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INTRODUCED BY James Fuchs ~~House~~ BILL NO. 131

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE STATE AND OTHER GOVERNMENTAL ENTITIES ARE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES FOR BAD FAITH, MALICIOUS CONDUCT, AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND AMENDING SECTIONS 2-9-105 AND 2-9-108, MCA."

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

Section 1. Section 2-9-105, MCA, is amended to read:

"2-9-105. State or other governmental entity immune from exemplary and punitive damages -- exception. The state and other governmental entities are immune from exemplary and punitive damages, except for bad faith, malicious conduct, or intentional infliction of emotional distress."

Section 2. Section 2-9-108, MCA, is amended to read:

"2-9-108. Limitation on governmental liability for damages in tort. (1) ~~Neither the~~ The state, a county, a municipality, a taxing district, ~~nor~~ or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence. The limitations in this subsection do not apply to exemplary or punitive damages authorized under 2-9-105.

(2) ~~No~~ An insurer is not liable for excess damages unless ~~such~~ the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0131, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that the state and other governmental entities are liable for exemplary or punitive damages for bad faith, malicious conduct, and intentional infliction of emotional distress.

ASSUMPTIONS:

1. The state and other governmental entities are presently statutorily immune from all claims for exemplary and punitive damages.
2. The extent to which the state would be subject to claims for exemplary and punitive damages is impossible to predict, but it is likely that such claims would be made if allowed under certain conditions.
3. Cases involving allegations of bad faith, malicious conduct, or intentional infliction of emotional distress for which exemplary and punitive damages are sought tend to be relatively costly to defend.
4. The tort claims defense fund, administered by the Department of Administration, currently collects nearly \$6 million per year for general liability defense from virtually all state funds. The estimated reserve at the end of the 1997 biennium is approximately \$6 million.
5. HB0131 would make existing limitations of \$750,000 per claim and \$1.5 million per occurrence inapplicable to exemplary and punitive damages. The additional exposure of the state, particularly in the absence of existing limitations, may require additional reserves for the state's tort claims defense fund.

FISCAL IMPACT:

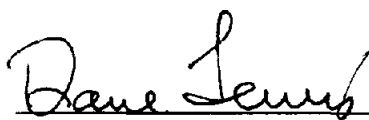
Inestimable but potentially significant increase in defense costs and claims expenditures primarily from the state's tort claims defense fund, administered by the Department of Administration.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would be similarly affected.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Inestimable but potentially significant increases in reserve requirements for the tort claims defense fund, causing "fixed cost" allocations to all agency budgets for general liability premiums to increase in the 1999 biennium.

 1-16-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


DANIEL FUCHS, PRIMARY SPONSOR DATE

Fiscal Note for HB0131, as introduced

HB 131