

ASSEMBLY BILL

No. 40

Introduced by Assembly Member Niello

February 16, 2010

An act to amend Section 3294 of, and to add Section 3333.8 to, the Civil Code, relating to civil damages.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as introduced, Niello. Civil actions: damages.

Existing law authorizes the plaintiff, 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, to recover damages for the sake of example and by way of punishing the defendant in addition to the actual damages.

This bill would limit punitive damages in those actions to 3 times the award for compensatory damages.

This bill would also provide, in a case involving injury or harm allegedly caused by a product, that the manufacturer, distributor, or seller of the product shall not be guilty of oppression, fraud, or malice if, at the time of manufacture, distribution, or sale, the product, or the aspect, component, warning, or absence of warning contained in or accompanying the product that allegedly caused the injury or harm, was either approved by, or in material compliance with, a statute or the standards, rules, regulations, requirements, or specifications of, a federal or state agency responsible for regulating, evaluating, or approving the product, except as specified.

Existing law also provides that the measure of damages for the breach of an obligation not arising from contract is the amount that will compensate for all the detriment proximately caused.

This bill would provide that in any action for injury based on negligence, the plaintiff shall be entitled to recover noneconomic losses, as provided, not to exceed \$250,000.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3294 of the Civil Code is amended to
2 read:

3 3294. (a) In an action for the breach of an obligation not arising
4 from contract, where it is proven by clear and convincing evidence
5 that the defendant has been guilty of oppression, fraud, or malice,
6 the plaintiff, in addition to the actual damages, may recover
7 damages for the sake of example and by way of punishing the
8 defendant. *However, the amount of punitive damages shall not*
9 *exceed three times the award for compensatory damages in any*
10 *action.*

11 (b) An employer shall not be liable for damages pursuant to
12 subdivision (a), based upon acts of an employee of the employer,
13 unless the employer had advance knowledge of the unfitness of
14 the employee and employed him or her with a conscious disregard
15 of the rights or safety of others or authorized or ratified the
16 wrongful conduct for which the damages are awarded or was
17 personally guilty of oppression, fraud, or malice. With respect to
18 a corporate employer, the advance knowledge and conscious
19 disregard, authorization, ratification or act of oppression, fraud,
20 or malice must be on the part of an officer, director, or managing
21 agent of the corporation.

22 (c) As used in this section, the following definitions shall apply:

23 (1) "Malice" means conduct which is intended by the defendant
24 to cause injury to the plaintiff or despicable conduct which is

1 carried on by the defendant with a willful and conscious disregard
2 of the rights or safety of others.

3 (2) “Oppression” means despicable conduct that subjects a
4 person to cruel and unjust hardship in conscious disregard of that
5 person’s rights.

6 (3) “Fraud” means an intentional misrepresentation, deceit, or
7 concealment of a material fact known to the defendant with the
8 intention on the part of the defendant of thereby depriving a person
9 of property or legal rights or otherwise causing injury.

10 (d) Damages may be recovered pursuant to this section in an
11 action pursuant to Chapter 4 (commencing with Section 377.10)
12 of Title 3 of Part 2 of the Code of Civil Procedure based upon a
13 death which resulted from a homicide for which the defendant has
14 been convicted of a felony, whether or not the decedent died
15 instantly or survived the fatal injury for some period of time. The
16 procedures for joinder and consolidation contained in Section
17 377.62 of the Code of Civil Procedure shall apply to prevent
18 multiple recoveries of punitive or exemplary damages based upon
19 the same wrongful act.

20 (e) (1) *In a case involving injury or harm allegedly caused by*
21 *a product, the manufacturer, distributor, or seller of the product*
22 *shall not be guilty of oppression, fraud, or malice as defined in*
23 *this section if, at the time of manufacture, distribution, or sale, the*
24 *product or the aspect, component, warning, or absence of warning*
25 *contained in or accompanying the product that allegedly caused*
26 *the injury or harm either was approved by, or was in material*
27 *compliance with a statute or the standards, rules, regulations,*
28 *requirements, or specifications of, a federal or state agency*
29 *responsible for regulating, evaluating, or approving the product.*

30 (2) *This subdivision shall not apply if it is proven by clear and*
31 *convincing evidence that the defendant intentionally withheld or*
32 *intentionally misrepresented information that the defendant was*
33 *required to submit to the agency at any time and the withholding*
34 *or misrepresentation of that information was causally related to*
35 *the injury or harm alleged.*

36 (3) *This subdivision shall apply to every case pending on or*
37 *after the date of enactment regardless of when the case was filed.*

38 (e)

1 (f) The amendments to this section made by Chapter 1498 of
2 the Statutes of 1987 apply to all actions in which the initial trial
3 has not commenced prior to January 1, 1988.

4 SEC. 2. Section 3333.8 is added to the Civil Code, to read:

5 3333.8. (a) In any action for injury based on negligence, the
6 injured plaintiff shall be entitled to recover noneconomic losses
7 to compensate for pain, suffering, inconvenience, physical
8 impairment, disfigurement, and other nonpecuniary damages.

9 (b) The amount of damages for noneconomic losses shall not
10 exceed two hundred fifty thousand dollars (\$250,000) in any action.

11 SEC. 3. This act addresses the fiscal emergency declared by
12 the Governor by proclamation on January 8, 2010, pursuant to
13 subdivision (f) of Section 10 of Article IV of the California
14 Constitution.

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