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## COURTS Punitive Damages: Provide for Lifting the Cap on Punitive Damages for Torts Committed While Tortfeasors are Under the Influence of Drugs

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## COURTS

### *Punitive Damages: Provide for Lifting the Cap on Punitive Damages for Torts Committed While Tortfeasors are Under the Influence of Drugs*

**CODE SECTION:** O.C.G.A. § 51-12-5.1 (amended)  
**BILL NUMBER:** HB 572  
**ACT NUMBER:** 299  
**GEORGIA LAWS:** 1997 Ga. Laws 837  
**SUMMARY:** The Act provides that a plaintiff, suing for a tort committed while the tortfeasor was under the influence of alcohol, drugs, or an intentionally taken substance that had the effect of impairing the person, can be compensated with punitive damages awarded against the tortfeasor. The Act does not require that such a tortfeasor display any intent to do harm or be acting in a malicious or aggravated manner. The Act does not limit the amount of punitive damages that may be awarded against the tortfeasor.  
**EFFECTIVE DATE:** April 14, 1997<sup>1</sup>

#### *HB 572*

HB 572 was introduced by Representative Doug Teper in an effort to push his idea of “accountability politics.”<sup>2</sup> The idea behind this theory is that wrongdoers should be responsible for the harm they cause and pay for their mistakes.<sup>3</sup> The insurance industry had come to the Georgia General Assembly wanting to place caps on the liability that can be imposed against a party.<sup>4</sup> This concerned Representative Teper.<sup>5</sup> In that vein, HB 572 was an attempt to compensate victims of alcohol- or drug-induced torts more fully.<sup>6</sup>

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1. The Act became effective upon approval by the Governor.
  2. See Telephone Interview with Rep. Doug Teper, House District No. 61 (Apr. 22, 1997) [hereinafter Teper Interview]. Representative Teper was the sponsor of the bill and a member of the House Judiciary Committee. *Id.*
  3. See *id.*
  4. See *id.*
  5. See *id.*
  6. O.C.G.A. § 51-12-56.1 (Supp. 1997).

*Lifting the Cap on the Number of Times Punitive Damages Can be Awarded*

Prior to the introduction of HB 572, Georgia law capped the number of times a defendant could have punitive damages awarded against him for his actions in a products liability suit, when these actions were shown to be of a willful, wanton, malicious, or fraudulent nature.<sup>7</sup> Originally, it was believed, the law was designed to keep small businesses alive.<sup>8</sup> In other words, it was designed so that a manufacturer could not be sued in one county, and then in another, without the opportunity to make the corrections to his business so as not to endanger other consumers.<sup>9</sup> But the language of the law was too open ended.<sup>10</sup> With this in mind, and to keep businesses accountable to the public, HB 572 was introduced.<sup>11</sup>

HB 572 originally included a provision to lift the cap and allow a business to be sued for punitive damages many times over if the defendant could not show he had taken remedial measures to correct the problem within a reasonable time of having punitive damages awarded against him.<sup>12</sup> However, the National Federation of Independent Business (NFIB), led by Bert Fridlin, objected because it believed this change would subject businesses to unlimited liability.<sup>13</sup> This provision was removed from the bill by the House Judiciary Committee in an effort to reduce opposition.<sup>14</sup>

*Attempting to Overrule Uniroyal Goodrich Tire Company*

A longstanding debate has raged in Georgia concerning punitive damages.<sup>15</sup> For years, the State has had the right to take seventy-five percent of any punitive damage award given in a products liability case and place this money in the State Treasury.<sup>16</sup> Whether the judge or an attorney may mention this before a jury has been debated.<sup>17</sup> On one side, there is the belief that the jury might overcompensate a plaintiff for the money the jury learns will go to the State rather than the

7. See 1987 Ga. Laws 915 (codified at O.C.G.A. § 51-12-5.1(b) (1994)).

8. See Telephone Interview with Rep. Robert Reichert, House District No. 126 (Apr. 28, 1997) [hereinafter Reichert Interview].

9. See *id.*

10. See *id.*

11. See Teper Interview, *supra* note 2.

12. HB 572, as introduced, 1997 Ga. Gen. Assem.

13. See Telephone Interview with Bert Fridlin, Georgia State Director, Georgia Chapter of the National Federation of Independent Business (Apr. 22, 1997) [hereinafter Fridlin Interview].

14. See Reichert Interview, *supra* note 8.

15. See Teper Interview, *supra* note 2.

16. See *id.*

17. See *id.*

plaintiff.<sup>18</sup> On the other side, defense attorneys wanted to be able to argue to the jury that the entire verdict was not going to the plaintiff.<sup>19</sup> The Georgia Supreme Court decided this issue in *Uniroyal Goodrich Tire Company v. Ford*.<sup>20</sup> The court held that since the purpose of punitive damages is to punish a wrongdoer, rather than compensate a plaintiff, the information was irrelevant and not helpful to the jury.<sup>21</sup> Thus, the court barred any reference to this law from the jury.<sup>22</sup>

Representative Teper introduced HB 572 with a provision that would statutorily overrule *Uniroyal* and allow such a reference.<sup>23</sup> This was done because both sides of the courtroom wanted the ability to mention this fact and Representative Teper wanted to clear up the issue.<sup>24</sup> Again, the NFIB objected to the change fearing unlimited liability to their members,<sup>25</sup> which resulted in this provision being taken out by the Committee in an effort to reduce opposition.<sup>26</sup>

#### *Subjecting Torts Committed Under the Influence to Punitive Damages*

The final prong of Representative Teper's "accountability politics" was to make the consequences of drunk driving even less acceptable.<sup>27</sup> In his view, this could be accomplished in two ways.<sup>28</sup> Offenders could be put in jail, as Governor Zell Miller had been requesting for years, or offenders could be subject to financial penalties designed to discourage the conduct.<sup>29</sup> Representative Teper chose the latter course of action because the General Assembly had not acted upon the former course in years, and he did not believe that it would during this session.<sup>30</sup> Thus, Representative Teper's bill called for unlimited punitive damages when it could be shown through clear and convincing evidence that the defendant intended to cause the consequences of his actions while he was under the influence of drugs, alcohol, or inhaled toxic substances.<sup>31</sup> The Act does not contain any requirement for a cap on these punitive damages, nor is it required that a person be operating a

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18. See Fridlin Interview, *supra* note 13.

19. See Teper Interview, *supra* note 2.

20. 218 Ga. App. 248, 253, 461 S.E.2d 877, 883 (1995).

21. See *id.*

22. See *id.*

23. HB 572, as introduced, 1997 Ga. Gen. Assem.

24. See Teper Interview, *supra* note 2.

25. See Fridlin Interview, *supra* note 13.

26. HB 572 (HCS), 1997 Ga. Gen. Assem.; see Teper Interview, *supra* note 2.

27. See Teper Interview, *supra* note 2.

28. See *id.*

29. See *id.*

30. See *id.*

31. See HB 572 as introduced, 1997 Ga. Gen. Assem.

car; a person must simply commit a tort while under the influence.<sup>32</sup> Additionally, the drafting of HB 572 has the effect of lifting the punitive damage cap for all torts committed with specific intent to cause harm.<sup>33</sup> Presumably, this lifts the punitive damage cap for any intentional tort or fraud.<sup>34</sup> Again, the NFIB objected to Representative Teper's provision of unlimited punitive damages because it believed that it was too broad and created too many opportunities for trial attorneys to subject businesses to unlimited liability.<sup>35</sup> The Georgia Chamber of Commerce joined the opposition, claiming that businesses and employers could be subject to punitive damages for the torts of their employees who were under the influence at the time of the incident.<sup>36</sup> Earl Rodgers, of the Georgia Chamber of Commerce, stated that the Chamber of Commerce was strictly against employees working while under the influence and urged its members to take proactive steps to curtail workers who use drugs.<sup>37</sup> Despite the opposition, the provision stayed in the bill and was sent to the House Rules Committee.<sup>38</sup>

However, prior to the bill being sent to the Rules Committee, Representative Reichert unsuccessfully attempted to amend the bill, which would have raised the general cap on punitive damages from \$250,000 to \$500,000.<sup>39</sup> This proposed Amendment was made in an effort to make punitive damages more effective as a deterrent while reflecting a change in the cost of living.<sup>40</sup>

### *The Thirty-third Day*

The battle to subject torts committed under the influence to punitive damages did not end in committee.<sup>41</sup> Under Georgia law, a bill must be passed by one Chamber of the General Assembly by the end of the thirty-third day of the session in order for the bill to be passed by the other Chamber and become law at the end of that session.<sup>42</sup> On the night before the thirty-third day, Teper attempted to have HB 572

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32. O.C.G.A. § 51-12-5.1(f) (Supp. 1997).

33. *Id.*

34. *See id.*

35. *See* Fridlin Interview, *supra* note 13.

36. *See* Telephone Interview with Earl Rodgers, Senior Vice President of Governmental Affairs, Georgia Chamber of Commerce (Apr. 28, 1997) [hereinafter Rodgers Interview].

37. *Id.*

38. *See* HB 572 (HCS), 1997 Ga. Gen. Assem.

39. *See* Reichert Interview, *supra* note 8.

40. *See id.*

41. *See* Teper Interview, *supra* note 2; Reichert Interview, *supra* note 8.

42. *See* Teper Interview, *supra* note 2.

placed on the calendar.<sup>43</sup> Earl Earhart, the Republican whip, called for a vote and it was voted down.<sup>44</sup> However, in the evening of the thirty-third day, a supplemental calendar was compiled and HB 572 was brought onto the floor.<sup>45</sup>

In a second attempt to strengthen the law and to make punitive damages more effective, Representative Reichert proposed his amendment that would raise the general cap, as he had done in committee.<sup>46</sup> Again, this was voted down.<sup>47</sup> However, Representative Reichert brought a second amendment to the floor, which held only the "active tortfeasor" liable for the payment of the punitive damages.<sup>48</sup> This second amendment was successful.<sup>49</sup> Before the bill was passed by the House, language was added on the floor that would make an employer a "joint-tortfeasor" if he knew of the act or should have known of the act.<sup>50</sup> The bill was sent to the Senate Judiciary Committee and passed to the full Senate.<sup>51</sup> On the Senate floor, the bill was amended to exclude persons under the influence of prescription drugs and require that the person's judgment be shown to be substantially impaired by the intoxicating substance.<sup>52</sup> The active tortfeasor language caused confusion in the Senate as to who an active tortfeasor is.<sup>53</sup> Therefore, the Senate specifically struck the active tortfeasor language that would hold anyone else with knowledge or presumed knowledge as an active tortfeasor.<sup>54</sup> In the view of the Georgia Trial Lawyers Association, this amendment seems to be a moot point because the doctrine of respondeat superior will hold those specifically excluded liable regardless.<sup>55</sup> Nonetheless, it does not appear, at this time, that the General Assembly intended for vicarious liability to attach to this bill in terms of paying the punitive awards.<sup>56</sup> HB 572 was passed and signed into law on April 14, 1997 and took effect immediately.<sup>57</sup> It provides

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43. *See id.*

44. *See id.*

45. *See id.*

46. *See* Reichert Interview, *supra* note 8.

47. *See id.*

48. *See id.*

49. *See* Teper Interview, *supra* note 2.

50. *See* O.C.G.A. § 51-12-5.1(f) (Supp. 1997).

51. *See* Teper Interview, *supra* note 2.

52. O.C.G.A. § 51-12-5.1(f) (Supp. 1997).

53. *See* Teper Interview, *supra* note 2.

54. *Compare* HB 572 (SCS), 1997 Ga. Gen. Assem. *with* HB 572 (SCSFA), 1997 Ga. Gen. Assem.

55. *See* Telephone Interview with Aubrey Villines, Lobbyist, Georgia Trial Lawyers Association (Apr. 26, 1997).

56. *See* Fridlin Interview, *supra* note 13.

57. O.C.G.A. § 51-12-5.1 (Supp. 1997).

punitive awards for all toxic substance abuse torts and intentional torts, including fraud, committed on or after April 14, 1997.<sup>58</sup>

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58. *See id.*