



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5798

Introduced 2/10/2010, by Rep. Tom Cross

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Full and Fair Noneconomic Damages Act. Provides that, in determining noneconomic damages, the fact finder may not consider: evidence of a defendant's alleged wrongdoing, misconduct, or guilt; evidence of the defendant's wealth or financial resources; or any other evidence that is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose. Provides for bifurcated trials before the same jury in cases involving punitive damages, if requested by any defendant. Outlines the procedure for the bifurcated trials. Provides for court review of noneconomic damage awards. Contains applicability provisions. Effective immediately.

LRB096 17157 AJO 32488 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act shall may be cited as the  
5 Full and Fair Noneconomic Damages Act.

6 Section 5. Findings.

7 (a) The purpose of this Act is to ensure that individuals  
8 receive full and fair compensatory damages, including damages  
9 for pain and suffering.

10 (b) Pain and suffering awards are intended to provide an  
11 injured person with compensation for the pain and suffering  
12 resulting from the injury at issue in a particular lawsuit.

13 (c) Punitive damages are intended to punish a defendant for  
14 wrongful conduct. Punitive damages are subject to certain  
15 statutory requirements, must be based on the appropriate  
16 evidence, and must be in accordance with the constitutional  
17 jurisprudence of the Supreme Court of the United States.

18 (d) Pain and suffering awards are distinct from punitive  
19 damages. Pain and suffering awards are intended to compensate a  
20 person for his or her loss. They are not intended to punish a  
21 defendant for wrongful conduct.

22 (e) For that reason, evidence that juries may consider in  
23 awarding pain and suffering damages is different from evidence

1 courts may consider for punitive damages. For example, the  
2 amount of a plaintiff's pain and suffering is not relevant to a  
3 decision on wrongdoing, and the degree of the defendant's  
4 wrongdoing is not relevant to the amount of pain and suffering.

5 (f) The size of noneconomic damage awards, which includes  
6 pain and suffering, has increased dramatically in recent years.  
7 While pain and suffering awards are inherently subjective, it  
8 is believed that this inflation of noneconomic damages is  
9 partially due to the improper consideration of evidence of  
10 wrongdoing in assessing pain and suffering damages.

11 (g) Inflated damage awards create an improper resolution of  
12 civil justice claims. The increased and improper costs of  
13 litigation and resulting rise in insurance premiums are passed  
14 on to the general public through higher prices for products and  
15 services.

16 (h) Therefore, courts should provide juries with clear  
17 instructions about the purpose of pain and suffering damages.  
18 Courts should instruct juries that evidence of misconduct is  
19 not to be considered in deciding compensation for noneconomic  
20 damages. Rather, it is to be considered solely for the purpose  
21 of deciding punitive damage awards.

22 (i) In cases in which punitive damages are requested,  
23 defendants should have the right to request bifurcation of a  
24 trial to ensure that evidence of misconduct is not  
25 inappropriately considered by the jury in its determination of  
26 liability and compensatory damages.

1 (j) As an additional protection, trial and appellate courts  
2 should rigorously review pain and suffering awards to ensure  
3 that they properly serve compensatory purposes and are not  
4 excessive.

5 Section 10. Definitions. As used in this Act:

6 "Noneconomic damages" means damages recoverable in tort  
7 actions that are awarded for the purpose of compensating a  
8 claimant for physical pain and suffering, mental or emotional  
9 pain or anguish, loss of consortium, disfigurement, physical  
10 impairment, loss of companionship and society, inconvenience,  
11 loss of enjoyment of life, and all other nonpecuniary losses  
12 other than exemplary or punitive damages.

13 "Pain and suffering" means the type of noneconomic damages  
14 that cover actual physical pain and suffering that is the  
15 proximate result of a physical injury sustained by a person.

16 "Exemplary damages" means any damages awarded as a penalty  
17 or by way of punishment but not for compensatory purposes.  
18 Exemplary damages are neither economic nor noneconomic  
19 damages. "Exemplary damages" includes punitive damages.

20 Section 15. Noneconomic damages; determination.

21 (a) In determining noneconomic damages, the fact finder may  
22 not consider:

23 (1) evidence of a defendant's alleged wrongdoing,  
24 misconduct, or guilt;

1           (2) evidence of the defendant's wealth or financial  
2 resources; or

3           (3) any other evidence that is offered for the purpose  
4 of punishing the defendant, rather than offered for a  
5 compensatory purpose.

6           Section 20. Procedure for trial of compensatory and  
7 punitive damages.

8           (a) All actions tried before a jury involving punitive  
9 damages shall, if requested by any defendant, be conducted in a  
10 bifurcated trial before the same jury.

11           (b) In the first stage of a bifurcated trial, the jury  
12 shall determine liability for compensatory damages and the  
13 amount of compensatory damages or nominal damages. Evidence  
14 relevant only to the issues of punitive damages shall not be  
15 admissible in this stage.

16           (c) Punitive damages may be awarded only if compensatory  
17 damages have been awarded in the first stage of the trial. An  
18 award of nominal damages cannot support an award of punitive  
19 damages.

20           (d) In the second stage of a bifurcated trial, the jury  
21 shall determine if a defendant is liable for punitive damages.

22           Section 25. Review of noneconomic damage awards.

23           (a) Upon a post-judgment motion, a trial court shall  
24 perform a rigorous analysis of the evidence supporting a

1 noneconomic damages award challenged as excessive. Such  
2 analysis shall consider the following nonexclusive factors:

3 (1) whether the evidence presented or the arguments of  
4 counsel resulted in one or more of the following events in  
5 the determination of a noneconomic damage award: (i)  
6 inflamed the passion or prejudice of the trier of fact;  
7 (ii) improper consideration of the wealth of the defendant;  
8 or (iii) improper consideration of the misconduct of the  
9 defendant so as to punish the defendant in circumvention of  
10 statutory or constitutional standards applicable to  
11 punitive damage awards;

12 (2) whether the verdict is in excess of verdicts  
13 involving comparable injuries to similarly situated  
14 plaintiffs; and

15 (3) whether there were any extraordinary circumstances  
16 in the record to account for an award in excess of what was  
17 granted by courts to similarly situated plaintiffs, with  
18 consideration to the injury type, severity of injury, and  
19 the plaintiff's age.

20 (b) A trial court upholding a noneconomic damages award  
21 challenged as excessive shall set forth in writing its reasons  
22 for upholding the award.

23 (c) A reviewing court shall use a de novo standard of  
24 review when considering an appeal of a noneconomic damages  
25 award on the grounds of excessiveness.

1           Section 30. Applicability. This Act applies to actions  
2           filed after its effective date.

3           Section 99. Effective date. This Act takes effect upon  
4           becoming law.