105TH CONGRESS
1ST SESSION

S. 78

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

JANUARY 21, 1997

Mr. HATCH (for himself and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multiple Punitive Damages Fairness Act of 1997".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) CLAIMANT.—The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such

1 an action is brought through or on behalf of an es-
2 tate, the term includes the claimant's decedent. If
3 such action is brought through or on behalf of a
4 minor or incompetent, the term includes the claim-
5 ant's legal guardian.

6 (2) HARM.—The term "harm" means any le-
7 gally cognizable wrong or injury for which punitive
8 damages may be imposed.

9 (3) DEFENDANT.—The term "defendant"
10 means any individual, corporation, company, associa-
11 tion, firm, partnership, society, joint stock company,
12 or any other entity (including any governmental en-
13 tity).

14 (4) PUNITIVE DAMAGES.—The term "punitive
15 damages" means damages awarded against any per-
16 son or entity to punish or deter such person or en-
17 tity, or others, from engaging in similar behavior in
18 the future.

19 (5) SPECIFIC FINDINGS OF FACT.—The term
20 "specific findings of fact" means findings in written
21 form focusing on specific behavior of a defendant.

22 (6) STATE.—The term "State" means any
23 State of the United States, the District of Columbia,
24 Puerto Rico, the Northern Mariana Islands, the Vir-
25 gin Islands, Guam, American Samoa, and any other

1 territory or possession of the United States, or any
2 political subdivision thereof.

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

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

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

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

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

24 (4) Federal and State appellate and trial
25 judges, and well-respected commentators, have ex-

1 pressed concern that multiple imposition of punitive
2 damages may violate constitutionally protected due
3 process rights.
4 (5) Multiple imposition of punitive damages
5 may be a significant obstacle to comprehensive set-
6 tlement negotiations in repetitive litigation.
7 (6) Limiting the imposition of multiple punitive
8 damages awards would facilitate resolution of mass
9 tort claims involving thousands of injured claimants.
10 (7) Federal and State trial courts have not pro-
11 vided adequate solutions to problems caused by the
12 multiple imposition of punitive damages because of
13 a concern that such courts lack the power or author-
14 ity to prohibit subsequent awards in other courts.
15 (8) Individual State legislatures can create only
16 a partial remedy to address problems caused by the
17 multiple imposition of punitive damages, because
18 each State lacks the power to control the imposition
19 of punitive damages in other States.
20 (b) GENERAL RULE.—Except as provided in sub-
21 section (c), punitive damages shall be prohibited in any
22 civil action in any State or Federal court in which such
23 damages are sought against a defendant based on the
24 same act or course of conduct for which punitive damages

1 have already been sought or awarded against such defend-
2 ant.

3 (c) CIRCUMSTANCES FOR AWARD.—If the court de-
4 termines in a pretrial hearing that the claimant will offer
5 new and substantial evidence of previously undiscovered,
6 additional wrongful behavior on the part of the defendant,
7 other than the injury to the claimant, the court may award
8 punitive damages in accordance with subsection (d).

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

11 (1) make specific findings of fact on the record
12 to support the award;

13 (2) reduce the amount of the punitive portion
14 of the damage award by the sum of the amounts of
15 punitive damages previously paid by the defendant
16 in prior actions based on the same act or course of
17 conduct; and

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

20 (e) APPLICABILITY AND PREEMPTION.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (3), this section shall apply to—

23 (A) any civil action brought on any theory
24 where punitive damages are sought based on
25 the same act or course of conduct for which pu-

1 nitive damages have already been sought or
2 awarded against the defendant; and
3 (B) all civil actions in which the trial has
4 not commenced before the effective date of this
5 Act.
6 (2) APPLICABILITY.—Except as provided in
7 paragraph (3), this section shall apply to all civil ac-
8 tions in which the trial has not commenced before
9 the effective date of this Act.
10 (3) NONAPPLICABILITY.—This section shall not
11 apply to any civil action involving damages awarded
12 under any Federal or State statute that prescribes
13 the precise amount of punitive damages to be award-
14 ed.
15 (4) EXCEPTION.—This section shall not pre-
16 empt or supersede any existing Federal or State law
17 limiting or otherwise restricting the recovery for pu-
18 nitive damages to the extent that such law is incon-
19 sistent with the provisions of this section.
20 **SEC. 4. EFFECT ON OTHER LAW.**
21 Nothing in this Act shall be construed to—
22 (1) waive or affect any defense of sovereign im-
23 munity asserted by any State under any law;
24 (2) supersede any Federal law;

1 (3) waive or affect any defense of sovereign im-
2 munity asserted by the United States;
3 (4) affect the applicability of any provision of
4 chapter 97 of title 28, United States Code;
5 (5) preempt State choice-of-law rules with re-
6 spect to claims brought by a foreign nation or a citi-
7 zen of a foreign nation;
8 (6) affect the right of any court to transfer
9 venue or to apply the law of a foreign nation or to
10 dismiss a claim of a foreign nation or of a citizen
11 of a foreign nation on the ground of inconvenient
12 forum; or
13 (7) create a cause of action for punitive dam-
14 ages.

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