

2025 SENATE JUDICIARY

SB 2290

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2290
2/4/2025

Relating to when a court or jury may give exemplary damages.
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10:30 a.m. Chair Larson opened the hearing.

Members present: Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Malice definition
- DUI limit
- Exemplary damages
- Legal loophole
- Reckless drunk driving

10:31 a.m. Senator Michael Dwyer introduced the bill.

10:33 a.m. Jaclyn Hall, Executive Director of the ND Association for Justice, testified in favor and submitted testimony #34317.

10:38 a.m. Shayna Monson testified in favor and submitted testimony #34138.

10:45 a.m. Jeff Weikum testified in favor and submitted testimony #34147.

10:52 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Good morning Chairwoman Larson and Committee Members,

My name is Shayna Monson. I am testifying today in support of Senate Bill 2290.

Back in 2015, I was a 21-year-old college student living my life to the fullest. I really loved learning and also, socializing with friends. I was at the top of my class, with a 4.25 GPA, and I only needed 14 more credits to graduate with a major in Biology and a minor in Chemistry. This was at the University of North Dakota. I was preparing to take the MCAT exam to follow my dream, which was to continue onto medical school and become an anesthesiologist.

In the early morning of June 27, 2015, my hopes and dreams were taken away from me. I was hit head-on by a drunk driver, who was driving the wrong way on the Bismarck Expressway. My two passengers, one being my roommate and her best friend, were killed upon the impact. I received a major traumatic brain injury. At the time of the accident, the drunk driver's blood alcohol level was .295.

When they arrived at the hospital, my family was told I had a 10% chance of surviving. If I did live, I would most likely be paralyzed and blind, or even worse, I could possibly remain in a vegetative state for the rest of my life. Days later, the doctors even told them that if I hadn't improved in one year and was to develop pneumonia, they should just let me die rather than try to save me.

My first memory was waking up about 3 months after the accident, and not being able to move. I had no idea where I was or what happened to me. The right side of my body was paralyzed, which was devastating because I'm a right-handed person. To help me, a lot of hospitalization and therapy was needed.

After the accident, I spent more than 10 months recovering at St. Alexius Hospital, here in Bismarck, Kindred and Craig Hospitals, both in Denver, and at Quality Living Inc., located in Omaha. I basically had to relearn all daily functions.

After several surgeries and months of physical therapy, I learned how to walk again. With speech therapy, I was eventually able to talk and swallow. With occupational therapy, accomplishing simple things, like getting in and out of bed by myself, bathing, and brushing my teeth took months of hard work. I continued physical, speech and occupational therapy after I returned home to Dickinson for 2 ½ years. I could not live alone so I lived with my mom for six years.

Now, almost 10 years later, I have completed my college degree. I am currently participating in the Clinical and Translational Sciences program at UND. This would not be possible without the special accommodations allowed through Disability Services. My professors allow me to take tests by myself in a quiet room. They also allow me extra time to take the tests and sometimes, more than one day. I use a smart pen to record lectures so I can listen to them again later. I can only focus on my studies for short periods of time due to the exhaustion it creates in my brain.

I am living on my own, but I'm not completely independent. Due to issues I have with my vision and slow reaction times, I'm not able to drive. I hope to someday be able to drive alone again. For now, I rely on public transportation. My social life has been hugely impacted, too. I spend most of my time alone in my apartment. My friends have all moved on with their lives. Most are married with kids and work the jobs of their dreams. Finding a job has been next to impossible for me. I've had several job interviews but continually get passed up. My life is drastically different than what it could have been without the accident occurring. I know God has a plan for me and I continue to work on moving forward.

I encourage you to please approve the Senate Bill 2290 for victims of drunk driving accidents, like me, and for the friends and families that have been or will be impacted as well.

Thank you for your time and have a good rest of your day.

Shayna Monson

Chairwoman Larson 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 27th, 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 2nd of February 2025.

Jeffrey S. Weikum
2000 Schafer Street
Suite C
Bismarck, ND 58501
701-354-0124



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

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

Madam Chair Larson and members of the Senate 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 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 damages go beyond the typical compensatory damages that cover direct harm, such as medical bills or lost wages.

Why should exemplary damages be awarded?

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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Jaclyn Hall, Executive Director
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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.

In section 2, the legislation will amend 32-03.2-11, this is the statute when exemplary damages are 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. The jury should be able to decide if the amount 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 inline 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 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 awards 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,

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2290
2/4/2025

Relating to when a court or jury may give exemplary damages.
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11:02 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Committee Action

11:03 a.m. Senator Cory moved a Do Pass.

11:03 a.m. Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

11:03 a.m. Senator Luick will carry the bill.

11:03 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2290 ([25.1203.01000](#))

Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2290 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2025 HOUSE JUDICIARY

SB 2290

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2290
3/17/2025

A BILL for an Act to amend and reenact sections 32-03.2-01 and 32-03.2-11 of the North Dakota Century Code, relating to when a court or jury may give exemplary damages.

9:00 a.m. Chairman Klemin called the meeting to order.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative S. Olson

Discussion Topics:

- Insurance companies' coverage of exemplary damages
- Situations in which exemplary damages apply

9:01 a.m. Senator Michael Dwyer, North Dakota Senator for District 47, introduced the bill and provided testimony #42230.

9:03 a.m. Jaclyn Hall, North Dakota Association for Justice, testified in favor and provided testimony #42009.

9:16 a.m. Jeff Weikum, Attorney in Bismarck, North Dakota, testified in favor and provided testimony #41804.

9:29 a.m. Shayna Monson, Grand Forks, North Dakota, testified in favor and provided testimony #41806.

9:38 a.m. Dennis Pathroff, American Property Casualty Insurance Association, testified in opposition and provided testimony #41575.

9:41 a.m. Cary Silverman, American Tort Reform Association, testified in opposition and provided testimony #41623.

9:48 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk



March 17, 2025

RE: Oppose, SB 2290

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA submits the following comments in opposition to [Senate Bill 2290](#) which broadens the definition of malice which exists in North Dakota case law currently.

The proposed amendment to the statute regarding exemplary and punitive damages in North Dakota eliminates the requirement to show clear and convincing evidence of “actual malice” to simply a clear and convincing showing of “malice.” The proposed amendment significantly broadens long-standing precedent and expands the definition of malice to “a. A direct intention to injure another; or b. A reckless disregard of the rights of another and any consequences”. However, the North Dakota Supreme Court in *Zander v. Morsette*, 2021 ND 84, ¶ 32, 959 N.W.2d 838, 846 held that under an “actual malice” standard, “grossly negligent or extremely reckless” conduct absent “intent to injury or personal ill will toward the Plaintiffs” is insufficient “to support a finding of actual malice.” *Zander v. Morsette*, 2021 ND 84, ¶ 32, 959 N.W.2d 838, 847.

The proposed amendment is concerning, because it would expand the scope of conduct for which punitive damages may be awarded in North Dakota. If North Dakota expands the definition set forth in the statute to include “reckless disregard” for the rights of another the imposition of punitive damages will be allowed due to “grossly negligent and reckless” conduct, which was previously prohibited by the North Dakota Supreme Court in *Zander*.

Contrary to longstanding legal precedent in North Dakota, SB2290 would allow the awarding of punitive damages for much less than intentional wrongdoing. The bill’s new and extremely broad standard of gross negligence would conflate punitive conduct with negligence and would likely result in jury confusion with many nuclear verdicts with punitive damage awards.

The very low bar of gross negligence, which conflates punitive conduct with ordinary negligence would generate excessive and un-warranted punitive damage awards, with the jury focusing on prejudicial factors focused on the wealth of the defendant, the profitability of the conduct to the defendant, and the plaintiff’s financial vulnerability in deciding the amount to award. This may bolster a “David vs. Goliath” theme by plaintiffs’ attorneys at trial and lead to much larger awards against civil defendants.



North Dakotans are already paying a tort tax per household of \$2913 every year due to excessive litigation. (U.S. Chamber of Commerce, Tort Costs In America, Nov. 2024).

APCIA respectfully requests the committee to remove the proposed amendment to expand the scope and broaden the definition of malice.

Respectfully,

A handwritten signature in black ink that reads "Brooke Kelley". The signature is written in a cursive, flowing style.

Brooke Kelley

Assistant Vice President, American Property Casualty Insurance Association (APCIA)

Testimony Before the North Dakota House Judiciary Committee
in Opposition to S.B. 2290: A Bill That Would Make Punitive Damages
Significantly More Common in North Dakota
Cary Silverman on Behalf of the American Tort Reform Association
March 17, 2025

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today. ATRA opposes S.B. 2290, which would reduce the standard for imposing punitive damages, exposing those who live, work, and do business in North Dakota to a significantly higher risk of massive awards.

ATRA is a broad-based coalition of businesses, municipalities, associations, and professional firms that share the goal of having a fair, balanced, and predictable civil justice system. I am a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. As part of my public policy practice, I closely study civil justice issues and have published several law review articles related to punitive damages.

S.B. 2290 alters longstanding North Dakota law that ensures punitive damages are reserved for punishing and deterring truly reprehensible conduct, that which stems from “oppression, fraud, or actual malice.”¹ The North Dakota Supreme Court has explained that actual malice involves an “improper motive implying the purpose and desire to injure,” “spite or ill will toward plaintiff,” or the intent to “harass, annoy, or injure another person.”²

Instead, the bill redefines and dilutes “malice” to include anything that might be considered unintentional, reckless conduct. Many cases will arguably meet this standard. If this bill is enacted, plaintiffs’ lawyers will routinely seek punitive damages in a wide range of litigation in the future in North Dakota, including cases involving no more than mere negligence. That threat alone will pressure individuals and businesses into settling what may be meritless cases and doing so for significantly larger amounts.

Like North Dakota, courts elsewhere have kept a high standard for punitive damages, reserving them for malicious, fraudulent, or deliberate misconduct, in states such as Maine,³ Maryland,⁴ and New York,⁵ as well as the District of Columbia.⁶ Additional states have codified a similarly high standard for punitive damages.⁷ In fact, just last Friday, my home state of Maryland rejected a similar bill that would have weakened its “actual malice” standard.⁸ Also keep in mind that a half dozen states generally do not authorize punitive damage awards or tightly restrict them to certain contexts where specifically authorized by statute.⁹

Some states, over time, have relaxed their standards for punitive damages, making such awards highly unpredictable and increasingly commonplace. It was this change that, in the words of the U.S. Supreme Court, led to punitive damages “run wild.”¹⁰ North Dakota has, so far, avoided that problem.

For these reasons, ATRA respectfully requests that the Committee not broaden and dilute the actual malice standard for punitive damage awards.

¹ N.D. Cent. Code § 32-03.2-11.

² *Zander v. Morsette*, 2021 ND 84, ¶ 31, 959 N.W.2d 838, 846 (citing decades of North Dakota precedent).

³ *Kinderhaus North LLC v. Nicolas*, 314 A. 3d 300, 313 (Maine 2024) (“Under Maine law, punitive damages may be awarded for tortious conduct only if the defendant acted with malice.”); *see also Tuttle v. Raymond*, 494 A.2d 1353, 1361, 1361 (Me.1985) (rejecting gross negligence standard for punitive damages as “too broad and too vague” and having an insufficient distinction from mere negligence).

⁴ *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 648 (Md. 1992) (requiring “actual malice” and rejecting a lower standard as “overextend[ing] the availability of punitive damages,” dulling their impact as an effective deterrent of truly reprehensible behavior).

⁵ *Prozeralik v. Capital Cities Commc’n, Inc.*, 82 N.Y.2d 466, 479 (1993) (“Punitive damages are awarded in tort actions ‘where the defendant’s wrongdoing has been intentional and deliberate and has the character of outrage frequently associated with crime.’”).

⁶ *Dist. of Columbia v. Bamidele*, 103 A.3d 516, 522 (D.C. 2014) (requiring “a state of mind evincing malice or its equivalent”); *Croley v. Republican Nat’l Comm.*, 759 A.2d 682, 695 (D.C. 2000) (requiring a showing of “evil motive or actual malice”).

⁷ *See, e.g.*, Cal. Civ. Code § 3294(a) (“oppression, fraud, or malice”); Idaho Code § 6-1604(1) (“oppressive, fraudulent, malicious or outrageous conduct”); Mont. Code Ann. § 27-1-221(1) (“actual fraud or actual malice”); Ohio Rev. Code Ann. § 2315.21(C)(1) (“malice or aggravated or egregious fraud”); Wis. Stat. § 895.043(3) (when a “defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff”).

⁸ Md. H.B. 1099 (2025) (withdrawn from House Judiciary Committee consideration after hearing).

⁹ These states include Louisiana, Massachusetts, Michigan, Nebraska, New Hampshire, and Washington.

¹⁰ *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991); *see also* Victor E. Schwartz & Cary Silverman, *The Case in Favor of Civil Justice Reform*, Emory L.J. Online 2065, 2068 (2016) (discussing how the departure from the “intentional tort” moorings of punitive damages, and move to allowing punitive damages for reckless or grossly negligent conduct in some states, led to such awards becoming commonplace).

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 27th, 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 14nd of March 2025.

Jeffrey S. Weikum
2000 Schafer Street
Suite C
Bismarck, ND 58501
701-354-0124

Good morning Chairman Klemin and Committee Members,

My name is Shayna Monson. I am testifying today in support of Senate Bill 2290.

Back in 2015, I was a 21-year-old college student living my life to the fullest. I really loved learning and also, socializing with friends. I was at the top of my class, with a 4.25 GPA, and I only needed 14 more credits to graduate with a major in Biology and a minor in Chemistry. This was at the University of North Dakota. I was preparing to take the MCAT exam to follow my dream, which was to continue onto medical school and become an anesthesiologist.

In the early morning of June 27, 2015, my hopes and dreams were taken away from me. I was hit head-on by a drunk driver, who was driving the wrong way on the Bismarck Expressway. My two passengers, one being my roommate and her best friend, were killed upon the impact. I received a major traumatic brain injury. At the time of the accident, the drunk driver's blood alcohol level was .295.

When they arrived at the hospital, my family was told I had a 10% chance of surviving. If I did live, I would most likely be paralyzed and blind, or even worse, I could possibly remain in a vegetative state for the rest of my life. Days later, the doctors even told them that if I hadn't improved in one year and was to develop pneumonia, they should just let me die rather than try to save me.

My first memory was waking up about 3 months after the accident, and not being able to move. I had no idea where I was or what happened to me. The right side of my body was paralyzed, which was devastating because I'm a right-handed person. To help me, a lot of hospitalization and therapy was needed.

After the accident, I spent more than 10 months recovering at St. Alexius Hospital, here in Bismarck, Kindred and Craig Hospitals, both in Denver, and at Quality Living Inc., located in Omaha. I basically had to relearn all daily functions.

After several surgeries and months of physical therapy, I learned how to walk again. With speech therapy, I was eventually able to talk and swallow. With occupational therapy, accomplishing simple things, like getting in and out of bed by myself, bathing, and brushing my teeth took months of hard work. I continued physical, speech and occupational therapy after I returned home to Dickinson for 2 ½ years. I could not live alone so I lived with my mom for six years.

Now, almost 10 years later, I have completed my college degree. I am currently participating in the Clinical and Translational Sciences program at UND. This would not be possible without the special accommodations allowed through Disability Services. My professors allow me to take tests by myself in a quiet room. They also allow me extra time to take the tests and sometimes, more than one day. I use a smart pen to record lectures so I can listen to them again later. I can only focus on my studies for short periods of time due to the exhaustion it creates in my brain.

I am living on my own, but I'm not completely independent. Due to issues I have with my vision and slow reaction times, I'm not able to drive. I hope to someday be able to drive alone again. For now, I rely on public transportation. My social life has been hugely impacted, too. I spend most of my time alone in my apartment. My friends have all moved on with their lives. Most are married with kids and work the jobs of their dreams. Finding a job has been next to impossible for me. I've had several job interviews but continually get passed up. My life is drastically different than what it could have been without the accident occurring. I know God has a plan for me and I continue to work on moving forward.

I encourage you to please approve the Senate Bill 2290 for victims of drunk driving accidents, like me, and for the friends and families that have been or will be impacted as well.

Thank you for your time and have a good rest of your day.

Shayna Monson



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Jaclyn Hall, Executive Director
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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,

25.1203.01000

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2290

Introduced by

Senators Dwyer, Sickler, Cleary

Representatives Klemin, Heinert, Schneider

1 A BILL for an Act to amend and reenact sections 32-03.2-01 and 32-03.2-11 of the North Dakota
2 Century Code, relating to when a court or jury may give exemplary damages.

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

4 **SECTION 1. AMENDMENT.** Section 32-03.2-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-03.2-01. Definition.**

7 As used in this chapter, "~~fault~~":

8 1. "Fault" includes acts or omissions that are in any measure negligent or reckless
9 toward the person or property of the actor or others, or that subject a person to tort
10 liability or dram shop liability. The term also includes strict liability for product defect,
11 breach of warranty, negligence or assumption of risk, misuse of a product for which
12 the defendant otherwise would be liable, and failure to exercise reasonable care to
13 avoid an injury or to mitigate damages. Legal requirements of causal relation apply
14 both to fault as the basis for liability and to contributory fault.

15 2. "Malice" means:

16 a. A direct intention to injure another; or

17 b. A reckless disregard of the rights of another and any consequences.

18 **SECTION 2. AMENDMENT.** Section 32-03.2-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **32-03.2-11. When court or jury may give exemplary damages.**

21 1. In any action for the breach of an obligation not arising from contract, when the
22 defendant has been guilty by clear and convincing evidence of oppression, fraud, or
23 actual malice, the court or jury, in addition to the actual damages, may give damages
24 for the sake of example and by way of punishing the defendant. Upon commencement

1 of the action, the complaint may not seek exemplary damages. After filing the suit, a
2 party may make a motion to amend the pleadings to claim exemplary damages. The
3 motion must allege an applicable legal basis for awarding exemplary damages and
4 must be accompanied by one or more affidavits or deposition testimony showing the
5 factual basis for the claim. The party opposing the motion may respond with affidavit
6 or deposition testimony. If the court finds, after considering all submitted evidence, that
7 there is sufficient evidence to support a finding by the trier of fact that a
8 preponderance of the evidence proves oppression, fraud, or actual malice, the court
9 shall grant the moving party permission to amend the pleadings to claim exemplary
10 damages. For purposes of tolling the statute of limitations, pleadings amended under
11 this section relate back to the time the action was commenced.

12 2. If either party so elects, the trier of fact shall first determine whether compensatory
13 damages are to be awarded before addressing any issues related to exemplary
14 damages. Evidence relevant only to the claim for exemplary damages is not
15 admissible in the proceeding on liability for compensatory damages. If an award of
16 compensatory damages has been made, the trier of fact shall determine whether
17 exemplary damages are to be awarded.

18 3. Evidence of a defendant's financial condition or net worth is not admissible in the
19 proceeding on exemplary damages.

20 4. If the trier of fact determines that exemplary damages are to be awarded, the amount
21 of exemplary damages may not exceed two times the amount of compensatory
22 damages or two hundred fifty thousand dollars, whichever is greater; provided,
23 however, that no award of exemplary damages may be made if the claimant is not
24 entitled to compensatory damages. In a jury trial, the jury may not be informed of the
25 limit on damages contained in this subsection. Any jury award in excess of this limit
26 must be reduced by the court.

27 5. In order for a party to recover exemplary damages, the finder of fact shall find by clear
28 and convincing evidence that the amount of exemplary damages awarded is
29 consistent with the following principles and factors:

- 1 a. Whether there is a reasonable relationship between the exemplary damage
2 award claimed and the harm likely to result from the defendant's conduct as well
3 as the harm that actually has occurred;
- 4 b. The degree of reprehensibility of the defendant's conduct and the duration of that
5 conduct; and
- 6 c. Any of the following factors as to which evidence is presented:
7 (1) The defendant's awareness of and any concealment of the conduct;
8 (2) The profitability to the defendant of the wrongful conduct and the desirability
9 of removing that profit and of having the defendant also sustain a loss; and
10 (3) Criminal sanctions imposed on the defendant for the same conduct that is
11 the basis for the exemplary damage claim, these to be taken into account if
12 offered in mitigation of the exemplary damage award.
- 13 6. Exemplary damages may not be awarded against a manufacturer or seller if the
14 product's manufacture, design, formulation, inspection, testing, packaging, labeling,
15 and warning complied with:
16 a. Federal statutes existing at the time the product was produced;
17 b. Administrative regulations existing at the time the product was produced that
18 were adopted by an agency of the federal government which had responsibility to
19 regulate the safety of the product or to establish safety standards for the product
20 pursuant to a federal statute; or
21 c. Premarket approval or certification by an agency of the federal government.
- 22 7. The defense in subsection 6 does not apply if the plaintiff proves by clear and
23 convincing evidence that the product manufacturer or product seller:
24 a. Knowingly and in violation of applicable agency regulations withheld or
25 misrepresented information required to be submitted to the agency, which
26 information was material and relevant to the harm in question; or
27 b. Made an illegal payment to an official of the federal agency for the purpose of
28 securing approval of the product.
- 29 8. Exemplary damages may be awarded against a principal because of an act by an
30 agent only if at least one of the following is proved by clear and convincing evidence to
31 be true:

- 1 a. The principal or a managerial agent authorized the doing and manner of the act;
- 2 b. The agent was unfit and the principal or a managerial agent was reckless in
- 3 employing or retaining the agent;
- 4 c. The agent was employed in a managerial capacity and was acting in the scope of
- 5 employment; or
- 6 d. The principal or managerial agent ratified or approved the doing and manner of
- 7 the act.

8 9. In a civil action involving a motor vehicle accident resulting in bodily injury, it is
9 sufficient for the trier of fact to consider an award of exemplary damages against the
10 driver under the motion procedures provided in subsection 1 if clear and convincing
11 evidence indicates that the accident was caused by a driver ~~who, within the five years-~~
12 ~~immediately preceding the accident has been convicted for violation of section-~~
13 ~~39-08-01~~ and who was operating or in physical control of a motor vehicle:

- 14 a. With an alcohol concentration of at least eight one-hundredths of one percent by
- 15 weight;
- 16 b. Under the influence of a controlled substance unless a drug that predominantly
- 17 caused impairment was used only as directed or cautioned by a practitioner who
- 18 legally prescribed or dispensed the drug to the driver;
- 19 c. Under the influence of alcohol and refused to take a test required under chapter
- 20 39-20; or
- 21 d. Under the influence of a volatile chemical as listed in section 19-03.1-22.1.

22 At the trial in an action in which the trier of fact will consider an award of exemplary
23 damages, evidence that the driver has been convicted of violating section 39-08-01 or
24 an equivalent statute or ordinance is admissible into evidence.

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2290
3/17/2025

A BILL for an Act to amend and reenact sections 32-03.2-01 and 32-03.2-11 of the North Dakota Century Code, relating to when a court or jury may give exemplary damages.

3:17 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, VanWinkle, Wolff, Schneider

Members Absent: Representative Tveit

Discussion Topics:

- Limits to exemplary punishment
- Exemplary damage court process

3:17 p.m. Representative Vetter moved a Do Pass.

3:17 p.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	N
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	A
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:27 p.m. Motion passed 12-1-1.

3:28 p.m. Representative Wolff will carry the bill.

3:28 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2290 ([25.1203.01000](#))

Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2290 was placed on the Fourteenth order on the calendar.