HB 110 INTRODUCED BY THOMAS

PUNITIVE DAMAGES/90 PERCENT TO GENERAL FUND; 10 PERCENT TO THE UNINSURED EMPLOYERS' FUND

- 1/08 INTRODUCED
- 1/08 REFERRED TO JUDICIARY
- 2/04 HEARING
- 2/14 COMMITTEE REPORT--BILL NOT PASSED
- 2/16 ADVERSE COMMITTEE REPORT ADOPTED 6

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INTRODUCED BY ______ BILL NO. _____ 1 2

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE 5 STATE TREASURER SHALL DEPOSIT 90 PERCENT OF THE EXEMPLARY OR 6 PUNITIVE DAMAGE AWARDS IN THE STATE GENERAL FUND AND 10 7 PERCENT IN THE UNINSURED EMPLOYERS' FUND; AND AMENDING 8 SECTION 27-1-221, MCA."

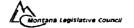
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10

Section 1. Section 27-1-221, MCA, is amended to read: 11 12 "27-1-221. When exemplary damages allowed. (1) Subject 13 to subsection $\{2\}$, in any action for a breach of an 14 obligation not arising from contract where the defendant has been quilty of oppression, fraud, or malice, actual or 15 16 presumed, the jury, in addition to the actual damages, may 17 give damages for the sake of example and by way of punishing 18 the defendant.

19 (2) The jury may not award exemplary or punitive 20 damages unless the plaintiff has proved all elements of the 21 claim for exemplary or punitive damages by clear and convincing evidence. Clear and convincing evidence means 22 23 evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the 24 25 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 2 of facts, intentionally avoids learning of facts, or 3 recklessly disregards facts, knowledge of which may be 4 proven by direct or circumstantial evidence, which creates a 5 6 high degree of risk of harm to the substantial interests of 7 another, and either deliberately proceeds to act in 8 conscious disregard of or indifference to that risk or 9 recklessly proceeds in unreasonable disregard of or indifference to that risk. 10

(4) The plaintiff may not present, with respect to the 11 issue of exemplary or punitive damages, any evidence to the 12 jury regarding the defendant's financial affairs or net 13 14 worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie 15 16 claim for exemplary or punitive damages.

(5) A defendant is guilty of oppression if he 17 18 intentionally causes cruel and unjust hardship by:

(a) misuse or abuse of authority or power; or 19

(b) taking advantage of some weakness, disability, or 20 misfortune of another person. 21

22 (6) (a) In cases of actual fraud or actual malice, the 23 jury may award reasonable punitive damages after considering the circumstances of the case. 24

25 (b) In all other cases where punitive damages are

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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.

4 (7) In cases where punitive damages may be awarded, 5 the jury shall not be instructed, informed, or advised in 6 any manner as to the limitations on the amount of exemplary 7 or punitive damages as set forth in subsection (6)(b).

8 (8) If exemplary or punitive damages are awarded under 9 this section, the court shall forward the total amount of 10 such damages to the state treasurer, who shall deposit 90% 11 in the state general fund and 10% in the uninsured 12 employers' fund."

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