

Fifty-fifth
Legislative Assembly
of North Dakota

Introduced by

Representatives Kretschmar, Rennerfeldt, Kilzer

Senators Lips, Traynor

1 A BILL for an Act to create and enact a new subsection to section 32-03.2-11 of the North
2 Dakota Century Code, relating to exemplary damages in civil actions for accidents involving a
3 motor vehicle operated by a person while under the influence of alcohol or a controlled
4 substance; to amend and reenact subsection 1 of section 32-03.2-11 of the North Dakota
5 Century Code, relating to exemplary damages; and to provide for application.

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

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

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

1 tolling the statute of limitations, pleadings amended under this section relate back
2 to the time the action was commenced.

3 **SECTION 2.** A new subsection to section 32-03.2-11 of the North Dakota Century
4 Code is created and enacted as follows:

5 a. In a civil action involving a motor vehicle accident, it is sufficient for the trier of
6 fact to consider an award of exemplary damages against a driver involved in
7 the accident if the driver has been convicted of a violation of section 39-08-01
8 within the previous five years and a preponderance of the evidence indicates
9 that the accident resulted in bodily injury and was caused by a driver:

10 (1) With an alcohol concentration of at least ten one-hundredths of one
11 percent by weight;

12 (2) Who was under the influence of a controlled substance;

13 (3) Who was under the influence of alcohol and refused to take a test
14 required under chapter 39-20; or

15 (4) Who was knowingly under significant influence of a medication or other
16 substance that substantially affects a person's nervous system, brain,
17 or muscles so as to impair the person's ability to drive or operate a
18 motor vehicle.

19 b. A criminal charge or conviction is not a prerequisite to consideration of
20 exemplary damages for the accident in question. At the trial in an action in
21 which the trier of fact will consider an award of exemplary damages, evidence
22 that the driver has been convicted of violating section 39-08-01 or equivalent
23 ordinance is admissible into evidence.

24 **SECTION 3. APPLICATION.** This Act applies only to actions commenced after the
25 effective date of this Act.