

January 29, 1998

HOUSE BILL No. 1118

DIGEST OF HB 1118 (Updated January 28, 1998 1:01 pm - DI 76)

Citations Affected: IC 34-4.

Synopsis: Jury instructions in punitive damages cases. Provides that a jury in a case involving punitive damages must be advised of the: (1) limitation on the amount of punitive damages that may be awarded; (2) ability of the court to reduce the amount of a punitive damage award; and (3) requirements concerning allocation of money received in payment in a punitive damage award. Provides that in an action based on comparative fault, the jury shall be informed of any immunity defense that is available to a nonparty.

Effective: July 1, 1998.

Moses

January 6, 1998, read first time and referred to Committee on Judiciary.
January 28, 1998, amended, reported — Do Pass.

C
O
P
Y

HB 1118—LS 6760/DI 69



January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1118

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-4-33-5, AS AMENDED BY P.L.278-1995,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 5. (a) In an action based on fault that is brought
4 against one (1) defendant or two (2) or more defendants who may be
5 treated as a single party, and that is tried to a jury, the court, unless all
6 the parties agree otherwise, shall instruct the jury to determine its
7 verdict in the following manner:

8 (1) The jury shall determine the percentage of fault of the
9 claimant, of the defendant, and of any person who is a nonparty.
10 The jury ~~may not shall~~ be informed of any immunity defense that
11 is available to a nonparty. In assessing percentage of fault, the
12 jury shall consider the fault of all persons who caused or
13 contributed to cause the alleged injury, death, or damage to
14 property, tangible or intangible, regardless of whether the person
15 was or could have been named as a party. The percentage of fault
16 of parties to the action may total less than one hundred percent
17 (100%) if the jury finds that fault contributing to cause the

HB 1118—LS 6760/DI 69



C
O
P
Y

- 1 claimant's loss has also come from a nonparty or nonparties.
- 2 (2) If the percentage of fault of the claimant is greater than fifty
3 percent (50%) of the total fault involved in the incident which
4 caused the claimant's death, injury, or property damage, the jury
5 shall return a verdict for the defendant and no further deliberation
6 of the jury is required.
- 7 (3) If the percentage of fault of the claimant is not greater than
8 fifty percent (50%) of the total fault, the jury then shall determine
9 the total amount of damages the claimant would be entitled to
10 recover if contributory fault were disregarded.
- 11 (4) The jury next shall multiply the percentage of fault of the
12 defendant by the amount of damages determined under
13 subdivision (3) and shall then enter a verdict for the claimant in
14 the amount of the product of that multiplication.
- 15 (b) In an action based on fault that is brought against two (2) or
16 more defendants, and that is tried to a jury, the court, unless all the
17 parties agree otherwise, shall instruct the jury to determine its verdict
18 in the following manner:
- 19 (1) The jury shall determine the percentage of fault of the
20 claimant, of the defendants, and of any person who is a nonparty.
21 The jury ~~may not~~ shall be informed of any immunity defense that
22 might be available to a nonparty. In assessing percentage of fault,
23 the jury shall consider the fault of all persons who caused or
24 contributed to cause the alleged injury, death, or damage to
25 property, tangible or intangible, regardless of whether the person
26 was or could have been named as a party. The percentage of fault
27 of parties to the action may total less than one hundred percent
28 (100%) if the jury finds that fault contributing to cause the
29 claimant's loss has also come from a nonparty or nonparties.
- 30 (2) If the percentage of fault of the claimant is greater than fifty
31 percent (50%) of the total fault involved in the incident which
32 caused the claimant's death, injury, or property damage, the jury
33 shall return a verdict for the defendants and no further
34 deliberation of the jury is required.
- 35 (3) If the percentage of fault of the claimant is not greater than
36 fifty percent (50%) of the total fault, the jury shall then determine
37 the total amount of damages the claimant would be entitled to
38 recover if contributory fault were disregarded.
- 39 (4) The jury next shall multiply the percentage of fault of each
40 defendant by the amount of damages determined under
41 subdivision (3) and shall enter a verdict against each such
42 defendant (and such other defendants as are liable with the

C
O
P
Y

1 defendant by reason of their relationship to such defendant) in the
2 amount of the product of the multiplication of each defendant's
3 percentage of fault times the amount of damages as determined
4 under subdivision (3).

5 (c) In an action based on fault that is tried by the court without a
6 jury, the court shall make its award of damages according to the
7 principles specified in subsections (a) and (b) for juries.

8 (d) In the case of an intentional tort, the plaintiff may recover one
9 hundred percent (100%) of the compensatory damages in a civil action
10 for intentional tort from a defendant who was convicted after a
11 prosecution based on the same evidence.

12 SECTION 2. IC 34-4-34-3, AS ADDED BY P.L.278-1995,
13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 1998]: Sec. 3. A jury in a case subject to this chapter ~~may not~~
15 **shall** be advised of

16 ~~(1) the limitation on the amount of a punitive damage award~~
17 ~~under section 4 of this chapter; or~~

18 ~~(2) the requirement under section 6 of this chapter concerning~~
19 ~~allocation of money received in payment of a punitive damage~~
20 ~~award:~~

21 **provisions of sections 4, 5, and 6 of this chapter.**

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1118, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-4-33-5, AS AMENDED BY P.L.278-1995, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) In an action based on fault that is brought against one (1) defendant or two (2) or more defendants who may be treated as a single party, and that is tried to a jury, the court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty.

The jury ~~may not shall~~ be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

(b) In an action based on fault that is brought against two (2) or more defendants, and that is tried to a jury, the court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

HB 1118—LS 6760/DI 69



C
O
P
Y

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. The jury ~~may not~~ shall be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each such defendant (and such other defendants as are liable with the defendant by reason of their relationship to such defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3).

(c) In an action based on fault that is tried by the court without a jury, the court shall make its award of damages according to the principles specified in subsections (a) and (b) for juries.

(d) In the case of an intentional tort, the plaintiff may recover one hundred percent (100%) of the compensatory damages in a civil action for intentional tort from a defendant who was convicted after a prosecution based on the same evidence."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1118 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 10, nays 2.

HB 1118—LS 6760/DI 69



C
O
P
Y