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SENATE BILL NO. 169

INTRODUCED BY G. HERTZ, J. ESP, B. BROWN, B. USHER, C. FRIEDEL, J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUNITIVE DAMAGES LAWS;  
PROHIBITING THE PLEADING OF PUNITIVE DAMAGES IN AN INITIAL PLEADING; PROVIDING THAT A  
PUNITIVE DAMAGES AWARD BE EQUALLY DIVIDED BETWEEN THE INJURED PARTY AND THE STATE;  
~~ESTABLISHING THE STATEWIDE PUBLIC DEFENDER SYSTEM ACCOUNT IN THE STATE SPECIAL  
REVENUE FUND~~; REQUIRING PUNITIVE DAMAGES THAT ARE AWARDED TO THE STATE TO BE  
DEPOSITED IN THE ~~STATEWIDE PUBLIC DEFENDER SYSTEM ACCOUNT~~ GENERAL FUND; ~~AND~~  
AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
APPLICABILITY DATE."

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

~~NEW SECTION. Section 1. Statewide public defender system account established. (1) There is  
a statewide public defender system account in the state special revenue fund provided for in 17-2-102.  
(2) There must be paid into the account any punitive damages awarded to the state pursuant to  
27-1-221.  
(3) Money deposited in the account is subject to appropriation by the legislature and may be used  
only to fund the statewide public defender system established under Title 47, chapter 1.~~

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

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

1 to the plaintiff; or

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

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

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

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

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

10 (5) A request for an award of punitive damages may not be contained within an initial pleading filed  
11 by a party with the court. At any time after the initial pleading is filed and discovery has commenced in the  
12 lawsuit, a party may move the court to allow the party to amend the pleading to assert a claim for punitive  
13 damages. The party making the motion may submit affidavits and documentation supporting the claim for  
14 punitive damages. A party opposing the motion may submit opposing affidavits and documentation. The court  
15 may not allow a party to assert a claim for punitive damages unless the affidavits and supporting documentation  
16 submitted by the party seeking punitive damages set forth specific facts supported by admissible evidence  
17 adequate to establish the existence of a triable issue on all elements of a punitive damages claim.

18 ~~(5)~~(6) All elements of the claim for punitive damages must be proved by clear and convincing  
19 evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt  
20 about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence  
21 but less than beyond a reasonable doubt.

22 ~~(6)~~(7) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

23 ~~(7)~~(8) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not  
24 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a  
25 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be  
26 determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as  
27 provided in subsection ~~(7)(e)~~(8)(c). In the separate proceeding to determine the amount of punitive damages to  
28 be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

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

- 4 (i) the nature and reprehensibility of the defendant's wrongdoing;
- 5 (ii) the extent of the defendant's wrongdoing;
- 6 (iii) the intent of the defendant in committing the wrong;
- 7 (iv) the profitability of the defendant's wrongdoing, if applicable;
- 8 (v) the amount of actual damages awarded by the jury;
- 9 (vi) the defendant's net worth;
- 10 (vii) previous awards of punitive or exemplary damages against the defendant based ~~upon~~on the  
11 same wrongful act;
- 12 (viii) potential or prior criminal sanctions against the defendant based ~~upon~~on the same wrongful  
13 act; and
- 14 (ix) any other circumstances that may operate to increase or reduce, without wholly defeating,  
15 punitive damages.

16 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the  
17 matters listed in subsection ~~(7)(b)~~ (8)(b). If after review the judge determines that the jury award of punitive  
18 damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for  
19 increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of  
20 fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection ~~(7)(b)~~ (7)(c).

21 ~~(8)(9)~~ (a) The judge shall divide the award of punitive ~~damage award~~ damages equally between the  
22 injured prevailing party and the state and shall enter judgment accordingly.

23 (b) Upon entry of a judgment awarding punitive damages, the prevailing party shall provide written  
24 notice of the judgment to the state through the attorney general.

25 (c) The costs of litigation related to the award of punitive damages may be deducted from the full  
26 award of punitive damages.

27 (d) Reasonable attorney fees related to the award of punitive damages may be deducted from the  
28 full award of punitive damages after costs, but attorney fees deducted from the state's share may not exceed

1 20% of the state's share of the award of punitive damages after costs.

2 (e) The award to the state must be deposited in the statewide public defender system account  
3 established in [section 1] general fund.

4 (f) The state has no interest in or right to intervene at any stage of a judicial proceeding pursuant  
5 to this subsection (9) except to enforce or execute a judgment entered in favor of the state.

6 (10) The jury may not be advised of the requirements under subsection (9) concerning the  
7 allocation of money received in payment of an award of punitive damages.

8 ~~(8)(9)(11)~~ This section is not intended to alter the Montana Rules of Civil Procedure governing  
9 discovery of a defendant's financial affairs, financial condition, and net worth."

10  
11 ~~NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an~~  
12 ~~integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 1].~~

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14 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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16 **NEW SECTION. Section 3. Applicability.** [This act] applies to any actions filed on or after [the  
17 effective date of this act].

18 - END -