

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~~ AND AMENDING SECTION 27-1-220, MCA."

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 -~~