F I S C A L   I M P A C T   R E P O R T

SPONSOR Komadina **DATE TYPED** 3/4/05 **HB**

SHORT TITLE Punitive Damages Act **SB** 860

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Unknown	Same	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files
Attorney General (AG)

Responses Received From
Administrative Office of the Courts (AOC)
Corrections Department (CD)

SUMMARY

Synopsis of Bill

Senate Bill 860 enacts the Punitive Damages Act, which requires that a court, when entering a judgment for punitive damages, direct in the judgment that payment of all punitive damages awarded are to be made to the state general fund. The bill further prohibits the state from seeking an award of punitive damages in a tort action to which it is a party.

Significant Issues

The AG states that eight other states (Alaska, Georgia, Illinois, Iowa, Indiana, Missouri, Oregon and Utah) have statutes directing a portion of punitive damages awards into the state treasury. Utah's statute was recently held to be unconstitutional by a lower court.

According to the AG, the majority of these eight states require a fixed percentage (ranging from 50% to 75%) of the punitive damage awards to be allocated to the state. States differ as to which cases such statutes affect. For example, Georgia applies its split-recovery statute only to products liability cases, and Iowa applies it only where the jury determines that the defendant's misconduct was not directed specifically at the individual plaintiff. States' statutes also differ with respect to contingency fees for attorneys and whether they are based upon the entire award, or are calculated after the state's portion is directed into the treasury. The AG is unaware of any state that has adopted a split-recovery statute allowing the state to take 100% of a punitive damages award as this bill proposes.

States have split on whether those so-called "split-recovery" statutes violate the provisions of the constitution regarding due process, excessive fines, double jeopardy, or "takings". In *DeMendoza v. Huffman*, 2002 WL 1827841 (Or. Aug. 8, 2002), the Oregon Supreme Court held that state's split-recovery statute allocating 60% of punitive damages award to the state did not violate the right to a remedy, the right to a jury trial, the takings or tax provisions, or the separation of powers under the State Constitution. However, the Colorado Supreme Court struck down its "split-recovery" statute as being an impermissible "taking" of the plaintiff's property. *Kirk v. Denver Publishing Co.*, 818 P.2d 262, 264 (Colo. 1991).

The AG also notes that aside from legal arguments, opponents allege that such statutes reduce incentive to sue or settle.

FISCAL IMPLICATIONS

The actual amount which would be directed to the general fund under the provisions of this bill is unclear.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Punitive damages awards will not be directed to the general fund.

DXM/yr