

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 60 35

1 H.B. BILL NO. 110  
2 INTRODUCED BY Thomas

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

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

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  
15 been guilty of oppression, fraud, or malice, actual or  
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  
22 convincing evidence. Clear and convincing evidence means  
23 evidence in which there is no serious or substantial doubt  
24 about the correctness of the conclusions drawn from the  
25 evidence. It is more than a preponderance of evidence, but

1 less than beyond a reasonable doubt.

2 (3) Presumed malice exists when a person has knowledge  
3 of facts, intentionally avoids learning of facts, or  
4 recklessly disregards facts, knowledge of which may be  
5 proven by direct or circumstantial evidence, which creates a  
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  
10 indifference to that risk.

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

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

- 19 (a) misuse or abuse of authority or power; or
- 20 (b) taking advantage of some weakness, disability, or  
21 misfortune of another person.

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

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



1 awarded, punitive damages may be in an amount up to but no  
2 greater than \$25,000 or 1% of the defendant's net worth,  
3 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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