

**Senate Bill No. 832**

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Passed the Senate August 31, 2006

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*Secretary of the Senate*

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Passed the Assembly August 31, 2006

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Section 3294.5 to the Civil Code, relating to punitive damages, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 832, Perata. Punitive damages.

Existing law provides that in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

This bill would provide, with respect to an action filed after August 16, 2004, that results of a final judgment or settlement that is rendered on or before June 30, 2011, and includes punitive damages, that the punitive damages shall be apportioned according to a specified formula. Pursuant to this formula, 25% would be paid to the plaintiff or plaintiffs and 75% of the award would be paid to the Director of the Department of Finance for deposit into the Public Benefit Trust Fund, which would be created by the bill. The fund would be administered by the Department of Finance. Of the amounts deposited into the fund, 25% would be continuously appropriated to pay the plaintiff's attorney, as specified, and the remainder would be available for annual appropriation in the Budget Act, to be used for purposes consistent with the nature of the award, as specified.

The bill would specify the state and local income tax treatment of punitive damages awards. The bill would further specify that the state shall not be a party in interest to, or intervene in, the underlying action, and that the sole right of the state shall be to the proceeds payable to the Public Benefit Trust Fund. The bill would also prohibit informing a jury that a portion of a punitive damages award will be paid to a government fund or that a punitive damages award would result in a windfall to the plaintiff.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3294.5 is added to the Civil Code, to read:

3294.5. (a) The Legislature finds and declares that extraordinary and dire budgetary needs have forced the enactment of this extraordinary measure to allocate temporarily for the state's Public Benefit Trust Fund a substantial portion of any punitive damages paid from a judgment during the limited time period specified in the statute. The Legislature further finds and declares that this uniquely extraordinary legislative action shall not be construed or interpreted in any way to establish any policy, precedent, presumption, or inference in any case or in any other setting, including future legislatures, regarding the award of punitive damages, its allocation, or the payment of attorney's fees arising in connection therewith.

(b) Punitive damages awarded pursuant to a final judgment shall be paid, as follows:

(1) Seventy-five percent shall be paid to the Public Benefit Trust Fund, which is hereby created in the State Treasury, to be administered by the Department of Finance. Amounts deposited into the Public Benefit Trust Fund shall be available for annual appropriation in the Budget Act and shall be used for purposes consistent with the nature of the award, but in no case shall be used to fund the courts or judicial programs. Amounts deposited in the Public Benefit Trust Fund shall also be available for the purposes specified in subdivision (d).

(2) Twenty-five percent to the plaintiff or plaintiffs.

(c) Upon a final judgment that includes punitive damages, after payment of costs if any, to the plaintiff, the judgment debtor shall do all of the following:

(1) Pay the Public Benefit Trust Fund's proportional share of the punitive damages to the Director of the Department of Finance for deposit in the Public Benefit Trust Fund.

(2) Pay to the plaintiff's attorney, the plaintiff's proportional share of punitive damages.

(3) Notify the plaintiff's attorney of the amount of punitive damages paid to the Public Benefit Trust Fund.

(d) Upon deposit in the Public Benefit Trust Fund of proceeds from a final judgment punitive damages award, the plaintiff's

attorney in the action giving rise to those proceeds shall be entitled to 25 percent of the proceeds received by the fund from the punitive damages award in that action. Notwithstanding Section 13340 of the Government Code, the plaintiff's attorney's share of the proceeds shall be continuously appropriated to pay those attorney's fees, provided that any claim for payment by the plaintiff's attorney shall be paid by the fund on July 1 of the next fiscal year.

(e) The state shall not be a party in interest to, and shall not intervene in, any action in which its sole interest is the potential recovery of a portion of a punitive damages award under this section. The state shall not file any amicus curiae brief regarding the propriety of, or the amount of, any punitive damages award in any action in which its sole interest is the potential recovery of a portion of a punitive damages award under this section. The state's sole right to the proceeds of a punitive damages award is as provided in this section.

(f) Notwithstanding any other provision of law, any attorney's fees paid to an attorney from the plaintiff's share of the award shall be deemed to be the income of the attorney and not income to the plaintiff for state and local taxation purposes.

(g) A jury shall not be informed that any portion of a punitive damages award will be paid to a government fund, and no argument or inference shall be made to a jury that a punitive damages award would result in a windfall to the plaintiff or plaintiffs. However, nothing in this section shall be construed to affect a punitive damages award if a juror or jurors had independent knowledge that a portion of a punitive damages award will be paid to a government fund.

(h) This section shall only apply to actions filed after August 16, 2004, and finally adjudicated, including the resolution of all mandatory or discretionary appeals, the resolution of any motion for attorney's fees on appeal and any appeals therefrom, and the issue of final remittitur, prior to the date this section ceases to be operative.

(i) This section shall remain in effect until July 1, 2011, and as of that date is repealed, unless a later enacted statute extends or deletes that date.







Approved \_\_\_\_\_, 2006

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*Governor*