

SENATE BILL NO. 123

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INTRODUCED BY Toewe

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO PUNITIVE DAMAGE AWARDS IN CIVIL CASES; PROVIDING THAT PUNITIVE DAMAGES MUST BE PAID TO THE STATE FOR DISBURSEMENT TO THE PLAINTIFF, THE PLAINTIFF'S ATTORNEY, AND THE STATE GENERAL FUND; AND AMENDING SECTION 27-1-221, MCA."

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 -- disbursement. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

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

(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 of otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that 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.

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

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

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

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

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

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

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

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

16 (vi) the defendant's net worth;

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

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

20 and

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

23 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the
24 matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive
25 damages should be increased or decreased, ~~he~~ the judge may do so. The judge shall clearly state ~~his~~ the
26 reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury
27 in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in
28 subsection (7)(b).

29 (8)(a) Upon the return of a verdict or bench judgment, punitive damages, less the plaintiff's costs,
30 are payable to the state treasurer. The state treasurer shall distribute the money received under this section

1 as follows:

2 (i) 15% to the plaintiff's attorney;

3 (ii) 10% to the plaintiff; and

4 (iii) the remainder to the state general fund.

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

9 (c) The department of revenue shall collect amounts due to the state under this section and may,
10 at its discretion, enter into settlements concerning amounts due to the state under this section.

11 (d) The clerk of the court in which a judgment for punitive damages is entered or affirmed shall
12 forward a copy of the order awarding punitive damages to the director of the department of revenue within
13 20 days of issuance.

14 (e) If the parties to a lawsuit in which punitive damages have been awarded enter into a settlement
15 agreement after a verdict or judgment is entered, the settlement agreement must provide for payment of
16 punitive damages to the state treasurer as provided in subsection (8)(a).

17 (f) If a judgment or settlement is paid in part, the state may not collect any amount under this
18 section until the plaintiff's compensatory damages and costs are paid.

19 (g) The jury may not be informed of the provisions of this subsection (8).

20 ~~(8)(9)~~ Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing
21 discovery of a defendant's financial affairs, financial condition, and net worth."

22 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0123, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the laws relating to punitive damage awards in civil cases; providing that punitive damages must be paid to the state for disbursement to the plaintiff, the plaintiff's attorney, and the state general fund.

ASSUMPTIONS:

1. According to the Montana Law Week, for the three year period of June 1990 through June 1993, \$6,265,000 was "awarded" in punitive damages in Montana. (note: a \$10.5 million single award has been removed from the total because its size, the largest ever awarded in Montana, would skew the average). This produces an annual average of \$2,088,000. Assume that this average will be maintained in the 1997 biennium (in actuality, punitive damage awards vary considerably from year to year).
2. Assume that juries and judges will continue to award punitive damages, in approximately the same amounts, with the knowledge that approximately 75% of the award will go to the state general fund.
3. After paying plaintiff costs of \$88,000, and distributing 15% to the plaintiff's attorney (\$300,000), and 10% to the plaintiff (\$200,000), the amount remaining for the general fund is \$1,500,000.
4. Administrative expenses are minimal and can be absorbed by the Department of Revenue.
5. Some of the award going to the recipients under current law would be paid to the state in income taxes. The effect of this is not shown in the amounts presented below.
6. The law will become effective October 1, 1995. Because of paper delays, assume only 6 months, or 50% of potential revenue collected in FY96.

FISCAL IMPACT:

Revenues:

	<u>FY96</u>	<u>FY97</u>
General fund:		
Punitive damages (01)	750,000	1,500,000

Dave Lewis 1-20-95

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

Daryl Toews 1-20-95
DARYL TOEWS, PRIMARY SPONSOR DATE

Fiscal Note for SB0123, as introduced

SB 123