

HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHALEN, BIRD

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 8, 1993	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
FEBRUARY 10, 1993	THIRD READING, PASSED. AYES, 69; NOES, 28.
FEBRUARY 11, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 258  
2 INTRODUCED BY Paul R. Whalen Bird  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE  
5 INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL  
6 DISCHARGE SUIT AN AMOUNT EQUAL TO THE COSTS OF OBTAINING OR  
7 RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905,  
8 MCA."  
9

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

11 **Section 1.** Section 39-2-905, MCA, is amended to read:

12 "39-2-905. Remedies. (1) If an employer has committed a  
13 wrongful discharge, the employee may be awarded lost wages  
14 and fringe benefits for a period not to exceed 4 years from  
15 the date of discharge, together with interest thereon.  
16 Interim earnings, including amounts the employee could have  
17 earned with reasonable diligence, must be deducted from the  
18 amount awarded for lost wages. Before interim earnings are  
19 deducted from lost wages, there must be deducted from the  
20 interim earnings any amounts expended by the employee in  
21 searching for, obtaining, or relocating to new employment.

22 (2) The employee may recover punitive damages otherwise  
23 allowed by law if it is established by clear and convincing  
24 evidence that the employer engaged in actual fraud or actual  
25 malice in the discharge of the employee in violation of

1 39-2-904(1).

2 (3) There is no right under any legal theory to damages  
3 for wrongful discharge under this part for pain and  
4 suffering, emotional distress, compensatory damages,  
5 punitive damages, or any other form of damages, except as  
6 provided for in subsections (1) and (2)."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

## HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHALEN, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905, MCA."

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

**Section 1.** Section 39-2-905, MCA, is amended to read:

"39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any REASONABLE amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual

malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

-End-



## HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHELEN, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905, MCA."

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

**Section 1.** Section 39-2-905, MCA, is amended to read:

"39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any REASONABLE amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual

malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 17, 1993

Page 2 of 2  
March 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 258 (first reading copy -- blue), respectfully report that House Bill No. 258 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 7.

Following: "EMPLOYMENT;"

Insert: "CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE  
WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO  
ARBITRATION;"

2. Title, line 8.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "39-2-905"

Insert: "AND 39-2-914"

3. Page 2, line 8.

Following: line 7

Insert: "Section 2. Section 39-2-914, MCA, is amended to read:

"39-2-914. Arbitration. (1) ~~Under A party may make a written agreement of the parties, offer to arbitrate a dispute that otherwise could be adjudicated under this part may be resolved by final and binding arbitration as provided in this section.~~

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action~~

~~under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5)(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.~~

~~(6)(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."~~

NEW SECTION. Section 3. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3]."

-END-

M- Amd. Coord.  
A Sec. of Senate

HALLIGAN  
Senator Carrying Bill

601248SC.Sma

SENATE  
HB 258

601248SC.Sma

HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHALEN, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION; AND AMENDING ~~SECTION~~ SECTIONS 39-2-905 AND 39-2-914, MCA."

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

**Section 1.** Section 39-2-905, MCA, is amended to read:

"39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any REASONABLE amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise

allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

**SECTION 2.** SECTION 39-2-914, MCA, IS AMENDED TO READ:

"39-2-914. Arbitration. (1) Under A party may make a written agreement-of--the--parties, offer to arbitrate a dispute that otherwise could be adjudicated under this part may-be-resolved-by-final-and-binding-arbitration-as-provided in-this-section.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~{4}--A party who makes a valid offer to--arbitrate--that is--not--accepted--by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date--of the offer--~~

{5}{4} A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

{6}{5} If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."

NEW SECTION. SECTION 3. EFFECT OF REJECTION OF OFFER TO ARBITRATE. A PARTY WHO MAKES A VALID OFFER TO ARBITRATE THAT IS NOT ACCEPTED BY THE OTHER PARTY AND WHO PREVAILS IN AN ACTION UNDER THIS PART IS ENTITLED AS AN ELEMENT OF COSTS TO REASONABLE ATTORNEY FEES INCURRED SUBSEQUENT TO THE DATE

OF THE OFFER.

NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.  
[SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
OF TITLE 39, CHAPTER 2, PART 9, AND THE PROVISIONS OF TITLE  
39, CHAPTER 2, PART 9, APPLY TO [SECTION 3].

-End-