

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 12, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 12, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 363: Rep. Bob Marks, District #75 and sponsor of HB 363, offered testimony in its support. He informed the committee that HB 363 is the first of five punitive damage bills that are scheduled for hearing today. The reasons these bills were introduced is because there is more and more abuse of punitive damages by the plaintiffs in lawsuits. Rep. Marks briefly went through the contents of the bill.

Senator Chris Christiaens, District #17, appeared and offered testimony with regards to SB 200 and the other bills relating to punitive damages. A copy of his testimony was marked as Exhibit B and attached hereto.

CONSIDERATION OF HOUSE BILL NO. 400: Rep. Ed Grady, District #47, sponsor of HB 400, testified. He said HB 400 simply amends 27-1-221. It is a simple, but very important, bill. It would provide that a jury may not consider a defendant's financial worth when determining the amount of exemplary or punitive damages to be awarded.

CONSIDERATION OF HOUSE BILL NO. 511: Rep. Tom Hannah, District #86, sponsor of HB 511, appeared and offered testimony in support of this bill. He said that HB 511 simply sets a limit on punitive damages. He said that punitive damages may be awarded to a plaintiff in an amount equal to the amount of actual damages awarded to the plaintiff or \$50,000 whichever is more, but not in excess of \$500,000.

CONSIDERATION OF HOUSE BILL NO. 533: Rep. Fred Thomas, District #62, testified in support of his bill. He said the purpose of this bill is to set up where punitive damages will go after a party is fully compensated for actual damages. He said that the intent of this legislation is to make the system fairer by not awarding unjust punitive damages for the benefit of enriching a few people.

CONSIDERATION OF HOUSE BILL NO. 536: Rep. Jack Ramirez, District #87, sponsor of HB 536, testified in support of it.

He said that this bill tightens up the language in 27-1-221. He feels that punitive damages should be limited. This gives people some idea as to what rules they must govern themselves and conduct themselves by each day. Rep. Ramirez said that the definitions provided in HB 536 are very important. It eliminates the definition of "oppression" and eliminates "presumed malice". The bill also limits punitive damages. He suggested the idea that the committee may wish to add a sentence which would eliminate some of the situations in which punitive damages can be awarded. Rep. Ramirez gave the committee a personal example of a bank president, and the impact it had on him and his family regarding a lawsuit with excessive punitive damages.

PROPOSERS: Mike Anderson, attorney from Billings, said that for the last 18 to 24 months, 75% of his practice has involved claims of "bad faith" and claims of punitive damages. In the last 10 months, he has had cases that cost several hundred thousand dollars both in compensatory and punitive damages and that those cases existed in Great Falls before he moved to Billings. He said the degree of change in the award in frequency of punitive damages both in terms of jury verdict and negotiations in resolution of conflicts, has increased dramatically in the last two years. He said the defense in handling punitive damages claims has become big business. He stated that supreme court judges and district judges are reluctant to overturn jury verdicts. Mr. Anderson further stated that the average businessman may not be able to afford the insurance coverage of punitive damages, and the protection he thinks he does have may not exist. He also brought out the point that these excessive lawsuits lead to a lot of personal anguish. Careers are on the line, and there is a significant amount of discouragement involved.

Mike Rice, businessman from Great Falls, appeared and stated his support for all the punitive damage bills. He informed the committee that he has a trucking business in Great Falls, and never before has his business been so threatened with survival. He said that litigation costs have become absolutely astronomical. He pointed out that most of the claims against his company have been settled out of court, but even so, settlement costs have been very expensive. He said the leverage that the legal profession has by hanging a large punitive damage lawsuit over their heads is very significant. He is experiencing more pressure from insurance companies to pay higher settlement costs to prevent a major lawsuit. He also said that the insurance market is very tight at present. He said that if his business fails, ultimately any plans to retire also fail. He also feels he is speaking for many businessmen in Montana.

In summary, he expressed his desire to see at least one of these bills passed to improve the business climate of the state and to give businessmen some measure of predicability.

Tuck Vosburg, president of Pacific Hide and Fur Dept from Great Falls, offered testimony in support of all these bills. A copy of his testimony was marked as Exhibit C and is attached hereto.

J. Michael Young, administrator of the Insurance and Legal Division of the Department of Administration, appeared and offered testimony. He said that the division supports the concept of these bills. He said that suing everyone who makes controversial decisions is becoming more common. He said that state officials can be sued in their professional and personal capacities. Mr. Young gave a scenerio of what happens when a state official is sued. In summary, Mr. Young said the bills are not perfect -- they are simply minimizing the risk. Referring to Rep. Ramirez's bill, HB 536, Mr. Young said there are a number of situations which could lead to unintended results. He suggested the bill be amended on line 19 following "purposely" by adding "with any intent to cause harm".

Greg Holt, a farmer from Great Falls, testified in support of limiting punitive damages and changing the law with respect to when they can be awarded. A copy of his testimony was marked as Exhibit D and is attached hereto. (Mr. Holt also spoke on behalf of the Grain Growers Association.)

Bill Olson, secretary of the Montana Contractor's Association, testified in support of the bills. He submitted a package of letters written by the Cop Construction Company in Billings, Montana requesting these bills be passed. The package of letters was marked as Exhibit E and is attached hereto.

Horace Boles, representing the Helena Chamber of Commerce, wished to go on record as supporting these bills.

Mike Fitzgerald, representing the Montana International Trade Commission, said that HB 363 is the preferred bill, although he feels any reasonable combination of these bills will benefit Montana. He pointed out that in terms of creating and expanding new businesses in Montana, which the commission works on full time, it has become a major issue of contention. It is an increased expense and fear amongst businesses that already exist, and it is even more of a problem amongst businesses that they are trying to get moved to Montana or create in Montana. Product liability insurance has generally increased operating insurance for enterprise in Montana -- this has become an enormous nuisance, and it is preventing new business development.

Chad Smith, representing the Montana Hospital Association, testified in support of the package of bills. He stated that the hospitals are primarily concerned with impact in the area of wrongful discharge.

R. A. Ellis, chairman of the board of the Helena Valley Irrigation District, appeared and offered testimony in support of the bills.

Riley Johnson, representing the National Federation of Independent Business, wished to go on record as supporting this legislation.

Dave Goss, representing the Billings Chamber of Commerce, stated his support for the bills.

George Allen, representing the Montana Retail Association, wished to go on record as supporting these bills.

Jeff Kirkland, vice-president of the Montana Credit Union League, supports passage of these bills.

John Cadby, representing the Montana Bankers Association, informed the committee that the bankers around Montana are deeply concerned about the adverse impact of punitive damage actions.

Jeff Witt, representing the Missoula Chamber of Commerce, wished to go on record as supporting all these bills.

Lorraine Gillis, representing the Montana Farm Bureau, wished to go on record as supporting these bills.

OPPONENTS: John Hoyt, a lawyer from Great Falls, stated his opposition to this package of bills dealing with punitive damages. A copy of his written testimony was marked Exhibit F and attached hereto.

Lon J. Dale, an attorney from Missoula, appeared and offered testimony in opposition to punitive damage bills. He stated that these bills are examples of an attack of the American system of justice. He said that the proponents of these bills seek to erode the cornerstone of our democracy, the American jury system. He said that there is a lot of misunderstandings about the judicial system, and he further feels the Montana jury system is working well. Mr. Dale further stated that he feels these proposed changes are promoted by out-of-state interests. He feels that proponents of these bills don't really understand the facts of this type of legislation. Rep. Ramirez's bill was a bill drafted by a California insurance company, Mr. Dale continued. That particular model bill is being offered in 26 different states. Mr. Dale said insurance companies are the ones who are behind most of this legislation. Mr. Dale submitted a study on exemplary damage cases in the Montana Supreme Court which shows over a period of 20 years the cases, the defendant entity, amount of compensatory award

by the jury, the amount of exemplary damage assessed by the jury and the amount of exemplary damages assessed by the supreme court. That study was marked Exhibit G and is attached hereto.

Bill Britton, a client of Lon Dale's from Ronan, appeared and offered personal testimony in opposition to the bills.

Greg Monroe, an attorney representing the Yellowstone Valley Claimant Association, feels this package of bills is a definite threat to injured Montanans. He brought out that most insurance companies will pay medical bills due to the punitive damages during pending litigation. Mr. Monroe further pointed out a problem with HB 511. He feels this bill would knock punitive damages completely out.

Bill Madden, an attorney from Bozeman appeared on behalf of his clients -- injured people. He feels there are a number of technical problems with the bills as proposed.

Julie Dalsoglio, representing the Montana Public Interest Research Group, wished to go on record as opposing these bills.

Tom Bowan, attorney from Great Falls, believes the lines in this issue have been inappropriately drawn. He feels the jury must know the net worth of a defendant if the punitive sanction is going to serve its purpose.

There being no further opponents, sponsors Grady, Thomas, Hannah, and Marks closed.

Rep. Ramirez wished to make some closing comments. He said these bills do not eliminate punitive damages. These bills are designed to protect the innocent. He further pointed out that the trend for filing punitive damage claims is increasing and it is a trend that is increasing dramatically. He said there is a pyramid effect with these cases also. Only about 10% of the cases filed actually get to trial. Most cases are settled, and then there are cases that aren't even filed which are settled. He also rebutted the prior testimony that this legislation is not due to out-of-state interests. He said this is something that effects everyone, and there are many people in the state who are concerned with this issue. Again, he stated that these bills are geared to protect the innocent.

The floor was opened to questions from the committee.

Rep. Addy asked Mr. Hoyt how many of his clients have been able to pay him on an hourly basis rather than on a contingent fee. Mr. Hoyt said that only one has been able to do so, and Mr. Hoyt added that he has tried hundreds of lawsuits.

Rep. Rapp-Svrcek wanted to know why the amount awarded has increased so dramatically. Mr. Anderson feels the greatest reason for change has been in rulings of the supreme court. He also pointed out that the business climate in the state is failing.

In response to a question, Bob James stated that he is unaware of any company in which insurance can be purchased specifically to protect for punitive damages.

It seemed to Rep. Rapp-Svrcek that the amount of exemplary damages awarded by the supreme court seem to fall well within the limits that Rep. Ramirez's bill is statutorily set. Rep. Ramirez pointed out that there are some cases that have not made it to the supreme court yet that have had some awards that are in excess of that. There are cases in federal court that are not reflected on the hand-out that Mr. Dale submitted. Rep. Ramirez further pointed out that this particular handout does not reflect what people ask for in punitive damages which is where the threat is. The threat is what is building so rapidly.

Rep. Rapp-Svrcek wanted to know why the jury shouldn't know an individual's full financial status. Rep. Ramirez said that not everyone would want to disclose his financial worth. Rep. Ramirez said that if everyone is equal before the law, why should someone who has more financially be punished for it.

Rep. Kruegar asked Mr. Dale to make a few comments. Mr. Dale pointed out some statistics. He said that there has been a proliferation of litigation which has resulted in an increased number of appeals to the supreme court. In 1974 there were 265 decisions by the Montana Supreme Court; in 1984, there were 565 decisions. We are dealing with the same law that has been on the books since 1895.

Rep. Addy asked Rep. Marks when people don't have equal resources, do you think a different burden of proof should be applied to those cases. Rep. Marks replied with a "no." Rep. Addy further asked if in criminal cases, life, liberty and property are in jeopardy, and in a civil case when property is in jeopardy, should that have any bearing as to what the appropriate burden of proof should be. Rep. Marks said it depends on what the motive is in getting punishment.

In response to a question asked by Rep. Hannah, Mr. Hoyt stated that when attorney fees are regulated, usually the person needing that attorney is not able to get the type of representation that the person should be entitled to get without regulated attorney fees.

Following a few more general questions of information,

hearing on the punitive damage bills closed.

EXECUTIVE SESSION

Chairman Tom Hannah called an executive session to order at 11:05 a.m.

ACTION ON HOUSE BILL NO. 265: Rep. Montayne moved to amend page 9, lines 8 through 12 by inserting the word "consumer" somewhere in the language. He feels unless consumer is added, the landowner and recreationalists will continue to fight. The motion was seconded by Rep. Addy.

Rep. Gould pointed out that the recreationalist is a consumer. Rep. Montayne said that a landowner is a consumer also, but he feels that by adding another consumer would provide the three-man board with a better stabilization.

The question was called on Rep. Montayne's motion and it failed with Rep. Montayne voting "yes".

Rep. Cobb moved to amend the bill on page 6, to add a new section (E) which will say "the placement or creation of any permanent or semi-permanent object such as a permanent duck blind or boat moorage.". The amendment includes striking lines 8 through 10 on page 6. He wanted to place this language higher because basically if you are placing property on someone else's property in a permanent or semi-permanent way he doesn't feel that this is quite correct. The fish and game department doesn't allow it now, and he feels if something is going to be placed permanently or semi-permanently permission should be obtained from the landowner.

Rep. Krueger stated that broad attention to this area has been given, and we are reflecting that in relation to the duties given to the fish and game commission.

The question was called and the motion to amend failed. (Those voting in favor of the motion were Reps Hannah, Gould, O'Hara, Grady, Cobb, Bergene and Montayne.)

Rep. Cobb further moved to amend page 6, following line 7 insert a new section(b) and renumber subsequent sections. The new section would read "UPLAND BIRD HUNTING".

Rep. Eudaily stated that he felt this amendment would be inappropriate. If you're on a farmer's ranch at present you don't have permission to hunt above the high water marks.

The question was called, and the motion to amend failed with Reps. Hannah, Montayne, Grady, Cobb, Gould and Bergene voting in favor of the amendment.

Rep. Cobb moved to amend the Statement of Intent. He wished to have the following language adopted into the Statment of Intent; "The department or the commission shall develop categories for surface waters in Class I and Class II waters as to recreational use and classify all such waters as to their recreational uses." He said the reason he wished to include this is because it is a long term procedure, and all the other states are following through with this. It is just a recommendation to the fish and game department to do what they are doing, to continue to classify. Another thing he feels needs to put into the Statment of Intent is that it needs to be re-emphasized to the commission that they ought to provide procedures for immediate temporary closure of surface waters by the commission itself or by ex-officio wardens due to public health or safety or nuisance to public or private property. He said the Statement of Intent should imply that categories should be made as the commission is already doing and classifying these surface waters. Secondly, temporary closures should be clarified. Thirdly, the department should be responsible for cleaning up the litter left behing by recreationists. A copy of his proposed amendments was marked as Exhibit H and is attached hereto. Without objection, the amendments will be divided for purposes of clarity.

The first part of the amendment deals with requesting the department to develop categories for surface water and classify surface waters as to their recreational use.

Rep. Keyser said he didn't have a huge problem with C, but he feels the department has the right and are presently doing this. He doesn't know that including it in the Statement of Intent will necessarily speed up the process. Rep. Keyser said as far as adopting E, the money that could be spent is unknown and could create problems. He feels that the department already has the authority to do this.

The question was called on the motion to adopt the first part of amendment 7, i.e. (C), and it failed with Reps. Hannah, O'Hara, Cobb, and Bergene voting for the amendment.

Amendment 7 (D) would provide for immediate temporary closing of surface waters by the commission, the department, or ex-officio wardens due to public health safety or nuisance to public or private property. The motion failed with Reps. Cobb, Hannah, Gould, and Bergene voting "yes" on the motion to amend.

The third amendment would require the department to be responsible for cleaning up the litter on property. The motion failed with Reps. Cobb and Bergene voting for the motion.

Following further discussion, Rep. Mercer stated that he hopes to see the committee give its unanimous consent to adopt the subcommittee's decision.

Rep. Keyser pointed out that the senate will probably amend this bill in many ways. He also stated that the subcommittee couldn't possibly spell out absolutely everything that came up in the bill. He pointed out that the Fish and Game Commission is presently doing many of these things.

The question was called, and the motion to adopt the subcommittee's amendments to HB 265 carried with Rep. Cobb voting "no".

ADJOURN: A motion having been made, and the motion having been seconded, the meeting adjourned at 11:30 a.m.


REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 4/12/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:00 a.m.

Date 2/12/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/12/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene			✓
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			
John Mercer	✓		
Joan Miles			
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

HOUSE BILL NO. 265

INTRODUCED BY REAM, MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY DEFINING LAWS RELATING TO RECREATIONAL USE OF STATE WATERS; PROHIBITING RECREATIONAL USE OF DIVERTED WATERS; RESTRICTING THE LIABILITY OF LANDOWNERS WHEN WATER IS BEING USED FOR RECREATION; ESTABLISHING THE RIGHT TO PORTAGE; PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY RECREATIONAL USE OF SURFACE WATERS; AMENDING SECTION 70-19-405, 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. Definitions. For purposes of [sections 2 1 through 5], the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, or a natural object IN OR OVER A WATER BODY which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water or a natural object within the ordinary high-water mark of a stream.

(2) "Class I waters" means surface waters that:

1 (a) lie within the officially recorded federal
2 government survey meander lines thereof;

3 (b) flow over lands that have been judicially
4 determined to be owned by the state by reason of application
5 of the federal navigability test for state streambed
6 ownership;

7 (c) flow through public lands, WHILE WITHIN THE
8 BOUNDARIES OF SUCH LANDS;

9 (d) are or have been capable of supporting THE
10 FOLLOWING commercial activity ACTIVITIES: LOG FLOATING,
11 TRANSPORTATION OF FURS AND SKINS, SHIPPING, COMMERCIAL
12 GUIDING USING MULTIPERSON WATERCRAFT, PUBLIC TRANSPORTATION,
13 OR THE TRANSPORTATION OF MERCHANDISE, AS THESE ACTIVITIES
14 HAVE BEEN DEFINED BY PUBLISHED JUDICIAL OPINION AS OF [THE
15 EFFECTIVE DATE OF THIS ACT]; or

16 (e) are or have been capable of supporting commercial
17 activity within the meaning of the federal navigability
18 test.

19 (3) "Class II waters" means all surface waters that
20 are not class I waters.

21 (4) "COMMISSION" MEANS THE FISH AND GAME COMMISSION
22 PROVIDED FOR IN 2-15-3402.

23 ~~(4)~~(5) "Department" means the department of fish,
24 wildlife, and parks provided for in 2-15-3401.

25 ~~(5)~~(6) "Diverted away from a natural water body" means

1 a diversion of surface water through a manmade water
2 conveyance system, including but not limited to:

3 (a) an irrigation or drainage canal or ditch;

4 (b) an industrial, municipal, or domestic water
5 system;

6 (c) a flood control channel; or

7 (d) a hydropower inlet and discharge facility.

8 ~~(6)~~(7) "Ordinary high-water mark" means the line that
9 water impresses on land by covering it for sufficient
10 periods to cause physical characteristics that distinguish
11 the area below the line from the area above it.
12 Characteristics of the area below the line include, when
13 appropriate, but are not limited to diminished terrestrial
14 vegetation or lack of agricultural crop value. A FLOOD
15 PLAIN ADJACENT TO SURFACE WATERS IS NOT CONSIDERED TO LIE
16 WITHIN THE SURFACE WATERS' HIGH-WATER MARKS.

17 ~~(7)~~(8) ~~(a)~~ "Recreational use" means with respect to
18 ~~class-1~~ SURFACE waters: fishing, hunting, swimming, floating
19 in small craft or other flotation devices, boating in
20 motorized craft unless otherwise prohibited or regulated by
21 law, or craft propelled by oar or paddle, OTHER
22 WATER-RELATED PLEASURE ACTIVITIES, and related unavoidable
23 or incidental uses, ~~within-the-ordinary-high-water-mark-of~~
24 ~~the-waters.~~

25 ~~(b)--Recreational-use-means-with-respect--to--class--11~~

1 waters--all--of--the--uses--set--forth--in--subsection--(7)(a),
 2 except--that--it--does--not--include,--without--permission--of--the
 3 landowner:

4 (i)--overnight--camping;

5 (ii)--big-game--hunting--or--upland--bird--hunting;

6 (iii)--operation---of---all--terrain--vehicles--or--other
 7 motorized--vehicles--not--primarily--designed--for--operation--upon
 8 the--water;

9 (iv)--the--placement--or--creation--of--any--permanent--or
 10 semipermanent--object--such--as--a--permanent--duck--blind--or--best
 11 moorage;--or

12 (v)--other---activities---which---are---not---primarily
 13 water--related--pleasure--activities.

14 (8)(9) "Supervisors" means the board of supervisors of
 15 a soil conservation district, the directors of a grazing
 16 district, or the board of county commissioners if a request
 17 pursuant to [section 3(3)(b)] is not within the boundaries
 18 of a conservation district or if the request is refused by
 19 the board of supervisors of a soil conservation district or
 20 the directors of a grazing district.

21 (10) "SURFACE WATER" MEANS, FOR THE PURPOSE OF
 22 DETERMINING THE PUBLIC'S ACCESS FOR RECREATIONAL USE, A
 23 NATURAL WATER BODY, ITS BED, AND ITS BANKS UP TO THE
 24 ORDINARY HIGH-WATER MARK.

25 NEW SECTION. Section 2. Recreational use permitted --

1 limitations -- exceptions. (1) Except as provided in
 2 subsection-~~(3)~~ SUBSECTIONS (2) THROUGH (4), all class--~~f~~
 3 SURFACE waters that are capable of recreational use as
 4 defined-in-~~{section-1(7)(a)}~~--including-the-beds--underlying
 5 them--and--the-banks-up-to-the-ordinary-high-water-mark, may
 6 be so used by the public without regard to the ownership of
 7 the land underlying the waters.

8 ~~{2}--Except-as-provided-in-subsection-(3), all-class--f~~
 9 ~~waters--that--are--capable-of-recreational-use-as-defined-in~~
 10 ~~{section-1(7)(b)}~~--including-the-beds--underlying--them--and
 11 the-banks-up-to-the-ordinary-high-water-mark, may-be-so-used
 12 by--the--public--without-regard-to-the-ownership-of-the-land
 13 underlying-them,--except--that--recreational--use--does--not
 14 include-those-activities-excluded-in-~~{section-1(7)(b)}~~.

15 ~~{3}~~(2) The right of the public to make recreational
 16 use of surface waters does not include the--right--to--make
 17 recreational--use--of--waters, WITHOUT PERMISSION OF THE
 18 LANDOWNER:

19 (a) THE OPERATION OF ALL-TERRAIN VEHICLES OR OTHER
 20 MOTORIZED VEHICLES NOT PRIMARILY DESIGNED FOR OPERATION UPON
 21 THE WATER;

22 (B) THE RECREATIONAL USE OF SURFACE WATERS in a stock
 23 pond or other impoundment fed by an intermittently flowing
 24 natural watercourse; or

25 ~~{b}~~(C) THE RECREATIONAL USE OF WATERS while diverted

1 away from a natural water body for beneficial use pursuant
2 to Title 85, chapter 2, part 2 or 3; OR

3 (D) BIG GAME HUNTING.

4 (3) THE RIGHT OF THE PUBLIC TO MAKE RECREATIONAL USE
5 OF CLASS II WATERS DOES NOT INCLUDE, WITHOUT PERMISSION OF
6 THE LANDOWNER:

7 (A) OVERNIGHT CAMPING;

8 (B) THE PLACEMENT OR CREATION OF ANY PERMANENT OR
9 SEMIPERMANENT OBJECT, SUCH AS A PERMANENT DUCK BLIND OR BOAT
10 MOORAGE; OR

11 (C) OTHER ACTIVITIES WHICH ARE NOT PRIMARILY
12 WATER-RELATED PLEASURE ACTIVITIES.

13 (4) The right of the public to make recreational use
14 of surface waters does not grant any easement or right to
15 the public to enter onto or cross private property in order
16 to use such waters for recreational purposes.

17 (5) THE COMMISSION SHALL ADOPT RULES PURSUANT TO
18 87-1-303, IN THE INTEREST OF PUBLIC HEALTH, PUBLIC SAFETY,
19 OR THE PROTECTION OF PUBLIC AND PRIVATE PROPERTY, GOVERNING
20 RECREATIONAL USE OF CLASS I AND CLASS II WATERS. THESE RULES
21 MUST INCLUDE THE FOLLOWING:

22 (A) THE ESTABLISHMENT OF PROCEDURES BY WHICH ANY
23 PERSON MAY REQUEST AN ORDER FROM THE COMMISSION:

24 (I) LIMITING, RESTRICTING, OR PROHIBITING THE TYPE,
25 INCIDENCE, OR EXTENT OF RECREATIONAL USE OF A SURFACE WATER:

1 OR

2 (II) ALTERING LIMITATIONS, RESTRICTIONS, OR
 3 PROHIBITIONS ON RECREATIONAL USE OF A SURFACE WATER IMPOSED
 4 BY THE COMMISSION; AND

5 (B) PROVISIONS REQUIRING THE ISSUANCE OF WRITTEN
 6 FINDINGS AND A DECISION WHENEVER A REQUEST IS MADE PURSUANT
 7 TO THE RULES ADOPTED UNDER SUBSECTION (5)(A).

8 ~~{5}~~(6) The provisions of this section do not affect
 9 any rights of the public with respect to state-owned lands
 10 that are school trust lands or any rights of lessees of such
 11 lands ~~under-lease-on-{the-effective-date-of-this-act}~~.

12 NEW SECTION. Section 3. Right to portage --
 13 establishment of portage route. (1) A member of the public
 14 making recreational use of surface waters may, above the
 15 ordinary high-water mark, portage around barriers in the
 16 least intrusive manner possible, avoiding damage to the
 17 landowner's land and violation of his rights..

18 (2) A landowner may create barriers across streams for
 19 purposes of land or water management or to establish land
 20 ownership as otherwise provided by law. If a landowner
 21 erects a ~~barrier~~ STRUCTURE pursuant to a design approved by
 22 the department and the ~~barrier--is--designed--not-to-end~~
 23 STRUCTURE does not interfere with the public's use of the
 24 surface waters, the public may not go above the ordinary
 25 high-water mark to portage around the ~~barrier~~ STRUCTURE.

1 (3) (a) A portage route around or over a barrier may
2 be established to avoid damage to the landowner's land and
3 violation of his rights as well as to provide a reasonable
4 and safe route for the recreational user of the surface
5 waters.

6 (b) A portage route may be established when either a
7 landowner or a member of the recreating public submits a
8 request to the supervisors that such a route be established.

9 (c) Within 45 days of the receipt of a request, the
10 supervisors shall, in consultation with the landowner and a
11 representative of the department, examine and investigate
12 the barrier and the adjoining land to determine a reasonable
13 and safe portage route.

14 (d) Within 45 days of the examination of the site, the
15 supervisors shall make a written finding of the most
16 appropriate portage route.

17 (e) The cost of establishing the portage route around
18 artificial barriers must be borne by the involved landowner,
19 except for the construction of notification signs of such
20 route, which is the responsibility of the department. The
21 cost of establishing a portage route around natural barriers
22 must be borne by the department.

23 (f) Once the route is established, the department has
24 the exclusive responsibility thereafter to maintain the
25 portage route at reasonable times agreeable to the

1 landowner. The department shall post notices on the stream
2 of the existence of the portage route and the public's
3 obligation to use it as the exclusive means around a
4 barrier.

5 (g) If either the landowner or recreationist disagrees
6 with the route described in subsection (3)(e), he may
7 petition the district court to name a three-member
8 arbitration panel. The panel must consist of an affected
9 landowner, a member of an affected recreational group, and a
10 member selected by the two other members of the arbitration
11 panel. The arbitration panel may accept, reject, or modify
12 the supervisors' finding under subsection (3)(d).

13 (h) The determination of the arbitration panel is
14 binding upon the landowner and upon all parties that use the
15 water for which the portage is provided. Costs of the
16 arbitration panel, computed as for jurors' fees under
17 3-15-201, shall be borne by the contesting party or parties;
18 all other parties shall bear their own costs.

19 (i) The determination of the arbitration panel may be
20 appealed within 30 days to the district court.

21 (j) Once a portage route is established, the public
22 shall use the portage route as the exclusive means to
23 portage around or over the barrier.

24 NEW SECTION. Section 4. Restriction on liability of
25 landowner and supervisor. (1) A person who makes

1 recreational use of surface waters flowing over or through
2 land in the possession or under the control of another,
3 pursuant to [section 2], or land while portaging around or
4 over barriers or while portaging or using portage routes,
5 pursuant to [section 3], does not have the status of invitee
6 or licensee and is owed no duty by a landowner other than
7 that provided in subsection (2).

8 (2) A landowner or tenant is liable to a person making
9 recreational use of waters or land described in subsection
10 (1) only for an act or omission that constitutes willful or
11 wanton misconduct.

12 (3) No supervisor who participates in a decision
13 regarding the placement of a portage route is liable to any
14 person who ~~while--making--recreational--use-of-the-surface~~
15 ~~waters-is-injured-while-using~~ IS INJURED OR WHOSE PROPERTY
16 IS DAMAGED BECAUSE OF PLACEMENT OR USE OF the portage route
17 except for an act or omission that constitutes willful and
18 wanton misconduct.

19 NEW SECTION. Section 5. Prescriptive easement not
20 acquired by recreational use of surface waters. (1) A
21 prescriptive easement is a right to use the property of
22 another that is acquired by open, exclusive, notorious,
23 hostile, adverse, continuous, and uninterrupted use for a
24 period of 5 years.

25 (2) A prescriptive easement cannot be acquired

1 through:

2 (A) recreational use of surface waters, including:

3 (I) the streambeds underlying them; and

4 (II) the banks up to the ordinary high-water mark; or

5 of

6 (III) ANY portage routes over and around barriers; OR

7 (B) THE ENTERING OR CROSSING OF PRIVATE PROPERTY TO

8 REACH SURFACE WATERS.

9 Section 6. Section 70-19-405, MCA, is amended to read:

10 "70-19-405. Title by prescription. Occupancy Except as
 11 provided in [section 5], occupancy for the period prescribed
 12 by this chapter as sufficient to bar an action for the
 13 recovery of the property confers a title thereto,
 14 denominated a title by prescription, which is sufficient
 15 against all."

16 NEW SECTION. Section 7. Severability. If a part of
 17 this act is invalid, all valid parts that are severable from
 18 the invalid part remain in effect. If a part of this act is
 19 invalid in one or more of its applications, the part remains
 20 in effect in all valid applications that are severable from
 21 the invalid applications.

22 NEW SECTION. Section 8. Applicability. Sections 5 and
 23 6 apply only to a prescriptive easement that has not been
 24 perfected prior to [the effective date of this act].

25 NEW SECTION. Section 9. Effective date. This act is

1 effective on passage and approval.

-End-

Prepared and submitted by Rep. John Cobb

1. All bills amend 27-1-221 punitive damage statute.

HB 363

- 1) Amount for damages - up to 5% net worth or 3 times actual damages - whichever is less
- 2) Jury must find actual damages
- 3) Defendant must be guilty of negligence
- 4) Plaintiff must prove all elements of claim for punitive or exemplary damages beyond a reasonable doubt - same burden of proof as a prosecutor must prove in criminal cases.
- 5) Plaintiff can not give Defendant's net worth or financial affairs to jury, unless outside presence of jury, the judge rules that Plaintiff presented a prima facie claim for exemplary or punitive damages.
- 6) Defines fraud, malice, oppression.

HB 400 amends 27-1-221

- 1) Jury may not consider a defendant's financial worth when determining the amount of exemplary or punitive damages to be awarded.
- 2) A plaintiff may not present evidence of a defendant's financial affairs, net worth, profits, or wealth on the issue of exemplary or punitive damages.

HB 511 amends 27-1-221

- 1) Punitive damages may be awarded to a plaintiff in an amount equal to the amount of actual damages awarded to the plaintiff or \$50,000 whichever is more, but not in excess of \$500,000.

HB 536 amends 27-1-221

- 1) Award punitive damages if Defendant's
 - a) guilty of fraud or actual malice or
 - b) violated a statute knowingly and purposely or with actual malice

S 200 amends 27-1-221

- 1) Jury may not award exemplary or punitive damages in excess of three times the amount of actual damages awarded or 5% of the net worth of each defendant, whichever is less

HB 533 amends 27-1-221

- 1) Punitive damages awarded in this order
 - a) expenses of litigation
 - b) attorney fees
 - c) plaintiff's share - equal to amount paid to attorney fees
 - d) remainder to state of Montana
- 2) Attorney fees regulated in actual amount
 - a) fee must not be more than $33 \frac{1}{3}$ of 1st 150,000 of punitive damages
 - b) 25% next \$200,000
 - c) 10% over any amount over \$350,000

PUNITIVE DAMAGES

History

In the English legal system damages called exemplary or punitive damages go back to the 1760's if not earlier. Since their early use, punitive awards have been a source of controversy.

Then it was difficult for juries to award damages for intangibles such as pain, impairment, embarrassment, inconvenience, and the like without the awards being challenged as excessive. Juries would instead award the plaintiff money to help override the "smart" caused by the injury. "Smart money" was awarded not just for the intangible consequences of bodily injury but also for the indignities associated with seduction, deceit in inducing marriage, alienation of affection, and other improprieties.

Only a tiny minority of states repudiate or never embrace the punitive damages doctrine. (4 states)

The other states use four rationales have been used to justify punitive awards.

1) Compensation

A few states take the position that punitive damages are exclusively compensatory in purpose and are needed to supplement compensatory damages.

2) Punishment and Deterrence

In the majority of jurisdictions the principal purpose of punitive damages is to punish flagrant wrongdoers and to deter them and others from engaging in flagrant conduct in the future.

3) Revenge

The theory is that the punitive damages award will cool the wrath and heal the wounded sense of honor of the injured party and, hopefully, dissuade him from taking justice into his own hand.

4) Promotion of Justice

- a) availability of punitive damages may make it worthwhile for plaintiffs to sue defendants who should be sued but who, in the absence of punitive damages, would not be, because of the trifling nature of the actual damages suffered by the plaintiff.
- b) availability of punitive damages may also bring about proper admonishment of a wrongdoer where compensatory damages alone would not suffice.

General Characteristics of Punitive Damages

A few of the general characteristics of punitive damages are enumerated below:

1. One proposition is that punitive damages are awardable only where the plaintiff can prove actual loss. However, the apparent simplicity of this proposition is deceiving. The chief inconsistency among the jurisdictions has to do with nominal damages. In some situations a plaintiff cannot show any measurable injury

- to support compensatory damages but the court on general principles wishes to show its empathy with the plaintiff. Nominal damages of, say, one dollar may be awarded. The court may then want to add punitive damages. An unsettled question is whether punitive damages can be supported by nominal (or token) actual damages.⁵⁹
2. Punitive damages must bear a reasonable ratio to actual loss suffered. The rub is that reasonableness in this context defies definition and may be interpreted quite differently from one jurisdiction to another. Whether the reasonable ratio proposition has substance is debatable. It may be vacuous. It certainly is at odds with the use of nominal damages in punitive awards.
 3. The plaintiff, as the incidental recipient, generally has no right to punitive damages but rather receives them only if and as they are awarded by the jury (or by the court in the absence of a jury).⁶³ Here again, the rule is not firm.
 4. Under the usual wrongful-death statutes, punitive damages are not appropriate where an act of the defendant resulted in wrongful death of another. Yet, in a substantial minority of states this characteristic does not apply.⁶⁵
 5. Punitive damages, being personal to the defendant, do not usually survive such defendant.⁶⁷ This rule seems to be more universal than any of the previously enumerated ones.
 6. Punitive damages historically have been awarded only in tort cases. There seems to be a growing tendency, however, to allow punitive damages in actions for breach of contract.
 7. When punitive damages are assessed against each of multiple defendants, the defendants usually but not necessarily are severally and not jointly liable; assignees of the injured party may or may not recover the punitive damages, depending on local rules.⁶⁹
 8. Since one purpose of punitive damages is to punish the defendant, the net worth of the defendant is usually admissible evidence in the determination of how large the award need be to truly punish the defendant.⁷⁰ In some jurisdictions the financial status of the plaintiff is also admissible evidence. Additionally, in some jurisdictions financial evidence about either is admissible only for holding down the damages but not for supporting the initial plea.
 9. A principal, usually an employer, may become vicariously liable for punitive damages under the doctrine of respondeat superior for wrongful acts of an agent, usually an employee.⁷² Among the jurisdictions, however, the rule admits of many qualifications, restrictions, and exceptions.⁷³
 10. Today most courts allow punitive damages for malicia or oppression.

Arguments Against Punitive Damages

1. Punitive Damages are not really damages at all but penalties that should be removed from the civil and confined to the criminal law.
2. Awarding of punitive damages can place a defendant in double jeopardy.
3. With no meaningful standard available for assessing punitive damages, the size of the award is limited only by the passions and prejudices of the jury and the judicial philosophy of the judges.
4. With no meaningful standard available for assessing punitive damages, the size of the award is limited only by the passions and prejudices of the jury and the judicial philosophy of the judges. As observed earlier, the reasonable ratio rule is not necessarily determinative and leaves the trier of the facts with virtually unbounded discretion as to the amount, if any, of the punitive award.⁸³
5. A closely related argument against punitive damages is that the procedural safeguards provided for the defendant in the criminal law are not found in the civil law. A defendant, consequently, is extremely vulnerable in standing before the bar of justice, subject to heavy penalties but without the protection enjoyable had the charge been commission of a crime. For one thing, the "guilty beyond a reasonable doubt" rule gives way to a weaker "weight of evidence" collective judgment by the jury. For another, the amount of the punitive penalty is not fixed in the civil as in the criminal action. For still another, the jury, unlike the judge, is not trained in setting penalties. Moreover, among other differences, the defendant is not protected from self-incrimination in a civil action.⁸⁴
6. Another objection is that in multiple-defendant suits a punitive award proper for one defendant is highly likely to be improper for another. While a jury theoretically can gauge the financial status of each defendant and assess an award sufficient to punish but not overwhelm any defendant, juries are not wont to act with such finesse. The awards are almost certain to hurt some defendants unduly if they hurt others enough. As a result, the punishment-deterrent goal may not be achieved.⁸⁵
7. A further argument against punitive damages is that the admissibility of evidence about financial information about the defendant is squarely at odds with evidence rules in regard to compensatory damages. The aim of compensatory damages is to restore the wounded plaintiff insofar as money will do so. Whether the defendant is rich or poor is not germane to the size of the plaintiff's hurt. The ability of the defendant to pay, then, has traditionally not had any legitimate place in the evidence accepted by the trier of the facts. With the punitive award supposed to be determined by giving consideration to the defendant's ability to pay, an apparently irresolvable conflict of rules of evidence arises. The two conflicting rules cannot be honored simultaneously in the same trial.

8. Punitive damages are further criticized when awarded vicariously against innocent employers whose employees have engaged in tortious conduct.⁸⁶ Opponents of the doctrine find it especially repugnant in its punishing further an employer who is already liable for actual damages caused by an employee and whose own personal culpability is either totally absent or minimal. These opponents feel that this rule is wrong. They feel, moreover, that even when a rule requiring "complicity of the employer" is used the courts are much too ready to find employer complicity⁸⁷ when no complicity really exists.⁸⁸
9. Punitive damages are also condemned as constituting a windfall or unjust enrichment of the plaintiff.
10. The argument most strongly voiced is that punitive damages are no longer needed. Critics argue that punitive awards are now strictly redundant and that they represent a great idea "whose time has passed." The doctrine is said to be a legal relic. Some might even say it is a legal derelict. The argument runs that, while punitive awards might once have had a function, the compensatory damages concept was broadened long ago to include total compensation, making punitive damages purely superfluous.
11. Should not punitive damages go to society as opposed to a windfall to a very few.

Today's Problems

1. "Excessive Awards"
 - a) unlimited recoveries
- should they be or not
 - b) The issue is
Should there be some limit upon the enormity of the sanction selected by 12 people.

Solutions

- 1) Put limits on awards
- 2) Leave as is
- 3) Define in more detail when punitive damages should be awarded
- 4) Allow judges to decide awards after juries find defendant "guilty"
5. Give a portion of award to the state

Exhibit B
2/12/85

SB 200 - LIMITATION OF PUNITIVE DAMAGES

WHAT ARE PUNITIVE DAMAGES?

Punitive damages are those awarded to a plaintiff to punish the defendant. The plaintiff receives this money in addition to his actual damages. Actual damages include such economic losses as lost wages, past and future medical expenses, and loss of earning capacity. It also includes non-economical and intangible items such as loss of established way of life, which would include such things as the inability to hunt, ski or play tennis--or any loss of the "enjoyment" of life which a plaintiff partook prior to injury. It also includes loss of consortium, emotional distress, and any pain or suffering caused by the injury.

Actual damages are intended to fully compensate an injured person for both his economic and non-economic losses. Punitive damages are essentially a windfall to the plaintiff.

The common-law origins of punitive damages are found in 18th Century England. Theories differ as to the initial rationale for awarding those damages. One theory is the courts used the concept of punitive damages to justify excessive jury verdicts. Another theory used to justify punitive damages was that it would compensate plaintiffs for mental anguish, humiliation or hurt feelings. These non-pecuniary type of injuries were not recoverable under English common law. Punitive damages, therefore, compensated victims for elements of personal harm that otherwise were not recoverable.

Neither of these historical rationales justifies retention of punitive damages today. American courts have well-established standards to measure actual damages in contracts, property and personal injury cases and the courts regularly review jury awards.

Why then do we have punitive damages? The basic contemporary objective of punitive damages is to assist the judicial system in enforcing established norms of conduct by punishing the defendant for violating those norms and thereby deterring others from similar behavior. Punitive damages also serve as a public and tangible expression of society's disapproval of certain particularly outrageous conduct, and provide enhanced incentives for private civil enforcement of legal norms.

For example, in the case of Funk v. Kerbaugh, 222 Pa. 18, 19, 70 A. 953, 954 (1908), the defendant decided it would be "cheaper to pay damages" for carrying out blasting that destroyed the plaintiff's building than to alter his blasting methods. The possibility of punitive damages removes the financial temptation to engage in this sort of deliberately wrongful conduct.

In addition, there are numerous examples of criminal behavior that may not adequately be deterred by the criminal justice system alone. The county attorney may decide not to prosecute a drunk driver. Punitive damages for a plaintiff injured by drunken driving enhances society's capacity to deter such behavior by supplementing criminal prosecution with civil punishment.

In brief, punitive damages for certain types of behavior fills gaps in the criminal law.

WHY SHOULD THE PRESENT PUNITIVE DAMAGES STATUTE BE CHANGED?

In short, punitive damages have been stretched far beyond the limits of their validity. The historical justification for such damages has disappeared. Seizing upon the retributive and the current function served by punitive damages, the courts have expanded the shapeless doctrine of punitive damages into allowing astronomical awards and essentially arbitrary amounts bearing no relation to the actual harm suffered.

There is no question that the law in Montana is adequate to provide full compensation for injuries based upon appropriate measures of a person's damages in contract, property and personal injury cases. Punitive damages are neither intended nor needed to assure adequate compensation to plaintiffs.

Moreover, recent punitive damages awards go far beyond any reasonable measure of what is necessary to assure appropriate punishment and deterrence. In addition, it must be recognized that the need to impose additional damages for the purpose of deterrence and punishment must be weighed against equally important public policy considerations of fairness and economic impact.

Many business activities which were common and lawful only ten or twenty years ago now are considered to be tortious and subject to punitive damages. Imposing devastating

punitive damages upon an individual or business for malice, oppression and the like has not been clearly demonstrated is a fundamentally unjust form of punishment; it is an unfair and arbitrary windfall to certain individuals beyond that which is necessary for full compensation. It is unnecessary to achieve the valid contemporary objective for punitive damages, i.e. punishment and deterrence.

The standards for determining the amount of punitive damages to be assessed against a defendant are vague. The amount is generally left to the sole discretion of the jury, guided only by certain ill-defined factors relating to the nature of the defendant's misconduct and the wealth of the defendant. The lack of standards in the rationale for assessing punitive damages prompted the United States Supreme Court to comment on the arbitrary and prejudicial nature of punitive damages awards. Justice Powell stated in Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1973):

In most jurisdictions jury discretion and the amount [of punitive damages] awarded is limited only by the general rule that they not be excessive. Consequently, juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused.

The Supreme Court of Montana has also recognized this uncertainty in the area of punitive damages. In First Bank (N.A.)--Billings v. TransAmerica Insurance Company, 679 P.2d 1217 (1984), the Court noted that, "juries and judges typically award punitives for a broad range of conduct not often described as willful or wanton, but merely reckless or unjustifiable." Id. at 1222. The Supreme Court further

stated that, "Fact-finders. . . wrestle with concepts like recklessness and reasonableness, such that defendants may not know that their conduct constituted presumed malice until after trial, and that a defendant in one case may never know of the sting of punitive damages, while another defendant in a similar case may be faced with financing a sizeable award."

In addition, punitive damages exemplify characteristics which are inherently criminal. Since you cannot put a business in jail, punitive damages punish certain conduct and ideally deter the defendant and others from engaging in similar acts. Unlike criminal actions, however, punitive damages provide none of the constitutional protections accorded to criminal defendants. These would include a unanimous jury verdict, proving that a defendant acted with fraud, oppression or malice beyond a reasonable doubt, protection against double jeopardy and the privilege against self-incrimination.

Most important, however, is the fact that every person and every employer in the State of Montana--whether they be a hospital, a local chapter of the Salvation Army, or a farmer or a rancher--is subject to punitive damages. In many instances, the business or individual cannot obtain insurance to protect himself against a punitive damage award. In many instances, there may not be insurance available to purchase for certain wrongs. For example, in many cases where an employee sues his employer for wrongfully discharging

him, the employer's general liability policy may not afford coverage to the defendant. The employer, therefore, may have to retain his own attorney and pay any judgment rendered against him. This would apply to a farmer who hired temporary help during the summer months; it would apply to a local YMCA or Boy Scout troop whose insurance policy expressly excludes punitive damages.

Recent punitive damage awards in Montana have reached astronomical proportions. They are inconsistent with contemporary justifications for imposing such damages. They conflict with other important public interests. The punitive damages law does not help the little man; it may cripple him financially for life. Punitive damages may not be a dischargeable debt in bankruptcy if the defendant's conduct was malicious or fraudulent.

WHY SHOULD A "CAP" OF THREE TIMES THE AMOUNT OF ACTUAL DAMAGES OR FIVE PERCENT OF THE NET WORTH OF EACH DEFENDANT, WHICHEVER IS LESS, BE INCLUDED IN THE NEW LAW?

While the doctrine of punitive damages has a proper place in Montana law, there is an evident and increasing danger that many defendants are being punished unjustly.

Trial judges currently have responsibility for seeing that punitive damages are applied in principled manner, but this task is far from easy to carry out given the nearly total absence of legislative guidance. In criminal proceedings, by contrast, judges are guided by both minimum and maximum penalties established by the legislature. While the

jury determines criminal liability, the judge holds a special hearing, at which time additional information is received in order to carefully determine the appropriate punishment or penalty.

In civil trials, at which punitive damages are sought, however, neither the judge nor the jury is provided with any similar guidance. Consequently, grossly inconsistent and excessive punitive damages have occurred all too frequently.

The "cap" in the proposed legislation would represent an effort by the legislature to provide some guidance for courts in balancing society's interest in using punitive damages for deterrence and punishment against equally fundamental public interests in basic fairness and economic cost. This form of legislative guidance is common. Both federal and state laws currently place ceilings on damages in particular cases.

With respect to federal law, the following limitations apply:

- 1) 15 U.S.C. §1640 (Truth and Lending Act). The creditor who fails to disclose required information and who fails to meet certain mitigating criteria, is subject to damages of twice the amount of the finance charge in connection with the transaction, but not in excess of \$1,000.00, nor less than \$100.00;

- 2) 15 U.S.C. §1691e (Equal Credit Opportunity Act) provides that a creditor who fails to comply with any requirement from the ECOA is liable for punitive damages not

greater than \$10,000.00, or in the case of a class action, not to exceed the lesser of \$500,000.00 or one percent of the creditor's net worth;

3) 15 U.S.C. §1693m (Electronic Fund Transfers Act) states that a person failing to comply with EFTA is subject to minimum actual damages of \$100.00, but not more than \$1,000.00;

4) 15 U.S.C. §1989 (Odometer Act) provides a person who, with intent to defraud, violates odometer requirements is subject to the greater of \$1,500.00 in punitive damages, or treble damages;

5) 15 U.S.C. §1692k (Debt Collection Practices Act) provides a debt collector who violates ACPA is subject to individual action to liability for up to \$1,000.00 over injured parties' actual damages; in class actions, the maximum amount of the lesser of \$500,000.00 or one percent of the net worth of the debt collector;

6) 15 U.S.C. §15(a) (Clayton Anti-Trust Act) provides that a private anti-trust plaintiff's recovery is limited to threefold the damages by him sustained;

7) 15 U.S.C. §2051 (Consumer Products Safety Act) provides that civil penalties are limited to \$500,000.00 per defective product.

With respect to damages set by the Montana legislature, the examples are numerous:

1) Bad Checks - §27-1-717. "Damages shall be equal to the greater of \$100.00 or three times the amount for which the check, draft or order was issued. Damages may not exceed the value of the check, draft or order by more than \$500.00."

2) Breach of Agreement to Convey Real Property - §27-1-314. "The detriment caused by the breach of an agreement to convey an estate in real property is considered to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon. If the breach was in bad faith and the agreed price was less than the value of the estate, the detriment is also considered to include the difference between the agreed price and the value of the estate at the time of the breach and the expenses properly incurred in preparing to enter upon the land."

3) Breach of Contract - §27-1-311. "For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary cause of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract."

4) Motor Vehicle Damage - §27-1-306. "The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value shall be the actual replacement

value of the motor vehicle rather than its 'book value'. Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage."

5) Appeal Without Merit - §25-33-304. Damages not exceeding 25% of the judgment appealed from.

6) Sale on Execution - §25-13-702. "An officer selling without the notice prescribed by §25-13-701 forfeits \$500.00 to the aggrieved party in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment (if the judgment be satisfied before sale), forfeits \$500.00."

7) Insurance Companies--Fraternal Benefit Societies--Misrepresentation - §33-7-518. "Any person who violates any provision of this section . . . shall in addition be liable for civil penalty in the amount of three times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice."

8) Penalty for Deceit - §37-61-406. Attorney forfeits to the party injured by his deceit or collusion treble damages.

9) Penalty for Delay - §37-61-407. Attorney forfeits to the party injured treble damages.

10) Contribution or Expenditure Violations - §13-37-128. Person liable for an amount up to \$500.00 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

11) Motor Carriers--Procedure to Recover Excess Charges - §69-12-511. In Subsection 2 it states that if upon the trial of such action it satisfactorily appears to the court or to the jury that such an overcharge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge.

12) Railroads--Actions to Recover Excess Charges - §69-14-322. In subsection 1 it states that if the charge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of the action, including reasonable attorney's fees.

13) Railroads--Maintenance of Fireguards - §69-14-722. In subsection 3 it states that if any railroad company fails to comply with any of the provisions of this section, the Board of County Commissioners of the county wherein such violation incurs may cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board and the district court having jurisdiction, recover double the amount of cost of such plowing, burning or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

14) Regulation of Carriers--Confiscation of Fuel - §69-11-108. "Any person, railroad company, or common carrier who shall confiscate or take any coal or fuel,

either for his or its own use or for the use of another, shall be liable to the consignee or owner of such coal or fuel in double the value of such coal or fuel at the point of shipment and such other damages as may be caused by the confiscation of such coal. Such liability shall be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal or fuel."

"(3) Any person, corporation, or common carrier who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$50.00 or more than \$200.00.

15) Liability for False Claims - §17-8-231. "A person who knowingly presents or causes to be presented a false, fictitious or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition, is subject to a penalty of not to exceed \$2,000.00 plus double the damages sustained by the state as a result of the false claim, including all legal costs."

16) Unfair Trade Practices--Injunctions - §30-14-222. In subsection 2 it states that in addition to such injunctive relief in violation of §30-14-205 through §30-14-218, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

17) Injunctions--Damages--Production of Evidence
(Consumer Protection) - §30-14-222. "(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained."

18) Liability of Clerk Relating to Duties as Recorder - §7-4-2623. "A county clerk is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby. . ."

19) Offices and Employees--Itemized receipt for Fees - §7-4-2517. "[I]f he refuses or neglects to do so when required, he is liable to the party paying the same in treble the amount so paid."

20) Offices and Employees--Prohibition Upon Receiving Other Fees - §7-4-2519. "[T]he party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, in addition to the cost of suit."

21) Elected Energy Producers License Tax--Penalty for Violation - §15-51-113. Persons shall be liable for three times the amount of the unpaid or delinquent tax in a civil action.

22) Trust and Fiduciary Relationships--Action for Misappropriation of Estate Prior to Appointment - §72-12-601
"If any person, before the granting of letters, testamentary or of administration, commits theft of or alienates any of the monies, goods, chattels, or effects of a decedent, he

is charged therewith and liable to an action by the executor or administrator of the estate for double the value of the property so mishandled to be recovered for the benefit of the estate."

23) Finder Failing to Make Discovery - §70-5-209. "If any person find any money, property or other valuable thing and fail to make discovery of the same as required by this chapter, he forfeits to the owner double the value thereof."

24) Forceable Entry and Detainer - §70-27-205. "[T]he judgment shall be rendered against the defendant, guilty of the forceable entry or forceable or unlawful detainer, for three times the amount of the damages thus assessed and of the rent found due."

25) Forceable Entry and Detainer - §70-27-206. "If a person recovers damages for a forceable or unlawful entry in or upon or detention of any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed."

26) Rights and Obligations--Action for Waste - §70-16-106. "If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages."

27) Rights and Obligations--Injury to Timber - §70-16-108. "For wrongful injuries to timber, trees, or underwood upon the land of another or removal thereof, the measure of damage

is three times such a sum as would compensate for the actual detriment . . ."

28) Containment of Livestock--Trespassing Animals in Herd Districts - §81-4-307. In subsection 5 it states that if the person is guilty of a misdemeanor he shall also be liable to the party entitled to such damages and charges in double the value of the stock.

29) Residential Landlord and Tenant Act--Unlawful Ouster - §70-24-411. "[T]he tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than three months periodic rent or ^{treble}~~trouble~~ damages, whichever is greater."

30) Failure of Landlord to Deliver Possession - §70-24-405. "(2) If a person's failure to deliver possession is purposeful and not in good faith, and aggrieved party may recover from that person an amount not more than three months periodic rent or treble damages, whichever is greater."

31) Residential Landlord and Tenant Act--Holdover Remedies - §70-24-429. "[I]f the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than three months' periodic rent or treble damages, whichever is greater."

32) Residential Landlord and Tenant Act--Disposition of Personal Property Abandoned by Tenant - §70-24-430. In subsection 5 it states that if the landlord purposefully damages tenant's personal property, the landlord is liable for double damages.

33) Residential Landlord and Tenant Act--Prohibited Provision in Rental Agreement - §70-24-403. If a party purposefully uses a rental agreement containing a prohibited provision, the other party may recover in addition to his actual damages an amount up to three months' periodic rent.

34) Residential Landlord and Tenant Act--Noncompliance of Tenant - §70-24-422. In Section 4 it states that the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or §70-24-321. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

35) Residential Tenant Security Deposit--Wrongful Withholding of Security Deposit - §70-25-204. Subsection 1 states that any person who wrongfully withholds a residential property security deposit or any portion shall be liable in damages to the tenant in the civil action for the amount equal to double the sum determined to have been wrongfully withheld or deducted.

36) Sales and Distribution of Motor Vehicles--For Injury to Business or Property - §61-4-406. Any person who is injured in his business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue and recover twofold the damages by him sustained and the cost of the suit.

37) Sales and Distribution of Motor Vehicles--Penalties - §61-4-210. In subsection 3 it states that if any new motor

vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the loss, together with costs including reasonable attorney's fees.

38) Sales and Distribution of Motor Vehicles--Civil Damages - §61-4-137. Any dealer who suffers pecuniary loss due to a violation of §61-4-131 through §61-4-137 is entitled to damages equal to three times the loss, together with court costs and reasonable attorney's fees.

39) Parent and Child--Destruction of Property by Minors - §40-6-237. Any aggrieved party is entitled to recovery damages in a civil action in an amount not to exceed \$2,500.00 from the parents of any person under the age of 18 years who shall maliciously or willfully destroy property.

CONCLUSION

The legislature should restrain the doctrine of punitive damages ill-advised and economically devastating effects. The law is continuously changing. In the case of punitive damages, the legislature should insure the fair and responsible administration of justice by establishing reasonable damages by which appropriate conduct can be punished or deterred.

Testimony Before the
House Judiciary Committee

Mr. Chairman, members of the Judiciary Committee, my name is Tuck Vosburg, President of Pacific Hide & Fur Depot from Great Falls, Montana. I am testifying on behalf of our company, its employees and shareholders.

Pacific is a Montana Corporation doing business here since about 1919. We are involved in hides, fur, metals recycling and the sale of steel and farm products through a system of local branches. Our company employs 400 people with nearly all of our stock held by Montana residents.

My purpose is to provide you with a brief view of what happens within a company when it is sued for a large punitive damage claim. Our company went to trial on two cases last year where large punitive damages were threatened.

Usually rumors of a suit circulate then become fact when the complaint is served on one of us in the office. We immediately turn over the complaint to our insurance company for defense and coverage. Within days we receive a letter from the insurance company accepting limited coverage but stating, I quote from their letter, **"The policy of insurance does not indemnify for cover exemplary damages. Should the plaintiff realize an award for exemplary and/or punitive damages, your client would be responsible for satisfaction of same."** In Montana this denial of coverage is a common occurrence.

Next, discovery begins with attorneys' fees clicking off and management time mounting. During discovery employees begin to hear about pieces of the suit. The possibility that the company will lose significant dollars begins to circulate around the company. Employees wonder about the effect on the company and the subsequent effect on their own jobs. Will the company have to cutback to pay the punitive damage awards? Will these cutbacks include jobs?

With all these pressures building, settlement becomes a stronger alternative even though the company feels it did no wrong and will win the suit. Remember, with no punitive damage coverage, the insurance company is not willing to participate to any great extent in settlement amounts.

Then we go to trial. Attorneys' fees range from \$50,000 to \$100,000, usually closer to the latter because the possibility of large punitive damages extends the case far beyond the scope the issues demand. One of our trials took four weeks to complete. Management time becomes totally committed to success at trial. Employees' concerns mount and productivity falls as they or fellow employees are called to testify. Publicity generates more talk for employees to contend with.

If we win there is some rejoicing and a great sense of relief. If we lose, punitive damage awards could require the company to convert assets to cash to pay the award. Cash is rarely available in these sums. Nor would the company's bank credit line be available for this purpose. That means lowering inventories and accounts receivable or selling equipment, buildings, and land. The next step for the company would be to contract because its assets have been reduced. That contraction results in cutting out jobs.

And why would this happen? Because the punitive damage legislation in this state has no direct relationship to the actual damages a jury determines. Large punitive damage awards against a company affect the people in that company and their jobs. People who had nothing to do with the issue in the first place.

You may ask, "Why does our company or any business, individual, or farmer feel so threatened when large punitive damages are asked for in a suit, especially if we feel we are innocent?" The answer, the risk of loss, often in the millions of dollars, and the unpredictability of juries. We dare not take a suit lightly. Remember, the standards in effect today require only that 51% of the evidence, a preponderance of the evidence, be against us for a jury to award punitive damages. If 51% is found, the jury has no guidelines to assess punitive damages other than the exaggerated amount stated by the plaintiff's attorney. Even if the standards for punitive damages were raised, a suit for such huge sums would still demand our total involvement. We must commit all of our resources to successfully defending ourselves no matter how minor the actual damages claimed might be.

This kind of involvement means we are not out earning the profits necessary to be a viable business for Montana.

Something is wrong with the present punitive damage criteria. I ask you to put some justice into the punitive damage legislation.

HB 363, 400, 511, 533 and 536--Punitive Damages

My name is Greg Holt. I live and work in Great Falls. I own a 5,000 acre wheat farm near the Oilmont area. The farm has been in my family for 30 years. I employ three full-time persons and three part-time workers. A foreman runs the crew on a daily basis.

I support limiting punitive damages and changing the law with respect to when they can be awarded. Although neither I nor my business has been sued, there is always that possibility; lawyers seem to be filing lawsuits left and right these days.

I cannot purchase insurance for punitive damages according to my insurance agent. If my foreman or I discharge an employee and we are sued, my insurance agent advises me that my policy will not cover me, nor can I buy one that will cover this risk. Since that is the case, I am at risk at losing my personal assets, including my farm.

It makes good sense to me to set a reasonable limit on the amount of punitive damages that can be awarded. If I do something wrong and get sued, my conduct might warrant punishment. But shouldn't there be a limit? There are limits in criminal sentences.

I also believe that if I am to be punished, the same standards ought to apply to me as apply to a defendant in a criminal case. After all, don't we punish criminals to make them an example to others and hopefully to deter similar conduct?

In a criminal case, all twelve jurors must find the defendant guilty. If I am sued for punitive damages, only eight jurors must find me guilty. This makes no sense.

In a criminal case, the jury must find that the defendant committed the crime "beyond a reasonable doubt". If I am sued for punitive damages, the jury must find that the "greater weight of evidence" is against me. This is an easier standard of proof than in the criminal case. Again, this makes no sense.

In a nutshell, we give people accused of a crime more protection than we do people sued for punitive damages.

I respectfully request you put some common sense into this law.

Thank you.

C O P C O N S T R U C T I O N C O .

General Contractors

AN EQUAL OPPORTUNITY EMPLOYER

P.O. BOX 20913

PHONE 406 252-8421

BILLINGS, MONTANA 59104



February 11, 1985


House Judiciary Committee
Montana House of Representatives
Helena, Montana 59601

Dear Representative Hannah and Members
of the House Judiciary Committee:

Enclosed are letters of testimony concerning the crisis problem of punitive damages in civil actions in the State of Montana. The risks and liabilities attached to conducting the least and most simple civil agreement are paralyzing. The problem is at crisis proportions.

Corrective action is needed and needed immediately. I request that you vote for the series of House bills on the topic of punitive damages. Bills to be considered are HB 95, 363, 400, 511, 533, and 536.

Very truly yours,
COP CONSTRUCTION COMPANY


John L. Hansen
President

JLH/ks

Encl.

COP CONSTRUCTION CO.

General Contractors

AN EQUAL OPPORTUNITY EMPLOYER

P.O. BOX 20913

PHONE 406 252-8421

BILLINGS, MONTANA 59104



February 4, 1985

Senate Judiciary Committee
Montana Senate
Helena, MT 59601

Re: Senate Bill 200

Dear Senator Mazurek and Members of the Senate Judiciary Committee:

I request your support for Senate Bill 200. Montana needs to control the present unlimited punitive damages in civil actions.

At present by Section 27-1-221 MCA any individual, public servant, businessman, rancher, teacher, or professional can be sued in civil action and be assessed punitive damages that will totally wipe them out. This all on presumed guilt.

I am the president of a construction corporation that has survived the 1980 to 1983 construction depression. In 1980 the corporation did \$16,000,000 volume, in 1981 \$11,000,000, and in 1982 \$7,000,000. The corporation is closely held by individuals who actively work in the corporation. The corporation also provides a pension to its employees by an Employees Stock Ownership Trust. The employees own thirty six (36) percent of the stock through the Employees Stock Ownership Plan.

During the period of depressed business volume, employees were laid off because of the economic conditions. I personally, and the corporation, are being sued by an employee so laid off. The courts will determine the facts of the suit.

The fearful problem we cope with is that an unlimited adverse judgment based on a jury's perception of presumed guilt could wipe me out, an individual, the corporation, and the life pension of people employed by the corporation. Such an oppressive fear of such infinite exposure has caused us to attempt to negotiate the suit. We strongly feel that the employee was fairly treated. The corporation has experienced an increase in volume, and has offered re-employment to the laid-off employee. He refuses employment and continues suit.

Senate Judiciary Committee
February 4, 1985
Page 2

In spite of our strong feelings of innocence in this suit, we simply cannot stand the exposure to unknown, infinite loss if a pretrial settlement can be made, however unjust we may feel the accusation. I am sure that part of the plaintiff's drive for bringing suit is that he may acquire all the assets of the corporation, of myself, and of the pension trust. To the manager of a business, or ranch, or professional corporation, or an individual, such a prospect is almost paralyzing.

I strongly request that you vote yes for Senate Bill 200 and do what is necessary to correct this unfair situation.

Very truly yours,

COP Construction Co.

A handwritten signature in dark ink, appearing to read "John L. Hansen". The signature is written in a cursive, flowing style.

John L. Hansen
President

JLH:sd

cc: Reading File #1

A&E

PARTNERSHIP
ARCHITECTS

February 4, 1985

The Honorable Jack Ramirez

Re: Senate Bill 200

Dear Jack:

In Senate deliberations of the bill that I understand would limit punitive damages, I seek your strong support of such a measure. Having been one of sixteen defendants (including a District Judge) in a land development case in Bozeman, it's apparent that punitive damages have gotten way out of hand. As an example, our partnership and our realtor were recently sued for damages amounting to the purchasers cost of a particular piece of land, plus interest, and attorneys fees for a total of about \$30,000.

The plaintiff's attorney was on a contingent fee and he almost immediately wanted more for his services than his client (a young woman) was asking for damages. It appeared to be a classic case of the naive young woman against the "established" group of investors including realtors, lawyers, engineers, architects and other business people. We tried over a period of a year to negotiate a settlement to avoid the time and expense of court but each time we made an offer her attorney raised the ante. Finally they re-filed the law suit asking for \$1,000,000 in punitive damages in addition to her original actual damages.

Our final offer prior to trial was about \$45,000. The trial had been scheduled for four days, but was strung out over three weeks in an obvious effort by plaintiff's attorney to take up as much professional time as possible and confuse the jury with obscure legal rhetoric. The defense took less than a day and the jury deliberated only a couple of hours before delivering a complete defense verdict with the plaintiff getting absolutely nothing.

Plaintiff's attorney then went through a lengthy re-trial motion and now is in the process of an appeal to the Supreme Court. Our attorney fees and expenses are now over \$30,000, not counting the time and personal expenses of the defendant group.

Thomas A. Overturf, James A. Bos, James R. Baker, Principals, Jerry J. Taylor,
C. Brent Agnew, William F. Wilde Members: American Institute of Architects

The Honorable Jack Ramirez
Page 2
February 4, 1985

The plaintiff has, in the last week, agreed to drop the appeal if defendants agree to purchase her property at a greatly reduced value, reportedly below the \$20,000 price she originally paid. She apparently is as tired of this hassle as we are. This entire fiasco was, in my opinion, created by the possibility that the plaintiff's attorney could get a sympathetic jury to award a big punitive damage claim. In his mind it was obviously a reasonable gamble. All he had to "ante" was his time and he was having our deep pocket partnership put up all the money in the pot. His client paid the expenses and he got a big share of whatever he could convince the jury.

Fortunately the jury saw through the scam, but after three weeks of confusing and contradictory testimony it could have gone either way. The losers are the plaintiff (who at this point gets nothing) and the defendants who were innocent but got stuck with over \$60,000 in expenses. The only ones who profited were the attorneys.

I urge your support of Senate Bill 200 to restrict punitive damages and thus curtail this abuse of our legal system by unscrupulous attorneys in search of windfall fees.

Thanks for your consideration.

Sincerely,



Thomas A. Overturf

TAO:cmz

PUNITIVE DAMAGES

LAWYER MORE THAN 35 YEARS AND A RANCHER.

White

SEVENTEEN FAMILIES RELY ON ME.

THE LANGUAGE OF OUR PUNITIVE DAMAGE STATUTE UNDER SUCH VIGOROUS
ATTACK HERE PERMITS A JURY TO AWARD THESE DAMAGES ^{against} ~~FOR~~ A PERSON
GUILTY OF OPPRESSION, FRAUD, OR MALICE, ACTUAL OR PRESUMED.

OPPRESSION:

Our bill would eliminate oppression.

NEARLY TOPPLED THE GOVERNMENT OF ENGLAND AND LED TO MAGNA CARTA
IN 1215 A.D. BECAUSE THOSE WITH ABSOLUTE OR TOO MUCH POWER TOO
OFTEN USED IT TO OPPRESS.

THUS, FROM THIS HISTORIC EVENT OVER 750 YEARS AGO, SPAWNED BY
OPPRESSION, SPRANG THE BODY OF ENGLISH COMMON LAW WHICH HAS
SERVED ALL ENGLISH-SPEAKING COUNTRIES SO WELL EVER SINCE.

PUNITIVE DAMAGES HAVE ALWAYS BEEN AN ESSENTIAL PART OF COMMON LAW.
FORGED UNDER CONCEPT THAT TRUE EQUALITY MEANS A DETERRENT TO CONDUCT
BASED ON OPPRESSION AND MALICE, BY WHATEVER NAME, WHICH CONDUCT IS
TOTALLY UNACCEPTABLE TO OUR DEMOCRATIC AND SOCIAL CONCEPTS.

THE NEXT STEP IN THE EVOLUTION OF OUR SOCIETY WAS THE COLONIZATION
OF AMERICA BY ENGLISH MEN AND WOMEN WHO BROUGHT TO OUR SHORES THE
COMMON LAW WHICH STILL GOVERNS US WITH THE SHIELD OF PUNITIVE DAMAGES
AS A GUARD AGAINST OPPRESSION.

BUT AGAIN OPPRESSION REARED ITS UGLY HEAD, AND OUR FOREFATHERS
FOUGHT A CRUEL WAR⁶ SO THAT WE COULD BE FREE OF ENGLISH OPPRESSION.

THEY THEN ENACTED OUR CONSTITUTION WITH FURTHER GUARANTEES, ADOPTED
OUR COMMON LAW WITH PUNITIVE DAMAGES AS A BASIC TENET THEREOF.

PUNITIVE DAMAGES HAVE TWO MAJOR BASIC BENEFITS FOR ALL:

1. PROVIDES EACH INDIVIDUAL A TOOL OR SHIELD AGAINST
THOSE WHO WOULD ATTEMPT THE FORBIDDEN CONDUCT.
2. WE GIVE UP NOTHING FOR THAT LEGAL PROTECTION. WE
DO IT OURSELVES. IT IS SELF-EXECUTING. NO FUNDING
REQUIRED. TRUEST DEMOCRACY.

DON'T NEED A COUNTY ATTORNEY, ATTORNEY GENERAL. YOU DON'T HAVE TO
ASK ANYONE FOR PROTECTION. WE CAN PROTECT OURSELVES.

THIS IS A MOST UNIQUE FEATURE OF OUR DEMOCRATIC SOCIETY AND THE
COMMON LAW. INDIVIDUALS HAVE RETAINED FOR THEMSELVES THE POWER
AND THE RIGHT TO DETER THOSE WHO WOULD UTILIZE AN ADVANTAGE BASED
ON THEIR OWN WEALTH, POWER, OR GREED.

ONE OF THE BILLS WOULD MAKE THE STATE THE BENEFICIARY OF A PUNITIVE
DAMAGE AWARD. PUNITIVES ARE ALREADY SUBJECT TO FEDERAL AND STATE
INCOME TAX. NO LAWYER CAN SERVE TWO MASTERS.

ANOTHER WOULD REGULATE ATTORNEY'S FEES. THESE WOULD ELIMINATE THE
SELF-EXECUTING FEATURE OF OUR PUNITIVE DAMAGE SYSTEM WHICH HAS BEEN
TESTED, TRIED, AND APPROVED FOR HUNDREDS OF YEARS.

*When punitives are sought - compensatory damages go
down.*

~~to without a lawyer~~
THE INSURANCE INDUSTRY KNOWS THAT THE PERSON WHO HAS A LEGITIMATE CLAIM WOULD BE AT THE MERCY OF ITS PROFESSIONAL STAFF AND SKILLED DEFENSE ATTORNEYS IF THAT PERSON WERE UNABLE TO OBTAIN A CAPABLE LAWYER HIMSELF. THIS IS EVEN MORE TRUE IF THE CONDUCT RISES TO THE LEVEL WHERE PUNITIVE DAMAGES COULD BE AWARDED. IF YOU REGULATE THE LAWYERS - THEN YOU COULD THROW OUT ALL OF THE OTHER BILLS.

LIMITING PUNITIVE DAMAGES: *Keep mouth of the Defendant shut*
THE CONCERN FOR THE POTENTIALLY LARGE PUNITIVE DAMAGE AWARD IS THE REAL DETERRENT TO THE TYPE OF CONDUCT WE ALL OPPOSE AND WHICH PUNITIVES PREVENT, DIMINISH, OR DETER.

IF A LIMIT IS IMPOSED, THE FEAR OF BEING CAUGHT IS GONE.

THE MAXIMUM EXPOSURE BY THE PROPOSED BILLS WOULD THEN SIMPLY BECOME A COST OF DOING BUSINESS --

- A. IT WOULD DETER NO WRONGFUL CONDUCT;
- B. SAVE NO LIVES;
- C. PREVENT NO INJUSTICE, AND
- D. SIMPLY INCREASE THE COST OF OUR GOODS AND COMMODITIES.

In many states, the wealth a lack thereof is essential - fairness.

WHO IS COMPLAINING ABOUT OUR PUNITIVE DAMAGE SYSTEM WHICH HAS WORKED SO WELL THESE HUNDREDS OF YEARS?

- IS IT JOHN DOE OR MARY DOE ON THE STREET?
- OUR WORKERS?
- OUR RURAL CITIZENS?
- OUR UNDERPRIVILEGED?
- OUR FRIENDS AND NEIGHBORS?
- OUR MIDDLE-CLASS CITIZENS? [Gibson Case] *Rice in N.D.*

RAMIERZ' PARTNER TESTIFIED VS. THE INSURANCE COMPANY.

Bad faith statute - no penalty

THEN WHO IS COMPLAINING? WHO IS SEEKING THESE CHANGES?

Emotional - unnecessary concerns

- A. NO ONE OR ENTITY AGAINST WHOM A PUNITIVE DAMAGE AWARD HAS BEEN ASSESSED HAS COME FORTH AND TOLD YOU THE TREATMENT WAS UNFAIR OR THE VERDICT WAS WRONG.
- B. *Is it* THOSE WHO CONDUCT THEIR BUSINESS WITH ORDINARY PRUDENCE, CARE AND CONCERN FOR OTHERS? -- NO.
I AM NOT CONCERNED ABOUT PUNITIVES. *Insurance available*
- C. THE COMPLAINTS OBVIOUSLY HAVE EMANATED FROM THOSE WHO REFUSE TO COME FORTH AND BE IDENTIFIED.
- D. FROM THOSE WHO CANNOT JUSTIFY DENYING THE PROTECTION OF OUR COMMON LAW PUNITIVE DAMAGE SYSTEM TO OUR CITIZENS.
- E. THOSE WHO TESTIFIED FOR SENATE BILL 200 WERE PERSONS AGAINST WHOM PUNITIVE DAMAGES WERE SOUGHT. THEY SAY THEY DID NOT CONDUCT THEMSELVES IN AN ONEROUS MANNER, AND THE JURY AGREED. THUS, THEY RECEIVED THE PROTECTION BUILT INTO OUR JURY SYSTEM, AND THEY HAD NOTHING TO FEAR - ABSOLUTELY NOTHING.
- F. THOSE WHO SEEK THE PASSAGE OF THESE BILLS (NOT THE LEGISLATORS WHO SPEAK FOR THEM) ARE THOSE WHO SEEK AN ADVANTAGE. THOSE WHO WOULD NOT CONDUCT THEIR BUSINESS WITH ORDINARY CARE AND CONCERN FOR OTHERS. THOSE WHO WOULD UTILIZE THEIR WEALTH AND POWER WITHOUT RESTRAINT. THOSE WHO WOULD TAKE ADVANTAGE OF INJUSTICE, OPPRESSION, TREACHERY OR MALICE.

WHO ARE THE VICTIMS? -- ANY MONTANA CITIZEN COULD BE. EVEN YOU AND ME.

NO BUSINESS HAS REFUSED TO COME INTO THIS STATE BECAUSE WE HAVE
OUR SYSTEM OF PUNITIVE DAMAGES. LESS THAN A HALF A DOZEN DON'T. *Run in MD*

INSURANCE IS NOT A PROBLEM. INSURANCE COMPANIES COULDN'T OPERATE IF
THEY DIDN'T COVER PUNITIVE DAMAGES AS THEY DO IN ALL THE OTHER STATES.

~~WASHINGTON RATES.~~

EXPLAIN CHECKS AND BALANCES IN OUR PUNITIVE DAMAGE SYSTEM.

EXPLAIN OUR JURY SYSTEM:

- CONSERVATIVE
- THOUGHTFUL
- INTELLIGENT
- INFORMED
- CROSS-SECTION OF THE COMMUNITY
- CONSCIENCE OF THE COMMUNITY
- NOT INFLUENCED BY ANY POSSIBLE GAIN, MONEY, POWER, OR EVEN
A VOTE.

BOTH SIDES PRESENT TESTIMONY AND ARGUMENTS EQUALLY.

EACH CASE DECIDED ON ITS OWN MERITS.

NOTHING YET AS GOOD AS OUR JURY SYSTEM.

EACH PROPONENT IS PROTECTED BY IT.

THE REQUIREMENTS TO BE A JUROR IN MONTANA IS THAT THEY ARE REGISTERED
VOTERS. WOULD YOU TRUST THEM TO ELECT YOU AND THEN SAY WE DON'T *trust*
THEM TO DISPENSE JUSTICE, TO UNDERSTAND OPPRESSION, FRAUD OR MALICE,
ACTUAL OR IMPLIED?

ARE WE SAYING THAT THE JURORS IN MONTANA CANNOT^{11/11} DISPENSE JUSTICE
AS THEY HAVE DONE SINCE THE FIRST JURY VERDICT IN THIS STATE IN THIS
COUNTRY, AND AS JURORS HAVE DONE FOR HUNDREDS OF YEARS?

REDEFINE MALICE.

ONE BILL WOULD ELIMINATE IMPLIED OR PRESUMED MALICE, AND WOULD YOU
BELIEVE THAT ANOTHER ONE WOULD EVEN ELIMINATE OPPRESSION AS A
CRITERIA FOR THE ASSESSMENT OF PUNITIVE DAMAGES AND LIMIT THEM TO
PROOF OF ACTUAL MALICE?

A TYPICAL JURY INSTRUCTION IS:

"IF YOU FIND THE DEFENDANT'S CONDUCT WAS WILLFUL AND WANTON..."

ANOTHER IS:

"IF YOU FIND THE DEFENDANT ACTED WITH UTTER DISREGARD ~~AND~~
~~CONCERN~~ FOR THE RIGHTS, LIFE OR WELL BEING OF PLAINTIFF ..."

AREN'T THESE INSTRUCTIONS EASY TO UNDERSTAND AND COMPREHEND?

DON'T YOU THINK THE PEOPLE WHO ELECTED YOU UNDERSTAND THEM THOROUGHLY
AND COMPLETELY?

ISN'T THIS THE TYPE OF CONDUCT THAT YOU AND EACH OF YOU PERSONALLY
CONDEMN?

THESE INSTRUCTIONS DEFINE OPPRESSION OR IMPLIED OR PRESUMED MALICE.

ACTUAL MALICE IS IMPOSSIBLE TO PROVE. NO ONE WILL ADMIT TO IT.

NO ONE HAS OR WILL TELL YOU OF ONE SINGLE PUNITIVE DAMAGE AWARD WHICH HAS BEEN UPHELD IN MONTANA THAT WAS UNREASONABLE.

NO ONE WILL COME BEFORE YOU AND TELL YOU THAT THE CONDUCT PUNITIVE DAMAGES DETER SHOULD BE PERMITTED.

NO ONE WILL COME BEFORE YOU AND SAY THAT THE PUNITIVE DAMAGE STATUTE IN ITS PRESENT FORM DOES NOT CONCERN THOSE WHO WANT A LICENSE TO DO WRONG.

Insurance bad faith - no penalty except punitive
BEYOND REASONABLE DOUBT

THEN THERE IS A BILL TO SOMEHOW CHANGE THE BURDEN OF PROOF FOR THE ASSESSMENT OF PUNITIVE DAMAGES.

LET'S HAVE A MINI TRIAL RIGHT NOW.

YOU ARE THE JURY. THE PROPONENTS ARE THE PLAINTIFFS, AND THE OPPONENTS THE DEFENDANTS.

THE PROPONENTS SAY THE STANDARD SHOULD BE CHANGED TO "BEYOND A REASONABLE DOUBT." YET THEY, THEMSELVES, COME UP WITH NO EVIDENCE. NO PROOF. ONLY FLIMSY INNUENDOS TO SUPPORT THEIR POSITION. SHOULD THEY NOT OFFER THE SAME STANDARD HERE THEY SEEK TO IMPOSE ON OUR CITIZENS. IS ANYONE HERE CONVINCED OF THE MERIT OF ANY OF THESE BILLS "BEYOND A REASONABLE DOUBT"?

~~Right to~~ *License to oppress*
wilful wrongful conduct

IF THE COMMISSIONER FINDS SUCH A COMPANY HAS VIOLATED AN ORDER,
HE MAY THEN TELL IT TO DESIST FROM SUCH ACT OR PRACTICES.

WHAT HAPPENS TO THE COMPLAINANT? NOTHING. NO REMEDY. SO WHY
PURSUE NOTHING.

THE PENALTY? FOR A PERSON WHO VIOLATES A CEASE AND DESIST ORDER
(AFTER A HEARING) HE IS SUBJECT TO A PENALTY NOT TO EXCEED \$1,000.
EACH DAY OF VIOLATION CONSTITUTES A SEPARATE VIOLATION. THE TOTAL
PENALTY MAY NOT EXCEED \$10,000 AGGREGATE.

IN CHECKING WITH THE AUDITOR'S OFFICE, WE FIND ONE HEARING AGAINST
I T T LIFE INSURANCE COMPANY WHICH FOUND IN FAVOR OF THE COMPANY
ON A COMPLAINT CONCERNING A SALES PITCH.

A RIGHT WITHOUT A REMEDY IS NO RIGHT AT ALL. IS IT CONSTITUTIONAL?

THIS CHAPTER AND SECTION 33-18-1005, HOWEVER, SPECIFICALLY PROVIDE
THAT THE CEASE AND DESIST IS NOT THE ONLY METHOD OF ENFORCING THE
UNFAIR SETTLEMENT PRACTICES AND RESERVES TO THE ABUSED ALL OTHER
APPROPRIATE REMEDIES.

HERE, YOU ARE ASKED TO MAKE APPROPRIATE REMEDIES INAPPROPRIATE AND
LEAVE OUR CITIZENS DEFENSELESS AND HELPLESS WHILE AT THE SAME TIME
MANDATING AND REQUIRING THAT THEY CARRY INSURANCE.

UNFAIR CLAIMS SETTLEMENT PRACTICES ACT [33-18-201]

THIS ACT ENACTED IN 1977 HAS FOLLOWED A TREND ACROSS THE COUNTRY AND LISTS 14 DIFFERENT TYPES OF PROHIBITED CONDUCT BY INSURANCE COMPANIES. A FEW ARE:

- [4] REFUSE TO PAY CLAIMS WITHOUT CONDUCTING A REASONABLE INVESTIGATION BASED UPON ALL AVAILABLE INFORMATION.
- [6] NEGLIGENCE TO ATTEMPT IN GOOD FAITH TO EFFECTUATE PROMPT, FAIR AND EQUITABLE SETTLEMENTS OF CLAIMS IN WHICH LIABILITY HAS BECOME REASONABLY CLEAR.
- [7] COMPEL INSURED TO INSTITUTE LITIGATION TO RECOVER AMOUNTS DUE UNDER AN INSURANCE POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN ACTIONS BROUGHT BY SUCH INSUREDS.

NOW A PERSON WHO HAS BEEN VICTIMIZED BY AN INSURANCE COMPANY VIOLATING THESE SECTIONS CAN BRING AN APPROPRIATE ACTION AND ASK FOR PUNITIVE DAMAGES. THIS IS THE ONLY WAY IN WHICH THOSE INSURANCE COMPANIES WHO WOULD NOT DEAL WITH OUR CITIZENS IN GOOD FAITH ARE, IN A SENSE, COMPELLED TO DO SO - OR FACE AN ACTION INCLUDING A CLAIM FOR PUNITIVE DAMAGES.

THE UNFAIR CLAIMS SETTLEMENT PRACTICES ACT HAS A SECTION CALLED "ENFORCEMENT", BEING 33-18-1001 through 1005.

THIS IS WHAT THE COMPANIES LOVE. IT PROVIDES THAT IF THE COMMISSIONER BELIEVES A PERSON ENGAGED IN INSURANCE VIOLATES ANY ACT OR PRACTICE IN THE CONDUCT OF SUCH BUSINESS, IT MAY HOLD A HEARING UPON A WRITTEN COMPLAINT. [IN HELENA, OF COURSE.]

THERE IS NO WAY THEY COULD PREVAIL BEFORE A JUDGE OR BEFORE A JURY. THEY SHOULD NOT PREVAIL BEFORE YOU.

~~IF~~ THEY CAN'T EVEN CARRY THE BURDDEN OF PREFPONDERANCE BEFORE A COURT OR A JURY, THEY WOULD BE THROWN OUT. A VERDICT WOULD BE DIRECTED AGAINST THEM BY THE COURT. NO JURY WOULD LISTEN TO NO PROOF, AND THAT IS WHAT SHOULD HAPPEN TO EACH OF THESE BILLS HERE. THEY SHOULD BE THROWN OUT WITHOUT FURTHER ADO.

FINALLY, NOTHING HAS BEEN SAID ABOUT THE VICTIMS OF THE WRONGFUL CONDUCT, THE OPPRESSION, THE MALICE OR THE FRAUD THAT WOULD BE IMPOSED UPON OUR CITIZENS WITH THE ENACTMENT OF ANY OF THESE BILLS. I ASK THAT YOU SPEAK FOR THESE PEOPLE, THESE CITIZENS, THESE REGISTERED VOTERS, AND THEIR CHILDREN AND YOURS.

*No bill in my lifetime, of which I am aware,
promote less good & more evil than these*

EXEMPLARY (PUNITIVE) DAMAGES MONTANA SUPREME COURT - 1965 TO DATE

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Crenshaw v. Bozeman Deaconess Hospital, Edwin E. Dalhberg (1984)	Hospital	\$125,000	\$25,000	Affirmed - \$25,000
Castillo v. Franks (1984)	Individual (rancher)		\$5,000	Affirmed - \$5,000
Gehnert v. Cullinan (1984)	Individuals (2)	\$614.32	\$10,000 for each of 4 Defendants	Affirmed total of \$40,000 remanded other grounds
Gibson v. Western Fire Insurance Co. (1984)	Western Fire Ins. Co.	\$250,000	\$300,000	Affirmed - \$300,000
Eliason v. Wallace (1984)	Individual	\$4,346.52 total combined	\$500	Affirmed - \$500
Doll v. Major Muffler and Colonial Leasing Co. of New England, Inc., a Massachusetts Corp., d/b/a Colonial- Pacific Leasing Co. (1984)	Muffler Co. Leasing Co.	\$30,000 \$10,000	\$90,000 \$40,000	Affirmed - \$90,000 Vacated - other awards
Purcell and Gary v. Automatic Gas Distributors, Inc. (1983)	Gas Distributors	\$13,198	\$50,000 each Plaintiff	Affirmed - \$100,000
Kuiper v. The Goodyear Tire & Rubber Co., et al. (1984)	Tire Co.	\$325,000	\$1,500,000	Remanded \$0 New Trial
Derenburger v. Lutey (1983)	Industrial	\$100,000	\$10,000	Reversed \$0
Gates v. Life of MT Insurance Co. (1983)	Insurance Company	\$1,891	\$50,000	Reinstated \$50,000 from N.O.V.
Lemley v. Allen (1983)	Industrial/ Business	\$0	\$500	Reversed \$0

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Harris v. American General Life Ins. Company of Delaware (1983)	Insurance		\$30,000	Affirmed - \$30,000
Lipinski v. The Title Insurance Company and Flathead County Title Company (1983)	Insurance	\$25,000	\$15,000	Remanded \$0
Johnson v. Murray (1982)	Individual	\$100,000	\$100,000 (by default)	Affirmed - \$100,000
Miller v. Watkins (1982)	Public Stable Owners	(no jury) \$1,500 (Plf.) \$78,000 (Def.)	\$50,000 (Def.)	Affirmed \$50,000
Bolz v. Myers (1982)	Individual	\$25,802.50	\$5,000	Affirmed \$5,000
Allers v. Willis (1982)	Individual	\$128,000	\$15,000	Affirmed \$15,000
Weber v. Blue Cross of MT (1982)	Health Care Provider	\$157,137	\$999,999	Reversed & Remanded (-0-)
Darvial v. T&W Chevrolet (1982)	Car Dealer	\$2,678	\$750	Affirmed \$750
Dvorak v. Hutley Project Irrigation District, Propp & Maynard (1981)	Irrigation District	\$5,000	\$40,000 (punitive damages struck in post-trial Order)	Reversed & Remanded New Trial
Shahrokhfar v. State Farm Mutual Auto Ins. Co. (1981)	Insurance Company	\$850	\$80,000	Affirmed \$80,000
Dahl v. Petroleum Geophysical Co. (1981)	Oil Well Drilling Company	\$14,850	\$8,500	Affirmed \$8,500
Lauman v. Lee (1981)	Individual	- 0 -	\$17,500	Affirmed \$17,500
Flemmer v. Ming (1980)	Individual & Corporations	\$13,127 estimated	\$20,000 app.	Affirmed est. \$20,000
Magnuson v. Billmater (1980)	Individual	\$1,644	\$11,500 (to Ronald Magnuson)	Affirmed \$11,500

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Toeckes v. Baker (1980)	Individual	\$230	\$1,000	Affirmed \$1,000
First Security Bank of Bozeman v. Goddard v. Bankers Union Life Ins. Co. (1979)	Life Insurance Co.	\$4,227.95	\$5,000	Affirmed \$5,000
Butcher v. Petranek (1979)	Individual	\$925	\$20,000	Affirmed \$20,000
Bermes v. Sylling (1978)	Individual	\$130,463.62	\$5,000	Affirmed \$5,000
Miller v. Fox (1977)	Individual	No value specified	\$400	Affirmed \$400
Purington v. Sound West (1977)	Music Co.	\$4,350	\$1,500	Remanded (\$0)
Johnson, et al. v. Doran, et al. (1975)	Real Estate Broker	\$16,772	\$43,500	Affirmed \$43,500
Holland v. Briggs, et al. (1975)	Individuals	\$600	\$7,000	Vacated & Remanded (\$0)
Sheehan v. Dewitt (1969)	Individual	\$1,000	\$5,000	Affirmed \$5,000
Hurley v. Northern Pacific Railway Co. (1969)	Railroad	\$6,640	\$3,000	Affirmed \$3,000
McCusker v. Roberts, Gallatin Lumber Co., Western General Enterprises & Chauner (1969)	Builder, Lumber Co. and its manager	\$2,500	\$7,500	Affirmed \$7,500
Gagnier v. The Curran Construction Co. (1968)	Construc- tion Co. & Individual	\$10,661	\$25,000	Reversed \$0
Dutton, et al. v. Rocky Mountain Phosphates (1968)	Phosphate Plant	\$113,283.80	\$10,000	Affirmed \$10,000

CASE	DEFENDANT ENTITY	AMOUNT OF COMPENSATORY AWARD BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Security State Bank of Harlem v. Kittleson (1967)	Bank	\$144	\$5,000	Affirmed \$5,000
Ryan v. Ald, Inc. (1965)	Corporation	\$3,415	\$7,500	Reversed & Remanded \$0

TOTAL ASSESSMENTS FOR TWENTY YEARS \$1,054,150

LG83

Proposed Amendment for John Cobb

1. Page 2, line 20.

Strike: "."

Insert: "and are capable of recreational use."

Page 1, line 25.

Strike: ":"

Insert: "are capable of recreational use and:"

2. Page 6, line 4.

Insert: "(E) The placement or creation of any permanent or semi permanent object, such as a permant duck blind boat moorage."

Page 6, line 3.

Strike: "."

Insert: "or"

Page 6, line 9-11.

Strike: in its entirety

3. Page 6, line 4

Add "(F) upland bird hunting if posted as required under
_____."

4. Page 6, line 4.

Insert: "(G) hunting or overnight camping within 500 feet of a residence."

5. Page 6.

Following: line 7

Insert: "upland bird hunting."

6. Page 6, line 17-18.

Strike: "pursuant to 87-1-303"

7. Page 7.

Following: line 7

C) develop categories for surface waters within Class I and Class II waters as to recreational uses and to classify all surface waters as to their recreational uses.

D) provide procedures for immediate temporary closing of surface waters by the Commission, its Department or ex-official wardens due to public health, safety, or nuisance to public or private property.

E) upon notice of a landowner, have the Department clean up all litter on surface waters left from recreational use of surface waters without permission of the landowner.

F) All rules adopted by the commission in the interest of public health, public safety, or protection of public and private property shall be as strict as those provided for in section _____.

1-5

WITNESS STATEMENT

Name Gregory B. Holt Committee On Judiciary
Address 916 25th Ave. S.W. Great Falls Date 2/12/85
Representing Individually and as Treasurer and
Director of the Montana Grain Growers Support ✓
Association
Bill No. 363, 400, 511, 533, 536 Oppose _____
+ SB 200 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. My personal testimony is attached.
2. The Board of Directors of the Montana Grain Growers Association has gone on record in support of the Punitive Damage legislation being proposed.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name R. A. Ellis Committee On H. J.
Address 1735 Sycamore Rd E Date 2/12/85
Representing Holman Valley Irrig Dist Support 363 400 811
Bill No. _____ Oppose ~~535 576~~
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I am Chairman of the ...
2. could not get liability or property damage insurance even though we had or have no ... In contacting our insura
3. To, I was informed a message next year
4. As to my own insurance. Having talked to my insurance company President He stated that they had Paged 116% of premium income and in large part was due to damages and property damage claims

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITORS' REGISTER

page 2

Judiciary

COMMITTEE

BILL NO. _____

DATE

Feb 12, 1985

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Terry Connolly	Helena	All X	
Tom Boland	Great Falls		X
Sen J. Dale	Missoula		X
Bill Britton	ROWAN		X
Don Allen	Helena	All	
Dave Goss	BILLINGS	All	
Glen Drake	Helena	all	
Ben Harden	Montana Mtr. carriers	ALL X	
Howard Straver	Great Falls MT		X All
Eden Daniels	Seabrook MT.	All	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 363 (Marks); 400 (Grady)
 511 (Hannah); 533 (Thomas); DATE February 12, 1985
 536 (Ramirez)

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mike Rice	Gt. Falls	All	
Bob James	Gt Falls	All	
Bill Jason	Great Falls	All	
Mike Anderson	Billing	All	
Gregg Holt	Great Falls	All	
W.E. Vosburg	Great Falls	All	
St. Jones	Helena MT Chamber	All	
Bruce Morris	Helena		
John C. Hoyt	Great Falls		✓
W. Madden	Bozeman		✓
Julie Dahlquist	Helena		✓
Bill Olson	Helena (Mt. Contractors)	All	
R. H. Ellis	Helena	400 363 511	536 533
Lorraine Gilhies	Philipsburg	400 363 511	536 433
Geoffrey Allen	Mt. Pacific Assn	363 400 511 533 536	
Wm. L. L. L.	Mt. Pacific Assn	363 400 511	
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	All	
Lorna Shank	Bozeman	400, 363 511	536 433
CHAD SMITH	MONTE HOSP ASSN - HELENA	All	
Reyn Johnson	mont. Homebuilders PIA	All	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.