

**HB 257 -- Rep. Gary Branae, sponsor
Repeal of MCA Sec. 28-2-722**

This bill would repeal MCA 28-2-722, which limits the term of an employment contract to two years.¹ As Professor Scott Burnham, Professor of Law at the University of Montana, explains – *“This antique statute serves no public purpose and may inhibit modern economic development.”*

- **There is no good public policy reason for this law.** This statute dates back 110 years to 1895, and was taken from California law at that time without explanation or discussion by the Montana legislature. It has never been interpreted by the Montana Supreme Court.
- **46 states have no restriction on the length of employment contracts. Only three other states have any restriction on the length of employment contracts.** California has amended its law to allow for 7 year employment contracts. North and South Dakota are the only other states, beside Montana, that continue to have a two year limit because they adopted California law at about the same time Montana did. Louisiana, which had a 10 year limit, repealed its law in 1990 “on the ground that it had become essentially anachronistic.”
- **In health care, sports, technology, and other businesses requiring recruitment of highly skilled employees, contracts beyond two years are common. Therefore, this limit on employment contracts impedes Montana businesses compared to other states.**
 - The University system for Montana has requested that it be exempt from this law for employment contracts with athletic coaches. (SB 171)
 - The federal government requires employment contracts of at least three years for foreign physicians with a J-1 visa status to be able to stay in the United States to provide services in medically underserved areas. This law puts those contracts in question.
 - Health care organizations, which often face challenging recruitments of highly skilled medical personnel and administrators, would benefit from the ability to offer longer term contracts in order to secure the willingness of people to move to Montana, with the expectation that they will stay.
- **The “common law” of contracts provides fairness and flexibility and prevents the enforcement of unconscionable contracts, while respecting freedom of contract.** “[T]he freedom of contract holds that the parties themselves are in the best position to determine the terms of a contract because the parties are free to get information and bargain the private law of the contract in their own interest.” Montana Supreme Court, October 28, 2003.

For a copy of Professor Scott Burnham’s legal analysis supporting repeal of MCA Sec. 28-2-722, please contact Jani McCall at 670-3084 or Kathy Kenyon, General Counsel of Deaconess Billings Clinic at kkenyon@billingsclinic.org or 406-238-2808.

¹ 28-2-722. *Contracts for personal services limited to two years. A contract to render personal services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.*