

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 9, 1987

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 16, 1987

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 20, 1987

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1987

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 21, 1987

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 442
2 INTRODUCED BY MARCE Manuel
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO
6 RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE
7 DAMAGES IN CONTRACT-RELATED CASES; PROHIBITING INSURANCE
8 COVERAGE OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND
9 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES AND AN
10 IMMEDIATE EFFECTIVE DATE."

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

12 Section 1. Section 27-1-220, MCA, is amended to read:

13 "27-1-220. ~~Purpose-----factual--basis-for-punitive-or~~
14 ~~exemplary-damages Punitive damages -- when allowed. The~~
15 ~~purpose--of--27-1-221--is--to--deter--claims-for-punitive-or~~
16 ~~exemplary-damages-that-are-not-clearly-based-in-fact, and to~~
17 ~~that-end, the legislature intends for 27-1-221 to be used in~~
18 ~~combination-with-early-and-ready-application-and-granting-of~~
19 ~~motions-for-summary-judgment-pursuant--to--Rule--56--of--the~~
20 ~~Montana--Rules--of--Civil--Procedure-where-such-claims-are-not~~
21 ~~based-in-fact, and the application of the sanctions provided~~
22 ~~for-in-Rule-ii-of--the--Montana--Rules--of--Civil--Procedure~~
23 ~~against--those--parties--responsible-for-making-such-claims.~~
24 (1) Except as otherwise expressly provided by statute, a
25

1 judge or jury may award, in addition to compensatory
2 damages, punitive damages for the sake of example and for
3 the purpose of punishing a defendant.

4 (2) Unless otherwise expressly provided by statute,
5 punitive damages may not be recovered in any action arising
6 from:

- 7 (a) contract;
- 8 (b) breach of contract;
- 9 (c) breach of any express or implied covenant included
10 within or arising out of a contract; or
- 11 (d) a tort that is interrelated with and dependent
12 upon a claim for breach of contract."

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

14 "27-1-221. ~~When--exemplary Punitive damages allowed --~~
15 ~~liability -- proof -- award. (1) Subject to subsection (2)7~~
16 ~~in-any-action-for-a-breach-of-an-obligation-not-arising-from~~
17 ~~contract and the provisions of 27-1-220, reasonable punitive~~
18 ~~damages may be awarded where the defendant has been guilty~~
19 ~~of oppression, actual fraud, or actual malice,--actual--or~~
20 ~~presumed,--the--jury, in addition to the actual damages, may~~
21 ~~give damages for the sake of example and by way of punishing~~
22 ~~the defendant.~~

23 (2) A defendant is guilty of actual malice if he
24 knowingly caused injury to the plaintiff.

25 (3) A defendant is guilty of actual fraud if he:

1 (a) makes a representation with knowledge of its
2 falsity; or

3 (b) conceals a material fact with the purpose of
4 depriving the plaintiff of property or legal rights or
5 otherwise causing injury.

6 (4) Actual fraud exists only where the plaintiff has a
7 right to rely upon the representation of the defendant and
8 suffers injury as a result of such reliance. The contract
9 definitions of fraud expressed in Title 28, chapter 2, do
10 not apply to proof of actual fraud under this section.

11 (2)(5) The jury may not award exemplary or punitive
12 damages unless the plaintiff has proved all All elements of
13 the claim for exemplary or punitive damages must be proved
14 by clear and convincing evidence. Clear and convincing
15 evidence means evidence in which there is no serious or
16 substantial doubt about the correctness of the conclusions
17 drawn from the evidence. It is more than a preponderance of
18 evidence, but less than beyond a reasonable doubt.

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

1 recklessly proceeds in unreasonable disregard of or
2 indifference to that risk.

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

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

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

12 (b) taking advantage of some weakness, disability, or
13 misfortune of another person.

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

25 (6) Liability for punitive damages must be determined

1 by the trier of fact, whether judge or jury.

2 (7) (a) If the trier of fact returns a verdict or
 3 finding of liability for punitive damages, the amount
 4 thereof must be determined exclusively by the judge and
 5 judgment entered within a reasonable time.

6 (b) When an award of punitive damages is made, the
 7 judge shall clearly state his reasons for making the award
 8 in findings of fact and conclusions of law, demonstrating
 9 consideration of each of the following matters:

10 (i) the nature and reprehensibility of the defendant's
 11 wrongdoing;

12 (ii) the extent of the defendant's wrongdoing;

13 (iii) the intent of the defendant in committing the
 14 wrong;

15 (iv) the profitability of the defendant's wrongdoing,
 16 if applicable;

17 (v) the amount of actual damages awarded by the jury;

18 (vi) the defendant's net worth;

19 (vii) previous awards of punitive or exemplary damages
 20 against the defendant based upon the same wrongful act;

21 (viii) potential or prior criminal sanctions against
 22 the defendant based upon the same wrongful act; and

23 (ix) any other circumstances which may operate to
 24 reduce, without wholly defeating, punitive damages.

25 (8) Evidence regarding the defendant's financial

1 affairs, financial condition, and net worth may not be
 2 admissible in a trial to determine whether a defendant is
 3 liable for punitive damages, except that evidence of the
 4 defendant's net worth must be considered by the judge in
 5 determining the amount of punitive damages to be awarded in
 6 those cases where liability for such an award has been
 7 determined."

8 NEW SECTION. Section 3. Insurance coverage of
 9 punitive damages void. It is a violation of public policy to
 10 insure against an award of punitive damages, and any
 11 insurance policy provision which purports to insure against
 12 any loss from liability for punitive damages is void.

13 NEW SECTION. Section 4. Codification instruction.
 14 Section 3 is intended to be codified as an integral part of
 15 Title 28, chapter 2, part 7, and the provisions of Title 28,
 16 chapter 2, part 7, apply to section 3.

17 NEW SECTION. Section 5. Severability. If a part of
 18 this act is invalid, all valid parts that are severable from
 19 the invalid part remain in effect. If a part of this act is
 20 invalid in one or more of its applications, the part remains
 21 in effect in all valid applications that are severable from
 22 the invalid applications.

23 NEW SECTION. Section 6. Applicability. (1) Except as
 24 provided in subsection (2), this act applies to any
 25 proceeding in which trial is commenced after the effective

1 date of this act.

2 (2) Section 3 applies to policies of insurance issued
3 after the effective date of this act.

4 NEW SECTION. Section 7. Effective date. This act is
5 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; PROHIBITING INSURANCE COVERAGE OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES AND AN IMMEDIATE-EFFECTIVE-DATE."

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

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Purpose-----factual--basis-for-punitive-or exemplary-damages Punitive damages -- when allowed. 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. (1) Except as otherwise expressly provided by statute, a

judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(a)(I) contract;

(b)(II) breach of contract;

(c)(III) breach of any express or implied covenant included within or arising out of a contract; or

(d)(IV) a--tort-that-is-interrelated-with-and-dependent upon-a-claim-for-breach-of-contract; TORTIOUS VIOLATION OF ANY EXPRESS OR IMPLIED COVENANT INCLUDED WITHIN OR ARISING OUT OF A CONTRACT.

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

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

"27-1-221. When exemplary Punitive damages allowed -- liability -- proof -- award. (1) Subject to subsection (2), in any action for a breach of an obligation not arising from contract and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of oppression, actual fraud, or actual malice, actual or 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) A defendant is guilty of actual malice if he:
4 (A) knowingly caused injury to the plaintiff; OR
5 (B) HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS
6 FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE
7 PLAINTIFF AND:

8 (I) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR
9 INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO
10 THE PLAINTIFF; OR

11 (II) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE TO
12 THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

13 (3) FOR PURPOSES OF SUBSECTION (2)(A), A PERSON ACTS
14 KNOWINGLY IF HE IS AWARE THAT IT IS HIGHLY PROBABLE THAT
15 INJURY WILL BE CAUSED BY HIS CONDUCT.

16 ~~(3)(4) A defendant is guilty of actual fraud if he:~~
17 (a) makes a representation with knowledge of its
18 falsity; or

19 (b) conceals a material fact with the purpose of
20 depriving the plaintiff of property or legal rights or
21 otherwise causing injury.

22 ~~(4)(5) Actual fraud exists only where the plaintiff~~
23 has a right to rely upon the representation of the defendant
24 and suffers injury as a result of such reliance. The
25 contract definitions of fraud expressed in Title 28, chapter

1 2, do not apply to proof of actual fraud under this section.

2 ~~(2)(5)(6) The jury may not award exemplary or punitive~~
3 ~~damages unless the plaintiff has proved all~~ All ~~elements of~~
4 ~~the claim for exemplary or punitive damages must be proved~~
5 ~~by clear and convincing evidence. Clear and convincing~~
6 ~~evidence means evidence in which there is no serious or~~
7 ~~substantial doubt about the correctness of the conclusions~~
8 ~~drawn from the evidence. It is more than a preponderance of~~
9 ~~evidence, but less than beyond a reasonable doubt.~~

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

19 ~~(4)--The plaintiff may not present, with respect to the~~
20 ~~issue of exemplary or punitive damages, any evidence to the~~
21 ~~jury regarding the defendant's financial affairs or net~~
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23 ~~the jury, that the plaintiff has presented a prima facie~~
24 ~~claim for exemplary or punitive damages.~~

25 ~~(5)--A defendant is guilty of oppression if he~~

1 intentionally causes cruel and unjust hardship by:
 2 (a) ~~misuse or abuse of authority or power; or~~
 3 (b) ~~taking advantage of some weakness, disability, or~~
 4 ~~misfortune of another person;~~
 5 (6) ~~(a) In cases of actual fraud or actual malice, the~~
 6 ~~jury may award reasonable punitive damages after considering~~
 7 ~~the circumstances of the case;~~
 8 (b) ~~In all other cases where punitive damages are~~
 9 ~~awarded, punitive damages may be in an amount up to but no~~
 10 ~~greater than \$25,000 or 1% of the defendant's net worth,~~
 11 ~~whichever is greater;~~
 12 (7) ~~In cases where punitive damages may be awarded,~~
 13 ~~the jury shall not be instructed, informed, or advised in~~
 14 ~~any manner as to the limitations on the amount of exemplary~~
 15 ~~or punitive damages as set forth in subsection (6)(b);~~
 16 (6)(7) Liability for punitive damages must be
 17 determined by the trier of fact, whether judge or jury.
 18 (7)(8) (a) If the trier of fact returns a verdict or
 19 finding of liability for punitive damages, the amount
 20 thereof must be determined exclusively by the judge and
 21 judgment entered within a reasonable time.
 22 (b) When an award of punitive damages is made, the
 23 judge shall clearly state his reasons for making the award
 24 in findings of fact and conclusions of law, demonstrating
 25 consideration of each of the following matters:

1 (i) the nature and reprehensibility of the defendant's
 2 wrongdoing;
 3 (ii) the extent of the defendant's wrongdoing;
 4 (iii) the intent of the defendant in committing the
 5 wrong;
 6 (iv) the profitability of the defendant's wrongdoing,
 7 if applicable;
 8 (v) the amount of actual damages awarded by the jury;
 9 (vi) the defendant's net worth;
 10 (vii) previous awards of punitive or exemplary damages
 11 against the defendant based upon the same wrongful act;
 12 (viii) potential or prior criminal sanctions against
 13 the defendant based upon the same wrongful act; and
 14 (ix) any other circumstances which may operate to
 15 INCREASE OR reduce, without wholly defeating, punitive
 16 damages.
 17 (8)(9) Evidence regarding the defendant's financial
 18 affairs, financial condition, and net worth may not be
 19 admissible in a trial to determine whether a defendant is
 20 liable for punitive damages, except that evidence of the
 21 defendant's net worth must be considered by the judge in
 22 determining the amount of punitive damages to be awarded in
 23 those cases where liability for such an award has been
 24 determined."
 25 NEW SECTION. Section 3. Insurance coverage of

1 punitive damages void. It is a violation of public policy to
2 insure against an award of punitive damages, and any
3 insurance policy provision which purports to insure against
4 any loss from liability for punitive damages is void.

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6 Section 3 is intended to be codified as an integral part of
7 Title 28, chapter 2, part 7, and the provisions of Title 28,
8 chapter 2, part 7, apply to section 3.

9 NEW SECTION. Section 5. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 NEW SECTION. Section 6. Applicability. ~~{1} Except as~~
16 ~~provided in subsection {2}, this act applies to any~~
17 ~~proceeding in which trial is commenced after the effective~~
18 ~~date of this act.~~

19 ~~{2} Section 3 applies to~~ THIS ACT APPLIES TO CLAIMS
20 ARISING AND policies of insurance issued after the effective
21 date of this act, EXCEPT THAT SUBSECTIONS (7), (8), AND (9)
22 OF 27-1-221 APPLY TO TRIALS THAT BEGIN AFTER THE EFFECTIVE
23 DATE OF THIS ACT WHETHER OR NOT THE CLAIM AROSE AFTER THE
24 EFFECTIVE DATE OF THIS ACT.

25 NEW SECTION. ~~Section 7. Effective date. This act is~~

1 ~~effective on passage and approval.~~

~~-End-~~

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

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

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Purpose-----factual-basis-for-punitive-or-exemplary-damages Punitive damages -- when allowed. 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- (1) Except as otherwise expressly provided by statute, a

judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

- (a)(I) contract;
(b)(II) breach of contract;
(c)(III) breach of any express or implied covenant included within or arising out of a contract; or
(d)(IV) a--tort-that-is-interrelated-with-and-dependent-upon-a-claim-for-breach-of-contract; TORTIOUS VIOLATION OF ANY EXPRESS OR IMPLIED COVENANT INCLUDED WITHIN OR ARISING OUT OF A CONTRACT.

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

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

"27-1-221. When-exemplary Punitive damages allowed -- liability -- proof -- award. (1) Subject to subsection (2), in-any-action-for-a-breach-of-an-obligation-not-arising-from-contract-and-the-provisions-of-27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of oppression, actual fraud, or actual malice,-actual-or-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) A defendant is guilty of actual malice if he:
 4 (A) knowingly caused injury to the plaintiff; OR
 5 (B) HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS
 6 FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE
 7 PLAINTIFF AND:

8 (I) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR
 9 INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO
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11 (II) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE TO
 12 THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

13 (3) FOR PURPOSES OF SUBSECTION (2)(A), A PERSON ACTS
 14 KNOWINGLY IF HE IS AWARE THAT IT IS HIGHLY PROBABLE THAT
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22 OF 27-1-221 APPLY TO TRIALS THAT BEGIN AFTER THE EFFECTIVE
23 DATE OF THIS ACT WHETHER OR NOT THE CLAIM AROSE AFTER THE
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1 ~~effective on passage and approval.~~

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

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Purpose-----factual-basis-for-punitive-or-exemplary-damages Punitive damages -- when allowed. 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.
(1) Except as otherwise expressly provided by statute, a

judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(a)(I) contract; OR

(b)(II) breach of contract;

(c){iii}-breach-of-any-express-or-implied-covenant included within or arising out of a contract; or

(d){iv}-a-tort-that-is-interrelated-with-and-dependent upon-a-claim-for-breach-of-contract; TORTIOUS--VIOLATION--OF-ANY--EXPRESS--OR-IMPLIED-COVENANT-INCLUDED-WITHIN-OR-ARISING-OUT-OF-A-CONTRACT;

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

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

"27-1-221. When-exemplary Punitive damages allowed -- liability -- proof -- award. (1) Subject to subsection (2), in-any-action-for-a-breach-of-an-obligation-not-arising-from contract and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of oppression, actual fraud, or actual malice, actual or 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) A defendant is guilty of actual malice if he:
4 (A) knowingly caused injury to the plaintiff; OR
5 (B) HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS
6 FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE
7 PLAINTIFF AND:

8 (I) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR
9 INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO
10 THE PLAINTIFF; OR

11 (II) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE TO
12 THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

13 (3) FOR PURPOSES OF SUBSECTION (2)(A), A PERSON ACTS
14 KNOWINGLY IF HE IS AWARE THAT IT IS HIGHLY PROBABLE THAT
15 INJURY WILL BE CAUSED BY HIS CONDUCT.

16 ~~{3}(4) A defendant is guilty of actual fraud if he:~~
17 (a) makes a representation with knowledge of its
18 falsity; or

19 (b) conceals a material fact with the purpose of
20 depriving the plaintiff of property or legal rights or
21 otherwise causing injury.

22 ~~{4}(5) Actual fraud exists only where the plaintiff~~
23 has a right to rely upon the representation of the defendant
24 and suffers injury as a result of such reliance. The
25 contract definitions of fraud expressed in Title 28, chapter

1 2, do not apply to proof of actual fraud under this section.

2 ~~{2}{5}(6) The jury may not award exemplary or punitive~~
3 ~~damages unless the plaintiff has proved all~~ All elements of
4 the claim for exemplary or punitive damages must be proved
5 by clear and convincing evidence. Clear and convincing
6 evidence means evidence in which there is no serious or
7 substantial doubt about the correctness of the conclusions
8 drawn from the evidence. It is more than a preponderance of
9 evidence, but less than beyond a reasonable doubt.

10 ~~{3}--Presumed malice exists when a person has knowledge~~
11 ~~of facts, intentionally avoids learning of facts, or~~
12 ~~recklessly disregards facts, knowledge of which may be~~
13 ~~proven by direct or circumstantial evidence, which creates a~~
14 ~~high degree of risk of harm to the substantial interests of~~
15 ~~another, and either deliberately proceeds to act in~~
16 ~~conscious disregard of or indifference to that risk or~~
17 ~~recklessly proceeds in unreasonable disregard of or~~
18 ~~indifference to that risk.~~

19 ~~{4}--The plaintiff may not present, with respect to the~~
20 ~~issue of exemplary or punitive damages, any evidence to the~~
21 ~~jury regarding the defendant's financial affairs or net~~
22 ~~worth unless the judge first rules, outside the presence of~~
23 ~~the jury, that the plaintiff has presented a prima facie~~
24 ~~claim for exemplary or punitive damages.~~

25 ~~{5}--A defendant is guilty of oppression if he~~

1 ~~intentionally causes cruel and unjust hardship by:~~
 2 ~~(a) misuse or abuse of authority or power; or~~
 3 ~~(b) taking advantage of some weakness, disability, or~~
 4 ~~misfortune of another person.~~
 5 ~~(6) (a) In cases of actual fraud or actual malice, the~~
 6 ~~jury may award reasonable punitive damages after considering~~
 7 ~~the circumstances of the case;~~
 8 ~~(b) In all other cases where punitive damages are~~
 9 ~~awarded, punitive damages may be in an amount up to but no~~
 10 ~~greater than \$25,000 or 1% of the defendant's net worth,~~
 11 ~~whichever is greater.~~
 12 ~~(7) In cases where punitive damages may be awarded,~~
 13 ~~the jury shall not be instructed, informed, or advised in~~
 14 ~~any manner as to the limitations on the amount of exemplary~~
 15 ~~or punitive damages as set forth in subsection (6)(b).~~
 16 (6)(7) Liability for punitive damages must be
 17 determined by the trier of fact, whether judge or jury.
 18 (7)(8) (a) IF WHEN the trier-of-fact JURY returns a
 19 verdict or finding of liability for punitive damages, the
 20 amount thereof must be determined exclusively by the judge
 21 JURY and judgment entered within a reasonable time BE
 22 SUBMITTED TO THE JUDGE FOR REVIEW AS PROVIDED IN SUBSECTION
 23 (8)(C).
 24 (b) When an award of punitive damages is made BY THE
 25 JUDGE, the judge HE shall clearly state his reasons for

1 making the award in findings of fact and conclusions of law,
 2 demonstrating consideration of each of the following
 3 matters:
 4 (i) the nature and reprehensibility of the defendant's
 5 wrongdoing;
 6 (ii) the extent of the defendant's wrongdoing;
 7 (iii) the intent of the defendant in committing the
 8 wrong;
 9 (iv) the profitability of the defendant's wrongdoing,
 10 if applicable;
 11 (v) the amount of actual damages awarded by the jury;
 12 (vi) the defendant's net worth;
 13 (vii) previous awards of punitive or exemplary damages
 14 against the defendant based upon the same wrongful act;
 15 (viii) potential or prior criminal sanctions against
 16 the defendant based upon the same wrongful act; and
 17 (ix) any other circumstances which may operate to
 18 INCREASE OR reduce, without wholly defeating, punitive
 19 damages.
 20 ~~(8)(9) Evidence regarding the defendant's financial~~
 21 ~~affairs, financial condition, and net worth may not be~~
 22 ~~admissible in a trial to determine whether a defendant is~~
 23 ~~liable for punitive damages, except that evidence of the~~
 24 ~~defendant's net worth must be considered by the judge in~~
 25 ~~determining the amount of punitive damages to be awarded in~~

1 ~~those cases where liability for such an award has been~~
 2 ~~determined.~~

3 (C) THE JUDGE SHALL REVIEW A JURY AWARD OF PUNITIVE
 4 DAMAGES, GIVING CONSIDERATION TO EACH OF THE MATTERS LISTED
 5 IN SUBSECTION (8)(B). IF AFTER REVIEW THE JUDGE DETERMINES
 6 THAT THE JURY AWARD OF PUNITIVE DAMAGES SHOULD BE INCREASED
 7 OR DECREASED, HE MAY DO SO. THE JUDGE SHALL CLEARLY STATE
 8 HIS REASONS FOR INCREASING OR DECREASING THE PUNITIVE
 9 DAMAGES AWARD OF THE JURY IN FINDINGS OF FACT AND
 10 CONCLUSIONS OF LAW, DEMONSTRATING CONSIDERATION OF EACH OF
 11 THE FACTORS LISTED IN SUBSECTION (8)(B).

12 (9) THE PLAINTIFF MAY NOT PRESENT, WITH RESPECT TO THE
 13 ISSUE OF EXEMPLARY OR PUNITIVE DAMAGES, ANY EVIDENCE TO THE
 14 JURY REGARDING THE DEFENDANT'S FINANCIAL AFFAIRS OR NET
 15 WORTH UNLESS THE JUDGE FIRST RULES, OUTSIDE THE PRESENCE OF
 16 THE JURY, THAT THE PLAINTIFF HAS PRESENTED A PRIMA FACIE
 17 CLAIM FOR EXEMPLARY OR PUNITIVE DAMAGES."

18 ~~NEW SECTION. Section 3. Insurance coverage of~~
 19 ~~punitive damages void. It is a violation of public policy~~
 20 ~~to insure against an award of punitive damages, and any~~
 21 ~~insurance policy provision which purports to insure against~~
 22 ~~any loss from liability for punitive damages is void.~~

23 ~~NEW SECTION. Section 4. Codification instruction.~~
 24 ~~Section 3 is intended to be codified as an integral part of~~
 25 ~~Title 28, chapter 2, part 7, and the provisions of Title 28,~~

1 ~~chapter 2, part 7, apply to section 3.~~

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. ~~(1) Except as~~
 9 ~~provided in subsection (2), this act applies to any~~
 10 ~~proceeding in which trial is commenced after the effective~~
 11 ~~date of this act.~~

12 ~~(2) Section 3 applies to THIS ACT APPLIES TO CLAIMS~~
 13 ~~ARISING AND policies of insurance issued after the effective~~
 14 ~~date of this act, EXCEPT THAT SUBSECTIONS (7), (8), AND (9)~~
 15 ~~OF 27-1-221 APPLY TO TRIALS THAT BEGIN AFTER THE EFFECTIVE~~
 16 ~~DATE OF THIS ACT WHETHER OR NOT THE CLAIM AROSE AFTER THE~~
 17 ~~EFFECTIVE DATE OF THIS ACT.~~

18 ~~NEW SECTION. Section 7. Effective date. This act is~~
 19 ~~effective on passage and approval.~~

-End-

STANDING COMMITTEE REPORT

SENATE

March 26 19 87

SENATE JUDICIARY
HB 442
Page 2 of 3

March 26 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 442

Third reading copy (blue color)

Limit Punitive damages.
Mercer (Halligan)

Respectfully report as follows. That HOUSE BILL No. 442

- 1. Title, lines 7 and 8.
Following: "CASES;" on line 7
Strike: the remainder of line 7 through "DAMAGES;" on line 8
- 2. Page 2, line 7.
Following: ";"
Insert: "or"
- 3. Page 2, line 8.
Following: "contract"
Strike: ";"
Insert: "."
- 4. Page 2, lines 9 through 14.
Strike: subsections (III) and (IV) in their entirety
- 5. Page 5, line 18.
Following: "(a)"
Strike: "If"
Insert: "When"
Following: "the"
Strike: "trier of fact"
Insert: "jury"

- 6. Page 5, line 20.
Following: "the"
Strike: "judge"
Insert: "jury"
- 7. Page 5, line 21.
Following: line 20
Strike: line 21 through "time"
Insert: "be submitted to the judge for review as provided in subsection (8) (c)"
- 8. Page 5, line 22.
Following: "made"
Insert: "by the judge"
- 9. Page 5, lines 22 and 23.
Following: "." on line 22
Strike: the remainder of line 22 through "judge" on line 23
Insert: "he"
- 10. Page 6, lines 17 through 24.
Following: line 16
Strike: subsection (9) in its entirety
Insert: "(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (8)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (8) (b).

(9) 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."
- 11. Page 6, line 25 through page 7, line 8.
Strike: sections 3 and 4 in their entirety
Renummer: subsequent sections

CONTINUED

Receives CONTINUED

[Handwritten Signature]
Senator Mazurek

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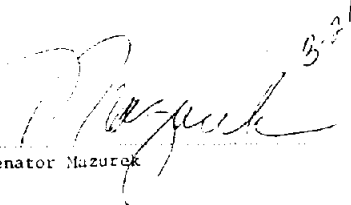
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Senator Mazurek

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12. Page 7, line 20.
Following: "ARISING"
Strike: "AND policies of insurance issued"

Amendments, HB 442
7077b/C:JEANNE\WP:jj

KMC AND AS AMENDED
BE CONCURRED IN


Senator Mazurek

..... A-16... 19.. 87..

MR. SPEAKER

We, your FREE Conference Committee on

House Bill 442

met and considered House Bill 442 in its entirety

We recommend as follows: That House Bill 442, reference copy (salmon) be amended as follows:

1. Title, line 8.
Following: "~~DAMAGES~~,"
Insert: "PERMITTING INSURANCE COVERAGE OF PUNITIVE DAMAGES;"
2. Page 3, lines 3 through 5.
Following: "~~he~~" on line 3
Strike: remainder of line 3 through "(B)" on line 5
3. Page 3, line 8.
Strike: "(I)"
Insert: "(a)"
4. Page 3, line 11.
Strike: "(II)"
Insert: "(b)"
5. Page 3, lines 13 through 15.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

CONTINUED

And that this Conference Committee report be adopted.

FOR THE SENATE

FOR THE HOUSE

Walter Halligan
Sen. Halligan, Chairman

Walter Crippen
Sen. Crippen

Walter Galt
Sen. Galt

MERCER
Rep. Mercer

Eugally
Rep. Eugally

Addy
Rep. Addy

ADOPT REJECT

HB 442
Page 2 of 3

6. Page 5, line 18.
Following: "~~if~~"
Insert: "Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages."

7. Page 5, line 19.
Following: "verdict"
Strike: "or"
Following: "finding"
Strike: "of liability"
Insert: "a defendant liable"

8. Page 5, line 20.
Following: "amount"
Strike: "thereof"
Insert: "of punitive damages"
Following: "must"
Insert: "then"
Following: "determined"
Strike: "exclusively"

9. Page 5, line 21.
Following: "JURY"
Insert: "in an immediate, separate proceeding"

10. Page 5, line 23.
Strike: "(8) (C)."
Insert: "(7) (c)". In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered."

11. Page 7, line 5.
Strike: "(8) (B)"
Insert: "(7) (b)"

12. Page 7, line 8.
Following: "INCREASING"
Strike: "OR"
Insert: ","
Following: "DECREASING"
Insert: ", or not increasing or decreasing"

13. Page 7, line 11.
Strike: "(8) (B)"
Insert: "(7) (b)"

CONTINUED

14. Page 7, lines 12 through 17.

Strike: subsection (9) in its entirety

Insert: "(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

15. Page 7, line 23.

Following: line 22

Insert: "NEW SECTION. Section 3. Insurance coverage of punitive damages. (1) Insurance coverage does not extend to punitive or exemplary damages unless expressly included by the contract of insurance.

(2) Prior to renewal of any policy in effect on [the effective date of this act], the insurer shall provide the insured with notice of nonrenewal of coverage of punitive or exemplary damages in the same manner as required by the commissioner of insurance for the renewal of policies with altered terms."

Renumber: subsequent sections

16. Page 8, line 14.

Strike: "(7), (8), AND (9)"

Insert: "(6), (7), and (8)"

1 HOUSE BILL NO. 442

2 INTRODUCED BY MERCER, MANUEL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO
6 RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE
7 DAMAGES IN CONTRACT-RELATED CASES; ~~PROHIBITING--INSURANCE~~
8 ~~COVERAGE--OF-PUNITIVE-DAMAGES;~~ PERMITTING INSURANCE COVERAGE
9 OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND
10 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES ~~AND AN~~
11 ~~IMMEDIATE-EFFECTIVE-DATE."~~

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 27-1-220, MCA, is amended to read:

15 "27-1-220. Purpose-----~~factuai--basis-for-punitive-or~~
16 ~~exemplary-damages~~ Punitive damages -- when allowed. The
17 ~~purpose--of--27-1-221--is--to--deter--claims-for-punitive-or~~
18 ~~exemplary-damages-that-are-not-clearly-based-in-fact,-and-to~~
19 ~~that-end,-the-legislature-intends-for-27-1-221-to-be-used-in~~
20 ~~combination-with-early-and-ready-application-and-granting-of~~
21 ~~motions-for-summary-judgment-pursuant--to--Rule--56--of--the~~
22 ~~Montana--Rules--of-Civil-Procedure-where-such-claims-are-not~~
23 ~~based-in-fact,-and-the-application-of-the-sanctions-provided~~
24 ~~for-in-Rule-11-of--the--Montana--Rules--of--Civil--Procedure~~
25 ~~against--those--parties--responsible-for-making-such-claims,-~~

1 (1) Except as otherwise expressly provided by statute, a
2 judge or jury may award, in addition to compensatory
3 damages, punitive damages for the sake of example and for
4 the purpose of punishing a defendant.

5 (2) (A) Unless otherwise expressly provided by
6 statute, punitive damages may not be recovered in any action
7 arising from:

8 (a)(I) contract; OR9 (b)(II) breach of contract;10 (c)(III) breach of any express or implied covenant
11 included within or arising out of a contract; or12 (d)(IV) a tort that is interrelated with and dependent
13 upon a claim for breach of contract; ~~TORTIOUS--VIOLATION--OF~~
14 ANY--EXPRESS--OR--IMPLIED--COVENANT--INCLUDED--WITHIN--OR--ARISING
15 OUT--OF--A--CONTRACT;16 (B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF
17 PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION
18 ARISING UNDER 33-18-201."

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

20 "27-1-221. When exemplary Punitive damages allowed --
21 liability -- proof -- award. (1) Subject to subsection (2),
22 in any action for a breach of an obligation not arising from
23 contract and the provisions of 27-1-220, reasonable punitive
24 damages may be awarded where the defendant has been guilty
25 of oppression; actual fraud; or actual malice; actual or

1 ~~presumed, the jury, in addition to the actual damages, may~~
 2 ~~give damages for the sake of example and by way of punishing~~
 3 ~~the defendant.~~

4 (2) A defendant is guilty of actual malice if he:

5 ~~(A) knowingly caused injury to the plaintiff; OR~~

6 (B) HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS
 7 FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE
 8 PLAINTIFF AND;

9 (i) (A) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR
 10 INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO
 11 THE PLAINTIFF; OR

12 (ii) (B) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE
 13 TO THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

14 ~~(3) FOR PURPOSES OF SUBSECTION (2)(A), A PERSON ACTS~~
 15 ~~KNOWINGLY IF HE IS AWARE THAT IT IS HIGHLY PROBABLE THAT~~
 16 ~~INJURY WILL BE CAUSED BY HIS CONDUCT.~~

17 (3)(4)(3) A defendant is guilty of actual fraud if he:

18 (a) makes a representation with knowledge of its
 19 falsity; or

20 (b) conceals a material fact with the purpose of
 21 depriving the plaintiff of property or legal rights or
 22 otherwise causing injury.

23 (4)(5)(4) Actual fraud exists only where the plaintiff
 24 has a right to rely upon the representation of the defendant
 25 and suffers injury as a result of such reliance. The

1 contract definitions of fraud expressed in Title 28, chapter
 2 2, do not apply to proof of actual fraud under this section.

3 ~~(2)(5)(6)(5) The jury may not award exemplary or~~
 4 ~~punitive damages unless the plaintiff has proved all~~ All
 5 elements of the claim for exemplary or punitive damages must
 6 be proved by clear and convincing evidence. Clear and
 7 convincing evidence means evidence in which there is no
 8 serious or substantial doubt about the correctness of the
 9 conclusions drawn from the evidence. It is more than a
 10 preponderance of evidence, but less than beyond a reasonable
 11 doubt.

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

21 ~~(4) The plaintiff may not present, with respect to the~~
 22 ~~issue of exemplary or punitive damages, any evidence to the~~
 23 ~~jury regarding the defendant's financial affairs or net~~
 24 ~~worth unless the judge first rules, outside the presence of~~
 25 ~~the jury, that the plaintiff has presented a prima facie~~

1 ~~claim for exemplary or punitive damages:~~
 2 ~~{5}--A--defendant--is--guilty--of--oppression---if---he~~
 3 ~~intentionally causes cruel and unjust hardship by:~~
 4 ~~{a}--misuse or abuse of authority or power; or~~
 5 ~~{b}--taking--advantage of some weakness, disability, or~~
 6 ~~misfortune of another person:~~
 7 ~~{6}--(a) in cases of actual fraud or actual malice, the~~
 8 ~~jury may award reasonable punitive damages after considering~~
 9 ~~the circumstances of the case:~~
 10 ~~{b}--in all other cases where punitive damages are~~
 11 ~~awarded, punitive damages may be in an amount up to but no~~
 12 ~~greater than \$25,000 or 1% of the defendant's net worth,~~
 13 ~~whichever is greater:~~
 14 ~~{7}--in cases where punitive damages may be awarded,~~
 15 ~~the jury shall not be instructed, informed, or advised in~~
 16 ~~any manner as to the limitations on the amount of exemplary~~
 17 ~~or punitive damages as set forth in subsection (6)(b):~~
 18 ~~{6}{7}(6) Liability for punitive damages must be~~
 19 ~~determined by the trier of fact, whether judge or jury.~~
 20 ~~{7}{8}(7) (a) If EVIDENCE REGARDING A DEFENDANT'S~~
 21 ~~FINANCIAL AFFAIRS, FINANCIAL CONDITION, AND NET WORTH IS NOT~~
 22 ~~ADMISSIBLE IN A TRIAL TO DETERMINE WHETHER A DEFENDANT IS~~
 23 ~~LIABLE FOR PUNITIVE DAMAGES. WHEN the trier-of-fact JURY~~
 24 ~~returns a verdict or finding of liability A DEFENDANT LIABLE~~
 25 ~~for punitive damages, the amount thereof OF PUNITIVE DAMAGES~~

1 must THEN be determined exclusively by the judge JURY IN AN
 2 IMMEDIATE, SEPARATE PROCEEDING and judgment entered within a
 3 reasonable time BE SUBMITTED TO THE JUDGE FOR REVIEW AS
 4 PROVIDED IN SUBSECTION ~~{8}{e}~~ (7)(C). IN THE SEPARATE
 5 PROCEEDING TO DETERMINE THE AMOUNT OF PUNITIVE DAMAGES TO BE
 6 AWARDED, THE DEFENDANT'S FINANCIAL AFFAIRS, FINANCIAL
 7 CONDITION, AND NET WORTH MUST BE CONSIDERED.
 8 (b) When an award of punitive damages is made BY THE
 9 JUDGE, the judge HE shall clearly state his reasons for
 10 making the award in findings of fact and conclusions of law,
 11 demonstrating consideration of each of the following
 12 matters:
 13 (i) the nature and reprehensibility of the defendant's
 14 wrongdoing;
 15 (ii) the extent of the defendant's wrongdoing;
 16 (iii) the intent of the defendant in committing the
 17 wrong;
 18 (iv) the profitability of the defendant's wrongdoing,
 19 if applicable;
 20 (v) the amount of actual damages awarded by the jury;
 21 (vi) the defendant's net worth;
 22 (vii) previous awards of punitive or exemplary damages
 23 against the defendant based upon the same wrongful act;
 24 (viii) potential or prior criminal sanctions against
 25 the defendant based upon the same wrongful act; and

1 (ix) any other circumstances which may operate to
2 INCREASE OR reduce, without wholly defeating, punitive
3 damages.

4 ~~(8)(9) Evidence regarding the defendant's financial
5 affairs, financial condition, and net worth may not be
6 admissible in a trial to determine whether a defendant is
7 liable for punitive damages, except that evidence of the
8 defendant's net worth must be considered by the judge in
9 determining the amount of punitive damages to be awarded in
10 those cases where liability for such an award has been
11 determined.~~

12 (C) THE JUDGE SHALL REVIEW A JURY AWARD OF PUNITIVE
13 DAMAGES, GIVING CONSIDERATION TO EACH OF THE MATTERS LISTED
14 IN SUBSECTION ~~(8)(B)~~ (7)(B). IF AFTER REVIEW THE JUDGE
15 DETERMINES THAT THE JURY AWARD OF PUNITIVE DAMAGES SHOULD BE
16 INCREASED OR DECREASED, HE MAY DO SO. THE JUDGE SHALL
17 CLEARLY STATE HIS REASONS FOR INCREASING OR, DECREASING, OR
18 NOT INCREASING OR DECREASING THE PUNITIVE DAMAGES AWARD OF
19 THE JURY IN FINDINGS OF FACT AND CONCLUSIONS OF LAW,
20 DEMONSTRATING CONSIDERATION OF EACH OF THE FACTORS LISTED IN
21 SUBSECTION ~~(8)(B)~~ (7)(B).

22 ~~(9) THE PLAINTIFF MAY NOT PRESENT, WITH RESPECT TO THE
23 ISSUE OF EXEMPLARY OR PUNITIVE DAMAGES, ANY EVIDENCE TO THE
24 JURY REGARDING THE DEFENDANT'S FINANCIAL AFFAIRS OR NET
25 WORTH UNLESS THE JUDGE FIRST RULES, OUTSIDE THE PRESENCE OF~~

1 ~~THE JURY, THAT THE PLAINTIFF HAS PRESENTED A PRIMA FACIE
2 CLAIM FOR EXEMPLARY OR PUNITIVE DAMAGES.~~

3 (8) NOTHING IN THIS SECTION IS INTENDED TO ALTER THE
4 MONTANA RULES OF CIVIL PROCEDURE GOVERNING DISCOVERY OF A
5 DEFENDANT'S FINANCIAL AFFAIRS, FINANCIAL CONDITION, AND NET
6 WORTH."

7 ~~NEW SECTION: Section 3. Insurance coverage of
8 punitive damages void; it is a violation of public policy
9 to insure against an award of punitive damages, and any
10 insurance policy provision which purports to insure against
11 any loss from liability for punitive damages is void.~~

12 ~~NEW SECTION. SECTION 3. INSURANCE COVERAGE OF
13 PUNITIVE DAMAGES. (1) INSURANCE COVERAGE DOES NOT EXTEND TO
14 PUNITIVE OR EXEMPLARY DAMAGES UNLESS EXPRESSLY INCLUDED BY
15 THE CONTRACT OF INSURANCE.~~

16 (2) PRIOR TO RENEWAL OF ANY POLICY IN EFFECT ON [THE
17 EFFECTIVE DATE OF THIS ACT], THE INSURER SHALL PROVIDE THE
18 INSURED WITH NOTICE OF NONRENEWAL OF COVERAGE OF PUNITIVE OR
19 EXEMPLARY DAMAGES IN THE SAME MANNER AS REQUIRED BY THE
20 COMMISSIONER OF INSURANCE FOR THE RENEWAL OF POLICIES WITH
21 ALTERED TERMS.

22 ~~NEW SECTION: Section 4. Codification instruction:
23 Section 3 is intended to be codified as an integral part of
24 Title 28, chapter 2, part 7, and the provisions of Title 28,
25 chapter 2, part 7, apply to section 3.~~

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

7 NEW SECTION. Section 5. Applicability. ~~{1}-Except--as~~
 8 ~~provided---in--subsection--{2},--this--act--applies--to--any~~
 9 ~~proceeding-in-which-trial-is-commenced-after--the--effective~~
 10 ~~date-of-this-act:~~

11 ~~{2}-Section--3--applies--to~~ THIS ACT APPLIES TO CLAIMS
 12 ARISING AND ~~policies-of-insurance-issued~~ after the effective
 13 date of this act, EXCEPT THAT SUBSECTIONS {7}, {8} AND {9}
 14 {6}, {7}, AND {8} OF 27-1-221 APPLY TO TRIALS THAT BEGIN
 15 AFTER THE EFFECTIVE DATE OF THIS ACT WHETHER OR NOT THE
 16 CLAIM AROSE AFTER THE EFFECTIVE DATE OF THIS ACT.

17 ~~NEW-SECTION:--Section-7:--Effective--date:--This-act-is~~
 18 ~~effective-on-passage-and-approval:~~

-End-