

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 41. 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 damages. In a cause of action in which a party seeks recovery of 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 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.

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or pecuniary loss; the term does not include exemplary damages or noneconomic damages.

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. 'Exemplary damages' includes punitive damages.

(6) "Fraud" means fraud other than constructive fraud.

(7) "Malice" means a specific intent by the defendant to cause substantial injury or harm to the claimant.

(7-a) "Net worth" means the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred

after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "Gross negligence" means an act or omission:

(A) 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

(B) 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.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 204, Sec. 13.02, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1159 (S.B. [735](#)), Sec. 1, eff. September 1, 2015.

Sec. 41.002. APPLICABILITY. (a) This chapter applies to any action in which a claimant seeks damages relating to a cause of action.

(b) This chapter establishes the maximum damages that may be

awarded in an action subject to this chapter, including an action for which 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 damages for a particular claim.

(c) Except as provided by Subsections (b) and (d), in 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:

(1) Section 15.21, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983);

(2) 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;

(3) an action brought under Chapter 36, Human Resources Code; or

(4) an action brought under Chapter 21, Insurance Code.

Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., ch. 380, Sec. 5, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1129, Sec. 16, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 9, eff. May 30, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 4.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 204, Sec. 13.03, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 18, eff. September 1, 2005.

Sec. 41.003. STANDARDS FOR RECOVERY OF EXEMPLARY DAMAGES.

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) gross negligence.

(b) The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by this section. 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.

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 204, Sec. 13.04, eff. Sept. 1, 2003.

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

(b) Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 204, Sec. 13.05, eff. Sept. 1, 2003.

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.

Amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

Sec. 41.006. AWARD SPECIFIC TO DEFENDANT. In any 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. Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff.

Sept. 2, 1987. Renumbered from Civil Practice & Remedies Code Sec. 41.005 by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

Sec. 41.007. PREJUDGMENT INTEREST. Prejudgment interest may not be assessed or recovered on an award of exemplary damages. Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Renumbered from Civil Practice & Remedies Code Sec. 41.006 by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

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

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1) (A) two times the amount of economic damages; plus

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

(2) \$200,000.

(c) This section 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, e

individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001 of this code);

(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](#) (fraudulent securing of document execution);

(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);

(15) Section [49.08](#) (intoxication manslaughter);

(16) Section [21.02](#) (continuous sexual abuse of young child or disabled individual); or

(17) Chapter 20A (trafficking of persons).

(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 this section may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

Added by Acts 1987, 70th Leg., 1st C.S., ch. 2, Sec. 2.12, eff. Sept. 2, 1987. Renumbered from Civil Practice & Remedies Code Sec. 41.007 and amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 643, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, Sec. 13.06, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. [8](#)), Sec. 3.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 309 (H.B. [533](#)), Sec. 2, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. [375](#)), Sec. 2.03, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. [109](#)), Sec. 5, eff. September 1, 2021.

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.

Amended by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

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) Subject to Section [41.008](#), 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.

Added by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 204, Sec. 13.07, eff. Sept. 1, 2003.

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 13.08, eff. Sept. 1, 2003.

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.

Added by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

Sec. 41.0115. DISCOVERY OF EVIDENCE OF NET WORTH FOR EXEMPLARY DAMAGES CLAIM. (a) On the motion of a party and after notice and a hearing, a trial court may authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. Evidence submitted by a party to the court in support of or in opposition to a motion made under this subsection may be in the form of an affidavit or a response to discovery.

(b) If a trial court authorizes discovery under Subsection (a), the court's order may only authorize use of the least burdensome method available to obtain the net worth evidence.

(c) When reviewing an order authorizing or denying discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion described by Subsection (a).

(d) If a party requests net worth discovery under this section, the court shall presume that the requesting party has had adequate time for the discovery of facts relating to exemplary damages for purposes of allowing the party from whom net worth

discovery is sought to move for summary judgment on the requesting party's claim for exemplary damages under Rule 166a(i), Texas Rules of Civil Procedure.

Added by Acts 2015, 84th Leg., R.S., Ch. 1159 (S.B. [735](#)), Sec. 2, eff. September 1, 2015.

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](#).

Added by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1995.

Sec. 41.014. INTEREST ON DAMAGES SUBJECT TO MEDICARE SUBROGATION. (a) Subject to this section, postjudgment interest does not accrue on the unpaid balance of an award of damages to a plaintiff attributable to any portion of the award to which the United States has a subrogation right under 42 U.S.C. Section 1395y(b)(2)(B) before the defendant receives a recovery demand letter issued by the Centers for Medicare and Medicaid Services or a designated contractor under 42 C.F.R. Section 411.22.

(b) Postjudgment interest under this section does not accrue if the defendant pays the unpaid balance before the 31st day after the date the defendant receives the recovery demand letter.

(c) If the defendant appeals the award of damages, this section does not apply.

(d) This section does not prevent the accrual of postjudgment interest on any portion of an award to which the United States does not have a subrogation right under 42 U.S.C. Section 1395y(b)(2)(B).

Added by Acts 2013, 83rd Leg., R.S., Ch. 870 (H.B. [658](#)), Sec. 1, eff. September 1, 2013.