

AN ACT

relating to exemplary damages in civil suits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 41, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 41. EXEMPLARY DAMAGES

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of exemplary damages. In a cause of action in which a party seeks recovery of exemplary damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of exemplary damages.

(2) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to exemplary damages.

(4) "Economic damages" means compensatory damages for pecuniary loss; the term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(5) [~~3~~] "Exemplary damages" means any damages awarded as [~~an example to others, as~~] a penalty[;] or by way of punishment. "Exemplary damages" includes punitive damages.

(6) [~~4~~] "Fraud" means fraud other than constructive fraud.

~~(7) [(5) "Gross negligence" means more than momentary thoughtlessness, inadvertence, or error of judgment. It means such an entire want of care as to establish that the act or omission was the result of actual conscious indifference to the rights, safety, or welfare of the person affected.~~

~~[(6)] "Malice" means:~~

~~(A) a specific intent [conduct that is specifically intended] by the defendant to cause substantial injury to the claimant; or~~

~~(B) an act or omission:~~

~~(i) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and~~

~~(ii) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others [that is carried out by the defendant with a flagrant disregard for the rights of others and with actual awareness on the part of the defendant that the act will, in reasonable probability, result in human death, great bodily harm, or property damage].~~

Sec. 41.002. APPLICABILITY. (a) This chapter applies to any ~~[an]~~ action in which a claimant seeks exemplary damages relating to a cause of action ~~[as defined by Section 33.001]~~.

(b) This chapter establishes the maximum exemplary damages that may be awarded in an action subject to this chapter, including an action for which exemplary damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of exemplary damages for a particular claim[:

~~[(1) an action brought under the Deceptive Trade Practices Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act;~~

~~[(2) an action brought under Chapter 21, Insurance Code;~~

~~[(3) an action brought under the workers' compensation laws of this state~~

~~(Article 8306 et seq., Revised Statutes);~~

~~[(4) an action to recover exemplary damages against an employer by the employee's beneficiaries in a death action arising out of the course and scope of employment where the employer is a subscriber under the workers' compensation laws of this state (Article 8306 et seq., Revised Statutes);~~

~~[(5) an action brought under Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973, Home Solicitation Transactions (Article 5069 13.01 et seq., Vernon's Texas Civil Statutes);~~

~~[(6) an action brought under Chapter 547, Acts of the 63rd Legislature, Regular Session, 1973, Debt Collection Practices (Article 5069 11.01 et seq., Vernon's Texas Civil Statutes);~~

~~[(7) an action brought under Chapter 54, 91, or 92, Property Code;~~

~~[(8) an action brought under the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);~~

~~[(9) an action brought under the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes);~~

~~[(10) an action brought under the Texas Proprietary School Act, Chapter 32, Education Code;~~

~~[(11) an action brought under Section 9.507 or Section 27.01, Business & Commerce Code;~~

~~[(12) an action brought under Chapter 36, Family Code;~~

~~[(13) an action brought under the Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes);~~

~~[(14) an action brought under the Business Opportunity Act (Article 5069 16.01 et seq., Vernon's Texas Civil Statutes); or~~

~~[(15) an action brought under the Texas Timeshare Act (Article 6573e, Vernon's Texas Civil Statutes)].~~

(c) Except as provided by Subsections (b) and (d), in [H] an action to which this chapter applies, the provisions of this chapter prevail over all other law to the extent of any conflict.

(d) Notwithstanding any provision to the contrary, this chapter does not apply to Section 15.21, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983), an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act, or an action brought under Chapter 21, Insurance Code.

Sec. 41.003. STANDARDS FOR RECOVERY OF EXEMPLARY DAMAGES.

(a) Except as provided by Subsection (c), exemplary [Exemplary] damages may be awarded only if the claimant proves by clear and convincing evidence that the [~~personal injury, property damage, death, or other~~] harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B) [~~gross negligence~~].

(b) The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by this section [~~Subsection (a)(1), (a)(2), or (a)(3)~~]. This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

(c) If the claimant relies on a statute establishing a cause of action and authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state, exemplary damages may be awarded only if the claimant proves by clear and

convincing evidence that the damages result from the specified circumstances or culpable mental state.

Sec. 41.004. FACTORS PRECLUDING RECOVERY. (a) Except as provided by Subsection (b), exemplary ~~[Exemplary]~~ damages may be awarded only if damages other than nominal damages are awarded.

(b) A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A). Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

Sec. 41.005. HARM RESULTING FROM CRIMINAL ACT. (a) In an action arising from harm resulting from an assault, theft, or other criminal act, a court may not award exemplary damages against a defendant because of the criminal act of another.

(b) The exemption provided by Subsection (a) does not apply if:

(1) the criminal act was committed by an employee of the defendant;

(2) the defendant is criminally responsible as a party to the criminal act under the provisions of Chapter 7, Penal Code;

(3) the criminal act occurred at a location where, at the time of the criminal act, the defendant was maintaining a common nuisance under the provisions of Chapter 125, Civil Practice and Remedies Code, and had not made reasonable attempts to abate the nuisance;

or

(4) the criminal act resulted from the defendant's intentional or knowing violation of a statutory duty under Subchapter D, Chapter 92, Property Code, and the criminal act occurred after the statutory deadline for compliance with that duty.

(c) In an action arising out of a criminal act committed by an employee, the employer may be liable for punitive damages but only if:

(1) the principal authorized the doing and the manner of the act;

(2) the agent was unfit and the principal acted with malice in employing or retaining him;

(3) the agent was employed in a managerial capacity and was acting in the scope of employment; or

(4) the employer or a manager of the employer ratified or approved the act.

Sec. 41.006. AWARD SPECIFIC TO DEFENDANT. In an action in which there are two or more defendants, an award of exemplary damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.

Sec. 41.007 [41.006]. PREJUDGMENT INTEREST. Prejudgment interest may not be assessed or recovered on an award of exemplary damages.

Sec. 41.008 [41.007]. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of exemplary damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary [Except as provided by Section 41.008, exemplary] damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two [four] times the amount of economic [actual] damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or

(2) \$200,000[~~, whichever is greater~~].

(c) Subsection (b) does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); or

(15) Section 49.08 (intoxication manslaughter).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of Subsections (a) and (b) may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

Sec. 41.009. BIFURCATED TRIAL. (a) On motion by a defendant, the court shall provide for a bifurcated trial under this section. A motion under this subsection shall be made prior to voir dire examination of the jury or at a time specified by a pretrial court order issued under Rule 166, Texas Rules of Civil Procedure.

(b) In an action with more than one defendant, the court shall provide for a bifurcated trial on motion of any defendant.

(c) In the first phase of a bifurcated trial, the trier of fact shall determine:

(1) liability for compensatory and exemplary damages; and

(2) the amount of compensatory damages.

(d) If liability for exemplary damages is established during the first phase of a bifurcated trial, the trier of fact shall, in the second phase of the trial, determine the amount of exemplary damages to be awarded, if any.

Sec. 41.010. CONSIDERATIONS IN MAKING AWARD. (a) Before making an award of exemplary damages, the trier of fact shall consider the definition and purposes of exemplary damages as provided by Section 41.001.

(b) The determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

Sec. 41.011. EVIDENCE RELATING TO AMOUNT OF EXEMPLARY DAMAGES.

(a) In determining the amount of exemplary damages, the trier of fact shall consider evidence, if any, relating to:

(1) the nature of the wrong;

(2) the character of the conduct involved;

(3) the degree of culpability of the wrongdoer;

(4) the situation and sensibilities of the parties concerned;

(5) the extent to which such conduct offends a public sense of justice and propriety; and

(6) the net worth of the defendant.

(b) Evidence that is relevant only to the amount of exemplary damages that may be awarded is not admissible during the first phase of a bifurcated trial.

Sec. 41.012. JURY INSTRUCTIONS. In a trial to a jury, the court shall instruct the jury with regard to Sections 41.001, 41.003, 41.010, and 41.011.

Sec. 41.013. JUDICIAL REVIEW OF AWARD. (a) Except as provided for in Subsection (b), an appellate court that reviews the evidence with respect to a finding by a trier of fact concerning liability for exemplary damages or with respect to the amount of exemplary damages awarded shall state, in a written opinion, the court's reasons for upholding or disturbing the finding or award. The written opinion shall address the evidence or lack of evidence with

specificity, as it relates to the liability for or amount of exemplary damages, in light of the requirements of this chapter.

(b) This section does not apply to the supreme court with respect to its consideration of an application for writ of error.

~~[Sec. 41.008. EXCEPTION. Section 41.007 does not apply to exemplary damages resulting from malice as defined by Section 41.001(6)(A) or to an intentional tort.~~

~~[Sec. 41.009. PROVISIONS NOT TO BE MADE KNOWN TO JURY. The provisions of Section 41.007 may not be made known to the jury through any means, including voir dire, introduction into evidence, or instruction.]~~

SECTION 2. This Act takes effect September 1, 1995, and applies only to a cause of action that accrues on or after that date. A suit filed before the effective date of this Act is governed by the law applicable to the claim that existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 25 passed the Senate on February 15, 1995, by a viva-voce vote; and that the Senate concurred in House amendments on April 11, 1995, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 25 passed the House, with amendments, on April 6, 1995,

S.B. No. 25

by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor