

1 H BILL NO. 367  
2 INTRODUCED BY [Signature]

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE ELEMENTS  
5 OF AN ACTION FOR BAD FAITH PROSECUTION; ESTABLISHING  
6 DEFENSES IN SUCH AN ACTION; PROVIDING FOR LIABILITY OF  
7 DEFENDANT'S ATTORNEY; AND PROVIDING FOR PUNITIVE DAMAGES."

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

10 Section 1. Definition of bad faith. As used in this  
11 act, "bad faith" includes but is not limited to:

12 (1) the initiation or maintenance of an action without  
13 the belief or reason to believe that the action is  
14 meritorious;

15 (2) the initiation or maintenance of an action with  
16 the purpose to harass the defendant; or

17 (3) the initiation of an action to force a settlement  
18 that the claimant knows or has reason to know has no  
19 relation to the merits of the case.

20 Section 2. Elements of tort of bad faith prosecution.  
21 In order to maintain an action for bad faith prosecution,  
22 each of the following elements must be shown:

23 (1) the institution or continuation of judicial  
24 proceedings, either civil or criminal, or of administrative,  
25 arbitration, or disciplinary proceedings;

1 (2) the institution of such proceedings by or at the  
2 instance of the defendant;

3 (3) the termination of such proceedings in plaintiff's  
4 favor;

5 (4) bad faith in instituting the proceedings;

6 (5) want of probable cause for the proceedings; and

7 (6) the suffering of injury or damage by plaintiff as  
8 a result of such proceedings.

9 Section 3. Defenses. (1) Any of the following  
10 constitute a complete defense to a claim for damages for bad  
11 faith prosecution:

12 (a) the absence of any one of the elements set forth  
13 in [section 2];

14 (b) the advice of defendant's counsel to pursue the  
15 proceeding complained of, if it appears that the advice was  
16 given after a full and fair statement of all the facts to  
17 the attorney and that the proceeding was instituted in  
18 reliance in good faith on such advice;

19 (c) if the original proceeding was terminated in  
20 plaintiff's favor other than on the merits, the guilt or  
21 liability of plaintiff; or

22 (d) a conviction of plaintiff in a prior criminal  
23 proceeding.

24 (2) The defendant has the burden of pleading and  
25 proving the defenses set forth in (b), (c), and (d) of

1 subsection (1).

2 Section 4. Liability of attorney. An attorney is not  
3 liable for the bad faith prosecution of his client unless it  
4 appears that he knew or through reasonable inquiry should  
5 have known that his client had no just claim or cause.

6 Section 5. Punitive damages. In an action for bad  
7 faith prosecution, punitive damages may be recovered by the  
8 plaintiff if actual damages have been awarded. When  
9 exercising its discretion as to the award of punitive  
10 damages, the judge or jury should be guided by the nature of  
11 the wrong committed and the aggravating circumstances shown,  
12 rather than by the amount of compensatory damages awarded.

13 Section 6. Remedy nonexclusive. The remedy provided by  
14 this act is in addition to any other remedy available.

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