

SENATE BILL NO. 296—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to exemplary or punitive damages in certain civil actions. (BDR 3-940)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to damages; prohibiting the assertion of claims for punitive or exemplary damages in certain pleadings in civil actions; revising provisions relating to exemplary or punitive damages in certain civil actions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits a party from including a claim for punitive or exemplary damages in certain pleadings at the commencement of a civil action and establishes a process by which a party may request leave to amend its pleadings to include such a claim.

Existing law establishes certain limitations on the amount of exemplary or punitive damages that may be assessed against a defendant in certain actions. Existing law further exempts certain persons, including manufacturers, distributors and sellers of a defective product, from those limitations. (NRS 42.005) **Section 3** of this bill sets forth circumstances under which a manufacturer or seller of a product is not liable for exemplary or punitive damages.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Upon commencement of any civil action, a complaint or answer or other responsive pleading may not include a claim for exemplary or punitive damages.



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2. After the parties to an action have conducted discovery, a party may move the court for leave to amend the party's pleadings to claim exemplary or punitive damages. Such a motion must:

(a) Comply with the requirements and limitations of NRS 42.005; and

(b) Be supported with admissible evidence.

3. A party opposing a motion filed pursuant to subsection 2 may respond to the motion with affidavits, testimony taken by deposition or other admissible evidence.

4. If, after considering all evidence submitted by the parties, the court finds that there is prima facie evidence supporting a claim for punitive or exemplary damages, the court shall grant the moving party leave to amend the party's pleadings to include such a claim.

5. A party may not conduct discovery on issues of financial condition before the party has filed with the court and served on all parties pleadings that have been amended with leave of the court pursuant to subsection 4.

Sec. 2. NRS 42.001 is hereby amended to read as follows:

42.001 As used in this chapter, unless the context otherwise requires and except as otherwise provided in subsection ~~5~~ 8 of NRS 42.005:

1. "Conscious disregard" means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.

2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person.

3. "Malice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.

4. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.

Sec. 3. NRS 42.005 is hereby amended to read as follows:

42.005 1. Except as otherwise provided in NRS 42.007, 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, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an award of exemplary or punitive damages made pursuant to this section may not exceed:



(a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is \$100,000 or more; or

(b) Three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than \$100,000.

2. The limitations on the amount of an award of exemplary or punitive damages prescribed in subsection 1 do not apply to an action brought against:

(a) A manufacturer, distributor or seller of a defective product;

(b) An insurer who acts in bad faith regarding its obligations to provide insurance coverage;

(c) A person for violating a state or federal law prohibiting discriminatory housing practices, if the law provides for a remedy of exemplary or punitive damages in excess of the limitations prescribed in subsection 1;

(d) A person for damages or an injury caused by the emission, disposal or spilling of a toxic, radioactive or hazardous material or waste; or

(e) A person for defamation.

3. *Except as otherwise provided in subsection 4, in a product liability action:*

(a) A manufacturer or seller is not liable for exemplary or punitive damages if:

(1) The product was designed, manufactured, packaged, labeled, sold or represented in relevant and material respects according to the terms of an approval, conditional approval, clearance, license or similar determination of a governmental agency;

(2) At the time the specific unit of the product was sold or delivered to the initial purchaser or user, the aspect of the product that allegedly caused the harm was in compliance with applicable rules, regulations, orders or standards promulgated by a governmental agency; or

(3) The product is a drug or device that:

(I) Was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the United States Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., or the Public Health Service Act, 42 U.S.C. §§ 201 et seq.; or

(II) Is generally recognized as safe and effective pursuant to conditions established by the United States Food and Drug Administration and applicable regulations, including, without limitation, regulations relating to packaging and labeling.



(b) A seller of the product, other than the manufacturer, is not liable for exemplary or punitive damages unless the seller:

(1) Exercised substantial control over that aspect of the design, manufacture, packaging or labeling of the product that caused the harm for which the recovery of damages is sought;

(2) Altered or modified the product and the alteration or modification was a proximate cause of the harm for which the recovery of damages is sought; or

(3) Had actual knowledge of the defective condition of the product at the time the seller sold the product.

4. The provisions of subsection 3 do not apply in a product liability action if the plaintiff establishes that, at any time before the activity or event that allegedly caused the harm, any of the following occurred:

(a) The manufacturer or seller sold the product after the effective date of a governmental agency's final order to remove the product from the market, to withdraw the governmental agency's approval of the product or to substantially alter the governmental agency's terms of approval of the product in a manner that would have avoided the plaintiff's alleged injury.

(b) A governmental agency or court determined that the manufacturer or seller made an unlawful payment to an official or employee of a governmental agency for the purpose of securing or maintaining approval of the product.

(c) After the product was sold, a governmental agency found that the manufacturer or seller knowingly violated applicable laws or regulations by failing to report risks of harm to that governmental agency and the information which was not reported was material and relevant to the harm that the plaintiff allegedly suffered.

5. The provisions of subsections 3 and 4 must not be construed to:

(a) Expand the authority of any officer, agent or agency of this State to adopt regulations or standards where no such authority previously existed; or

(b) Reduce the scope of any limitation on liability based on compliance with the rules or regulations of a governmental agency applicable to a specific act, transaction, person or industry.

6. If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of whether such damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted before the same trier of fact to determine the amount of such damages to be assessed. The trier of fact shall make a finding of the amount to be assessed according to the provisions of this section. The findings required by this section,



1 if made by a jury, must be made by special verdict along with any
2 other required findings. The jury must not be instructed, or
3 otherwise advised, of the limitations on the amount of an award of
4 punitive damages prescribed in subsection 1.

5 ~~[4.]~~ 7. Evidence of the financial condition of the defendant is
6 not admissible for the purpose of determining the amount of
7 punitive damages to be assessed until the commencement of the
8 subsequent proceeding to determine the amount of exemplary or
9 punitive damages to be assessed.

10 ~~[5.]~~ 8. For the purposes of an action brought against an insurer
11 who acts in bad faith regarding its obligations to provide insurance
12 coverage, the definitions set forth in NRS 42.001 are not applicable
13 and the corresponding provisions of the common law apply.

14 9. *As used in this section:*

15 (a) *“Compensatory damages” means economic and*
16 *noneconomic damages. The term does not include exemplary or*
17 *punitive damages, interest allowed on a judgment, attorney’s fees*
18 *or civil penalties.*

19 (b) *“Device” has the meaning ascribed to it in 21 U.S.C. §*
20 *321(h).*

21 (c) *“Drug” has the meaning ascribed to it in 21 U.S.C. §*
22 *321(g)(1).*

23 (d) *“Governmental agency” means this State, the United*
24 *States, any agency of this State or the United States or any entity*
25 *vested with the authority of this State or the United States to issue*
26 *rules, regulations, orders or standards governing the design,*
27 *manufacture, packaging, labeling or advertising of a product.*

28 (e) *“Manufacturer” means any person who is engaged in a*
29 *business to produce, create, make or construct any product or*
30 *component part of a product and who:*

31 (1) *Designs, manufactures or formulates the product or*
32 *component part of the product; or*

33 (2) *Engages another person to design, manufacture or*
34 *formulate the product or component part of the product.*

35 (f) *“Product” means any object possessing intrinsic value that*
36 *is capable of being delivered either as an assembled whole or as a*
37 *component part or parts and produced for introduction into trade*
38 *or commerce.*

39 (g) *“Product liability action” means any civil action brought*
40 *against a manufacturer or seller of a product, regardless of the*
41 *substantive legal theory or theories upon which the action is*
42 *brought, for or on account of personal injury, death or property*
43 *damage caused by or resulting from:*



1 (1) *The manufacture, construction, design, formula,*
2 *installation, preparation, assembly, testing, packaging, labeling or*
3 *sale of a product;*

4 (2) *The failure to warn or protect against a danger or*
5 *hazard in the use, misuse or unintended use of a product; or*

6 (3) *The failure to provide proper instructions for the use of*
7 *a product.*

8 (h) *“Seller” means a person who, in the course of a business*
9 *conducted for that purpose:*

10 (1) *Sells, distributes, rents, leases, prepares, blends,*
11 *packages, labels or is otherwise involved in placing a product into*
12 *the stream of commerce; or*

13 (2) *Installs, repairs, refurbishes, reconditions or maintains*
14 *a product.*

