



SEAN M. LYNN
STATE REPRESENTATIVE
13th District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Judiciary, Chair
Education
Gaming & Parimutuals

House Judiciary Committee Meeting Minutes

6.14.23

This committee meeting has been recorded and may be accessed via legis.delaware.gov

Chair Lynn called the meeting to order at 10:10 a.m. Members present included Vice Chair Griffith, and Reps. Cooke, Dorsey Walker, Phillips, Romer, Dukes, Briggs King, Shupe and Spiegelman. Reps. Mike Smith, Kendra Johnson, and Kim Williams were also present. For a list of guests present, please see the attendance list below.

Rep. Spiegelman expressed frustration regarding the length of the agenda because it places an unfair burden on staff, lobbyists and legislators. He said he objects to the agenda.

Chair Lynn replied the alternative would be to walk all of the bills which would result in a lack of public hearings. He said it is difficult to understand his complaint because he wants the bills to have a fair hearing but is also complaining about the length of the meeting.

Rep. Spiegelman replied there are many bills that have been waiting over a month to be heard therefore the agenda items could have been spread out.

Chair Lynn said he attempted to have more meetings but there is limited staff and livestream availability for meetings.

Chair Lynn introduced **SS1 FOR SB46, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO MISSING PERSONS.**

Rep. Johnson, sponsor of the bill, said this legislation adds requirements to facilitate cooperation and statistical reporting regarding missing children. The changes are needed because the current Delaware Code does not require statistics to be reported.

Rep. Dorsey Walker thanked Rep. Johnson for her work.

Rep. Spiegelman asked about modernizing language in the bill regarding disabled persons.

Rep. Johnson says she agrees and will work towards that at a later time. She said she will not make the change right now but will in the future.

At the request of the Chair, Mark Cutrona from the Division of Research added that it can be fixed in next year's technical corrections bill.

Rep. Dukes asked if this is part of the Governor's recommended budget.

At the request of the Chair, Jason Smith from the Office of the Controller General replied it is included in funding for the proposed fiscal year 2024 operating budget.

Chair Lynn opened the floor to public comment.

Robert Overmiller spoke in support of the legislation.

A motion was made by Vice Chair Griffith, and seconded by Rep. Dorsey Walker to release SS1 for SB46 from committee; motion carried. Yes = 8 (Lynn, Griffith, Briggs King, Dukes, Dorsey Walker, Phillips, Romer, and Spiegelman); No = 0; Absent = 2 (Cooke, Shupe). The bill was released from committee with a F= 3, M=6, U=0 vote.

Chair Lynn introduced SB67, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO MISCONDUCT BY PUBLIC OFFICIALS.

Rep. Williams, sponsor of the bill, said this legislation recognizes that when a public servant abuses their oath of office to commit an illegal act they are committing a crime against the state constitution. This modernizes the state's official misconduct charge by creating a scale based on severity of the offense.

Rep. Dukes asked for the definition of a public servant.

At the request of the chair, David Skoranski from the Delaware Department of Justice (DOJ) replied it is defined under 11 Del C. §1029 and in simple terms means anyone employed by the State or who is a representative of the State including public officials, state employees, police officers and political subdivisions of the State.

Rep. Dukes asked if local municipal police officers would be included.

Mr. Skoranski replied they would be included because they are a political subdivision of the State.

Rep. Dukes expressed concern about taking the offense from a misdemeanor to a class A felony. He believes public servants should be held to a higher standard but this seems very harsh.

Rep. Spiegelman expressed concern regarding the punishment fitting the crime and the difference in punishment for intentional and unintentional actions.

Mr. Skoranski said the threshold of this legislation is that the individual would have been intending harm. The DOJ would need intent to harm or intent to benefit in order to prove official misconduct. He added that the crime has to take place while the individual is acting in their employment capacity and the crime has to impact the public.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

A motion was made by Vice Chair Griffith and seconded by Rep. Phillips to release SB 67 from committee; motion carried. Yes = 6 (Lynn, Griffith, Dorsey Walker, Phillips, Romer,

Spiegelman); No = 2 (Briggs King, Dukes); Absent = 2 (Cooke, Shupe). The bill was released from committee with a F=0, M=7, U=0 vote.

Chair Lynn introduced SB91, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE.

Vice Chair Griffith, sponsor of the bill, said this legislation allows the Director of the Division of Civil Rights and Public Trust, Director of the Family Division, and the Director of the Fraud and Consumer Protection Division to apply for wire intercepts.

Chair Lynn recognized A.J. Roop from the Department of Justice. He stated this legislation accounts for the fact that the Department has grown and includes more divisions now.

Chair Lynn opened the floor to public comment.

Rober Overmiller spoke in support of the legislation.

A motion was made by Rep. Briggs King and seconded by Rep. Romer to release SB 91 from committee; motion carried. Yes = 8 (Lynn, Griffith, Dukes, Dorsey Walker, Phillips, Romer, Spiegelman, Briggs King); No = 0; Absent = 2 (Shupe, Cooke). The bill was released from committee with a F=0, M=9, U=0 vote.

Chair Lynn introduced SB81, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO WRONGFUL DEATH ACTIONS.

Vice Chair Griffith, sponsor of the bill, said this legislation will permit the spouse, parents, children, and siblings of a deceased person to recover punitive damages when the actions resulting in the death of another person were maliciously intended or the result of willful or wanton misconduct by the at fault party.

Rep. Spiegelman asked about a technical change in language.

Vice Chair Griffith replied it is a clean up issue that she will follow up with.

Rep. Dorsey Walker thanked Vice Chair Griffith for the legislation.

Chair Lynn opened the floor to public comment.

Rober Overmiller spoke in support of the legislation.

A motion was made by Rep. Briggs King and seconded by Rep. Phillips to release SB 81 from committee; motion carried. Yes = 8 (Lynn, Griffith, Dukes, Dorsey Walker, Phillips, Romer, Spiegelman, Briggs King); No = 0; Absent = 2 (Shupe, Cooke). The bill was released from committee with a F=3, M=6, U=0 vote.

Chair Lynn introduced HB170, AN ACT TO AMEND TITLE 11, TITLE 16, AND TITLE 29 OF THE DELAWARE CODE RELATING TO HUMAN TRAFFICKING OF CHILDREN.

Rep. Williams, sponsor of the bill, said this legislation codifies current practices regarding suspected human trafficking of children. It ensures the sharing of information across agencies and councils to ensure thorough review and responses.

Vice Chair Griffith thanked Rep. Williams for her consistent advocacy for this issue.

Chair Lynn opened the floor to public comment.

Robert Overmiller spoke in favor of the legislation.

A motion was made by Vice Chair Griffith and seconded by Rep. Dorsey Walker to release HB 170 from committee; motion carried. Yes = 8 (Lynn, Griffith, Dukes, Dorsey Walker, Phillips, Romer, Spiegelman, Briggs King); No = 0; Absent = 2 (Shupe, Cooke). The bill was released from committee with a F=0, M=9, U=0 vote.

Chair Lynn introduced SB121, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CHILD PROTECTION ACCOUNTABILITY COMMISSION.

Vice Chair Griffith, sponsor of the bill, said this legislation codifies that the Child Protection Accountability Commission (CPAC), in conjunction with the Department of Services for Children, Youth, and their Families (DSCYF), must develop and provide training to raise public awareness regarding child abuse.

Rep. Romer thanked Vice Chair Griffith for this legislation. She said the education portion is very important.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

Eric Hastings from DSCYF said they support the bill.

A motion was made by Rep. Briggs King and seconded by Rep. Dorsey Walker to release SB 121 from committee; motion carried. Yes = 8 (Lynn, Griffith, Dukes, Dorsey Walker, Phillips, Romer, Spiegelman, Briggs King); No = 0; Absent = 2 (Shupe, Cooke). The bill was released from committee with a F=3, M=6, U=0 vote.

Chair Lynn introduced SB122, AN ACT TO AMEND TITLE 11, TITLE 16, AND TITLE 29 OF THE DELAWARE CODE RELATING TO AUTHORIZED INFORMATION SHARING FOR CHILDREN.

Vice Chair Griffith, sponsor of the bill, said this legislation authorizes the Office of the Child Advocate and Office of the Investigation Coordinator to share information with Office of Investigative Services during presentence investigations of defendants convicted of felony child abuse, endangering the welfare of a child or death of a child.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

Eric Hastings from DSCYF said they support the bill.

A motion was made by Rep. Briggs King and seconded by Rep. Dorsey Walker to release SB 122 from committee; motion carried. Yes = 8 (Lynn, Griffith, Dukes, Dorsey Walker, Phillips,

Romer, Spiegelman, Briggs King); No = 0; Absent = 2 (Shupe, Cooke). The bill was released from committee with a F=0, M=9, U=0 vote.

Chair Lynn introduced **SB124, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE REPORTING OF CHILD ABUSE AND NEGLECT.**

Vice Chair Griffith, sponsor of the bill, said this legislation clarifies when reports of child abuse or neglect, including suspected human trafficking of a child, are required to be made orally to the child abuse report line and when they may be made via the online reporting portal. In Delaware everyone is a mandated reporter.

Rep. Romer thanked Vice Chair Griffith for letting everyone know about the mandatory reporting.

Chair Lynn recognized Tania Culley, from the Office of the Child Advocate and Trenee Parker from the Division of Family Services to answer any questions.

Trenee Parker provided information on how to report child abuse.

Rep. Romer asked if the reports can be anonymous.

Ms. Parker replied it is allowed but identification is preferred for follow up.

Chair Lynn asked about the legislation requiring identification of the reporter.

Ms. Culley responded that for professionals in the field it is required such as mental health professionals and doctors.

Chair Lynn asked what happens to the name of the individual once reported.

Ms. Parker responded that it is maintained in the database but remains confidential.

Vice Chair Griffith said if the reporter is called as a witness in court, they will have the opportunity to confront that person. As a prosecutor she has seen the initial reporter subpoenaed to the trial.

Chair Lynn expressed concern about the identity of reporters and how they can impact court proceedings especially when parents are not getting along.

Rep. Dorsey Walker asked what the steps are when a report is made.

Ms. Parker responded calls are recorded, reports are created and then distributed to a supervisor for consideration, and the response varies depending on the case logistics. There are various levels of urgency that determine the next steps.

Rep. Spiegelman asked about the definition of 'currently unsupervised' as the terminology is used in the legislation.

Ms. Culley replied this is not in code but is used as guidance in training.

Ms. Parker added that context is heavily considered when making decisions on the course of action.

Rep. Spiegelman asked about professionals who are calling the hotline in the off hours to report abuse.

Ms. Culley replied that if they call as a professional in his field, they must provide a name and address but if they call as a regular individual they can remain anonymous.

Rep. Spiegelman expressed concern that this may put people in a bad situation with their bosses or other people in their lives.

Ms. Culley said she does not know how the Department of Justice would handle a situation when someone chooses not to identify themselves.

Ms. Parker added this is not trying to dissuade a person from reporting.

Rep. Spiegelman replied he understands and does not want people to hesitate to report these actions but it can place people, like doctors, realtors, and teachers in an awkward position when they want to remain anonymous because they were not on the clock when they witnessed a problem.

Rep. Briggs King expressed concern about the long list of professional regulation occupations and how people, like plumbers and electricians, know that they are held to a higher standard of reporting when they are not in touch with this type of work.

Ms. Culley said many people do not report anonymously and therefore they did not get that far in the planning process.

Chair Lynn expressed concern about the Division of Family Services and how they might be impeding on other people's rights. He said they need to find a balance.

Chair Lynn opened the floor to public comment.

Robert Overmiller expressed his neutrality to the legislation.

Eric Hastings from DSCYF said they support the bill.

Vice Chair Griffith requested the committee's support because various groups have expressed concern and worked on the bill.

Chair Lynn asked if anyone on the committee represented parents.

Ms. Culley said there were no parent attorneys on the committee.

A motion was made by Rep. Briggs King and seconded by Rep. Phillips to release SB 124 from committee; motion failed. Yes = 5 (Griffith, Cooke, Dorsey Walker, Phillips, Briggs King); No = 2 (Lynn, Dukes); Absent = 1 (Romer); Not Voting = 2 (Shupe, Spiegelman) The bill was released from committee with a F=0, M=5, U=1 vote.

Chair Lynn introduced **HB217, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CHILD ABUSE AND NEGLECT INVESTIGATIONS.**

Chair Lynn, sponsor of the bill, said this legislation mandates that the Division of Family Services (DFS) require a Miranda warning to individuals who are currently being investigated.

The notice must be written and oral. He said that DFS does not respect that parents also have rights which is important because of how much their lives can be affected. This is consistent with the United States Constitution.

Rep. Briggs King said she understands and appreciates where this is going but has some concerns. She asked if the parent refuses to allow the DFS worker to see the environment, it can place a hold on an emergency situation. She expressed concern about the investigator not being able to properly address the situation. She asked if Chair Lynn had any conversations with DFS or the Office of the Child Advocate (OCA).

Chair Lynn said he did not have conversations with DFS or OCA regarding the current legislation. He said in normal criminal cases, warrants are needed and therefore this should be treated the same because parents have rights as well.

Rep. Spiegelman asked when the investigation begins for many cases because abuse is reported via the hotline it appears as though the investigation starts immediately. He expressed concern that the parent may have enough time to hide evidence if applicable.

Chair Lynn responded that it really is a case by case basis. He said oftentimes parents are under investigation but oftentimes they are not informed of the accusations against them.

Rep. Spiegelman reiterated his concern about parents telling their children what to lie about and hiding what was taking place. He asked if the hotline is considered the first contact in the case.

Vice Chair Griffith expressed her opposition to the legislation because she has deep concerns about children who will not be able to be removed from harmful environments. She said she appreciates his concern, but this does not appear to be helpful.

Chair Lynn said the parents' attorneys are only involved if DFS removes the children and files a dependency neglect petition with Family Court. Affording parents' rights does not equate to children being hurt.

Rep. Dorsey Walker asked about a parent who is under investigation for abuse and their right to counsel.

Chair Lynn said they are not informed of their rights. This legislation ensures that DFS informs the parents of their rights in these cases.

Rep. Phillips asked if DFS needs a warrant to talk to children and how long that process takes.

Chair Lynn said this legislation requires DFS to get parental consent before speaking to the child and if the parents deny consent, they must get a warrant.

Rep. Phillips asked how long it gets to take a warrant.

Chair Lynn said it takes a few hours.

Vice Chair Griffith said this will place a halt on immediate assistance for children and prolong access to medical treatment and DFS assistance. She said this legislation is extremely dangerous for children who need help. It does not make sense for parental consent to be required when oftentimes the parents are the abusers. She said she respects Chair Lynn's position, but she cannot support a bill that places children in significant harm.

At the request of the Chair, Ms. Parker said medical examinations can only take place during an investigation.

Rep. Spiegelman asked when the investigation starts.

Ms. Parker replied once DFS decides to approach the child regarding a report they received. The initial call to the hotline is not the start of an investigation.

Chair Lynn said once the contact is made with the parent, under this legislation, they must inform the parent that they are under investigation and why. He said this does not impede on DFS's ability to perform their duties.

Vice Chair Griffith disagreed.

Ms. Parker said this is a civil investigation not a criminal investigation. She said this legislation makes it appear that DFS must approach the parent before the child who is being harmed.

Chair Lynn said this does not require DFS to inform the parents the moment the investigation begins, it only requires it upon first contact with the parents. It only applies when DFS makes first contact with the accused. It does not prevent DFS from making immediate contact with the child who appears to have been abused.

Rep. Phillips asked if there is a different way to write the legislation because many attorneys are interpreting it differently.

Rep. Briggs King asked if parents are informed of the investigation when they are not the abuser.

Chair Lynn asked if a parent can refuse an examination for their child.

Ms. Parker replied they have the opportunity to refuse. She said they do have the right to seek an examination, but this legislation makes it more difficult for them to complete their jobs in a timely manner. She also clarified that removal of a child from a home is done through a court order. She added they oppose this legislation as written.

Rep. Cooke shared his personal experience as a law enforcement officer with Miranda rights.

Chair Lynn opened the floor to public comment.

Rober Overmiller spoke in favor of the legislation.

Kristi Ianelli from DOJ spoke in opposition of the legislation as it will negatively impact children.

Jennifer Donahue from the Office of the Investigation Coordinator spoke in opposition to the legislation because she has worked in this field for years and knows how much this will negatively impact children.

Addie Asay from Family Court expressed concerns about the impacts the legislation will have on child safety.

Ashley Wyre spoke in support of the legislation because of a personal experience.

Sgt. Michael Ripple from DSP spoke in opposition to the legislation.

Ketina Jonnem said they support this legislation in part due to personal experiences with DFS.

Rep. Romer asked why there is such a disconnection on this topic.

Chair Lynn said the system is flawed. He said this just informs parents of their rights upon first contact. He said parents have the right to withhold consent.

Chair Lynn recognized Ms. Donahue from the Office of the Investigation Coordinator. She said at times parents do not have the right to withhold consent. She disagreed with Chair Lynn regarding generalizations about these types of situations. She said he is minimizing the gravity of what this legislation does. She shared personal accounts of what she and others witness daily in this field of work.

Rep. Romer asked what the disconnect is between parents and DFS.

Ms. Parker said at times they cannot disclose all information due to confidentiality and law enforcement. She said strengthening the family unit is how they want to proceed but safety is always the top priority.

A motion was made by Rep. Briggs King and seconded by Rep. Spiegelman to table HB 217 from committee; motion carried. Yes = 6 (Dukes, Phillips, Spiegelman, Briggs King, Shupe, Cooke); No = 2 (Lynn, Romer); Absent = 2 (Griffith, Dorsey Walker).

Chair Lynn introduced **SB119, AN ACT TO AMEND TITLE 13 AND TITLE 31 OF THE DELAWARE CODE RELATING TO GUARDIANSHIP OF A CHILD.**

Chair Lynn, sponsor of the bill, said this legislation impacts guardianship and permanent guardianship in several ways.

At the request of the Chair, Ms. Culley from the Office of the Child Advocate, said this legislation updates guardianship laws in Delaware due to issues they have had over the last few years. This bill was done in a multidisciplinary manner and in collaboration with stakeholders.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

Eric Hastings from DSCYF said they support the bill.

A motion was made by Rep. Cooke and seconded by Rep. Briggs King to release SB 119 from committee; motion carried. Yes = 6 (Lynn, Cooke, Phillips, Romer, Spiegelman, Briggs King); No = 0; Absent = 4 (Shupe, Dukes, Griffith, Dorsey Walker). The bill was released from committee with a F=0, M=7, U=0 vote.

Chair Lynn introduced **HB165, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DISCOVERY IN CRIMINAL CASES.**

At the request of the Chair, Kevin O'Connell from the Office of Defense Services (ODS) explained the Brady court case. He said Brady requires the prosecution to provide evidence favorable to an accused. This legislation just codifies this practice which is used often.

Rep. Spiegelman asked if the accused have to turn information over to the defense.

Mr. O'Connell replied it does mean that and it seeks to serve justice.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

A.J. Roop from DOJ said they generally support the concept but wish they had more time to review the bill itself.

Rep. Cooke asked why they have not had time to review the bill.

Mr. Roop replied they just spoke to ODS this morning and believes they would be able to work together to ensure the language is modern to agree with Brady.

Rep. Cooke asked if they just saw this bill this morning.

Ms. Iannelli said they were not involved in the drafting of this bill.

A motion was made by Rep. Romer and seconded by Rep. Phillips to release HB 165 from committee; motion failed. Yes = 4 (Lynn, Phillips, Romer, Spiegelman); No = 1 (Briggs King); Absent = 4 (Shupe, Dukes, Griffith, Dorsey Walker); Not Voting = 1 (Cooke). The bill was released from committee with a F=4, M=2, U=1 vote.

Chair Lynn introduced **SS1 for SB43, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DISPLAY OF HUMAN TRAFFICKING PUBLIC AWARENESS SIGNS.**

Rep. Smith, sponsor of the bill, said this legislation increases awareness of human trafficking. Effective public awareness of human trafficking is important to prevent it from happening. The locations of the signage were carefully chosen and other states sign locations were considered to see how effective each location would be.

Rep. Romer thanked him for this legislation.

Rep. Spiegelman asked if the language in the bill is based on other sign requirements within Delaware.

Rep. Smith replied yes it is according to other signage laws. He said that certain types of establishments have a choice of where signs can be placed.

Kara Wilson from the Division of Research said this expands the location requirements.

Rep. Briggs King asked if they are on display in hospitals.

Ms. Wilson replied hospitals are already in the Code.

Chair Lynn opened the floor to public comment.

Robert Overmiller said he supports the legislation.

A motion was made by Rep. Briggs King and seconded by Rep. Cooke to release SS1 for SB43 from committee; motion carried. Yes = 8 (Lynn, Cooke, Dorsey Walker, Dukes, Phillips, Romer,

Spiegelman, Briggs King); No = 0; Absent = 2 (Griffith, Shupe). The bill was released from committee with a F=3, M=5, U=0 vote.

Chair Lynn adjourned the meeting at 12:44 p.m.

Respectfully Submitted by:

Maggie Karpinski

Guest List:

- Jason Smith
- Mark Cutrona
- David Skoranski
- A.J. Roop
- Kristi Iannelli
- Tania Culley
- Trenee Parker
- Robert Overmiller
- Kara Wilson
- Kevin O'Connell
- Ketin Jonnem
- Shaka Bhaya

- Eric Hastings
- Michael Ripple
- Jennifer Donahue
- Addie Asay
- Ashley Wyre



Delaware Bill SB 81 – Wrongful Death-Punitive Damages

House Judiciary Committee- June 14, 2023

Letter of Opposition

Via email: HouseCommitteeComment@delaware.gov

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. Our members write approximately 63.8% percent of total property and casualty insurance sold in Delaware including 52.3 % of all medical malpractice liability insurance and 75.5% of commercial liability. APCIA appreciates the opportunity to provide comments regarding Senate Bill 81.

APCIA opposes this sweeping punitive damages legislation, which would permit punitive damages in wrongful death actions in Delaware, potentially resulting in massive economic effects in the state and an unpredictable and destabilized legal environment.

Businesses and other civil defendants in Delaware would be potentially exposed to the risk of astronomically large punitive damages awards that could put them out of business and adversely impact Delaware's economy. To avoid these dire outcomes, most other states have enacted limitations such as only allowing awards of punitive damages under certain circumstances and requiring a higher standard of conduct and proof, or as well as capping the amount of any such awards.¹

Since 1999, the frequency and expense of punitive damages awarded in the U.S. has increased significantly, largely due to the unpredictability of juries. For example, 98% of punitive damages awarded over \$100 million have been rendered by juries and only 2% by judges.²

Although punitive damages are rarely awarded in medical liability cases, plaintiffs' attorneys routinely include punitive damage claims in their complaints. This hampers settlements. Where there are no reasonable guidelines to aid juries in determining the appropriate level of punitive damages, such awards could be limitless. This "lottery" atmosphere makes settlement negotiations difficult, since the parties are unable to make an accurate assessment of the value of a particular case.

Delaware's wrongful death legislation would also be a distinct outlier, as over 75% of states that permit awards of punitive damages also require that those damages must be proven by "clear and convincing" evidence.³ Further, since punitive damages are generally calculated as a ratio to the underlying

¹ *Punitive damage values are very subjective. In theory, a punitive damages award should be tied to the defendant's reprehensible conduct, but in Delaware, without monetary parameters, juries can take almost anything into consideration when determining the size of a punitive damages award.*

² *Amwins Client Advisory, July 2022*

³ *Wilson Elser 2018 Punitive Damages State Survey*

damages verdict, the result would be not only substantially larger wrongful death verdicts, but also potentially larger punitive damages verdicts.

To the detriment of Delaware’s legal climate, business community and its residents, the legislation would eradicate the clear and strong decision promulgated by U.S. District Court of Delaware underscoring why punitive damages should not be available in wrongful death actions.⁴ This would encourage more frequent and excessive demands for punitive damages, which would hinder settlements and cause additional tort costs that would ultimately be borne by all Delaware citizens and businesses. **Delaware’s tort tax is already \$5,480 per household and 2.68% as a percentage of GDP.**⁵

With the inflation we are all facing, now is not the time to add more damage claims that will further negatively impact all consumers and businesses in Delaware.

Accordingly, APCIA recommends that this legislation be voted unfavorably, and that the Legislature instead consider amending Senate bill 81 on punitive damages in wrongful death actions to provide for:

- 1) a fair and equitable, objective “clear and convincing” legal standard to be used by juries to determine whether punitive damages should be imposed on defendants, as well as an intentionality requirement and;
- 2) fair and equitable maximum punitive damages award amounts.

There is some precedent for adopting a cap under Delaware law. Under Title VII (federal employment discrimination law), there are civil penalty/damage caps depending on the # of an institution’s employees. It appears that Delaware, like many states, follows the civil penalty limitations of Title VII. (See below).

Delaware - Section 715 - Judicial remedies; civil penalties **19 Del. C. § 715 4 Del. Laws, c. 356**

Superior Court shall have jurisdiction over all proceedings brought by the charging party pursuant to § 714 of this title. Superior Court may excuse a charging party who has complied with the compulsory conciliation provisions of this chapter from the compulsory arbitration provisions of Superior Court rule.

- (1) Superior Court shall have the authority to provide the following relief, including but not limited to:
 - a. Order the respondent to cease and desist or modify its existing employment policies;
 - b. Order the respondent to hire, reinstate or promote the charging party;
 - c. **Order the payment of compensatory damages, including but not limited to general and special damages, punitive damages when appropriate, not to exceed the damage awards allowable under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.], as amended, provided that for the purposes of this subchapter, employers with 4-14 employees shall be treated under Title VII's damage award as an employer having under 50 employees; and.....**

APCIA suggests the following language on punitive damages awarded:

⁴See *Sterner v. Wesley College, Inc.*, 747 F.Supp. 263 (D. Del 1990).

⁵ U.S. Chamber Report on Tort Cost, Nov. 2022.

6) In any action for wrongful death, punitive damages may be awarded only if it is found that the death was maliciously intended or was the **result of reckless, willful** or wanton misconduct by the tortfeasor and may be awarded only if separately awarded by the trier of fact in a separate finding from any finding of compensatory damages which separate finding shall also state the amounts being awarded for each such category of damages.

(a) Limitation on Award of Punitive Damages. With respect to claims subject to the Act, (1) the total amount awarded for punitive damages shall not exceed \$350,000 or five times the liability of the defendant for compensatory damages, whichever is greater; (2) requires an award of compensatory damages of at least \$500; and (3) is effective for causes of action filed on or after January 1, 2024.

For reference, here is information on surrounding states' punitive damage laws:

MD – No cap on punitives, but “**actual malice**” is required which must be proven with “clear and convincing” evidence.

VA - Punitives for med mal cases are capped at \$350K. 8.01-38.1. Limitation on recovery of punitive damages. In any action accruing on or after July 1, 1988, including an action for medical malpractice under Chapter 21.1 (§ [8.01-581.1](#) et seq.), the total amount awarded for punitive damages against all defendants found to be liable shall be determined by the trier of fact. In no event shall the total amount awarded for punitive damages exceed \$350,000. The jury shall not be advised of the limitation prescribed by this section. However, if a jury returns a verdict for punitive damages in excess of the maximum amount specified in this section, the judge shall reduce the award and enter judgment for such damages in the maximum amount provided by this section.

NJ – Punitives in all civil cases are capped at \$350K or 5X compensatory damages, whichever is greater. Clear and convincing is required. [New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9](#)

WV - Punitives in all civil cases cannot exceed 4X compensatory damages or \$500K, whichever is greater. Section 55-7-29(c) of the West Virginia Code. “The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater.” (a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

Once again, thank you for the opportunity to provide comments on Senate Bill 81. APCIA recommends that this legislation be voted unfavorably or instead consider amending Senate bill 81 on punitive damages in wrongful death actions as provided above.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

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cc: Henderson, Bryan L (legislative); Lynn, Sean M (legislative); Mike Squarone - msquarone@dsc.com

The Delaware State Chamber of Commerce appreciates the sponsors approach and wiliness to engage with us to listen to our concerns. We can all agree that human trafficking is terrible and is a problem. I think if you asked anyone in this room or on the street they would agree. That said, I can't tell you the telltale signs of victims and I would imagine that most people can't either. Posters may be helpful but are they the most effective tool to help identify, prevent, and support victims? Most businesses already post signs about human trafficking among others they're required to display from the DOL, OSHA, and others, which quite frankly few employees rarely and sometimes never look at. A better solution would be creating educational videos that employers could share with their employees that inform them on how to recognize the telltale signs of victims and who to call when they suspect someone is being victimized. For these reasons we believe this proposal needs more work and the State Chamber respectfully opposes SS1 for SB43. Thank you.

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