

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1297

Introduced by

Representatives Kretschmar, Rennerfeldt, Kilzer

Senators Lips, Traynor

1 A BILL for an Act to amend and reenact subsection 1 of section 32-03.2-11 of the North Dakota
2 Century Code, relating to exemplary damages.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Subsection 1 of section 32-03.2-11 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. In any action for the breach of an obligation not arising from contract, when the
7 defendant has been guilty by clear and convincing evidence of oppression, fraud,
8 or actual malice, the court or jury, in addition to the actual damages, may give
9 damages for the sake of example and by way of punishing the defendant. Upon
10 commencement of the action, the complaint may not seek exemplary damages.
11 After filing the suit, a party may make a motion to amend the pleadings to claim
12 exemplary damages. The motion must allege an applicable legal basis for
13 awarding exemplary damages and must be accompanied by one or more affidavits
14 or deposition testimony showing the factual basis for the claim. ~~At the hearing on~~
15 ~~the motion, if~~ The party opposing the motion may respond with affidavit or
16 deposition testimony. If the court finds prima facie evidence in support of the
17 motion, after considering all submitted evidence, that a preponderance of the
18 evidence proves oppression, fraud, or actual malice, the court shall grant the
19 moving party permission to amend the pleadings to claim exemplary damages.
20 For purposes of tolling the statute of limitations, pleadings amended under this
21 section relate back to the time the action was commenced.