

HB 111 INTRODUCED BY THOMAS
PUNITIVE DAMAGE AWARDS PAID TO THE STATE

1/08 INTRODUCED
1/08 REFERRED TO JUDICIARY
1/08 FISCAL NOTE REQUESTED
1/15 FISCAL NOTE RECEIVED
2/04 HEARING
2/14 COMMITTEE REPORT--BILL NOT PASSED
2/16 ADVERSE COMMITTEE REPORT ADOPTED

80 16

1 H. B. BILL NO. 111
2 INTRODUCED BY Thomas

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
5 TOTAL AMOUNT OF EXEMPLARY OR PUNITIVE DAMAGE AWARDS BE
6 FORWARDED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE
7 GENERAL FUND; AND AMENDING SECTION 27-1-221, MCA."

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) Subject
12 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 unless the plaintiff has proved all elements of the
20 claim for exemplary or punitive damages by clear and
21 convincing evidence. Clear and convincing evidence means
22 evidence in which there is no serious or substantial doubt
23 about the correctness of the conclusions drawn from the
24 evidence. It is more than a preponderance of evidence, but
25 less than beyond a reasonable doubt.

1 (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 high degree of risk of harm to the substantial interests of
6 another, and either deliberately proceeds to act in
7 conscious disregard of or indifference to that risk or
8 recklessly proceeds in unreasonable disregard of or
9 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 worth unless the judge first rules, outside the presence of
14 the jury, that the plaintiff has presented a prima facie
15 claim for exemplary or punitive damages.

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

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

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

24 (b) In all other cases where punitive damages are
25 awarded, punitive damages may be in an amount up to but no



1 greater than \$25,000 or 1% of the defendant's net worth,
2 whichever is greater.

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

7 (8) If exemplary or punitive damages are awarded under
8 this section, the court shall forward the total amount of
9 such damages to the state treasurer for deposit in the state
10 general fund."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB111, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide that the total amount of exemplary or punitive damage awards be forwarded to the State Treasurer for deposit in the state general fund; and amending Section 27-1-221, MCA.

ASSUMPTIONS:

1. Data is not available for awards of exemplary or punitive damages.

FISCAL IMPACT:

Expenditures:

None. The State Treasurer will handle receipt of funds with existing resources.

Revenues:

The state will receive additional revenue to the extent that exemplary or punitive damages are awarded. It is impossible to estimate the amount.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

David L. Hunter DATE 1/14/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Fred Thomas DATE _____
FRED THOMAS, PRIMARY SPONSOR
Fiscal Note for HB111, as introduced.

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