

HOUSE BILL NO. 363

INTRODUCED BY MARKS

IN THE HOUSE

January 22, 1985	Introduced and referred to Committee on Judiciary.
February 21, 1985	Committee recommend bill do not pass as amended.  Objection to adverse committee report.  Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass as amended.
February 25, 1985	Correctly engrossed.
February 26, 1985	Third reading, passed.  Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Judiciary.
March 25, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 26, 1985	Motion pass consideration until 67th Legislative Day.
March 28, 1985	Second reading, concurred in as amended.

March 30, 1985

Third reading, concurred in.  
Ayes, 42; Noes, 7.

Returned to House with  
amendments.

IN THE HOUSE

March 30, 1985

Received from Senate.

April 4, 1985

Second reading, amendments  
concurred in.

April 5, 1985

Third reading, amendments  
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 363  
 2 INTRODUCED BY [Signature]

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING PUNITIVE  
 5 DAMAGES IN CIVIL ACTIONS; AMENDING SECTION 27-1-221, MCA;  
 6 AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE  
 7 EFFECTIVE DATE."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 27-1-221, MCA, is amended to read:

11 "27-1-221. When exemplary damages allowed. (1) In  
 12 Subject to subsection (2), in any action for a breach of an  
 13 obligation not arising from contract where the defendant has  
 14 been guilty of oppression, fraud, or malice, actual or  
 15 presumed, the jury, in addition to the actual damages, may  
 16 give damages for the sake of example and by way of punishing  
 17 the defendant.

18 (2) The jury may not award exemplary or punitive  
 19 damages:

- 20 (a) unless it has awarded actual damages;
- 21 (b) if it has found the defendant guilty only of  
 22 negligence; and
- 23 (c) unless the plaintiff has proved all elements of  
 24 the claim for exemplary or punitive damages beyond a  
 25 reasonable doubt, which is the same burden of proof that a

1 prosecutor has in a criminal case.

2 (3) The plaintiff may not present, with respect to the  
 3 issue of exemplary or punitive damages, any evidence to the  
 4 jury regarding the defendant's financial affairs or net  
 5 worth unless the judge first rules, outside the presence of  
 6 the jury, that the plaintiff has presented a prima facie  
 7 claim for exemplary or punitive damages.

8 (4) As used in this section, the following definitions  
 9 apply:

10 (a) "Exemplary or punitive damages" means an amount up  
 11 to 5% of the net worth of each defendant or three times the  
 12 amount of actual damages awarded, not including attorney  
 13 fees or costs, whichever is less.

14 (b) "Fraud" means an intentional misrepresentation,  
 15 deceit, or concealment of a material fact known to the  
 16 defendant with the intention on the part of the defendant to  
 17 thereby deprive a person of property or legal rights or  
 18 otherwise cause injury.

19 (c) "Malice" means a specific intent of the defendant  
 20 to cause injury to the plaintiff or to engage in conduct  
 21 that the defendant knew or should have known would injure  
 22 the plaintiff, unless the defendant acted in good faith.

23 (d) "Oppression" means cruel and unjust hardship  
 24 caused by the defendant with a specific intent to do so."

25 NEW SECTION. Section 2. Severability. If a part of



1 this act is invalid, all valid parts that are severable from  
2 the invalid part remain in effect. If a part of this act is  
3 invalid in one or more of its applications, the part remains  
4 in effect in all valid applications that are severable from  
5 the invalid applications.

6 NEW SECTION. Section 3. Applicability. This act  
7 applies to any proceeding begun after or pending on the  
8 effective date of this act that has not been submitted to a  
9 jury on the effective date of this act.

10 NEW SECTION. Section 4. Effective date. This act is  
11 effective on passage and approval.

-End-

HB 0363/02  
COMMITTEE  
ON JUDICIARY  
AS AMENDED  
RECOMMEND DO NOT PASS  
OBJECTION RAISED TO  
ADVERSE COMMITTEE REPORT

HOUSE BILL NO. 363  
INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

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(2) The jury may not award exemplary or punitive damages:

(a) unless it has awarded actual damages;

(b) if it has found the defendant guilty only of negligence; and

(c) unless the plaintiff has proved all elements of the claim for exemplary or punitive damages beyond a reasonable doubt, which is the same burden of proof that a

prosecutor has in a criminal case BY CLEAR AND CONVINCING EVIDENCE.

(3) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.

(4) As used in this section, the following definitions apply:

(a) "Exemplary or punitive damages" means an amount up to 5% of the net worth of each defendant or three times the amount of actual damages awarded, not including attorney fees or costs, whichever is less.

(b) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant to thereby deprive a person of property or legal rights or otherwise cause injury.

(c) "Malice" means a specific intent of the defendant to cause injury to the plaintiff or to engage in conduct that the defendant knew or should have known would injure the plaintiff, unless the defendant acted in good faith.

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prosecutor has in a criminal case BY CLEAR AND CONVINCING EVIDENCE.

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(4) A DEFENDANT IS GUILTY OF OPPRESSION IF HE INTENTIONALLY CAUSES CRUEL AND UNJUST HARDSHIP BY:

(A) MISUSE OR ABUSE OF AUTHORITY OR POWER; OR

(B) TAKING ADVANTAGE OF SOME WEAKNESS, DISABILITY, OR MISFORTUNE OF ANOTHER PERSON.

(5) PUNITIVE DAMAGES MAY NOT BE AWARDED TO A PLAINTIFF IN AN AMOUNT IN EXCESS OF \$500,000.

(4) As used in this section, the following definitions apply:

(a) "Exemplary or punitive damages" means an amount up to 5% of the net worth of each defendant or three times the amount of actual damages awarded, not including attorney fees or costs, whichever is less;

(b) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant to thereby deprive a person of property or legal rights or

1 ~~otherwise-cause-injury.~~

2 ~~(c) -- "Malice" means a specific intent of the defendant~~  
3 ~~to cause injury to the plaintiff or to engage in conduct~~  
4 ~~that the defendant knew or should have known would injure~~  
5 ~~the plaintiff, unless the defendant acted in good faith.~~

6 ~~(d) -- "Oppression" means cruel and unjust hardship~~  
7 ~~caused by the defendant with a specific intent to do so."~~

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9 this act is invalid, all valid parts that are severable from  
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15 applies to any proceeding begun after or pending on the  
16 effective date of this act that has not been submitted to a  
17 jury on the effective date of this act.

18 NEW SECTION. Section 4. Effective date. This act is  
19 effective on passage and approval.

-End-



COMMITTEE OF THE WHOLE AMENDMENT

SENATE

Mar 28, 1985  
DATE

1:25  
TIME

SENATE JUDICIARY COMMITTEE REPORT OF

MR. CHAIRMAN: I MOVE TO AMEND MARCH 23, 1985, ON HOUSE BILL No. 363

~~XXXXXXXXXX~~ ) as follows:  
~~XXXX~~

Amendment No. 3.

Strike: subsection (7) of inserted material in its entirety

Renumber: subsequent subsection

PC3HB363.671

ADOPT

REJECT

*Mike Pally*

SENATE STANDING COMMITTEE REPORT

Page 1 of 3

March 23 19 85

March 23

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 363

third reading copy (blue color)

(Senator Towe)

LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS

Respectfully report as follows: That HOUSE BILL No. 363

be amended as follows:

1. Page 1, line 10. Following: line 9

Insert: "NEW SECTION. Section 1. Purpose. The purpose of 27-1-221 is to deter claims for punitive or exemplary damages that are not clearly based in fact and, to that end, the legislature intends for 27-1-221 to be used in combination with early and ready application and granting of motions for summary judgment pursuant to Rule 56 of the Montana Rules of Civil Procedure where such claims are not based in fact, and the application of the sanctions provided for in Rule 11 of the Montana Rules of Civil Procedure against those parties responsible for making such claims."

Renumber: subsequent sections

Page 2 of 3

HOUSE BILL NO. 363

2. Page 2, line 2. Following: "EVIDENCE."

Insert: "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt."

(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk."

Renumber: subsequent subsections

3. Page 2, lines 14 and 15.

Strike: lines 14 and 15 in their entirety

Insert: "(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case."

(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than \$25,000 or 1% of the defendant's net worth, whichever is greater.

(7) If a plaintiff sought exemplary damages at trial, but such damages were not awarded, the court shall submit to the jury a question concerning whether the jury found in the evidence presented any reasonable basis in fact for seeking exemplary damages. If the response to the question is negative, the court may, in its discretion as a penalty against such party, the party's attorney, or both, assess damages in an amount not to exceed what is determined by the court to be reasonable attorney fees and costs of the defendant incurred in defense of such claims.

(8) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in section (6)(b)."

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CONTINUED

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Chairman.

CONTINUED

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Page 3 of 3

HOUSE BILL NO. 363

4. Page 3, line 15.

Following: "any"

Strike: "proceeding begun"

Insert: "claim arising"

Following: "after"

Strike: "or pending on"

5. Page 5, lines 16 and 17.

Following: "act" on line 16

Strike: remainder of line 16 through "act" on line 17

6. Page 3, line 18.

Following: line 17

Insert: "Section 5. Codification instruction. Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 2, and the provisions of Title 27, chapter 1, part 2, apply to section 1."

Renumber: subsequent section

AND AS AMENDED

BE CONCURRED IN

  
.....  
Senator Joe Mazurek, Chairman

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7 EFFECTIVE DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. SECTION 1. PURPOSE. THE PURPOSE OF  
11 27-1-221 IS TO DETER CLAIMS FOR PUNITIVE OR EXEMPLARY  
12 DAMAGES THAT ARE NOT CLEARLY BASED IN FACT, AND TO THAT END,  
13 THE LEGISLATURE INTENDS FOR 27-1-221 TO BE USED IN  
14 COMBINATION WITH EARLY AND READY APPLICATION AND GRANTING OF  
15 MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO RULE 56 OF THE  
16 MONTANA RULES OF CIVIL PROCEDURE WHERE SUCH CLAIMS ARE NOT  
17 BASED IN FACT, AND THE APPLICATION OF THE SANCTIONS PROVIDED  
18 FOR IN RULE 11 OF THE MONTANA RULES OF CIVIL PROCEDURE  
19 AGAINST THOSE PARTIES RESPONSIBLE FOR MAKING SUCH CLAIMS.

20 Section 2. Section 27-1-221, MCA, is amended to read:

21 "27-1-221. When exemplary damages allowed. (1) In  
22 Subject to subsection (2), in any action for a breach of an  
23 obligation not arising from contract where the defendant has  
24 been guilty of oppression, fraud, or malice, actual or  
25 presumed, the jury, in addition to the actual damages, may

1 give damages for the sake of example and by way of punishing  
2 the defendant.

3 (2) The jury may not award exemplary or punitive  
4 damages:

5 (a) unless it has awarded actual damages;

6 (b) if it has found the defendant guilty only of  
7 negligence; and

8 (c) unless the plaintiff has proved all elements of  
9 the claim for exemplary or punitive damages beyond a  
10 reasonable doubt, which is the same burden of proof that a  
11 prosecutor has in a criminal case BY CLEAR AND CONVINCING  
12 EVIDENCE. CLEAR AND CONVINCING EVIDENCE MEANS EVIDENCE IN  
13 WHICH THERE IS NO SERIOUS OR SUBSTANTIAL DOUBT ABOUT THE  
14 CORRECTNESS OF THE CONCLUSIONS DRAWN FROM THE EVIDENCE. IT  
15 IS MORE THAN A PREPONDERANCE OF EVIDENCE, BUT LESS THAN  
16 BEYOND A REASONABLE DOUBT.

17 (3) PRESUMED MALICE EXISTS WHEN A PERSON HAS KNOWLEDGE  
18 OF FACTS, INTENTIONALLY AVOIDS LEARNING OF FACTS, OR  
19 RECKLESSLY DISREGARDS FACTS, KNOWLEDGE OF WHICH MAY BE  
20 PROVEN BY DIRECT OR CIRCUMSTANTIAL EVIDENCE, WHICH CREATES A  
21 HIGH DEGREE OF RISK OF HARM TO THE SUBSTANTIAL INTERESTS OF  
22 ANOTHER, AND EITHER DELIBERATELY PROCEEDS TO ACT IN  
23 CONSCIOUS DISREGARD OF OR INDIFFERENCE TO THAT RISK OR  
24 RECKLESSLY PROCEEDS IN UNREASONABLE DISREGARD OF OR  
25 INDIFFERENCE TO THAT RISK.

1 {3}(4) The plaintiff may not present, with respect to  
2 the issue of exemplary or punitive damages, any evidence to  
3 the jury regarding the defendant's financial affairs or net  
4 worth unless the judge first rules, outside the presence of  
5 the jury, that the plaintiff has presented a prima facie  
6 claim for exemplary or punitive damages.

7 {4}(5) A DEFENDANT IS GUILTY OF OPPRESSION IF HE  
8 INTENTIONALLY CAUSES CRUEL AND UNJUST HARDSHIP BY:

9 (A) MISUSE OR ABUSE OF AUTHORITY OR POWER; OR

10 (B) TAKING ADVANTAGE OF SOME WEAKNESS, DISABILITY, OR  
11 MISFORTUNE OF ANOTHER PERSON.

12 {5}--PUNITIVE DAMAGES MAY NOT BE AWARDED TO A PLAINTIFF  
13 IN AN AMOUNT IN EXCESS OF \$500,000.

14 (6) (A) IN CASES OF ACTUAL FRAUD OR ACTUAL MALICE, THE  
15 JURY MAY AWARD REASONABLE PUNITIVE DAMAGES AFTER CONSIDERING  
16 THE CIRCUMSTANCES OF THE CASE.

17 (B) IN ALL OTHER CASES WHERE PUNITIVE DAMAGES ARE  
18 AWARDED, PUNITIVE DAMAGES MAY BE IN AN AMOUNT UP TO BUT NO  
19 GREATER THAN \$25,000 OR 1% OF THE DEFENDANT'S NET WORTH,  
20 WHICHEVER IS GREATER.

21 {7}--IF A PLAINTIFF SOUGHT EXEMPLARY DAMAGES AT TRIAL  
22 BUT SUCH DAMAGES WERE NOT AWARDED, THE COURT SHALL SUBMIT TO  
23 THE JURY A QUESTION CONCERNING WHETHER THE JURY FOUND IN THE  
24 EVIDENCE--PRESENTED ANY REASONABLE BASIS IN FACT FOR SEEKING  
25 EXEMPLARY DAMAGES.--IF THE RESPONSE TO THE QUESTION IS

1 NEGATIVE, THE COURT MAY, IN ITS DISCRETION AS A PENALTY  
2 AGAINST SUCH PARTY, THE PARTY'S ATTORNEY, OR BOTH, ASSESS  
3 DAMAGES IN AN AMOUNT NOT TO EXCEED WHAT IS DETERMINED BY THE  
4 COURT TO BE REASONABLE ATTORNEY FEES AND COSTS OF THE  
5 DEFENDANT INCURRED IN DEFENSE OF SUCH CLAIMS.

6 {8}(7) IN CASES WHERE PUNITIVE DAMAGES MAY BE AWARDED,  
7 THE JURY SHALL NOT BE INSTRUCTED, INFORMED, OR ADVISED IN  
8 ANY MANNER AS TO THE LIMITATIONS ON THE AMOUNT OF EXEMPLARY  
9 OR PUNITIVE DAMAGES AS SET FORTH IN SECTION (6)(B).

10 {4}--As used in this section, the following definitions  
11 apply:

12 (a)--"Exemplary or punitive damages" means an amount up  
13 to 5% of the net worth of each defendant or three times the  
14 amount of actual damages awarded, not including attorney  
15 fees or costs, whichever is less.

16 (b)--"Fraud" means an intentional misrepresentation,  
17 deceit, or concealment of a material fact known to the  
18 defendant with the intention on the part of the defendant to  
19 thereby deprive a person of property or legal rights or  
20 otherwise cause injury.

21 (c)--"Malice" means a specific intent of the defendant  
22 to cause injury to the plaintiff or to engage in conduct  
23 that the defendant knew or should have known would injure  
24 the plaintiff, unless the defendant acted in good faith.

25 (d)--"Oppression" means cruel and unjust hardship

1 ~~caused-by-the-defendant-with-a-specific-intent-to-do-so."~~

2 NEW SECTION. Section 3. Severability. If a part of  
3 this act is invalid, all valid parts that are severable from  
4 the invalid part remain in effect. If a part of this act is  
5 invalid in one or more of its applications, the part remains  
6 in effect in all valid applications that are severable from  
7 the invalid applications.

8 NEW SECTION. Section 4. Applicability. This act  
9 applies to any proceeding--begun CLAIM ARISING after or  
10 pending--on the effective date of this act ~~that-has-not-been~~  
11 ~~submitted-to-a-jury-on-the-effective-date-of-this-act.~~

12 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION.  
13 SECTION 1 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF  
14 TITLE 27, CHAPTER 1, PART 2, AND THE PROVISIONS OF TITLE 27,  
15 CHAPTER 1, PART 2, APPLY TO SECTION 1.

16 NEW SECTION. Section 6. Effective date. This act is  
17 effective on passage and approval.

-End-