

104TH CONGRESS
1ST SESSION

S. 671

To provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, MARCH 27), 1995

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multiple Punitive
5 Damages Fairness Act of 1995”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the term—

8 (1) “claimant” means any person who brings a
9 civil action and any person on whose behalf such an
10 action is brought; if such an action is brought

1 through or on behalf of an estate, the term includes
2 the claimant's decedent; if such action is brought
3 through or on behalf of a minor or incompetent, the
4 term includes the claimant's legal guardian;

5 (2) "harm" means any legally cognizable wrong
6 or injury for which punitive damages may be im-
7 posed;

8 (3) "defendant" means any individual, corpora-
9 tion, company, association, firm, partnership, soci-
10 ety, joint stock company, or any other entity (includ-
11 ing any governmental entity);

12 (4) "punitive damages" means damages award-
13 ed against any person or entity to punish or deter
14 such person or entity, or others, from engaging in
15 similar behavior in the future;

16 (5) "specific findings of fact" means findings in
17 written form focusing on specific behavior of a de-
18 fendant; and

19 (6) "State" means any State of the United
20 States, the District of Columbia, Puerto Rico, the
21 Northern Mariana Islands, the Virgin Islands,
22 Guam, American Samoa, and any other territory or
23 possession of the United States, or any political sub-
24 division thereof.

1 **SEC. 3. MULTIPLE PUNITIVE DAMAGES FAIRNESS.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Multiple or repetitive imposition of punitive
4 damages for harms arising out of a single act or
5 course of conduct may deprive a defendant of all the
6 assets or insurance coverage of the defendant, and
7 may endanger the ability of future claimants to re-
8 ceive compensation for basic out-of-pocket expenses
9 and damages for pain and suffering.

10 (2) The detrimental impact of multiple punitive
11 damages exists even in cases that are settled, rather
12 than tried, because the threat of punitive damages
13 being awarded results in a higher settlement than
14 would ordinarily be obtained. To the extent this pre-
15 mium exceeds what would otherwise be a fair and
16 reasonable settlement for compensatory damages, as-
17 sets that could be available for satisfaction of future
18 compensatory claims are dissipated.

19 (3) Fundamental unfairness results when any-
20 one is punished repeatedly for what is essentially the
21 same conduct.

22 (4) Federal and State appellate and trial
23 judges, and well-respected commentators, have ex-
24 pressed concern that multiple imposition of punitive
25 damages may violate constitutionally protected due
26 process rights.

1 (5) Multiple imposition of punitive damages
2 may be a significant obstacle to comprehensive set-
3 tlement negotiations in repetitive litigation.

4 (6) Limiting the imposition of multiple punitive
5 damages awards would facilitate resolution of mass
6 tort claims involving thousands of injured claimants.

7 (7) Federal and State trial courts have not pro-
8 vided adequate solutions to problems caused by the
9 multiple imposition of punitive damages because of
10 a concern that such courts lack the power or author-
11 ity to prohibit subsequent awards in other courts.

12 (8) Individual State legislatures can create only
13 a partial remedy to address problems caused by the
14 multiple imposition of punitive damages, because
15 each State lacks the power to control the imposition
16 of punitive damages in other States.

17 (b) GENERAL RULE.—Except as provided in sub-
18 section (c), punitive damages shall be prohibited in any
19 civil action in any State or Federal court in which such
20 damages are sought against a defendant based on the
21 same act or course of conduct for which punitive damages
22 have already been sought or awarded against such defend-
23 ant.

24 (c) CIRCUMSTANCES FOR AWARD.—If the court de-
25 termines in a pretrial hearing that the claimant will offer

1 new and substantial evidence of previously undiscovered,
2 additional wrongful behavior on the part of the defendant,
3 other than the injury to the claimant, the court may award
4 punitive damages in accordance with subsection (d).

5 (d) LIMITATIONS ON AWARD.—A court awarding pu-
6 nitive damages pursuant to subsection (c) shall—

7 (1) make specific findings of fact on the record
8 to support the award;

9 (2) reduce the amount of the punitive portion
10 of the damage award by the sum of the amounts of
11 punitive damages previously paid by the defendant
12 in prior actions based on the same act or course of
13 conduct; and

14 (3) prohibit disclosure to the jury of the court's
15 determination and action under this subsection.

16 (e) APPLICABILITY AND PREEMPTION.—(1) Except
17 as provided in paragraph (3), this section shall apply to—

18 (A) any civil action brought on any theory
19 where punitive damages are sought based on the
20 same act or course of conduct for which punitive
21 damages have already been sought or awarded
22 against the defendant; and

23 (B) all civil actions in which the trial has not
24 commenced before the effective date of this Act.

1 (2) Except as provided in paragraph (3), this section
2 shall apply to all civil actions in which the trial has not
3 commenced before the effective date of this Act.

4 (3) This section shall not apply to any civil action
5 involving damages awarded under any Federal or State
6 statute that prescribes the precise amount of punitive
7 damages to be awarded.

8 (4) This section shall not preempt or supersede any
9 existing Federal or State law limiting or otherwise re-
10 stricting the recovery for punitive damages to the extent
11 that such law is inconsistent with the provisions of this
12 section.

13 **SEC. 4. EFFECT ON OTHER LAW.**

14 Nothing in this Act shall be construed to—

15 (1) waive or affect any defense of sovereign im-
16 munity asserted by any State under any law;

17 (2) supersede any Federal law;

18 (3) waive or affect any defense of sovereign im-
19 munity asserted by the United States;

20 (4) affect the applicability of any provision of
21 chapter 97 of title 28, United States Code;

22 (5) preempt State choice-of-law rules with re-
23 spect to claims brought by a foreign nation or a citi-
24 zen of a foreign nation;

1 (6) affect the right of any court to transfer
2 venue or to apply the law of a foreign nation or to
3 dismiss a claim of a foreign nation or of a citizen
4 of a foreign nation on the ground of inconvenient
5 forum; or

6 (7) create a cause of action for punitive dam-
7 ages.

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