

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

March 12, 1987

The forty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 12, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HB 167: Representative Bob Gilbert of House District #22 presented to the committee HB 167 (see Exhibit 1).

PROPOSERS: Jim Robischon, Montana Liability Coalition, handed out amendments and a page from a record of a damage issue trial (see Exhibit 2 and 3). He felt the House restricted the recovery of mental distress too far. He said the amendments that he purpose describe more throughly what contracts can be covered under this bill (that is (a) through (d)). He explained the hand out from a trial record. He said the case was Noonans vs First Bank of Butte, which had a verdict of 1.5 million dollars. He said it 1986 the district court gave the Noonans \$700,000 in mental distress damages. He said the hand out is the one page out of just 11 pages in the record of 1,000 pages that talks about mental distress. He felt the jury went over board in giving that \$700,000 verdict for mental distress. He also pointed out the damages would not be covered by any insurance company policy.

Karl Englund, Montana Trial Lawyers Association, said the bill would clarify the damage recovery in a contract dispute case. Mr. Englund explained that the bill is very close to what is stated in section 353 of the Restatement of Contracts Act. Mr. Englund gave the committee an amendment that bring the bill in line with section 353 of the Restatement of Contracts (see Exhibit 4). He hoped the committee would pass the bill the way the House passed it out. He believed the House knew what it was doing when it passed the bill out.

Bob Correna, Bozeman Chamber of Commerce, supported the bill as amended by the Montana Liability Coalition.

Bill Leary, Montana Hospital Association, testified in support of the bill with the amendments.

Connie Clark, Montana Forward Coalition, supported the bill also as amended.

OPPOSERS: John Hoyt of Great Falls said emotional distress can be very

Judiciary Committee  
Minutes of the meeting  
March 12, 1987  
page 2

dangerous. He talked about an actual case, Vic Tacke vs Fireman Fund Insurance, where this Mr. Tacke checked himself into the "Pain Center" in Spokane, Washinton for tests of mental distress, which was caused over his suit with the Fireman Fund Insurance. Mr. Hoyt showed graphs of this gentlemen's behavior while at this place. He showed how the mental depression began to worsen with the charts he brought. Mr. Hoyt does not agree with Mr. Robischon's amendment.

William Rossbach, Montana Trial Lawyers Association, gave an example of a family that paid a lot of money for a funeral for their grandmother who had died. He said the family paid cash to the funeral parlor and had a contract with them for the funeral. He explained that when the family left the grave sight that the casket was still not put into the ground. He said they were concern, so they went back to the grave sight and found employees of the funeral parlor throwing rocks at the casket and kicking the casket into the grave site. He said that is mental distress dealing with a contract. He said if that type of claim is being limited in this bill, then the bill is flawed. He stated the parts of cases that Mr. Robischon brought before the committee don't show the whole story that go on in a courtroom.

Zander Blewett, Great Falls attorney, said the bill does attempt to get rid of any emotional distress damage out of fraud cases. He said usually fraud cases arise out of contracts. He said if the committee passes a bill like this, then the committee is accepting the term fraud.

DISCUSSION ON HB 167: Senator Pinsoneault asked about a certain line on Mr. Hoyt's chart. Mr. Hoyt said the line shows how truthful Mr. Tacke was during the sessions and the line is straight, so therefore, he was steady with the truth through out his sessions at the clinque. He explained that Mr. Tacke was a third party member in the case, where there was a breech of contract.

Representative Gilbert closed by saying he supported the Robischon amendments.

CONSIDERATION OF HB 442: Representative John Mercer of Polson introduced HB 442 (see Exhibit 5).

PROPOSERS: Randy Bishop, Montana Defense Counsel, stated right now a judge really has no right, by law, to ask a jury not to try a defendant with punitive damages on top of the liability damage case or other kind of damage case. He gave the committee the Montana State and Federal Court Cases in which punitive damages were awarded (see Exhibit 6).

Jim Robischon, Montana Liability Coalition, supported the bill because the bill sets guidelines for how far punitive damages can go in certain cases.

Judiciary Committee  
Minutes of the meeting  
March 12, 1987  
page 3

Connie Clark, Montana Foward Coalition, supported the bill.

Bob Correna, Bozeman Chamber of Commerce, supported the bill.

Lorna Frank, Montana Farm Bureau, supported the bill also.

Jim Rector, representing himself, said punitive damage awards have cost many businesses in Montana a lot of money and many time these kind of case are frivolous cases. He said the definition of "actual malice" is the kind of language that got all of us in this mess to begin with. He said he thinks it would be a good idea to have insurance for punitive damages. He felt business would benefit from having it.

Tuck Vosburg, Pacific Hide and Fur Depot of Great Falls, Montana, supported the bill (see Exhibit 7).

Kay Foster, Govenor's Council of Economic Development and Billings Chamber of Commerce, supported the bill (see Exhibit 8).

OPPONENTS: John Hoyt, Great Falls attorney, said that Karl Englund and himself are working on some amendments for this bill. He pointed out that there has not been one single case tried under the 1985 punitive damage law. He asked how can anyone tell if it will work if it has not been used. He stated there are two provisions in the bill that he is against; first, to require a judge to award damages in a punitive damage case, after a jury has determined that a person is entitled to them. He said this will put a terrible stress on trial judges. He stated that if the bill stated that the judge had to set the amount of the punitive damages award after the jury says there will be one, then it would make a great difference as to what kind of judge one would go before with these kinds of cases. He purposed a system of review for the judge so he can review what the jury has decided on in the amount of the damaged and then the judge can higher it or lower it. He also did not want to see punitive damages insurance in this bill because he thought the insurance companies just don't want to compete for it.

Richard Sebull, Billings Montana, believed juries should decided liability responsibilites and the amount of the damages. He felt people should have the right to buy punitive damages insurance because it would not violate any public policy.

Lon Dale, representing himself, felt the bill takes rights away from the people and that is not tort reform. He felt the 1985 bill was fair and workable. He gave the committee a summary of cases of punitive damage cases from 1965 to the present (see Exhibit 9).

Karl Englund, Montana Trial Lawyers Association, felt the legislature should let the 1985 law go into progress a little longer than just two

Judiciary Committee  
Minutes of the meeting  
March 12, 1987  
page 4

years, especially with no one using the law as of yet. He said he doesn't understand why the proponents have a problem with "oppression". He said that definition was worked on two years ago and was thought out very carefully. He said that the act of oppression should be put back into the bill. He felt people should be able to buy punitive damage insurance. He said by tomorrow he will have his amendments written for the committee to look at.

William Rossbach, Montana Trial Lawyers Association, supported the bill because groups like the farmers in these hard economic times are being pressured by banks and other institution and that punitive damages are very practical for farmers.

Zander Blewett, Great Falls attorney, supported the bill.

DISCUSSION ON HB 442: Senator Blaylock asked why this bill has been brought forward when the 1985 law has not even been used yet. Representative Mercer said the last bill would not have gone into effect in time to help any cases. He said the 1985 bill was not that well thought out as Mr. Englund thought it was.

Senator Mazurek asked why this state could never have punitive damage insurance. Representative Mercer said, as an example, everyone would like to have insurance for a DUI, so they will not have to spend time in jail. He said this damage should not be paid by the insurance company, because they did not spread the risk. Senator Mazurek said not everyone would purchase the insurance, and I don't think we should deprive some people from having it if they want it. Representative Mercer gave an example about Ford Motor Company and how they were criticized for allowing the Pintos to exploded because of a financial decision the company made.

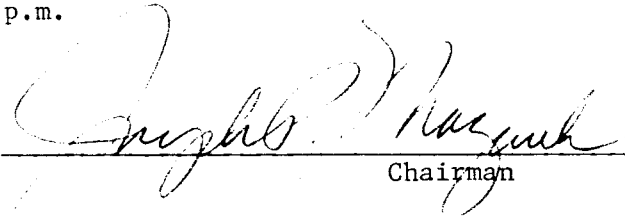
Senator Yellowtail questioned what the business community thought about this idea of punitive damage insurance. Mr. Vosburg said the businesses that he has talked to would like to have it.

Senator Pinsoneault asked if his bill that he submitted to the committee about the judge having the right to increase or decrease an award as he sees fit, bothers anyone. let the 1985 law go into process a little longer than just two years and with no one using the law as of yet. He said that page 2, lines 11 through 14 the bill goes much futher than contract cases, it includes tort cases. Mr. Hoyt said that happens in every trial anyway. Senator Pinsoneault asked about giving the jury both plaintiff's and defendant's amounts. Mr. Hoyt said he did not know if that was a very good idea. Senator Pinsoneault questioned what was wrong with the jury knowing what figure the plaintiff wants and what figure the defendant is willing to pay. Mr. Hoyt answered that lawyers file a statement of claim before the trial, which is about the same thing.

Judiciary Committee  
Minutes of the meeting  
March 12, 1987  
page 5

Representative Mercer closed by saying that this bill will not create "judge shopping" because a lawyer has much more to do in a case than seek out the right judge that will give just the right claim. He stated that in contract cases if someone doesn't keep their promise in a contract, then the other side has a right to collect damages for not keeping that promise. He said the contract law is not to punish someone for not keeping their promise, but just to provide compensation for what they promised in a contract. Representative Mercer said that the other day the House Appropriations Committee took out the whole funding for Dillon's college. He said that would cause cruel and unjust hardship on the people of Dillon, which is what "oppression" is. He said the money was put back into the General Fund, but the point is that oppression is very broad and can be used in many different ways.

The committee adjourned at 12:10 p.m.

  
Chairman

Judiciary COMMITTEE  
 48th LEGISLATIVE SESSION -- 1985

Date March 12

SENATE SEAT #

| NAME            | PRESENT | ABSENT | EXCUSED |
|-----------------|---------|--------|---------|
| Sen. Manurek    | X       |        |         |
| Sen. Crippen    | X       |        |         |
| Sen. Beck       | X       |        |         |
| Sen. Blaylock   | X       |        |         |
| Sen. Bishop     | X       |        |         |
| Sen. Brown      | X       |        |         |
| Sen. Halligan   | X       |        |         |
| Sen. Galt       | X       |        |         |
| Sen. Pinsoncalt | X       |        |         |
| Sen. Yellowtail | X       |        |         |
|                 |         |        |         |
|                 |         |        |         |
|                 |         |        |         |
|                 |         |        |         |
|                 |         |        |         |

Each day attach to minutes.

## VISITORS' REGISTER

| NAME           | REPRESENTING                                   | BILL #           | Check One |        |
|----------------|--|------------------|-----------|--------|
|                |  |                  | Support   | Oppose |
|                | Self   | 442              |           |        |
| Roger McGLENN  | INDEPENDENT INSURANCE AGENTS ASSOC. OF MT      | 442              | ✓         |        |
| Connie Clarke  | mt. Journal Coalition                          | 442              | ✓         |        |
| Bob Ormer      | Boys Chamber of Comm.                          | HB 167<br>HB 442 | ✓         |        |
| Bill Leroy     | Mont. Hosp. Assn                               | HB 167<br>HB 442 | ✓         |        |
| Joyce Lake     | Jaylins - Miles City                           | 442              | ✓         |        |
| Clayton        | First Interstate Bank                          | 442              | ✓         |        |
| Don Dutton     | Dunes Inc.                                     | 442              | ✓         |        |
| Zinda Lamb     | Business Owner                                 | 442              | ✓         |        |
| Kay Foster     | Gas Council of Ec.<br>Development & Bldg. Club | 442              | ✓         |        |
| Lorna Frank    | MT. Farm Bureau                                | 442              | X         |        |
| AS Hansen      | MT. TECHNICAL COUNCIL                          | HB-167<br>HB-442 | X         |        |
| BILL ROSSBACH  | MT TRIAL LAWYERS                               | 167<br>442       |           | ✓      |
| Don Allen      | not. Wood Products Assn                        | HB 442           | ✓         |        |
| Gregg Allen    | mt. Retail Assn                                | HB 167<br>HB 442 | ✓         |        |
| Mr. Voshary    | Pacific Hide & Fur Dept                        | HB 167<br>HB 442 | ✓         |        |
| Randy Bishop   | MT Assoc. of Defense Council                   | HB 442           |           |        |
| Connie Clarke  | MT Journal Coalition                           | 167              | ✓         |        |
| Ann Kiefer     | Self   | 442              | ✓         |        |
| Don Kolumbian  | Mont. Liability, Coalitions                    | HB 442<br>HB 167 | ✓         |        |
| Robert Bennett | Self   | HB 442<br>HB 167 |           | ✓      |
| Russell        | Self   | HB 442           |           | ✓      |
| Rose Skoog     | MT. HEALTH CARE ASSN                           | HB 442           | ✓         |        |
| Rose Skoog     | MT HEALTH CARE ASSN                            | HB 167           | ✓         |        |

**SUMMARY OF HB167 (GILBERT)**

(Prepared by Senate Judiciary Committee staff)

HB167 revises the law relating to recovery of non-economic damages, or negligent infliction of emotional distress. This bill, as originally drafted, was submitted to the Joint Interim Subcommittee on Liability Issues by the Montana Association of Defense Counsel (MADC). The Interim Subcommittee did not adopt the bill as a committee bill.

As originally drafted, the bill would have prohibited recovery in any civil case for any damages for emotional or mental distress (non-economic damages), except in cases of actual physical injury to the plaintiff. **As amended by the House**, the prohibition against recovery for emotional or mental distress applies only in cases arising from contract disputes, except in cases of actual physical injury to the plaintiff. For example, in a recent case out of Butte, the plaintiffs, who owned a Baskin-Robbins franchise, sued Baskin-Robbins for damages allegedly caused by Baskin-Robbins' refusal to allow the franchise to be relocated to an allegedly more advantageous location in Butte. The plaintiffs recovered not only for contractual damages but also a large sum for emotional distress. This bill, as amended, would have prevented the recovery for any emotional distress.

COMMENTS: None.

C:\LANE\WP\SUMHB167.



1. Strike: Everything after the enacting clause
  
2. Insert: NEW SECTION. Section 1. Damages for emotional or mental distress prohibited in contract actions or actions arising out of contract. (1) Except in those actions involving actual physical injury to the plaintiff, damages for emotional or mental distress may not be recovered in any action arising from:
  - (a) contract
  - (b) breach of contract;
  - (c) breach of any express or implied duty of good faith and fair dealing; or
  - (d) tortious breach of any express or implied covenant including but not limited to those arising out of a contract.

(2) As used in subsection (1) or this section, emotional or mental distress includes but is not limited to mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry."

-39-

Leo Noonan

Q. Mr. Noonan, has the financial difficulty that you have had as a result of filing the bankruptcy, has that had any effect on your health?

A. Yes, sir.

Q. What effect has it had?

A. Oh, mental strain, unable to sleep, stiffness.

Q. What else?

A. Stress, I guess, or whatever you want to call it. TR 565.

\* \* \* \*

Q. I want to know if the difficulties you have had financially, filing bankruptcy, if that has been an embarrassment to you?

A. Yes, sir, very much. TR 565.

Dan Noonan

Q. Tell the Court and the Jury some of those problems it [the bankruptcy] has caused you.

A. Its embarrassing for one thing, being embarrassed about it, shameful. TR 625.

\* \* \* \*

Q. How about your health, have an effect on your health?

A. Probably mental stress. I don't think it hurt my health like my brother's physically. Mentally it did.

Q. Been hard on you mentally?

A. Yes.

Q. How?

A. Oh, we have a hard time making it right now, trying to get going again. TR 628.

*Carl Englund*

SENATE JUDICIARY  
EXHIBIT NO. 4  
DATE March 12, 1981  
BILL NO. HB 167

PROPOSED AMENDMENT TO HOUSE BILL 167 - THIRD READING COPY

Page 1, Line 18

Following: "plaintiff"

Insert: "or the contract or the breach is of such a kind that emotional disturbance was a particularly likely result"

SENATE JUDICIARY

EXHIBIT NO. 5

DATE March 12, 1981

BILL NO. HB 442

**SUMMARY OF HB442 (MERCER)**

(Prepared by Senate Judiciary Committee staff)

HB442 was submitted in substantially the same form to the Joint Interim Subcommittee on Liability Issues which did not adopt the bill as a committee bill. This bill revises the law relating to punitive damages. The bill prohibits recovery of punitive damages in any contract case or case arising from breach of an express or implied covenant, except a products liability case or an insurance bad faith case. Allows recovery only cases of actual fraud or actual malice, not presumed fraud or malice as is the law now. The trier of fact, judge or jury, determines liability for punitive damages, but only the judge gets to set the amount of punitive damages. Prohibits insurance coverage of punitive damages.

COMMENTS: None.

C:\LANE\WP\SUMHB442.

APPENDIX BMontana State And Federal Court Cases  
In Which Punitive Damages Were Awarded1. Silver Bow County Cases.a. Dunfee v. Baskin and Robbins, Silver Bow County, 83 C-258 (1983).

The jury found that the defendant breached the implied covenant of good faith and fair dealing by failing to assist the plaintiffs in relocating a Baskin and Robbins franchise. The jury awarded the following damages:

1. \$232,138.88 compensatory damages
2. \$300,000 punitive damages

b. Flannigan v. Prudential Federal Savings & Loan Association and Fred Ogolin, Silver Bow County, 83 C-174 (1983).

The jury found that the defendant breached the implied covenant of good faith and fair dealing in a wrongful discharge action in which the defendant fired a 60-year-old employee who had been with the company for 28 years. The jury awarded the following damages:

1. \$94,170 in financial damages (lost wages and benefits)
2. \$100,000 in general damages and mental stress
3. \$1,300,000 punitive damages

c. Dinsmore v. First Metals Bank & Trust Company, Silver Bow County, 81 C-67 (1983).

The jury found that the defendant Bank acted in bad faith in a commercial transaction whereby the bank reduced the plaintiff's floor plan limits in an alleged attempt to force him out of business. The jury awarded the plaintiff damages as follows:

1. \$3,000,000 compensatory damages
2. \$5,000,000 punitive damages

2. Missoula County.

a. Stowe v. Farmers Insurance Group, Missoula County, 572-37 (1985).

The jury found that the defendant committed bad faith in defending a first-party claim on the basis of arson. The jury awarded the following damages:

1. \$72,728.01 compensatory damages
2. \$2,000 living expenses
3. \$100,000 punitive damages

b. Eliason v. Wallace, \_\_\_ Mont. \_\_\_, \_\_\_ P.2d \_\_\_, 41 St.Rep. 758 (1984).

The jury found the defendant liable for punitive damages when he made a left turn in front of the plaintiff. The jury awarded the following damages:

1. \$2,963 in actual damages
2. \$1,500 punitive damages (approximately)

c. Campbell v. Viking Sewing Machine, Missoula County, CV 83-214-M (1983).

The jury found bad faith on the part of the defendant in a contract action.

The following damages were awarded:

1. \$62,500 compensatory damages
2. \$3,125 punitive damages

3. Lake County.

a. Britton v. Farmers Insurance Group, Lake County, DV 82-140 (1982).

The jury found bad faith where the insurance company defended an insurance benefit claim on the grounds of arson. The following damages were awarded:

1. \$267,000 compensatory damages
2. \$400,000 punitive damages

4. Flathead County.

a. Gibson v. Western Fire Exchange, Flathead County, DV 80-341 and Supreme Court affirmed in 41 St.Rep. 1048 (1984).

This was a first-party bad faith claim wherein an insurance company did not settle within the limits, and the judgment was for way over the limit amount. The damages awarded by the jury were as follows:

1. \$250,000 compensatory damages
2. \$300,000 punitive damages

b. Allers v. Willis, \_\_\_ Mont. \_\_\_, 643 P.2d 592, 39 St.Rep. 745 (1982).

This was an action for damages arising from a collision between a car and a truck. The jury awarded the following damages:

1. \$128,000 actual damages
2. \$15,000 punitive damages

c. Lipinski v. Title Insurance Company, \_\_\_ Mont. \_\_\_, 655 P.2d-970 (1982).

The plaintiff brought suit for failure of the title insurance company to disclose easements and to defend two suits against the plaintiff. The Supreme Court affirmed the judgment against the Title Insurance Company on the first claim. The damages awarded were as follows:

1. \$25,000 actual damages
2. \$15,000 punitive damages

In this case, the trial court had found the above damages on two suits; however, the Montana Supreme Court held that the defendant was liable only on the first suit. Therefore, the Montana Supreme Court held that the award must be decreased by that amount given on the second suit.

**5. Gallatin County.**

a. First Security Bank of Bozeman v. Goddard, 181 Mont. 407, 593 P.2d 1040 (1979).

Insurer denied insured's claim for credit disability insurance on the basis of insurer's erroneous belief that the policy had not become effective as of the date that the insured sustained the disabling disease. This breached the duty of good faith and fair dealing, and the court, sitting without a jury, awarded the following damages which were affirmed on appeal:

1. \$4,227.95 disability benefit damages
2. \$5,000 exemplary damages

b. Gates v. Life of Montana Insurance Company, Gallatin County, 638 P.2d 1063 (1982), after remand, 40 St.Rep. 1287 (1983).

The plaintiff found the defendant liable for breach of the covenant of good faith and fair dealing implicit in the at-will employment context in wrongfully discharging an employee without the proper procedure. The jury awarded damages as follows:

1. \$1,891 compensatory damages
2. \$50,000 punitive damages



c. Crenshaw v. Bozeman Deaconess Hospital, \_\_\_ Mont. \_\_\_, \_\_\_ P.2d \_\_\_, 41 St.Rep. 2251 (1984).

The plaintiff respiratory therapist recovered a judgment against a hospital which terminated her employment for alleged behavior inconsistent with hospital guidelines during her probationary employment period. The jury awarded her damages as follows:

1. \$125,000 compensatory damages
2. \$25,000 punitive damages

The damage awards were affirmed on appeal.

d. Knaub v. Big Sky, Gallatin County, DV 83-156 (1984).

The plaintiff was wrongfully discharged, and the jury awarded damages as follows:

1. \$35,000 compensatory damages
2. \$250,000 exemplary damages

e. Harris v. American General Life Ins. Co. of Delaware, \_\_\_ Mont. \_\_\_, 658 P.2d 1089, 40 St.Rep. 164 (1983).

This case involved an insurance company's alleged bad faith in denying a claim under an accidental death policy. The jury returned a verdict as follows:

1. Denied accidental death benefits
2. \$30,000 punitive damages

The Supreme Court affirmed the judgment.

f. Shahrokhfar v. State Farm Mut. Auto. Ins., \_\_\_ Mont. \_\_\_, 634 P.2d 53 (1981).

Plaintiff sued insurance company who mistakenly sued plaintiff for property damage arising out of an automobile accident. The jury awarded:

1. \$850 actual damages
2. \$80,000 punitive damages

The District Judge reduced the entire damage award by 16 percent because of contributory negligence. The Supreme Court found the punitive damages could not be reduced by the percentage of plaintiff's contributory negligence.

6. Fergus County.

a. Butcher v. Petranek, 181 Mont. 358, 593 P.2d 743, 36 St.Rep. 830 (1979).

This involved a trespass action, and the jury awarded the following damages:

1. \$925 actual damages
2. \$20,000 punitive damages

This damage award was affirmed on appeal.

7. Cascade County.

a. Martinson v. B N, Cascade County, Judge McCarvel.

This was a contract situation in which the plaintiff alleged defendant breached an implied contract by discontinuing plaintiff's supply after one year. The plaintiff had a contract with the B N for only this one year. The court found in favor of the plaintiff and awarded damages as follows:

1. \$1.44 million compensatory damages
2. \$1.5 million punitive damages

b. Tynes v. Bankers Life, Cascade County, ADV-81-1264 (March 11, 1985).

This was a first-party claim for medical benefits and bad faith. The jury awarded damages as follows:

1. Medical expenses \$49,167.09
2. \$100,000 emotional distress damages for one party
3. \$100,000 emotional distress damages for the other party
4. \$200,000 punitive damages

c. Baiz v. Checkrite Service Company, etc., Cascade County (10-15-80).

This involved a defendant sending bills for collection and threatening letters where the plaintiff was not, as of yet, in default. The jury awarded damages as follows:

1. Against Check-Rite: \$5,000 compensatory and \$25,000 punitive.
2. Against Credit Service: \$5,000 compensatory and \$15,000 punitive.

d. Fitzgerald v. Western Fire Insurance Company, \_\_\_ Mont. \_\_\_, \_\_\_ P.2d \_\_\_, 41 St.Rep. 654 (1984).

Jury verdict against defendant as a result of an automobile accident. Defendant was drunk at the time of the accident and traveling at an extremely high rate of speed. The jury awarded damages as follows:

1. General and special damages.
2. \$5,000 punitive damages

e. Weber v. Blue Cross of Montana, \_\_\_ Mont. \_\_\_, 643 P.2d 198, 39 St.Rep. 245 (1982).

This was an action for damages for contract benefits and wrongful cancellation of a medical plan contract. The jury awarded damages as follows:

1. \$157,137 compensatory damages
2. \$999,999 punitive damages

This award was affirmed in part and reversed in part. A new trial was necessitated.

f. Harrington v. Holiday Rambler Corp., 176 Mont. 37, 575 P.2d 578 (1977).

Trailer buyers sued manufacturer for damages resulting from defects in a trailer. The manufacturer had misrepresented the type and quality of the trailer. The jury awarded damages as follows:

1. \$17,691.90 general damages
2. \$20,000.00 punitive damages

The Supreme Court affirmed the judgment as modified (general damages were reduced).

g. Toeckes v. Baker, \_\_\_ Mont. \_\_\_, 611 P.2d 609 (1980).

Plaintiff brought suit for deprivation of use of the property through intimidation. District Court entered judgment against defendant and awarded the following damages:

1. \$230 actual damages
2. \$1,000 punitive damages

h. Welsh v. Pritchard, 125 Mont. 517, 241 P.2d 816 (1952).

Plaintiff brought action against a landlord for invasion of right of privacy, trespass, and wrongful entry. The jury found for plaintiff and awarded the following damages:

1. No actual damages
2. \$250 exemplary damages

8. Federal Court in Great Falls.

a. Marshall v. B N, CV 79-38-GF (March 6, 1981).

This was a crossing accident in Cut Bank. The jury awarded the following damages:

1. \$75,000 compensatory damages
2. \$725,000 exemplary damages

This case was taken to the Ninth Circuit, and they reversed and remanded it on the basis of signals that the train was to have.

b. International Harvester v. Weaver Maxwell, CV 83-32-GF; and Weaver Maxwell v. International Harvester, CV 82-41-GF.

This action arose because of an alleged bad faith canceling of a distributorship. The two cases were tried together, and the following jury verdicts resulted:

1. CV 83-32-GF: Plaintiff International Harvester not entitled to recover. Defendant recovered one million dollars on its counterclaim.
2. CV 82-41-GF: Plaintiff not entitled to recover. International Harvester recovered \$40,000 on its counterclaim.

9. Dawson County.

a. Brenner and Gehnert v. Cullinan, the Brenner action was 9797-A; the Gehnert action was 9753-A (1982).

This involved an altercation whereby the parties were fighting possession of property. The verdicts were as follows:

1. In 9797-A: \$199.80 actual damages; \$10,000 punitive damages.
2. In 9753-A: \$414.52 actual damages; \$10,000 punitive damages.

This judgment was appealed, and the Supreme Court remanded the case for a new trial on the amount of damages. There was a question over whether or not pain and suffering should be included within the actuals.

10. Roosevelt County.

- a. Johnson v. Murray, \_\_\_ Mont. \_\_\_, 656 P.2d 170 (1982).

This involved an action against a police officer for damages regarding a speeding ticket, for intimidation, and other charges. A default judgment was entered against the defendant as follows:

1. \$100,000 general damages
2. \$100,000 punitive damages
3. \$1,500 attorney's fees.

The judgment was affirmed.

11. Yellowstone County.

- a. Doll v. Major Muffler Centers, Inc., \_\_\_ Mont. \_\_\_, \_\_\_ P.2d \_\_\_, 41 St.Rep. 429 (1984).

This was an action to recover damages on a lease for equipment alleging violation of the Montana Unfair Trade Practices and Consumer Protection Act. The jury awarded for the plaintiff and awarded damages as follows:

1. \$30,000 actual damages against Major Muffler
2. \$90,000 punitive damages against Major Muffler
3. \$10,000 actual damages against Colonial Pacific
4. \$40,000 punitive damages against Colonial Pacific

This judgment was appealed, and the Supreme Court reversed as to Major Muffler and modified as to Colonial Pacific.

b. Linda M. Hart-Anderson v. Geraldine C. Hauck and State Farm Insurance Company, DV 83-1404 (tried 1984).

This case involved a bad faith refusal to pay policy benefits. The damages awarded by the verdict were as follows:

1. \$687 actual damages
2. \$25,000 emotional distress damages
3. \$687,000 punitive damages

c. Safeco v. George Ellinghouse, DV 82-1695 (December 20, 1984).

This involved a declaratory judgment action filed by Safeco to determine its liability under a business protection plan policy. The defendant counterclaimed in the declaratory judgment action alleging violation of the covenant of good faith and fair dealing, among other things. The jury found Safeco liable and awarded damages as follows:

1. \$25,000 economic damages
2. \$200,000 emotional damages
3. \$5,000,000 punitive damages

12. Park County.

a. Purcell and Gary v. Automatic Gas Distributors, Inc., Mont. \_\_\_\_\_,

P.2d \_\_\_\_\_, 40 St.Rep. 1997 (1983).

This involved a breach of contract in the sale of gas from wholesalers to retailers, wherein a commission was withheld from the retailers without their knowledge. The jury awarded:

1. Gary: \$7,091.50 general damages  
\$50,000.00 punitive damages
2. Purcell: \$6,107.50 general damages  
\$50,000.00 punitive damages

The Supreme Court affirmed as to Automatic Gas.

13. Big Horn County.

a. Kildahl and Holland v. Fox Oil Co. of Hardin, Big Horn County, No. 9

(1983).

This involved the breach of a lease on a service station. The jury awarded damages as follows:

1. \$39,900 compensatory damages
2. \$10,000 punitive damages

The District Court judge reduced the compensatory award to \$16,000 but retained the punitive damages.



- b. Lauman v. Lee, \_\_\_ Mont. \_\_\_, 626 P.2d 830 (1981).

Action by motorist against an owner and operator of another car involved in a collision to recover damages. There was evidence that the defendant had destroyed critical physical evidence. The jury found no negligence or compensatory damages but did award \$17,500 punitive damages, plus costs.

The Supreme Court affirmed this award, holding that the failure of the jury to fix a monetary value of plaintiff's damages caused by the destruction of evidence did not preclude an award of punitive damages.

14. Musselshell County.

- a. Miller v. Watkins, \_\_\_ Mont. \_\_\_, 653 P.2d 126 (1982).

Breach of contract action for breeding horses. Jury verdict for defendant on his counterclaim, with the following damages:

1. \$78,000 actual damages (less \$1,500 for plaintiff)
2. \$50,000 punitive damages

TESTIMONY FOR HB 442  
SENATE JUDICIARY COMMITTEE

MARCH 12, 1987

MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE, MY NAME IS TUCK VOSBURG, PRESIDENT OF PACIFIC HIDE & FUR DEPOT FROM GREAT FALLS, MONTANA.

PACIFIC IS A MONTANA CORPORATION DOING BUSINESS HERE SINCE ABOUT 1919. WE ARE INVOLVED IN HIDES, FURS, 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 WAS SUED AND WENT TO TRIAL IN TWO CASES WHERE SUBSTANTIAL PUNITIVE DAMAGES WERE REQUESTED.

WHEN WE ARE SUED WE SEND THE COMPLAINT TO OUR INSURANCE COMPANY. WITHIN DAYS WE RECEIVE A LETTER FROM THE INSURANCE COMPANY ACCEPTING LIMITED COVERAGE BUT STATING, AND I QUOTE FROM THEIR LETTER, "THE POLICY OF INSURANCE DOES NOT INDEMNIFY OR COVER EXEMPLARY DAMAGES. SHOULD THE PLAINTIFF REALIZE AN AWARD FOR EXEMPLARY AND/OR PUNITIVE DAMAGES, YOU WOULD BE RESPONSIBLE FOR SATISFACTION OF SAME." IN MONTANA THIS DENIAL OF COVERAGE IS A COMMON OCCURANCE BECAUSE INSURANCE COMPANIES HAVE ALREADY EXPRESSLY EXCLUDED COVERAGES FOR PUNITIVE DAMAGES IN THEIR GENERAL LIABILITY POLICIES.

NEXT, DISCOVERY BEGINS WITH ATTORNEYS FEES CLICKING OFF AND MANAGEMENT TIME MOUNTS. 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.

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. THAT MEANS LOWERING INVENTORIES AND ACCOUNTS RECEIVABLE OR SELLING EQUIPMENT, BUILDINGS, AND LAND. CASH IS RARELY AVAILABLE IN THESE SUMS. 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 WITH ACTUAL DAMAGES A JURY DETERMINES. THE JURY, OFTEN COMPRISED OF PEOPLE WITH NO BUSINESS EXPERIENCE, CAN AFFECT THE HEALTH OF A COMPANY WITH THE STROKE OF A PEN. 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. THIS IS WRONG, IT SHOULD BE CORRECTED.

~~I ASK YOU TO PASS HB 442.~~

*But since issues meriting punitive damages under HB 442 can be caused by a single employee acting on his own, the company and the rest of its employees should be able to protect themselves from large punitive damage awards. Therefore, section 3 prohibiting insurance for punitive damages should be deleted.*

*I ask you to pass H.B. 442 without section 3.*

*McVasburg, Pres.  
D - L. Hildner For Paper*



March 12, 1987

## TESTIMONY IN SUPPORT OF HB442

My name is Kay Foster. I appear on behalf of the Billings Area Chamber of Commerce and the Governor's Council on Economic Development.

For nine months I served as chairman of the Insurance Subcommittee of the Governor's Council on Economic Development. Our subcommittee was assigned the specific task of seeking legislative and administrative solutions to the problem of the lack of available and affordable liability insurance for Montana businesses and governmental entities. Six legislative recommendations were approved by the entire Council and one of these is contained in HB442.

The Council recommended that uncertainties associated with the punitive damage issue must be removed to create a more stable environment for both the insurance industry and the business community. They further recommended that "In regard to punitive damages, judges would instruct juries before its deliberations that they are to determine only if the payment of punitive damages is in order, and that upon reaching a verdict, the judge will determine the amount of the award if the jury has decided for the plaintiff." We feel that Representative Mercer's bill accomplishes this objective and we urge its support.

EXEMPLARY (PUNITIVE) DAMAGES MONTANA SUPREME COURT  
1965 TO DATE

| CASE  | DEFENDANT ENTITY                  | COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY  | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT   |
|---|-----------------------------------|--|--|--|
| Crystal Springs Trout Co. et al. v. First State Bank of Froid & Jerry B. Wallander (1987) | Bank & Bank President             | \$461,848  | \$159,907                                    | Affirmed-\$159,907   |
| Kelly W. Tynes & Walter E. Tynes v. Banker's Life Co. (1986)                              | Life Insurance Co.                | \$258,752  | \$200,000                                    | Affirmed-\$200,000   |
| Northwestern Nat'l Bank of Great Falls v. Weaver-Maxwell, Inc. (1986)                     | Bank v. Farm Equipment Dealership | \$2,519,671 to Defendant against Bank                | \$140,000 to Defendant against Bank          | Reversed \$0   |
| Safeco Insurance Co. v. George Ellinghouse (1986)   | Insurance Co. & Individual        | \$325,000 against Ins. Co.                           | \$5,000,000 against Ins. Co. on counterclaim | Remanded for New Trial or Damage Reduction to Total \$1,000,000; which is \$675,000 punitive damages |
| James P. Roberts v. Mission Valley Concrete Industries, Inc. (1986)                       | A concrete construction plant     | approx. \$20,000                                     | \$5,000                                      | Affirmed-\$5,000   |
| Mildred Flanigan v. Prudential Federal Savings & Loan Assoc. & Fred Ogolin (1986)         | Savings & Loan Assoc.             | \$194,170  | \$1,300,000                                  | Affirmed-\$1,300,000   |
| Richard A. Shors & Ann C. Shors v. Jerry L. Branch, et al. (1986)                         | Consulting Geologist              | \$17,000   | \$35,000                                     | Affirmed-\$35,000  |

| CASE   | DEFENDANT ENTITY     | COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT |
|--|----------------------|--|---|--|
| Terrence Dunfee & Patricia Dunfee v. Baskins Robbins, Inc. (1986)    | Ice Cream Franchise  | \$232,138.88   | \$300,000                                   | Affirmed \$300,000                                   |
| Bill Britton v. Farmers Insurance Group (Truck Ins. Exchange) (1986) | Ins. Co.             | \$214,748.54   | \$400,000                                   | Affirmed-\$400,000                                   |
| William F. Rauch, Jr. v. Violet Michel (1986)                        | Individual           | \$9,297  | \$5,000                                     | Affirmed-\$5,000                                     |
| Alan D. Nicholson v. United Pacific Ins. Co. (1985)                  | Insurance Co.        | \$286,105  | \$225,000                                   | Affirmed-\$225,000                                   |
| Morrell Tribby v. Northwestern Bank of Great Falls (1985)            | Bank                 | \$119,890  | \$1,000,000                                 | Remanded-\$0   |
| John Forsythe & Beth Tinney v. Dan Elkins et al. (1985)              | Individual           | Remanded   | \$1,000                                     | Affirmed-\$1,000                                     |
| George Smith & Wm. Smith v. Larry W. Moran et al. (1985)             | Individuals          | \$22,000   | \$20,000                                    | Reversed \$0   |
| 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                                     |
| Cehnert v. Cullinan (1984)   | Individuals (2)      | \$614.32   | \$10,000 for each of 4 Deendants            | Affirmed total of \$40,000 remanded other grounds    |

| CASE  | DEFENDANT ENTITY        | COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED | EXEMPLARY DAMAGE ASSESSED BY JURY | DAMAGE ASSESSED BY SUPREME COURT         |
|---|-------------------------|--|-----------------------------------|--|
| 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<br>\$10,000                                 | \$90,000<br>\$40,000              | Affirmed-\$90,000<br>Vacated-other award |
| Purcell and Gary v. Automatic Gas Distributors, Inc. (1983)   | Gas Distributors        | \$13,198   | \$50,000 each Plaintiff           | Affirmed-\$100,000                       |
| Kuiper v. The Good-year 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                             |
| 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                       |

SENATE JUDICIARY

EXHIBIT NO. 9

DATE 3-12-87

U R 442

| CASE  | DEFENDANT ENTITY         | COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY            | AMOUNT OF EXEMPLAR DAMAGE ASSESSED BY SUPREME COURT |
|---|--------------------------|--|--|---|
| Miller v. Watkins (1982)  | Public Stable Owners     | (no jury)<br>\$1,500 (Plf.)<br>\$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 Co.            | \$850  | \$80,000   | Affirmed \$80,000                                   |
| Dahl v. Petroleum Geophysical Co. (1981)  | Oil Well Drilling Co.    | \$14,850   | \$8,500  | Affirmed \$8,500                                    |
| Lauman v. Lee (1981)  | Individual               | -0-  | \$17,500   | Affirmed \$17,500                                   |
| Flemer v. Ming (1980)   | Individual & Corporation | \$13,127 Estimated                                   | \$20,000 Approx.                                       | Affirmed Est. \$20,000                              |
| Magnunson v. Billmater (1980)   | Individual               | \$1,644  | \$11,500 (to Ronald Magnuson)                          | Affirmed \$11,500                                   |
| Toeckes v. Baker (1980)   | Individual               | \$230  | \$1,000  | Affirmed \$1,000                                    |
| First Security Bank of Bozeman v. Coddard v. Bankers Union Life Ins. Co. (1979) | Life Ins. Co.            | \$4,227.95   | \$5,000  | Affirmed \$5,000                                    |
| Butcher v. Petranek (1979)  | Individual               | \$925  | \$20,000   | Affirmed \$20,000                                   |

SENATE JUDICIARY

EXHIBIT NO. 9

DATE 3-12-87

BILL NO. 112



| CASE   | DEFENDANT ENTITY                  | COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED | AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY | AMOUNT OF EXEMPLAR DAMAGE ASSESSED BY SUPREME COURT |
|--|-----------------------------------|--|---|---|
| Bermes v. Sylling (1978)   | Individual                        | \$130,463.62   | \$5,000                                     | Affirmed \$5,000                                    |
| Miller v. Fox (1977)   | Individual                        | No value specified                                   | \$400                                       | Affired \$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. & its manager | \$2,500  | \$7,500                                     | Affirmed \$7,500                                    |
| Gagnier v. The Curran Construction Co. (1968)  | Construction 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                                   |
| Security State Bank of Harlen 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-TWO YEARS

\$4,360,057

NAME: N. E. USBURG DATE: 3-12-57

ADDRESS: G. REEF FALLS

PHONE: 727-6222

REPRESENTING WHOM? Pacific Hide + Fur Dept

APPEARING ON WHICH PROPOSAL: HB 442

DO YOU: SUPPORT? X AMEND? X OPPOSE?       

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY  
EXHIBIT NO. 9  
DATE 3-12-8  
BILL NO. H.B. 4