

LFC Requester:

Felix Chavez

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/27/2025

Check all that apply:

Bill Number: SB0132

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Pat Woods

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Limit Damages in Legal Action

Analysis: Henry Chynoweth

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

##### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: SB 132 prohibits courts from awarding plaintiffs in civil suits more in punitive damages (damages for the purpose of deterrence) than they have been awarded in compensatory damages (damages for the purpose of compensating plaintiffs for the loss suffered). Under SB 132, plaintiffs receiving punitive damages would also be eligible for being awarded the costs for reasonable attorney fees.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

**Potential issues with deterrence.**

This bill diverges from how New Mexico has approached punitive damages in the past. *See Sanchez v. Clayton*, 1994-NMSC-064, ¶ 11, 117 N.M. 761 (“Punitive damages do not measure a loss to the plaintiff, but rather punish the tortfeasor for wrongdoing and serve as a deterrent.”). One of the principles of this approach is illustrated by the example of a man who wildly fires a gun into a crowd, but miraculously misses everyone and can only be held liable for \$10 of compensatory damages. *See TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443 (1993) Under the common approach, this would warrant punitive damages far exceeding \$10 in order to deter others from such reckless actions. *Id.*

This issue would not be resolved by awards of nominal damages, which are distinct from compensatory damages and thus could be accompanied by larger punitive damages. However, nominal damages are only awarded when plaintiffs establish a cause of action but cannot prove actual damages. *Sanchez*, 1994-NMSC-064, ¶¶ 13-15.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 132 may conflict with other New Mexico statutes.

NMSA 1978, Section 57-12-10(B) (2005) (part of the Unfair Practices Act) provides for awards of treble damages (three times actual damages) where the defendant is found to have willfully engaged in unfair, deceptive, or unconscionable trade practices. Treble damages are considered a form of punitive damages. See *Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 20, 110 N.M. 314; *McLelland v. United Wis. Life Ins. Co.*, 199-NMCA-055, ¶ 10, 127 N.M. 303.

NMSA 1978, Section 12-12-16 (2005) (part of the Energy Emergency Powers Act) provides that “[i]n any action for money damages, the court or jury may award punitive damages not to exceed three times the actual damages, if the violation is found to be willful.” This statute implicitly allows for punitive damages in excess of compensatory damages, given that its language would be otherwise rendered mere surplusage. Courts do not interpret statutory language to be mere surplusage. *State v. Johnson*, 1988-NMCA-019, ¶ 22, 107 N.M. 85.

NMSA 1978, Section 30-16-21 (2023) (part of the New Mexico Criminal Code). Provides that convicted shoplifters may be liable for punitive damages “of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).” The enactment of SB 132 would mean that shoplifters of merchandise costing less than \$100 would not be liable for punitive damages.

### **TECHNICAL ISSUES**

Typically, authorization for a party to receive attorney fees comes from individual statutes. See *G.E.W. Mech. Cont., Inc. v. Johnston Co.*, 1993-NMCA-081, ¶ 20, 115 N.M. 727. SB-132 may be interpreted as providing for awards of attorney fees whenever punitive damages are applicable, even if the statute giving rise to the cause of action does not specifically authorize awards of attorney fees.

### **OTHER SUBSTANTIVE ISSUES**

N/A.

### **ALTERNATIVES**

N/A.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

### **AMENDMENTS**

In order to avoid conflict with statutes providing for treble damages or other punitive damage amounts, language that makes an exception for treble damages or language (such as “unless otherwise provided by law”) could resolve this issue.

If the potential impact of this bill described above is not in line with the bill’s purpose, language could be added that clarifies a threshold at which point this law becomes applicable

(e.g., when compensatory damages exceed a certain amount). The bill's scope could also be narrowed to certain acts or sections under which suits awarding punitive damages in excess of compensatory damages has become a problem.

If providing rights to attorney fee awards under statutes which did not previously provide for such awards is not in line with this bill's purpose, potential remedies could be to add such language as "as permitted by statute."