

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:

- 1 **Section 1** of this bill prohibits a party from including a claim for punitive or
2 exemplary damages in certain pleadings at the commencement of a civil action and
3 establishes a process by which a party may request leave to amend its pleadings to
4 include such a claim.
5 Existing law establishes certain limitations on the amount of exemplary or
6 punitive damages that may be assessed against a defendant in certain actions.
7 Existing law further exempts certain persons, including manufacturers, distributors
8 and sellers of a defective product, from those limitations. (NRS 42.005) **Section 3**
9 of this bill sets forth circumstances under which a manufacturer, distributor or seller
10 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:

- 1 **Section 1.** Chapter 42 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 *1. Upon commencement of any civil action, a complaint or*
4 *answer or other responsive pleading may not include a claim for*
5 *exemplary or punitive damages.*
6 *2. The party commencing the action may conduct discovery*
7 *of facts supporting a claim of fraud, malice or oppression. The*



1 *discovery must comply with the provisions of the Nevada Rules of*
2 *Civil Procedure. After the parties to an action have conducted*
3 *discovery, a party may move the court for leave to amend the*
4 *party's pleadings to claim exemplary or punitive damages. Such a*
5 *motion must:*

6 *(a) Comply with the requirements and limitations of NRS*
7 *42.005; and*

8 *(b) Be supported with admissible evidence.*

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

12 4. *If the court determines that there is prima facie evidence*
13 *supporting a claim for punitive or exemplary damages, the court*
14 *shall grant the moving party leave to amend the party's pleadings*
15 *to include such a claim.*

16 5. *A party may not conduct discovery on issues of financial*
17 *condition for the purposes of subsection 4 of NRS 42.005 before*
18 *the party has filed with the court and served on all parties*
19 *pleadings that have been amended with leave of the court*
20 *pursuant to subsection 4.*

21 **Sec. 2.** (Deleted by amendment.)

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

23 42.005 1. Except as otherwise provided in NRS 42.007, in an
24 action for the breach of an obligation not arising from contract,
25 where it is proven by clear and convincing evidence that the
26 defendant has been guilty of oppression, fraud or malice, express or
27 implied, the plaintiff, in addition to the compensatory damages, may
28 recover damages for the sake of example and by way of punishing
29 the defendant. Except as otherwise provided in this section or by
30 specific statute, an award of exemplary or punitive damages made
31 pursuant to this section may not exceed:

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

35 (b) Three hundred thousand dollars if the amount of
36 compensatory damages awarded to the plaintiff is less than
37 \$100,000.

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

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

42 **if:**

43 (1) *The manufacturer, distributor or seller sold the product*
44 *after the effective date of a governmental agency's final order to:*

45 (I) *Remove the product from the market;*



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1 (II) Withdraw the governmental agency's approval of
2 the product; or

3 (III) Substantially alter the governmental agency's
4 terms of approval of the product in a manner that would have
5 avoided the plaintiff's alleged injury and the product did not meet
6 the agency's altered terms of approval when sold;

7 (2) A governmental agency or court determined that the
8 manufacturer, distributor or seller made an unlawful payment to
9 an official or employee of a governmental agency for the purpose
10 of securing or maintaining approval of the product;

11 (3) The manufacturer, distributor or seller intentionally,
12 and in violation of any applicable laws or regulations as
13 determined by the responsible governmental agency, withheld
14 from or misrepresented to the governmental agency information
15 material to the approval of the product and that information is
16 material and relevant to the harm that the plaintiff allegedly
17 suffered; or

18 (4) After the product was sold, a governmental agency
19 found that the manufacturer, distributor or seller knowingly
20 violated any applicable laws or regulations by failing timely to
21 report risks of harm to that governmental agency and the
22 information which was not reported was material and relevant to
23 the harm that the plaintiff allegedly suffered;

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

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

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

33 (e) A person for defamation.

34 3. If punitive damages are claimed pursuant to this section, the
35 trier of fact shall make a finding of whether such damages will be
36 assessed. If such damages are to be assessed, a subsequent
37 proceeding must be conducted before the same trier of fact to
38 determine the amount of such damages to be assessed. The trier of
39 fact shall make a finding of the amount to be assessed according to
40 the provisions of this section. The findings required by this section,
41 if made by a jury, must be made by special verdict along with any
42 other required findings. The jury must not be instructed, or
43 otherwise advised, of the limitations on the amount of an award of
44 punitive damages prescribed in subsection 1.



1 4. Evidence of the financial condition of the defendant is not
2 admissible for the purpose of determining the amount of punitive
3 damages to be assessed until the commencement of the subsequent
4 proceeding to determine the amount of exemplary or punitive
5 damages to be assessed.

6 5. For the purposes of an action brought against an insurer who
7 acts in bad faith regarding its obligations to provide insurance
8 coverage, the definitions set forth in NRS 42.001 are not applicable
9 and the corresponding provisions of the common law apply.

