

Chairman Klemin and members of the Judiciary Committee -

I am a licensed attorney in the State of North Dakota with an office in Bismarck, ND. I have been practicing law since 1995, nearly exclusively in the area of personal injury civil litigation.

I am writing to express my support for SB 2290.

On June 27<sup>th</sup>, 2015, a drunk driver who had a Blood Alcohol Level of .295 drove the wrong way on the Bismarck Expressway and crashed head-on into a vehicle containing Shayna Monson, Taylor Goven and Abby Renschler. Taylor Goven (age 21) and Abby Renschler (age 22) were killed. Shayna Monson (age 21) sustained a massive traumatic brain injury altering her life forever.

The drunk driver's Blood Alcohol level was over three (3) times the legal limit. The North Dakota Supreme Court called the drunk driver's conduct "grossly negligent or extremely reckless".

Exemplary damages are intended to financially punish a defendant or deter similar conduct. Shayna Monson and the families of Taylor Goven and Abby Renschler brought suit against the drunk driver and as a portion of the litigation was a claim for exemplary damages. The jury in that case found that exemplary damages were appropriate.

However, the current exemplary damages law has a ridiculous loophole. It requires more than "grossly negligent or extremely reckless" conduct for exemplary damages to be authorized. The North Dakota Supreme Court outlined the current law as follows:

The law requires a finding of more than reckless conduct; it requires sufficient evidence to support a finding that a preponderance of the evidence demonstrates conduct with a state of mind evincing an intent to harm or injure another person. N.D.C.C. § 32-03.2-11(1). [Goven, Taylor and Monson] argued that [the drunk driver] acted maliciously because he intended to drink and drive and as a result, he killed Goven and Renschler and seriously injured Monson. However, intentional or

willful conduct is not synonymous with oppressive, fraudulent or malicious conduct.” (citation omitted) There was no evidence indicating that [the drunk driver] acted with ill will or wrongful motive and intended to injure Monson, Goven, Renschler, or any other person. Although [the drunk driver’s] conduct while intoxicated can be characterized as grossly negligent or extremely reckless, there are no special circumstances, such as an intent to injure or personal ill will toward the [Goven, Taylor and Monson], to support a finding of actual malice.

*Zander v. Morsette 2021 ND 84 (¶ 24).*

SB 2290 is designed to fix that loophole.

It corrects the definition of malice to include “a reckless disregard of the rights of another and any consequences”.

North Dakota should have provisions in place that will deter the conduct that took the lives of Taylor Goven and Abby Renschler and forever altered the life of Shayna Monson.

I ask for your support of SB 2290.

Thank you for your efforts. It is appreciated.

Dated the 14<sup>nd</sup> of March 2025.

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