

HOUSE BILL NO. 26

INTRODUCED BY GOLIE

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS FOR AN ACT OR OMISSION BY A PERSON OR ENTITY ALLEGED TO HAVE BEEN AN OSTENSIBLE AGENT OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency -- limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be ~~his~~ the principal's agent ~~who~~ when that person is not really employed by ~~him~~ the principal.

(2) ~~For~~ EXCEPT AS PROVIDED IN SUBSECTION (3), FOR purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) SUBSECTION (2) IS NOT APPLICABLE UNLESS THE HEALTH CARE PROVIDER HAS, BY POLICY OR PRACTICE, ENSURED THAT THOSE PERSONS PROVIDING INDEPENDENT PROFESSIONAL SERVICES HAVE INSURANCE OF A TYPE AND IN THE AMOUNT REQUIRED BY THE RULES AND REGULATIONS OF THE MEDICAL STAFF, BY THE MEDICAL STAFF BYLAWS, OR BY OTHER SIMILAR HEALTH CARE FACILITY RULES OR REGULATIONS."

NEW SECTION. SECTION 2. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

