

CHAPTER.....

AN ACT relating to damages; prohibiting the assertion of claims for punitive or exemplary damages in certain pleadings in civil actions; revising provisions relating to exemplary or punitive damages in certain civil actions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits a party from including a claim for punitive or exemplary damages in certain pleadings at the commencement of a civil action and establishes a process by which a party may request leave to amend its pleadings to include such a claim.

Existing law establishes certain limitations on the amount of exemplary or punitive damages that may be assessed against a defendant in certain actions. Existing law further exempts certain persons, including manufacturers, distributors and sellers of a defective product, from those limitations. (NRS 42.005) **Section 3** of this bill sets forth circumstances under which a manufacturer, distributor or seller of a product is not liable for exemplary or punitive damages.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Upon commencement of any civil action, a complaint or answer or other responsive pleading may not include a claim for exemplary or punitive damages.

2. The party commencing the action may conduct discovery of facts supporting a claim of fraud, malice or oppression. The discovery must comply with the provisions of the Nevada Rules of Civil Procedure. After the parties to an action have conducted discovery, a party may move the court for leave to amend the party's pleadings to claim exemplary or punitive damages. Such a motion must:

(a) Comply with the requirements and limitations of NRS 42.005; and

(b) Be supported with admissible evidence.

3. A party opposing a motion filed pursuant to subsection 2 may respond to the motion with affidavits, testimony taken by deposition or other admissible evidence.

4. If the court determines that there is prima facie evidence supporting a claim for punitive or exemplary damages, the court



shall grant the moving party leave to amend the party's pleadings to include such a claim.

5. A party may not conduct discovery on issues of financial condition for the purposes of subsection 4 of NRS 42.005 before the party has filed with the court and served on all parties pleadings that have been amended with leave of the court pursuant to subsection 4.

6. As used in this section, "prima facie evidence" means evidence to permit a court to find that a party has acted with oppression, fraud or malice, express or implied.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 42.005 is hereby amended to read as follows:

42.005 1. Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an award of exemplary or punitive damages made pursuant to this section may not exceed:

(a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is \$100,000 or more; or

(b) Three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than \$100,000.

2. The limitations on the amount of an award of exemplary or punitive damages prescribed in subsection 1 do not apply to an action brought against:

(a) A manufacturer, distributor or seller of a defective product
if:

(1) The manufacturer, distributor or seller sold the product after the effective date of a governmental agency's final order to:

(I) Remove the product from the market;

(II) Withdraw the governmental agency's approval of the product; or

(III) Substantially alter the governmental agency's terms of approval of the product in a manner that would have avoided the plaintiff's alleged injury and the product did not meet the agency's altered terms of approval when sold;

(2) A governmental agency or court determined that the manufacturer, distributor or seller made an unlawful payment to



an official or employee of a governmental agency for the purpose of securing or maintaining approval of the product;

(3) The manufacturer, distributor or seller intentionally, and in violation of any applicable laws or regulations, as determined by the responsible governmental agency, withheld from or misrepresented to a governmental agency information material to the approval of the product and that information is material and relevant to the harm that the plaintiff allegedly suffered; or

(4) After the product was sold, a governmental agency found that the manufacturer, distributor or seller knowingly violated any applicable laws or regulations by failing to report risks of harm to that governmental agency and the information which was not reported was material and relevant to the harm that the plaintiff allegedly suffered;

(b) An insurer who acts in bad faith regarding its obligations to provide insurance coverage;

(c) A person for violating a state or federal law prohibiting discriminatory housing practices, if the law provides for a remedy of exemplary or punitive damages in excess of the limitations prescribed in subsection 1;

(d) A person for damages or an injury caused by the emission, disposal or spilling of a toxic, radioactive or hazardous material or waste; or

(e) A person for defamation.

3. If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of whether such damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted before the same trier of fact to determine the amount of such damages to be assessed. The trier of fact shall make a finding of the amount to be assessed according to the provisions of this section. The findings required by this section, if made by a jury, must be made by special verdict along with any other required findings. The jury must not be instructed, or otherwise advised, of the limitations on the amount of an award of punitive damages prescribed in subsection 1.

4. Evidence of the financial condition of the defendant is not admissible for the purpose of determining the amount of punitive damages to be assessed until the commencement of the subsequent proceeding to determine the amount of exemplary or punitive damages to be assessed.

5. For the purposes of an action brought against an insurer who acts in bad faith regarding its obligations to provide insurance



coverage, the definitions set forth in NRS 42.001 are not applicable and the corresponding provisions of the common law apply.

