Alabama Tort Reform

H 299

LRS97-580:N:2/3/97:JRC*/cj

HB 298

SYNOPSIS: This bill regulates the award of punitive damages in civil actions. It states certain conditions that must be met in order for an award of punitive damages to be made; it sets amounts of punitive damages that may be awarded subject to a multiplier of compensatory damages but not to exceed a total of $750,000; it allows for several liability regarding punitive damages awards only among defendants expressly found liable for punitive damages and then only for an amount commensurate with the defendant's conduct; it prohibits punishment more than once for the same wrongful act; and it prescribes circumstances under which a defendant may be liable for punitive damages arising from the conduct of another.

A B I L L

T O B E E N T I T L E D

A N A C T

DSW 133032

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To regulate further the award of punitive damages in civil actions; to prescribe amounts of punitive damages that may be awarded; to prohibit, in certain civil actions, an award of punitive damages except upon an award of economic damages; to prohibit award of punitive damages against any defendant not expressly found to have committed conduct warranting such an award and to require the award to be commensurate with a defendant's conduct; to prohibit punishment more than once for the same wrongful act or course of conduct; and to prescribe circumstances under which a defendant may be liable for punitive damages arising from the conduct of another; to amend Section 6-11-21 of the Code of Alabama 1975; to repeal Section 6-11-27 of the Code of Alabama 1975; and to provide an effective date for such act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 6-11-21 of the Code of Alabama 1975 (originally enacted as Section 2 of Act 87-185) is hereby amended to read as follows:

"§6-11-21.

"~~An award of punitive damages shall not exceed $250,000, unless it is based upon one or more of the following:~~

"~~(1) A pattern or practice of intentional wrongful conduct, even though the damage or injury was inflicted only on the plaintiff; or,~~

~~"(2) Conduct involving actual malice other than fraud or bad faith not a part of a pattern or practice; or,~~

~~"(3) Libel, slander or defamation.~~

"(a) In all civil actions wherein entitlement to punitive damages shall have been established under applicable laws, other than actions for wrongful death brought under Alabama law so long as the wrongful death action in Alabama is restricted solely to the remedy of punitive damages, no award of punitive damages shall exceed in the aggregate three times the compensatory damages of the party claiming punitive damages but in no event shall such punitive damages exceed seven hundred and fifty thousand dollars ($750,000). An award of punitive damages may not be made to any claimant in any amount in the absence of an award of economic damages to that claimant.

"(b) "Economic damages" means the actual, out-of-pocket monetary loss of the injured party and does not include any recovery for nominal damages, pain, suffering, mental anguish, emotional injuries, injury to reputation, inconvenience or other nonpecuniary damages.

"(c) No defendant may be liable for any punitive damages unless that defendant has been expressly found by the trier of fact to have engaged in conduct, as defined in Section 6-11-20, Code of Alabama 1975, warranting punitive damages, and such defendant shall be liable only for punitive damages commensurate with that defendant's own conduct except

to the extent that such defendant may be held liable for the conduct of another as provided in subparagraph (f).

"(d) Nothing herein shall be construed as creating a right to an award of punitive damages in any amount inasmuch as punitive damages should be awarded only in extraordinary cases, and the trier of fact shall likewise have discretion in all cases not to award punitive damages in any amount.

"(e) A defendant may not be punished more than once for the same wrongful act, omission, or course of conduct. No award of punitive damages for multiple claimants shall, in the aggregate, exceed three times the compensatory damages of each claimant entitled to an award of punitive damages, and in no event shall the aggregate punitive damage awards for all claimants exceed seven hundred fifty thousand dollars ($750,000).

"(f) A defendant may be liable for punitive damages as a result of wrongful conduct of another warranting punitive damages only where such defendant or, if the defendant is an entity, when a person in senior management with the express and actual authority to make policy decisions, with actual knowledge of the wrongful conduct, expressly authorizes or subsequently expressly ratifies, and retains the benefit of, another's wrongful conduct."

Section 2. The provisions of this act are severable. If any section, subsection, clause, provision or other portion of this act should be held invalid or

unenforceable (whether on grounds of unconstitutionality or otherwise) by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining portions of this act, which shall continue to be effective.

Section 3. All laws and parts of laws that are in conflict with any of the provisions of this act shall be and are, to the extent of conflict repealed, and Section 6-11-27, Code of Alabama 1975, is specifically repealed.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor or upon its otherwise becoming a law.

Section 5. This act shall apply only to civil actions first commenced on or after the effective date of this act.

#1302

LRS97-581:N:2/3/97:JRC*/cj

HB 302

SYNOPSIS: This bill relates to civil actions for fraud; provides that an action for fraud shall be brought within two years from the date the aggrieved party discovered, or in the exercise of reasonable diligence should have discovered, the fraud; amends Section 6-2-3 and Section 6-5-100, Code of Alabama 1975, to consolidate various actions for fraud into one cause of action whether committed by misrepresentation or suppression; and specifically repeals Section 6-11-27 and Sections 6-5-101 to 6-5-104, inclusive, Code of Alabama 1975.

A B I L L

T O B E E N T I T L E D

A N A C T

Relating to civil actions for fraud to amend Section 6-2-3, Code of Alabama 1975, relating to the statute of limitations for fraud, to provide that an action for fraud

DSW 133037

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shall be brought within two years from the date the aggrieved party discovered, or in the exercise of reasonable diligence should have discovered, the fraud, to amend Section 6-5-100, Code of Alabama 1975, relating to a right of action for fraud, to consolidate various actions for fraud into one cause of action whether committed by misrepresentation or suppression; and to specifically repeal Section 6-11-27 and Sections 6-5-101 to 6-5-104, inclusive, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 6-2-3, Code of Alabama 1975, is amended to read as follows:

"§6-2-3.

"~~In~~ All actions seeking relief on the ground of fraud ~~where the statute has created a bar, the claim must not be considered as having accrued until the discovery by the aggrieved party of the fact constituting the fraud, after which he must have two years within which to prosecute his action~~ shall be brought within two years from the date the aggrieved party discovered, or in the exercise of reasonable diligence should have discovered, the fraud. The receipt by a party of a document which would place a reasonable person on notice that a misrepresentation or suppression has occurred shall be deemed discovery of the fraud, regardless of whether the party actually read the document."

Section 2. Section 6-5-100, Code of Alabama 1975, is amended to read as follows:

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"§6-5-100.

"~~Fraud by one, accompanied with damage to the party defrauded, in all cases gives a right of action.~~

"(a) For purposes of this section, the following terms shall have the following meanings:

"(1) ECONOMIC DAMAGES. Actual out-of-pocket economic loss of the injured party. Economic damage does not include nominal damages, recovery for pain, suffering, mental anguish, emotional injuries, injury to reputation, inconvenience, or other nonpecuniary damages.

"(2) DUTY TO COMMUNICATE. A duty to communicate a material fact may arise only from a fiduciary relationship or from a confidential relationship created by contractual privity between the parties.

"(3) REASONABLE RELIANCE. Reliance which is objectively reasonable under the circumstances. If the circumstances are such that a reasonably prudent person, by the exercise of ordinary care, could have discovered the true facts, and the discovery of the true facts would have been timely to prevent the damage, then there is no reasonable reliance. As a matter of law, a party may not reasonably rely upon an oral representation that conflicts with the terms of a written document signed or initialed by that party or a written contract entered into by that party.

"(b) As a matter of law, a person shall be deemed to have read and understood the contents of the following:

"(1) A document which bears his or her signature or initials.

"(2) Any written contract to which he or she is a party that was received by such person, from the time of the person's signature, initials, or receipt.

"(c) There shall be one cause of action for fraud, whether committed by misrepresentation or suppression, only as follows:

"(1) "Misrepresentation" shall mean misrepresentation of material fact made willfully, or made recklessly without actual knowledge, with the intent to induce the other party to act and on which the other party reasonably relies and which proximately causes the other party to suffer economic damage.

"(2) "Suppression" shall mean the reckless, willful, or intentional failure to communicate a material fact which a party is under a duty to communicate to another party, with the intent to induce the other party to act or refrain from acting, and the other party reasonably relies on the absence of the material fact, and as a proximate result thereof, is caused to suffer economic damage. The existence of a duty to communicate is a threshold issue of law to be decided by the court, and no action for fraud based on suppression may be submitted to the trier of fact absent a ruling from the court that there exists a duty to communicate the allegedly suppressed fact or facts.

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"(d) In the event the trier of facts determines that punitive damages should be awarded, then it shall determine, in terms of a percentage, the relative degree of culpability to be attributed to each person for the wrongful conduct giving rise to the punitive damage award, regardless of whether such person is, was, or could be made a defendant in this case. No person shall be liable for punitive damages in excess of the percentage of culpability assigned to that person under this section."

Section 3. All laws and parts of laws that are in conflict with any of the provisions of this act shall be and are, to the extent of the conflict, repealed, and Section 6-11-27 and Section 6-5-101 to 6-5-104, inclusive, Code of Alabama 1975, are specifically repealed.

Section 4. The provisions of this Act are severable. If any section, subsection, clause, provision or other portion of this Act should be held invalid or unenforceable (whether on grounds of unconstitutionality or otherwise) by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining portions of this Act, which shall continue effective. Furthermore, in the event that any portion of this act should be held invalid or unenforceable, or otherwise denied full force and effect, by any court of competent jurisdiction, such portion of this Act shall nevertheless not be deemed to have been repealed, rescinded or annulled by the

Legislature; and, in the event that, subsequent to such holding of invalidity or unenforceablity, such holding is overturned by the same court or a higher court, then such portion of this act so held to be invalid or unenforceable shall be effective, and shall be deemed to be in full force and effect, on and after the date on which such holding is overturned.

Section 5. The provisions of this Act shall not affect or be applied to any civil action filed before the effective date of this act.

Section 6. This act shall become effective immediately upon its passage and approval by the Governor or upon its otherwise becoming law.