

## **BILL ANALYSIS**

Senate Research Center

S.B. 735  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1888, the Texas Supreme Court determined in *Young v. Kuhn*, 9 S.W. 860, 862 (Tex. 1888) that the injury inflicted, rather than the defendant's ability to pay, was the relevant consideration for a jury tasked with assessing exemplary (sometimes called "punitive") damages.

In *Lunsford v. Morris*, 746 S.W.2d 471 (Tex. 1988), the Court overruled *Young* and permitted the discovery and use of net worth evidence to support a claim for exemplary damages.

Today, Section 41.011(a), Civil Practice and Remedies Code, codifies the rule in *Lunsford*, providing that in determining the amount of exemplary damages, the trier of fact "shall" consider (among other things) evidence relating to the defendant's net worth.

Opponents of the current law note that application of the *Lunsford* rule in light of the statutory changes governing the award of exemplary damages makes the defendant's financial condition largely irrelevant and often produces a litigation burden far exceeding any potential benefit. Further, current law gives rise to extensive, contentious pretrial discovery, including requests to reveal income tax returns, profit-and-loss statements, balance sheets, loan applications, HUD-1 settlement statements (reflecting the sale or purchase of real estate), inventories exchanged in a divorce, and other similar documents. Many individuals and small businesses strenuously resist this invasive discovery, which results in expensive and unproductive "satellite litigation."

S.B. 735 requires a trial court to serve as a gatekeeper for the discoverability and admissibility of net worth evidence on the issue of exemplary damages.

S.B. 735 amends current law relating to discovery of evidence of the net worth of a defendant in connection with a claim for exemplary damages.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 41.001, Civil Practices and Remedies Code, by adding Subdivision (7-a), to define "net worth."

SECTION 2. Amends Chapter 41, Civil Practices and Remedies Code, by adding Section 41.0115, as follows:

Sec. 41.0115. DISCOVERY OF EVIDENCE OF NET WORTH FOR EXEMPLARY DAMAGES CLAIM. (a) Authorizes a trial court, on the motion of a party and after notice and a hearing, to 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. Authorizes evidence submitted by a party to the court in support of or in opposition to a motion made under this subsection to be in the form of an affidavit or a response to discovery.

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

(c) Authorizes the reviewing court, when reviewing an order authorizing or denying discovery of net worth evidence under this section, to 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) Requires the court, if a party requests net worth discovery under this section, to 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.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.