

## 1 HOUSE BILL NO. 71

2 INTRODUCED BY DEBRUYCKER

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO PUNITIVE DAMAGES  
 5 AWARDS IN CIVIL CASES; PROVIDING THAT 60 PERCENT OF PUNITIVE DAMAGES THAT ARE AWARDED  
 6 MUST BE PAID TO THE STATE, WHICH SHALL DISTRIBUTE 80 PERCENT OF THAT AMOUNT TO THE  
 7 UNIVERSITY SYSTEM AND 20 PERCENT TO THE SCHOOL FOR THE DEAF AND BLIND; ESTABLISHING  
 8 THE STATE AS A JUDGMENT CREDITOR; DIRECTING THE CLERK OF THE COURT TO NOTIFY THE  
 9 DEPARTMENT OF REVENUE OF PUNITIVE DAMAGES AWARDS; PROVIDING FOR DISBURSEMENT OF  
 10 PARTIAL PAYMENTS OF PUNITIVE AWARDS; PROVIDING FOR DISBURSEMENT OF POSTVERDICT  
 11 SETTLEMENTS; PROHIBITING THE JURY FROM BEING INFORMED OF CERTAIN PROVISIONS; AND  
 12 AMENDING SECTION 27-1-221, MCA."

13

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

15

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

17 "27-1-221. **Punitive damages -- liability -- proof -- award -- disbursement to state.** (1) Subject to  
 18 the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the  
 19 defendant has been found guilty of actual fraud or actual malice.

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

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

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

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

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

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

29 (4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the  
 30 defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title

1 28, chapter 2, do not apply to proof of actual fraud under this section.

2 (5) All elements of the claim for punitive damages must be proved by clear and convincing  
3 evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt  
4 about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of  
5 evidence but less than beyond a reasonable doubt.

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

7 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not  
8 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns  
9 a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be  
10 determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as  
11 provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to  
12 be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

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

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

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

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

19 (iv) the profitability of the defendant's wrongdoing, 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 against the defendant based upon the same  
23 wrongful act;

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

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

28 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the  
29 matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive  
30 damages should be increased or decreased, ~~he~~ the judge may do so. The judge shall clearly state ~~his~~ the

1 reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury  
2 in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in  
3 subsection (7)(b).

4 (8) (a) Upon the return of a verdict or bench judgment, punitive damages are payable as follows,  
5 subject to adjustment under subsection (7)(c):

6 (i) 40% to the plaintiff; and

7 (ii) 60% to the state treasurer, who shall distribute the money received under this section as  
8 follows:

9 (A) 80% to the board of regents for distribution to the university system; and

10 (B) 20% to the school for the deaf and blind.

11 (b) The judge shall enter judgment accordingly. Upon the entry of judgment, the state has all the  
12 rights of a judgment creditor until the judgment is satisfied.

13 (c) The state may not use the rights and interests created by subsections (8)(a) and (8)(b) as  
14 grounds for intervention in the merits of a lawsuit in which it has no other interest. However, this  
15 subsection does not prohibit the state from taking procedural action to enforce its interest in an award of  
16 punitive damages under this section.

17 (d) The department of revenue shall collect amounts due the state under this section and may, at  
18 its discretion, enter into settlements concerning amounts due the state under this section.

19 (e) The clerk of the court in which a judgment for punitive damages is entered or affirmed shall  
20 forward a copy of the order awarding punitive damages to the director of the department of revenue within  
21 20 days of issuance.

22 (f) Any settlement agreement entered into by the parties after the return of a verdict awarding  
23 punitive damages must provide that 60% of a proportionate share be paid to the state treasurer as provided  
24 in subsection (8)(a). A proportionate share for the purposes of this subsection is the punitive portion of  
25 the award, divided by the total amount of the award, times the total amount of the settlement.

26 (g) If a judgment or settlement is paid in part, the state may not collect an amount under this  
27 section until the plaintiff's compensatory damages, costs, and attorney fees are paid. After the deductions,  
28 no less than 60% of all payments collected must be paid to the state.

29 (h) The jury may not be informed of the provisions of this subsection (8).

30 ~~(8)(9) Nothing in this~~ This section is not intended to alter the Montana Rules of Civil Procedure

1 governing discovery of a defendant's financial affairs, financial condition, and net worth."

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0071, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the laws relating to punitive damages awards in civil cases; providing that 60 percent of punitive damages that are awarded must be paid to the state, which shall distribute 80 percent of that amount to the university system and 20 percent to the school for the deaf and blind; establishing the state as a judgment creditor; directing the clerk of the court to notify the department of revenue of punitive damages awards; providing for disbursement of partial payments of punitive awards; providing for disbursement of postverdict settlements; and prohibiting the jury from being informed of certain provisions.

ASSUMPTIONS:

1. There would be approximately 25 cases per year in which punitive damages are payable upon the return of a verdict or bench judgment.
2. Amounts due the state would be handled through the Delinquent Accounts Receivable (DAR) system of the Department of Revenue at a one-time cost of \$200 for adding punitive damages to the system.
3. This proposal is effective October 1, 1995.
4. Due to the relatively small number of cases per year, administrative costs would be minimal and can be absorbed by the Department of Revenue.

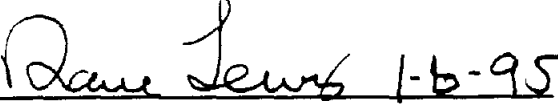
FISCAL IMPACT:

Expenditures:

Under the assumption that there are so few cases per year and that collections will be handled through the DAR system, expenditures will be minimal and can be absorbed by the Department of Revenue.

Revenues:

Unable to determine at this time. Data on state-wide punitive damage awards are not in a readily available format. A revised fiscal note will be done if reliable information is available.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
ROGER DeBRUYCHER, PRIMARY SPONSOR DATE

Fiscal Note for HB0071, as introduced

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