

SA2005RF0147

December 21, 2005

**VIA PERSONAL DELIVERY**

The Honorable Bill Lockyer  
Attorney General  
1300 I Street  
Sacramento, CA 95814

**RECEIVED**  
DEC 21 2005

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary- Initiative Statutory Amendment

Dear Mr. Lockyer:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative statutory amendment. Enclosed is a check for \$200.00. My residence address is attached.

All inquiries or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Richard D. Martland.

Thank you for your assistance.

Sincerely,

  
John H. Sullivan, Proponent

Enclosure: Proposed Initiative

## SECTION 1. Findings and Declarations.

The people find and declare as follows:

(A) It is the intent of California voters in enacting this measure to encourage compliance with government product regulations, including reporting and disclosure requirements, thereby improving public health and safety. Californians will benefit from a law that increases the incentive for companies to disclose product information important to consumer health and safety.

(B) Punitive damages are designed to punish wrongdoers for despicable conduct above and beyond damages to compensate for an injury. Companies that are proven guilty of oppression, fraud, or malice in conscious disregard of consumer health and safety may be punished by punitive damages.

(C) People who can prove they were injured by a defective product should continue to be able to receive compensation for their actual damages, such as their medical expenses, lost wages, and pain and suffering.

(D) Companies that follow regulatory standards or obtain government approval of a product which later is proven to have a defect which causes injury should compensate consumers for their actual damages but should not be faced with paying millions of dollars more as a punishment.

(E) Plaintiffs' lawyers routinely threaten huge amounts of punitive damages in order to force costly settlements without going to court. The lawyers are the big winners; their fees take a high percentage of a settlement.

(F) Lawsuits unfairly seeking punitive damages unnecessarily complicate litigation, delay compensation to deserving people, drive up legal costs, increase the cost of products, and clog courts thereby penalizing taxpayers.

(G) The prospect of being an easy target for punitive damages, even if the rules are followed, poses a major barrier for companies intending to engage in research and development of new products like medicines or vaccines that enhance health and safety.

(H) Californians benefit from federal and state government regulatory agency standards and product approvals that involve comprehensive data collection, extensive scientific analysis, and testing and review that includes public input.

(I) The California Legislature has failed to enact reasonable reforms despite numerous bills being introduced during the past ten years.

(J) It is the intent of California voters in enacting this measure that it is a reasonable interpretation of the punitive damages statute (Civil Code section 3294) that a company is not guilty of oppression, fraud, or malice if it has followed the law, complied with the standards of a government agency, and met its disclosure obligations to the government.

(K) It is the intent of California voters in enacting this measure to clarify and confirm that punitive damages are a remedy controlled by statute, not a vested right, and that it is entirely proper and fair to apply this measure to all cases pending on or after the date of enactment of this clarifying amendment.

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

Sec. 3294. (a) 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, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

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

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

(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

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

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

based upon the same wrongful act.

(e) In a case involving injury or harm allegedly caused by a product, the manufacturer, distributor, or seller of the product shall not be guilty of oppression, fraud, or malice as defined in this section 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 either was approved by, or was 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.

This subdivision shall not apply if it is proven by clear and convincing evidence that the defendant intentionally withheld or intentionally misrepresented information which it was required at any time to submit to the agency and the withholding or misrepresentation of such information was causally related to the injury or harm alleged.

This subdivision shall apply to every case pending on or after the date of enactment regardless of when the case was filed.

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

### SECTION 3. Severability.

It is the intent of the People that the provisions of this measure are severable and that if any provision of this measure, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this measure which can be given effect without the invalid provision or application.

### SECTION 4. Conflicting Ballot Measures.

In the event that this measure and another measure or measures relating to punitive damages appear on the same statewide election ballot, the provisions of the other measures shall be deemed in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.