

# SB0078



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0078

Introduced 2/3/2021, by Sen. Jil Tracy

### 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: (i) evidence of a defendant's alleged wrongdoing, misconduct, or guilt; (ii) evidence of the defendant's wealth or financial resources; or (iii) 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 post-trial review of noneconomic damage awards pursuant to specified nonexclusive factors. Includes legislative findings, definitions, and applicability language. Effective immediately.

LRB102 05079 LNS 15098 b

A BILL FOR

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 may be cited as the Full  
5 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  
14 for 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  
20 a 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  
5 suffering.

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

13 (g) Inflated damage awards create an improper resolution  
14 of civil justice claims. The increased and improper costs of  
15 litigation and resulting rise in insurance premiums are passed  
16 on to the general public through higher prices for products  
17 and services. Therefore, courts should provide juries with  
18 clear instructions about the purpose of pain and suffering  
19 damages. Courts should instruct juries that evidence of  
20 misconduct is not to be considered in deciding compensation  
21 for noneconomic damages. Rather, it is to be considered solely  
22 for the purpose of deciding punitive damage awards.

23 (h) In each case in which an award for punitive damages is  
24 requested, the defendant should have the right to request  
25 bifurcation of a trial to ensure that evidence of misconduct  
26 is not inappropriately considered by the jury in its

1 determination of liability and compensatory damages.

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

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

7 "Exemplary damages" means damages awarded as a penalty or  
8 by way of punishment but not for compensatory purposes.  
9 Exemplary damages are neither economic nor noneconomic  
10 damages. "Exemplary damages" includes punitive damages.

11 "Noneconomic damages" means damages, recoverable in a tort  
12 action, that are awarded for the purpose of compensating a  
13 claimant for physical pain and suffering, mental or emotional  
14 pain or anguish, loss of consortium, disfigurement, physical  
15 impairment, loss of companionship and society, inconvenience,  
16 loss of enjoyment of life, and all other nonpecuniary losses  
17 other than exemplary or punitive damages.

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

21 Section 15. Noneconomic damages; determination. In  
22 determining noneconomic damages, the finder of fact may not  
23 consider:

24 (1) evidence of a defendant's alleged wrongdoing,

1 misconduct, or guilt;

2 (2) evidence of a defendant's wealth or financial  
3 resources; or

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

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

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

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

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

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

24 Section 25. Review of noneconomic damage awards.

1           (a) Upon a post-trial motion, a trial court shall perform  
2 a rigorous analysis of the evidence supporting a noneconomic  
3 damages award challenged as excessive. The court shall  
4 consider in its analysis the following nonexclusive factors:

5           (1) Whether the evidence presented or the arguments of  
6 counsel resulted in one or more of the following events in  
7 the determination of a noneconomic damage award:

8           (i) It inflamed the passion or prejudice of the  
9 trier of fact.

10           (ii) It resulted in the improper consideration of  
11 the wealth of the defendant.

12           (iii) It resulted in the improper consideration of  
13 the misconduct of the defendant so as to punish the  
14 defendant in circumvention of statutory or  
15 constitutional standards applicable to punitive damage  
16 awards.

17           (2) Whether the verdict is in excess of verdicts  
18 involving comparable injuries to similarly situated  
19 plaintiffs.

20           (3) Whether there were any extraordinary circumstances  
21 in the record to account for an award in excess of what was  
22 granted by courts to similarly situated plaintiffs, with  
23 consideration to the injury type, the severity of the  
24 injury, and the plaintiff's age.

25           (b) A trial court upholding a noneconomic damages award  
26 challenged as excessive shall set forth in writing its reasons

1 for upholding the award.

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

5 Section 30. Applicability. This Act applies to actions  
6 filed on or after its effective date.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.