

HOUSE BILL NO. 1297
with Senate Amendments

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; and to provide for application.

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 there is sufficient evidence to~~
18 support a finding by the trier of fact that a preponderance of the evidence proves
19 oppression, fraud, or actual malice, the court shall grant the moving party
20 permission to amend the pleadings to claim exemplary damages. For purposes of
21 tolling the statute of limitations, pleadings amended under this section relate back
22 to the time the action was commenced.

23 **SECTION 2. APPLICATION.** This Act applies only to actions commenced after the
24 effective date of this Act.