

AMENDMENTS TO LB25

(Amendments to Standing Committee amendments, AM440)

Introduced by Wayne, 13.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new
3 sections:

4 Section 1. The Legislature finds and declares that:

5 (1) Article VII, section 5, of the Constitution of Nebraska provides
6 in part that all fines, penalties, and license money arising under the
7 general laws of the state shall belong and be paid over to the counties
8 respectively where the same may be levied or imposed;

9 (2) Article VII, section 5, of the Constitution further provides
10 that all such fines, penalties, and license money shall be appropriated
11 exclusively to the use and support of the common schools in the
12 respective subdivisions where the same may accrue;

13 (3) Punitive damages are in the nature of fines or penalties;

14 (4) Punitive damages are awarded both to punish the defendant and to
15 deter the defendant and others from similar conduct. Punitive damages are
16 appropriate in many situations where compensatory damages would be
17 inadequate because the defendant acted in a truly egregious fashion; and

18 (5) Additional funds available for the public schools could be used
19 to provide property tax relief.

20 Sec. 2. For the purposes of sections 1 to 7 of this act:

21 (1) Compensatory damages mean damages intended to make whole the
22 loss of an injured party and no more. The term includes general and
23 special damages and does not include nominal, exemplary, or punitive
24 damages;

25 (2) Gross negligence means the absence of even slight care in the
26 performance of a duty involving an unreasonable risk of harm;

1 (3) Malice means hatred, spite, or ill-will or the doing of a
2 wrongful act intentionally without just cause or excuse;

3 (4) Nominal damages are damages that are not designed to compensate
4 an injured party and are less than one thousand dollars;

5 (5) Punitive damages mean damages that a party in a civil action is
6 ordered to pay (a) based on aggravating circumstances, (b) to penalize
7 such party, or (c) to provide additional deterrence and discourage
8 similar conduct in the future. The term does not include compensatory
9 damages or nominal damages; and

10 (6)(a) Reckless disregard means the person acted with reckless
11 disregard of the rights, health, or safety of others and the person was
12 either aware, or did not care, that there was a substantial and
13 unnecessary risk that such person's conduct would cause serious harm to
14 others.

15 (b) In order for the conduct to be with reckless disregard of
16 another's rights, health, or safety, it must have been unreasonable under
17 the circumstances and there must have been a high probability that the
18 conduct would cause serious harm to others.

19 Sec. 3. (1) Subject to this section, in an action for the breach of
20 an obligation not arising from contract, other than an insurance
21 contract, the trier of fact may, in addition to compensatory damages,
22 award punitive damages for the sake of example and by way of punishing
23 the defendant.

24 (2) In determining the amount, if any, of punitive damages to award,
25 the trier of fact shall consider the following factors:

26 (a) The seriousness of the hazard to the public arising from the
27 defendant's misconduct;

28 (b) The profitability of the misconduct to the defendant;

29 (c) The duration of the misconduct and any concealment of it;

30 (d) The degree of the defendant's awareness of the hazard and of its
31 excessiveness;

1 (e) The target of the conduct was financially vulnerable;

2 (f) The attitude and conduct of the defendant upon discovery of the
3 misconduct or hazard;

4 (g) The conduct involved repeated actions or was an isolated
5 incident;

6 (h) In the case of a defendant that is a corporation or other
7 entity, the number and level of employees involved in causing or
8 concealing the misconduct; and

9 (i) The financial condition of the defendant.

10 (3)(a) Category I. The trier of fact may award punitive damages
11 subject to the limit in subdivision (3)(b) of this section if the trier
12 of fact finds by clear and convincing evidence:

13 (i) That the defendant acted with gross negligence, fraud, or
14 reckless disregard; or

15 (ii) If the defendant is an insurer, that the defendant recklessly
16 disregarded its duty to deal fairly and act in good faith with its
17 insured.

18 (b) An award of punitive damages under this subsection shall not
19 exceed the greater of:

20 (i) One million dollars; or

21 (ii) The amount of any compensatory damages awarded.

22 (4)(a) Category II. The trier of fact may award punitive damages
23 subject to the limit in subdivision (4)(b) of this section if the trier
24 of fact finds by clear and convincing evidence:

25 (i) That the defendant acted intentionally and with malice toward
26 others; or

27 (ii) If the defendant is an insurer, that the defendant
28 intentionally and with malice breached its duty to deal fairly and act in
29 good faith with its insured.

30 (b) An award of punitive damages under this subsection shall not
31 exceed the greater of:

- 1 (i) Five million dollars;
- 2 (ii) Three times the amount of any compensatory damages awarded; or
- 3 (iii) The increased financial benefit derived by the defendant as a
- 4 direct result of the conduct causing the injury to the plaintiff and
- 5 other persons or entities.

6 (c) The trial court shall reduce any award for punitive damages
7 awarded pursuant to subdivision (4)(b)(iii) of this section by the amount
8 the court finds the defendant has previously paid as a result of all
9 punitive damage verdicts entered in any court of this state for the same
10 conduct by the defendant.

11 (5) Category III. The trier of fact may award punitive damages
12 without regard to any limit set forth in this section if:

13 (a) The trier of fact finds by clear and convincing evidence:

14 (i) That the defendant acted with gross negligence, fraud, or
15 reckless disregard; or

16 (ii) If the defendant is an insurer, that the defendant recklessly
17 disregarded its duty to deal fairly and act in good faith with its
18 insured; and

19 (b) The trial court finds, on the record and out of the presence of
20 the jury, that there is evidence beyond a reasonable doubt that the
21 defendant acted intentionally and with malice and engaged in conduct
22 threatening to human life.

23 (6) Except as provided in section 5 of this act, the determination
24 of what amount, if any, of punitive damages to award shall be made by the
25 trier of fact in a separate proceeding that is conducted after the trier
26 of fact has made findings regarding any compensatory damages.

27 Sec. 4. (1) An award of punitive damages must be specifically
28 prayed for in the pleading.

29 (2) The party requesting punitive damages shall cause a copy of such
30 pleading to be served upon the Attorney General and the county attorney.
31 The county attorney shall notify the school board for any school district

1 that may receive punitive damages if any are awarded.

2 (3) Upon an award of punitive damages, the court shall notify the
3 county attorney. The county attorney or local school board may become a
4 party to the action solely to protect and enforce the interests of the
5 common schools in any award of punitive damages.

6 Sec. 5. Whether to award punitive damages, and the amount of such
7 damages, shall be determined by the trier of fact unless waived by all
8 parties.

9 Sec. 6. Any award of punitive damages shall be remitted to the
10 State Treasurer for distribution in accordance with Article VII, section
11 5, of the Constitution of Nebraska.

12 Sec. 7. (1) Sections 1 to 7 of this act are cumulative with and
13 supplemental to any other laws of this state that authorize punitive
14 damages.

15 (2) Nothing in sections 1 to 7 of this act shall prevent a court
16 from ordering restitution or ordering payment of attorney's fees.

17 2. Correct the operative date and repealer sections so that the
18 sections added by this amendment become operative on July 1, 2025.