



North Dakota Association for Justice
PO Box 365
Mandan, ND 58554
The.Trial.Lawyers.of.North.Dakota

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

Chairman Klemin and members of the House Judiciary Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here in support of SB2290.

Exemplary damages, also known as punitive damages, are financial compensation awarded that may be awarded to a plaintiff not just to compensate for their actual losses, but to punish the defendant for **particularly harmful or egregious behavior and to deter others from engaging in similar actions. These actions are malicious, fraudulent or willful conduct that exceeds the legal criteria for gross or mere negligence.** These damages go beyond the typical compensatory damages that cover direct harm, such as medical bills or lost wages.

Why could a jury award exemplary damages?

1. **Punishment:** They serve as a punishment to the defendant for outrageous, malicious, or grossly negligent behavior. For example, if someone intentionally caused harm or acted with extreme recklessness, exemplary damages may be seen as appropriate to show that such behavior is unacceptable.
2. **Deterrence:** The idea is to discourage the defendant and others from engaging in similar conduct in the future. By making an example of the defendant, it sends a message that wrongful acts will be penalized harshly, especially when the harm caused was severe.
3. **Justice for Victims:** In cases where compensatory damages don't fully reflect the severity of the defendant's actions, exemplary damages offer additional justice to the victim. They may help balance the scales in situations where the harm caused goes far beyond what could be captured by the actual damages alone.
4. **Public Policy:** Awarding exemplary damages can promote societal well-being by reinforcing legal norms and ethical behavior. When companies or individuals see that there are serious consequences for extreme misconduct, they may act more responsibly.



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SB2290 will amend NDCC32-03.2-01 and align the definition of malice to the same definition a jury will get in their jury instructions. This will provide continuity with the law and the instructions in a trial. Currently, the statute and the instructions are different. This causes confusion because the level of malice needed to trigger exemplary damages is more than the level used by a jury to consider awarding.

In section 2, the legislation will amend 32-03.2-11, this is the statute that dictates when exemplary damages can be awarded. The current statute will not give the jury the ability to award exemplary damages unless a DUI charge of the individual is the second charge in five years.

In most cases, the first DUI charge is usually pled down to a misdemeanor, so this provision could essentially require the third DUI in five years. As a mother, wife and provider of my family I strongly urge the committee to remove this provision. If the blood alcohol level or the level of drugs in an individual's system is high enough to impair their driving and cause an accident, it should not matter how many charges they have received.

Driving under the influence is a choice, and the jury should be able to decide if the level of intoxication is outrageous, malicious or grossly negligent. If they agree yes, they can decide whether to award exemplary damages.

Exemplary damages can increase an award, but when the offense falls in line with the requirements of exemplary damages, victims should be able to receive just and honest compensation from a jury of their peers. In North Dakota, a judge can reduce both the compensatory damages or the level of exemplary damages if they believe the award is too high. So, there is a checks and balance system within the judicial system to ensure a proper award is given.

In closing, exemplary damages are typically awarded only in cases of severe misconduct. Courts usually reserve them for cases where the defendant's actions were not just negligent but grossly so, or where there is evidence of malice, fraud, or intentional harm. We ask the committee to support a Do Pass on SB 2290.

Thank you,