

105TH CONGRESS  
2D SESSION

# H. R. 4785

To provide for relief from excessive punitive damage awards in cases involving primarily financial loss by establishing rules for proportionality between the amount of punitive damages and the amount of economic loss.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 1998

Mr. HYDE (for himself and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide for relief from excessive punitive damage awards in cases involving primarily financial loss by establishing rules for proportionality between the amount of punitive damages and the amount of economic loss.

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 “Fairness in Punitive  
5       Damage Awards Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) punitive damage awards in jury verdicts in  
2           financial injury cases are a serious and growing  
3           problem, and according to a Rand Institute for Civil  
4           Justice study in 1997 of punitive damage verdicts  
5           from calendar years 1985 through 1994 in States  
6           that represent 25 percent of the United States popu-  
7           lation—

8                   (A) nearly 50 percent of all punitive dam-  
9                   age awards are made in financial injury cases  
10                  (those in which the plaintiff is alleging a finan-  
11                  cial injury only and is not alleging injuries to  
12                  either person or property);

13                  (B) punitive damages are awarded in 1 in  
14                  every 7 financial injury verdicts overall and 1 in  
15                  every 5 financial injury cases in the State of  
16                  California;

17                  (C) between calendar years 1985 through  
18                  1989 and calendar years 1990 through 1994,  
19                  the average punitive damage verdict in financial  
20                  injury cases increased from \$3,400,000 to  
21                  \$7,600,000;

22                  (D) between calendar years 1985 through  
23                  1989 and calendar years 1990 through 1994,  
24                  the award of such damages at the 90th percent-  
25                  ile increased from \$3,900,000 to \$12,100,000;

1 (E) between calendar years 1985 through  
2 1989 and calendar years 1990 through 1994,  
3 the total amount of punitive damages awarded  
4 increased from \$1,200,000,000 to  
5 \$2,300,000,000, for a 10-year total of  
6 \$3,500,000,000;

7 (F) punitive damages represent a very  
8 large percentage of total damages awarded in  
9 all financial injury verdicts, increasing from 44  
10 percent to 59 percent during the period ana-  
11 lyzed; and

12 (G) in the State of Alabama, punitive dam-  
13 ages represent 82 percent of all damages  
14 awarded in financial injury cases;

15 (2) excessive, unpredictable, and often arbitrary  
16 punitive damage awards have a direct and undesir-  
17 able effect on interstate commerce by increasing the  
18 cost and decreasing the availability of goods and  
19 services;

20 (3) as a result of excessive, unpredictable, and  
21 often arbitrary punitive damage awards, consumers  
22 have been adversely affected through the withdrawal  
23 of products, producers, services, and service provid-  
24 ers from the marketplace, and from excessive liabil-

1        ity costs passed on to consumers through higher  
2        prices;

3            (4) excessive, unpredictable, and often arbitrary  
4        punitive damage awards jeopardize the financial  
5        well-being of many individuals and companies, par-  
6        ticularly the Nation's small businesses, and ad-  
7        versely affect government and taxpayers;

8            (5) individual State legislatures, 5 of whom  
9        have banned punitive damages and 14 others of  
10       whom have place limitations on the amount of such  
11       awards, can create only a partial remedy to address  
12       these problems because each State lacks the power  
13       to control the imposition of punitive damages in  
14       other States;

15           (6) it is the constitutional role of the national  
16       Government to remove barriers to interstate com-  
17       merce and to protect due process rights;

18           (7) there is a need to restore rationality, cer-  
19       tainty, and fairness to the award of punitive dam-  
20       ages in order to protect against excessive, arbitrary,  
21       and uncertain awards;

22           (8) establishing a rule of proportionality, in  
23       cases that primarily involve financial injury, between  
24       the amount of punitive damages awarded and the  
25       amount of economic damages would—

1 (A) be fair to both plaintiffs and defend-  
2 ants; and

3 (B) address the constitutional objection of  
4 the United States Supreme Court in *BMW of*  
5 *North America v. Gore* 116 S. Ct. 1589 (1996)  
6 to punitive damages that are grossly excessive  
7 in relation to the harm suffered; and

8 (9) based upon the powers contained in Article  
9 I, section 8, clause 3 and section 5 of the 14th  
10 amendment of the United States Constitution, this  
11 Act will—

12 (A) promote the free flow of goods and  
13 services and lessen the burdens on interstate  
14 commerce; and

15 (B) uphold constitutionally protected due  
16 process rights by placing reasonable limits on  
17 damages over and above the actual damages  
18 suffered by a claimant.

19 **SEC. 3. DEFINITIONS.**

20 For purposes of this Act:

21 (1) ACT OF TERRORISM.—The term “act of ter-  
22 rorism” means any activity that—

23 (A)(i) is a violation of the criminal laws of  
24 the United States or any State; or

1 (ii) would be a criminal violation if com-  
2 mitted within the jurisdiction of the United  
3 States or any State; and

4 (B) appears to be intended to intimidate or  
5 coerce a civilian population, to influence the  
6 policy of a government by intimidation or coer-  
7 cion, or to affect the conduct of a government  
8 by assassination or kidnaping.

9 (2) CLAIMANT.—The term “claimant”—

10 (A) means any person who brings a civil  
11 action that is subject to this Act and any per-  
12 son on whose behalf such an action is brought;  
13 and

14 (B) includes—

15 (i) a claimant’s decedent if such ac-  
16 tion is brought through or on behalf of an  
17 estate; and

18 (ii) a claimant’s legal guardian if such  
19 action is brought through or on behalf of  
20 a minor or incompetent.

21 (3) COMPENSATORY DAMAGES.—The term  
22 “compensatory damages” means damages awarded  
23 for economic and non-economic loss.

24 (4) ECONOMIC LOSS.—The term “economic  
25 loss” means objectively verifiable monetary losses in-

1 including medical expenses, loss of earnings, burial  
2 costs, loss of use of property, costs of repair or re-  
3 placement, costs of obtaining substitute domestic  
4 services, loss of employment, and loss of business or  
5 employment opportunities, to the extent such recov-  
6 ery is allowed under applicable Federal or State law.

7 (5) HARM.—The term “harm” means any le-  
8 gally cognizable wrong or injury for which punitive  
9 damages may be imposed.

10 (6) INTERSTATE COMMERCE.—The term “inter-  
11 state commerce” means commerce among the several  
12 States or with foreign nations, or in any territory of  
13 the United States or in the District of Columbia, or  
14 between any such territory and another, or between  
15 any such territory and any State or foreign nation,  
16 or between the District of Columbia and any State  
17 or territory or foreign nation.

18 (7) PERSON.—The term “person” includes any  
19 governmental entity.

20 (8) PUNITIVE DAMAGES.—The term “punitive  
21 damages” means damage awarded against any per-  
22 son to punish or deter such person, or others, from  
23 engaging in similar behavior in the future.

24 **SEC. 4. APPLICABILITY.**

25 (a) GENERAL RULE.—

1           (1) CIVIL ACTIONS COVERED.—Except as pro-  
2       vided in subsection (b), this Act applies to any civil  
3       action brought in any Federal or State court where  
4       such action affects interstate commerce or implicates  
5       rights or interests that may be protected by Con-  
6       gress under section 5 of the 14th amendment of the  
7       United States Constitution and where the claimant  
8       seeks to recover punitive damages under any theory  
9       for harm. Punitive damages may, to the extent per-  
10      mitted by applicable State law, be awarded against  
11      a person in such an action only if the claimant es-  
12      tablishes by clear and convincing evidence that con-  
13      duct of such person was carried out with a con-  
14      scious, flagrant indifference to the rights or safety of  
15      others and was the proximate cause of the harm  
16      that is the subject of the action.

17      (b) EXCEPTIONS.—

18           (1) IN GENERAL.—The provisions of this Act  
19      shall not apply to any person in a civil action de-  
20      scribed in subsection (a)(1) if the misconduct for  
21      which punitive damages are awarded against that  
22      person—

23           (A) caused harm that resulted in death, se-  
24      rious and permanent physical scarring or dis-  
25      figurement, loss of a limb or organ, or serious

1           and permanent physical impairment of an im-  
2           portant bodily function;

3           (B) constitutes a crime of violence (as that  
4           term is defined in section 16 of title 18, United  
5           States Code) for which the defendant has been  
6           convicted in any court;

7           (C) constitutes an act of terrorism for  
8           which the defendant has been convicted in any  
9           court;

10          (D) constitutes a hate crime referred to in  
11          subsection (b)(1) of the first section of the  
12          Hate Crime Statistics Act (28 U.S.C 534 note)  
13          for which the defendant has been convicted in  
14          any court;

15          (E) occurred at a time when the defendant  
16          was under the influence (as determined pursu-  
17          ant to applicable State law) of—

18                 (i) intoxicating alcohol, or

19                 (ii) any drug that may not lawfully be  
20                 sold without a prescription or had been  
21                 taken by the defendant other than in ac-  
22                 cordance with the terms of a lawful pre-  
23                 scription, and

1 if the defendant so being under the influence  
2 caused the harm for which the civil action was  
3 brought; or

4 (F) constitutes a felony sexual offense, as  
5 defined by applicable Federal or State law, for  
6 which the defendant has been convicted in any  
7 court.

8 (2) QUESTION OF LAW.—The applicability of  
9 this subsection and what constitutes death, serious  
10 and permanent physical scarring or disfigurement,  
11 loss of a limb or organ, or serious and permanent  
12 physical impairment of an important bodily function  
13 shall be a question of law for determination by the  
14 court. The liability of any other person in such an  
15 action shall be determined in accordance with this  
16 Act.

17 **SEC. 5. PROPORTIONAL AWARDS.**

18 (a) AMOUNT.—

19 (1) IN GENERAL.—The amount of punitive  
20 damages that may be awarded to a claimant in any  
21 civil action that is subject to this Act shall not ex-  
22 ceed the greater of—

23 (A) 3 times the amount awarded to the  
24 claimant for economic loss; or

25 (B) \$250,000.

1           (2) SPECIAL RULE FOR SMALL BUSINESS AND  
2 CERTAIN INDIVIDUALS.—

3           (A) IN GENERAL.—Notwithstanding para-  
4 graph (1), in any civil action that is subject to  
5 this Act against an individual whose net worth  
6 does not exceed \$500,000 or against an owner  
7 of an unincorporated business, or any partner-  
8 ship, corporation, association, unit of local gov-  
9 ernment, or organization that has fewer than  
10 25 full-time employees, the amount of punitive  
11 damages shall not exceed the lesser of—

12                   (i) 3 times the amount awarded to the  
13 claimant for economic loss; or

14                   (ii) \$250,000.

15           (B) APPLICABILITY.—For purposes of de-  
16 termining the applicability of this paragraph to  
17 a corporation, the number of employees of a  
18 subsidiary of a wholly owned corporation shall  
19 include all employees of a parent corporation or  
20 any subsidiary of that parent corporation.

21           (b) APPLICATION OF LIMITATIONS BY THE COURT.—  
22 The limitations in subsection (a) shall be applied by the  
23 court and shall not be disclosed to the jury.

24           (c) BIFURCATION AT REQUEST OF ANY PARTY.—

1           (1) IN GENERAL.—At the request of any party  
2           the trier of fact in any action that is subject to this  
3           section shall consider in a separate proceeding, held  
4           subsequent to the determination of the amount of  
5           compensatory damages, whether punitive damages  
6           are to be awarded for the harm that is the subject  
7           of the action and the amount of the award.

8           (2) INADMISSIBILITY OF EVIDENCE RELATIVE  
9           ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PRO-  
10          CEEDING CONCERNING COMPENSATORY DAMAGES.—  
11          If any party requests a separate proceeding under  
12          paragraph (1), in a proceeding to determine whether  
13          the claimant may be awarded compensatory dam-  
14          ages, any evidence, argument, or contention that is  
15          relevant only to the claim of punitive damages, as  
16          determined by applicable State law, shall be inadmis-  
17          sible.

18 **SEC. 6. PREEMPTION.**

19          Nothing in this Act shall be construed to—

20               (1) create a cause of action for punitive dam-  
21               ages;

22               (2) supersede or alter any Federal law;

23               (3) preempt or supersede any Federal or State  
24               law to the extent such law would further limit the  
25               award of punitive damages; or

1           (4) modify or reduce the ability of courts to  
2       order remittitur.

3   **SEC. 7. FEDERAL CAUSE OF ACTION PRECLUDED.**

4       The district courts of the United States shall not  
5   have jurisdiction pursuant to this Act based on section  
6   1331 or 1337 of title 28, United States Code.

7   **SEC. 8. EFFECTIVE DATE.**

8       This Act applies to any civil action described in sec-  
9   tion 4 that is commenced on or after the date of enactment  
10   of this Act, without regard to whether the harm that is  
11   the subject of the action or the conduct that caused the  
12   harm occurred before such date of enactment.

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