

REFERENCE TITLE: punitive damages; compensation fund

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## **HB 2862**

Introduced by  
Representative Burns J

AN ACT

AMENDING TITLE 12, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-557; RELATING TO PUNITIVE DAMAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5, article 3, Arizona Revised Statutes,  
3 is amended by adding section 12-557, to read:

4 12-557. Punitive damages; award; punitive damages fund

5 A. PUNITIVE DAMAGES MAY BE AWARDED IN ANY CIVIL ACTION IN WHICH THE  
6 PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT'S  
7 ACTIONS INVOLVED WILFUL MISCONDUCT, MALICE, FRAUD, WANTONNESS, OPPRESSION OR  
8 AN ENTIRE WANT OF CARE THAT RAISES THE PRESUMPTION OF CONSCIOUS INDIFFERENCE  
9 TO CONSEQUENCES.

10 B. PUNITIVE DAMAGES SHALL NOT BE AWARDED AS COMPENSATION TO A  
11 PLAINTIFF BUT ONLY TO PUNISH, PENALIZE OR DETER A DEFENDANT.

12 C. THE PLAINTIFF SHALL ALLEGE PUNITIVE DAMAGES IN A COMPLAINT. IF THE  
13 PLAINTIFF CLAIMS PUNITIVE DAMAGES, THE TRIER OF FACT FIRST SHALL DETERMINE  
14 FROM THE EVIDENCE PRODUCED AT TRIAL WHETHER TO AWARD PUNITIVE DAMAGES. IF  
15 THE TRIER OF FACT DETERMINES THAT PUNITIVE DAMAGES SHOULD BE AWARDED, THE  
16 TRIER OF FACT SHALL DETERMINE THE AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED.

17 D. ANY PARTY THAT IS AWARDED PUNITIVE DAMAGES SHALL NOTIFY THE  
18 ATTORNEY GENERAL OF THE AWARD. THIS STATE SHALL HAVE A LIEN FOR DEPOSIT IN  
19 THE TORT VICTIMS' COMPENSATION FUND WHICH DOES NOT ATTACH UNTIL AFTER  
20 ATTORNEY'S FEES AND EXPENSES ARE DEDUCTED. THE ATTORNEY'S CLAIM FOR FEES AND  
21 EXPENSES FOR THE ENTIRETY OF THE LAWSUIT SHALL BE PAID FIRST FROM THE  
22 PUNITIVE DAMAGES AWARD AND ONLY FROM THE VICTIM'S COMPENSATION IF THE CLAIM  
23 EXCEEDS THE AMOUNT OF THE PUNITIVE DAMAGES AWARD. THE ATTORNEY GENERAL SHALL  
24 SERVE NOTICE OF THE LIEN BY CERTIFIED MAIL ON THE PARTY OR PARTIES AGAINST  
25 WHOM THE STATE HAS A CLAIM FOR COLLECTION OF PUNITIVE DAMAGES. ON PETITION  
26 BY THE STATE, THE COURT, ON WRITTEN NOTICE TO ALL INTERESTED PARTIES, SHALL  
27 ADJUDICATE THE RIGHTS OF THE PARTIES AND ENFORCE THE LIEN. THE LIEN SHALL  
28 NOT BE SATISFIED OUT OF ANY RECOVERY UNTIL THE ATTORNEY'S CLAIM FOR FEES AND  
29 EXPENSES IS PAID. THE STATE MAY FILE ITS LIEN ON ENTRY OF THE PUNITIVE  
30 DAMAGES AWARD. THE STATE MAY NOT ENFORCE ITS LIEN UNTIL FINAL JUDGMENT.  
31 THIS SUBSECTION DOES NOT APPLY TO CLAIMS THAT ARE RESOLVED BY ARBITRATION,  
32 MEDIATION OR COMPROMISE SETTLEMENT. THIS SUBSECTION DOES NOT AFFECT THE  
33 RIGHT OR ABILITY OF THE PARTIES TO ANY CLAIM OR LAWSUIT TO COMPROMISE OR  
34 SETTLE THE CLAIM OR LITIGATION ON ANY TERMS AND AT ANY TIME.

35 E. THE PUNITIVE DAMAGES FUND IS ESTABLISHED CONSISTING OF MONIES  
36 DEPOSITED IN THE FUND PURSUANT TO SUBSECTION D. THE ATTORNEY GENERAL SHALL  
37 ADMINISTER THE FUND.

38 F. THE PUNITIVE DAMAGES FUND IS SUBJECT TO LEGISLATIVE APPROPRIATION  
39 FOR USE BY THE ATTORNEY GENERAL FOR FUNDING HEALTH EDUCATION SERVICES.

40 G. IF THE TRIER OF FACT IS A JURY, THE COURT SHALL INFORM THE JURY  
41 THAT IF PUNITIVE DAMAGES ARE AWARDED, THE MONIES AWARDED WILL BE DEPOSITED IN  
42 THE PUNITIVE DAMAGES FUND FOR HEALTH EDUCATION SERVICES AND WILL NOT BE  
43 AWARDED TO THE PLAINTIFF.