

HOUSE BILL NO. 165

INTRODUCED BY G. HERTZ

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUNITIVE DAMAGE LAWS; PROVIDING A LIMIT FOR PUNITIVE DAMAGE AWARDS TO THREE TIMES THE TOTAL AMOUNT OF COMPENSATORY DAMAGES AWARDED; REQUIRING A PERCENTAGE OF PUNITIVE DAMAGES TO BE ALLOCATED TO THE OFFICE OF THE PUBLIC DEFENDER; AMENDING SECTIONS 27-1-220, 27-1-221, AND 47-1-110, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Punitive damages -- when allowed -- limitation. (1) Except as otherwise expressly provided by statute and subject to subsection (3), a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

- (i) contract; or
- (ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) An award for punitive damages may not exceed \$10 million, ~~or~~ 3% of a defendant's net worth, or three times the total amount of compensatory damages awarded, whichever is less. This subsection does not limit punitive damages that may be awarded in class action lawsuits."

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages -- liability -- proof -- award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally



1 disregards facts that create a high probability of injury to the plaintiff and:

2 (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to
3 the plaintiff; or

4 (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

5 (3) A defendant is guilty of actual fraud if the defendant:

6 (a) makes a representation with knowledge of its falsity; or

7 (b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or
8 otherwise causing injury.

9 (4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant
10 and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2,
11 do not apply to proof of actual fraud under this section.

12 (5) All elements of the claim for punitive damages must be proved by clear and convincing evidence.
13 Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the
14 correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less
15 than beyond a reasonable doubt.

16 (6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

17 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not
18 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a
19 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined
20 by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in
21 subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the
22 defendant's financial affairs, financial condition, and net worth must be considered.

23 (b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons
24 for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the
25 following matters:

26 (i) the nature and reprehensibility of the defendant's wrongdoing;

27 (ii) the extent of the defendant's wrongdoing;

28 (iii) the intent of the defendant in committing the wrong;

29 (iv) the profitability of the defendant's wrongdoing, if applicable;

30 (v) the amount of actual damages awarded by the jury;

- 1 (vi) the defendant's net worth;
- 2 (vii) previous awards of punitive or exemplary damages against the defendant based upon the same
- 3 wrongful act;
- 4 (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
- 5 (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive
- 6 damages.

7 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters

8 listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should

9 be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing,

10 decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and

11 conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

12 (8) If punitive damages are awarded, the defendant shall pay the punitive damage award to the clerk of

13 the district court where the action is pending. The clerk of the district court shall allocate the punitive damage

14 award as follows:

15 (a) 35% to the plaintiff;

16 (b) 5% to the plaintiff's attorney; and

17 (c) 60% to the state treasurer.

18 (9) All money received by the state treasurer pursuant to subsection (8) must be deposited in the public

19 defender account provided for in 47-1-110.

20 ~~(8)~~(10) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery

21 of a defendant's financial affairs, financial condition, and net worth."

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23 **Section 3.** Section 47-1-110, MCA, is amended to read:

24 **"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue

25 fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the

26 account may be used only for the operation of the system.

27 (2) Money to be deposited in the account also includes:

28 (a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a

29 sentence in a criminal case;

30 (b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

1 (c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as
2 payment for public defender costs pursuant to 53-9-104; and

3 (d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate
4 Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally
5 disabled person when the respondent is determined to have the financial ability to pay for a public defender and
6 a judge orders payment under 47-1-111; and

7 (e) payments for punitive damage awards pursuant to 27-1-221."

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9 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
11 remains in effect in all valid applications that are severable from the invalid applications.

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13 **NEW SECTION. Section 5. Applicability.** [This act] applies to agreements for legal services entered
14 into on or after October 1, 2017.

15 - END -