

HOUSE BILL 98

Introduced by Ellison, et al.

1/09	Introduced
1/09	Referred to Judiciary
1/10	Fiscal Note Requested
1/17	Fiscal Note Received
1/17	Fiscal Note Printed
1/20	Hearing
1/25	Tabled in Committee

House BILL NO. 98

INTRODUCED BY Ellison J. Brown
Gilbert C. Smith Lynn Owens William Heller
Hayne D. NATHAN
 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUNITIVE
 DAMAGES IN CIVIL CASES TO BE PAID TO THE COUNTY TO FUND
 DISTRICT COURT OPERATIONS; AMENDING SECTION 27-1-221, MCA;
 AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

"27-1-221. Punitive damages -- liability -- proof --
 award. (1) Subject to ~~subsection (2)~~ subsections (2) through
(9) and the provisions of 27-1-220, reasonable punitive
 damages may be awarded where the defendant has been guilty
 of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if he has
 knowledge of facts or intentionally disregards facts that
 create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or
 intentional disregard of the high probability of injury to
 the plaintiff; or

(b) deliberately proceeds to act with indifference to
 the high probability of injury to the plaintiff.

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

(a) makes a representation with knowledge of its

falsity; or

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

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

(5) All elements of the claim for punitive damages
 must be proved by clear and convincing evidence. 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.

(6) Liability for punitive damages must be determined
 by the trier of fact, whether judge or jury.

(7) (a) 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. When the jury returns a verdict
 finding a defendant liable for punitive damages, the amount
 of punitive damages must then be determined by the jury in
 an immediate, separate proceeding and be submitted to the

judge for review as provided in subsection (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.

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

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

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

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

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

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

(vi) the defendant's net worth;

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

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

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

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(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, decreasing, or not 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 (7)(b).

(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.

(9) (a) If exemplary or punitive damages are awarded under this section, the total amount of such damages is payable to the clerk of the district court for the county in which the trial was held.

(b) The clerk of the district court shall deposit the money received under subsection (9)(a) in the county general fund for district court operations, unless the county has a district court fund, in which case the money must be deposited in that fund."

NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

3 NEW SECTION. **Section 3.** Applicability. [This act]
4 applies to causes of action that arise on or after [the
5 effective date of this act].

6 NEW SECTION. **Section 4.** Effective date. [This act] is
7 effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB098, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB098 would require that punitive damages awarded in civil cases be paid to the county for the purpose of partially funding district court operations.

ASSUMPTIONS:

1. Data is not available for awards of exemplary or punitive damages. There are no rules for establishing the amount of such awards that can be used to calculate fiscal impact.

FISCAL IMPACT:

Expenditures:

None. The clerks of district courts will handle receipt of funds with existing resources.

Revenues:

It is impossible to estimate the amount of additional revenue that counties may receive.

Ray Shackelford 1/16/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Orval S. Ellison 1-17-89
ORVAL S. ELLISON, PRIMARY SPONSOR DATE

Fiscal Note for HB098, as introduced

HB 98