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Improve state's legal climate

Guest column by WEBB BROWN | Posted: Thursday, February 17, 2011 7:58 am

Montana's legal climate is holding our state back. The U.S. Chamber of Commerce Institute for Legal Reform ranks Montana's legal climate the 43rd worst in the nation for "fairness of its litigation environment." Put another way, that means employers are more likely to lose a lawsuit in Montana than in other states. That factor is obviously a serious deterrent to any business considering expanding or investing in Montana.

While Montana ranks near the bottom in terms of litigation, our four neighboring states all rank in the top 20, with North Dakota coming in second-best in the nation.

Our state's negative litigation environment puts our competitiveness among businesses at a severe disadvantage. Fortunately, there are simple fixes that will protect the rights of plaintiffs while improving the legal climate for employers.

The first simple fix is called an "appeal bond cap." Montana is currently one of only seven states that does not cap appeal bonds, meaning that, unlike other states, the bond amount required to appeal a judgment in Montana is always equal to the amount of the judgment - if you have a $100 million judgment against you, you must post a bond of $100 million.

To appeal an extraordinarily large - but increasingly common - judgment, a business in Montana would struggle to come up with the bond necessary to file an appeal. This puts a heavy burden on the fundamental legal right to appeal that all Montanans should have a right to exercise. If a business cannot afford to post a bond while it appeals, its only choices would be to pay the judgment, even though it has valid reasons to appeal, or declare bankruptcy, which will keep the plaintiff from seizing its assets while it appeals but is of course terrible for the business and its employees.

Thirty-eight states have placed caps on appeal bonds to prevent this situation, and five do not require an appeal bond at all. This year, the Montana Legislature will consider a sensible proposal to cap appeal bond amounts at $1 million for small businesses and $50 million for larger corporations.

To be clear: capping the appeal bond does not affect the amount of a judgment awarded to a plaintiff; it simply sets reasonable limits on appeal bonds to ensure that defendants have a meaningful right to appeal. The amounts proposed by the Legislature are consistent with other states', and would go a long way toward improving Montana's legal climate.

A second straightforward fix is to adjust the interest rate that applies to tort judgments. Currently Montana law places a 10 percent interest rate on all cash judgments in torts. That rate was codified years ago when high interest rates were common. Today, with rates so low, a 10 percent interest rate makes little sense.

Placing such a high interest rate on tort judgments is another detriment to Montana's legal climate because it adds an unnecessary and arbitrary punishment on top of the judgment - a punishment that doesn't exist for tort judgments in other states.

The Montana Legislature is considering a proposal this session that would implement a fair interest rate policy for Montana's legal system. For many cases, the legislation would simply replace the mandatory 10 percent rate with a rate based on the federal prime rate, plus 1 percentage point. The interest rate applied to all tort judgments would fluctuate and accurately reflect interest rate conditions in the overall market.

Again, this concept does not impinge on a plaintiff's ability to seek justice; it simply sets a reasonable market-driven interest rate that is fair to all those involved.

Creating jobs and investment in Montana is every legislator's number one priority today, and our legal climate is one very important area holding back competitiveness in our state. With these simple legislative fixes, Montana can easily improve its business environment and our ability to grow the state's economy.

Webb Brown is the president/CEO of the Montana Chamber of Commerce.

Common Sense Legal Reform for Montana

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I'm writing to urge you to support two simple legal-reform proposals that have already been adopted in many other states. By doing so we can bring Montana's legal climate more in line with other states and level the playing field for Montana's small businesses.

Montana Should Join Other States in Limiting the Size of Appeal Bonds

In order to stay the execution of a judgment pending appeal, Montana law requires the defendant to post an "appeal bond" for the full amount of the judgment, plus estimated costs for the appeal and interest. This requirement endangers the fundamental right to appeal because most defendants cannot afford to post such a large sum. If a defendant cannot afford to post a bond in the amount required by Montana law, the defendant may be forced to file for bankruptcy in order to prevent the plaintiff from taking its assets during the appeal.

Montana is one of the few remaining jurisdictions with no limit on its appeal bond. Since 2000 at least thirty-eight states have enacted legislation or adopted rules to limit or waive an appeal bond. The bond limits range from $1 million to $150 million. Five other states automatically stay a judgment upon the filing of an appeal.

Please support the proposed legislation to adopt a two-tiered limitation on the size of appeal bonds. This legislation does not affect the plaintiff's ability to recover damages—if a jury's verdict is upheld on appeal, the defendant must pay the plaintiff the full amount.

Montana Should Adopt Legislation Changing its Exorbitantly High Judgment Interest Rates

Plaintiffs in Montana who win favorable verdicts are usually entitled to recover pre- and post-judgment interest on the damages awarded.

Unless otherwise agreed to by the parties in contract, Montana imposes a flat interest rate of ten percent, which vastly exceed today's market interest rates. Please support the proposed legislation that corrects this problem by adopting an interest rate equal to the prime rate set by the Federal Reserve plus one percent.

Montana should join the numerous states that have based their judgment interest rate on a fluctuating market rate instead of a flat rate. Doing so will ensure that interest awards are fair, reasonable, and consistent.

Together, these simple, straightforward, and fair legal reforms will improve our legal climate and help make Montana a better place to do business.

Signed,

NAME	BUSINESS/AFFILIATION	ADDRESS
Nancy Streibich	Flathead Business & Industry Assn.	

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NAME	BUSINESS/AFFILIATION	ADDRESS
	MT Retail Assoc	1645 Parkhill Dr. #6 Billings MT 59102

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NAME	BUSINESS/AFFILIATION	ADDRESS
Donna Alexander	E.D. MT Petroleum Marketers Assoc.	PO 304 Helena MT 59624

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NAME	BUSINESS/AFFILIATION	ADDRESS
Chuck Denowh	UPOM	

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Signed, Ronda Wiggers, for

Great Falls Chamber of Commerce

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NAME	BUSINESS/AFFILIATION	ADDRESS
Spencer Gustafson	GLADSMITH KLINE	HAMILTON, MT

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NAME	BUSINESS/AFFILIATION	ADDRESS
James R Johnson	NFIB	491 S. Park Ave Helena, MT 59601

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NAME	BUSINESS/AFFILIATION	ADDRESS
[illegible]	President	15 Depot Park, Kalispell, MT
	Kalispell Chamber of Commerce	

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NAME	BUSINESS/AFFILIATION	ADDRESS
Todd Dillon	Cloud Peak Energy	Box 759 Helena MT

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