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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~~  
11 ~~PLEADING FILED BY A PARTY WITH THE COURT. AT ANY TIME AFTER THE INITIAL PLEADING IS FILED AND DISCOVERY HAS~~  
12 ~~COMMENCED IN THE LAWSUIT, A PARTY MAY MOVE THE COURT TO ALLOW THE PARTY TO AMEND THE PLEADING TO~~  
13 ~~ASSERT A CLAIM FOR PUNITIVE DAMAGES. THE PARTY MAKING THE MOTION MAY SUBMIT AFFIDAVITS AND~~  
14 ~~DOCUMENTATION SUPPORTING THE CLAIM FOR PUNITIVE DAMAGES. A PARTY OPPOSING THE MOTION MAY SUBMIT~~  
15 ~~OPPOSING AFFIDAVITS AND DOCUMENTATION. THE COURT MAY NOT ALLOW A PARTY TO ASSERT A CLAIM FOR PUNITIVE~~  
16 ~~DAMAGES UNLESS THE AFFIDAVITS AND SUPPORTING DOCUMENTATION SUBMITTED BY THE PARTY SEEKING PUNITIVE~~  
17 ~~DAMAGES SET FORTH SPECIFIC FACTS SUPPORTED BY ADMISSIBLE EVIDENCE ADEQUATE TO ESTABLISH THE EXISTENCE~~  
18 ~~OF A TRIABLE ISSUE ON ALL ELEMENTS OF A PUNITIVE DAMAGES CLAIM.~~

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

23 ~~(6)(7)(6)~~ Liability for punitive damages must be determined by the trier of fact, whether judge or  
24 jury.

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

1 provided in subsection ~~(7)(e)~~ (8)(c)(7)(c). In the separate proceeding to determine the amount of punitive  
2 damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be  
3 considered.

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

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

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

25 ~~(8)(9)(8)~~ (A) The judge shall divide the AWARD OF punitive damage award DAMAGES equally  
26 between the injured PREVAILING party and the state and shall enter judgment accordingly. When punitive  
27 damages are awarded by a judge or jury, the amount of the punitive damages must be apportioned as follows:

- 28 (i) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the clerk of

1 the district court. The clerk of the district court shall forward any amount collected under this subsection (8)(a)(i)  
2 to the state treasurer within 60 days of receipt for deposit in the general fund.

3 (ii) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the party to  
4 whom the punitive damages were awarded.

5 (B) UPON ENTRY OF A JUDGMENT AWARDING PUNITIVE DAMAGES, THE PREVAILING PARTY SHALL PROVIDE  
6 WRITTEN NOTICE OF THE JUDGMENT TO THE STATE THROUGH THE ATTORNEY GENERAL.

7 (C) THE COSTS OF LITIGATION RELATED TO THE AWARD OF PUNITIVE DAMAGES MAY BE DEDUCTED FROM  
8 THE FULL AWARD OF PUNITIVE DAMAGES.

9 (D) REASONABLE ATTORNEY FEES RELATED TO THE AWARD OF PUNITIVE DAMAGES MAY BE DEDUCTED  
10 FROM THE FULL AWARD OF PUNITIVE DAMAGES AFTER COSTS, BUT ATTORNEY FEES DEDUCTED FROM THE STATE'S  
11 SHARE MAY NOT EXCEED 20% OF THE STATE'S SHARE OF THE AWARD OF PUNITIVE DAMAGES AFTER COSTS.

12 (E) The award to the state must be deposited in the statewide public defender system account  
13 established in [section 1] GENERAL FUND.

14 (F)(C) THE STATE HAS NO INTEREST IN OR RIGHT TO INTERVENE AT ANY STAGE OF A JUDICIAL PROCEEDING  
15 PURSUANT TO THIS SUBSECTION (9)(8) EXCEPT TO ENFORCE OR EXECUTE A JUDGMENT ENTERED IN FAVOR OF THE  
16 STATE.

17 (9) The costs of litigation, including reasonable attorney fees, must be deducted from the full  
18 punitive damages award before apportionment under subsection (8).

19 (10) THE JURY MAY NOT BE ADVISED OF THE REQUIREMENTS UNDER SUBSECTION (9)(8) CONCERNING THE  
20 ALLOCATION OF MONEY RECEIVED IN PAYMENT OF AN AWARD OF PUNITIVE DAMAGES.

21 (8)(9)(11) This section is not intended to alter the Montana Rules of Civil Procedure governing  
22 discovery of a defendant's financial affairs, financial condition, and net worth."

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

27 NEW SECTION. SECTION 2.— EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.