

SUBJECT: Mental anguish and exemplary damages for certain wrongful evictions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Smithee, Farrar, Raymond, Schofield, Sheets, S. Thompson

1 nay — Laubenberg

2 absent — Clardy, Hernandez

WITNESSES: For — Sergio Lejarazu

Against — None

On — John Sepehri, Texas Apartment Association

BACKGROUND: Under Texas common law, tenants may recover from their landlord for wrongful eviction if they can prove that they:

- had an unexpired contract;
- occupied the premises;
- were evicted or dispossessed of the land by the landlord; and
- suffered damages as a result of the eviction.

Civil Practice and Remedies Code, sec. 41.003 provides that exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm suffered resulted from fraud, malice, or gross negligence.

Under sec. 41.008, the amount of exemplary damages awarded against a defendant cannot exceed the greater of:

- two times noneconomic damages, plus the amount of noneconomic damages up to \$750,000; or
- \$200,000.

Under sec. 41.011, a trier of fact determining the amount of exemplary damages must consider evidence relating to:

- the nature of the wrong;
- the character of the conduct involved;
- the degree of culpability of the wrongdoer;
- the situation and sensibilities of the parties;
- a public sense of justice and propriety; and
- the net worth of the defendant.

**DIGEST:**

HB 3561 would allow a claimant who prevailed in wrongful eviction suit to recover damages for mental anguish and exemplary damages, under certain circumstances, if the claimant could show that the evicting property owner would not have been reasonably likely to prevail in an eviction suit under ch. 24.

A claimant could recover mental anguish damages if the claimant could show that in the course of the wrongful eviction, the property owner:

- used or threatened violence to get the claimant to vacate; or
- knowingly or recklessly destroyed or seized all or the majority of the claimant's property located on the leased premises.

The bill would allow a claimant entitled to damages for mental anguish to recover exemplary damages if the claimant proved, by a preponderance of the evidence, that the wrongful eviction was pursued by the property owner solely for the purpose of putting the property to a more profitable use. There would be a rebuttable presumption that the wrongful eviction was solely for a more profitable use if:

- it occurred less than six months after the property owner acquired the property; and
- a structure occupied by the claimant was destroyed by the owner within 60 days after the eviction.

Exemplary damages for wrongful eviction could be the greater of:

- the amount provided under Civil Practice and Remedies Code, sec. 41.008; or
- up to 25 percent of the fair market value of the property from which the claimant was evicted, determined at the time of eviction.

The bill would allow courts to consider evidence of the amount of damages necessary to deter future similar wrongful evictions when calculating exemplary damages in wrongful eviction cases.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply only to wrongful evictions that occurred on or after that date.