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SENATE BILL NO. 169

INTRODUCED BY G. HERTZ, J. ESP, B. BROWN, B. USHER, C. FRIEDEL, J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUNITIVE DAMAGES LAWS; PROVIDING THAT A PUNITIVE DAMAGES AWARD BE EQUALLY DIVIDED BETWEEN THE INJURED PARTY AND THE STATE; ESTABLISHING THE STATEWIDE PUBLIC DEFENDER SYSTEM ACCOUNT IN THE STATE SPECIAL REVENUE FUND; REQUIRING PUNITIVE DAMAGES THAT ARE AWARDED TO THE STATE TO BE DEPOSITED IN THE STATEWIDE PUBLIC DEFENDER SYSTEM ACCOUNT; AND AMENDING SECTION 27-1-221, MCA."

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

**NEW SECTION. Section 1. Statewide public defender system account established.** (1) There is a statewide public defender system account in the state special revenue fund provided for in 17-2-102.

(2) There must be paid into the account any punitive damages awarded to the state pursuant to 27-1-221.

(3) Money deposited in the account is subject to appropriation by the legislature and may be used only to fund the statewide public defender system established under Title 47, chapter 1.

**Section 2.** Section 27-1-221, MCA, is amended to read:

**"27-1-221. Punitive damages -- liability -- proof -- award.** (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 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.

1 (3) A defendant is guilty of actual fraud if the defendant:  
2 (a) makes a representation with knowledge of its falsity; or  
3 (b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or  
4 otherwise causing injury.

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

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

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

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

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

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

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

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

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

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

27 (vi) the defendant's net worth;

28 (vii) previous awards of punitive or exemplary damages against the defendant based ~~upon~~on the

1 same wrongful act;

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

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

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

11 ~~(8) The judge shall divide the punitive damage award equally between the injured party and the~~  
12 ~~state and shall enter judgment accordingly. The award to the state must be deposited in the statewide public~~  
13 ~~defender system account established in [section 1]. When punitive damages are awarded by a judge or jury,~~  
14 ~~the amount of the punitive damages must be apportioned as follows:~~

15 ~~(a) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the clerk of~~  
16 ~~the district court. The clerk of the district court shall forward any amount collected under this subsection (8)(a)~~  
17 ~~to the state treasurer within 60 days of receipt for deposit in the account established in [section 1].~~

18 ~~(b) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the party to~~  
19 ~~whom the punitive damages were awarded.~~

20 ~~(9) The costs of litigation, including reasonable attorney fees, must be deducted from the full~~  
21 ~~punitive damages award before apportionment under subsection (8).~~

22 ~~(8)(9)(10)~~ This section is not intended to alter the Montana Rules of Civil Procedure governing  
23 discovery of a defendant's financial affairs, financial condition, and net worth."

24  
25 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
26 integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 1].

27 - END -