SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 23, 09
BILL NO. HB 362

Amendments to House Bill No. 362
3rd Reading Copy

Requested by Senator Jesse Laslovich

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 23, 2009 (9:00am)

1. Page 2, line 23.
Following: "materials,"
Strike: "naturally occurring biological diseases,"
Insert: "outbreak of disease,"

2. Page 4, line 17.
Following: "medicine."
Insert: "The provisions of [section 6] do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine."

3. Page 5, line 1.
Following: "order"
Strike: "must specify the need to allow for"
Insert: "or proclamation may authorize"

4. Page 5, line 2.
Following: "medicine."
Insert: "The provisions of [section 6] do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine."

5. Page 5, line 19 through line 20.
Following: the second "injury" on line 19
Strike: remainder of line 19 through "EMERGENCY," on line 20

6. Page 5, line 21.
Following: "misconduct"
Insert: "and as a result of"

7. Page 5, line 22.
Following: line 21
Insert: "(a) an act or omission arising out of activities undertaken in response to the disaster or emergency;"
Renumber: subsequent subsections

8. Page 5, line 22.
Following: "(a)"
Strike: "as a result of"

(OVER)

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9. Page 5, line 23.
Following: "(b)"
Strike: "as a result of"

10. Page 6, line 3.
Following: "SUBDIVISION"
Insert: "acting within the scope of the provider's employment or duties"

- END -

HOUSE BILL NO. 362

INTRODUCED BY T. HENRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO DISASTER AND EMERGENCY SERVICES; DEFINING "DISASTER MEDICINE"; LIMITING LIABILITY OF LICENSED HEALTH CARE PROFESSIONALS DURING THE PRACTICE OF DISASTER MEDICINE; ~~LIMITING GOVERNMENTAL LIABILITY;~~ AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-111, 10-3-302, AND 10-3-303, MCA."

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

Section 1. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or ~~man-made~~ human-caused disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations."

Section 2. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, ~~naturally occurring biological diseases~~, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care BY A HEALTH CARE PROVIDER during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and

1 personnel. Disaster medicine may include implementing ~~protocols~~ PATIENT CARE GUIDELINES that depart from
2 recognized nondisaster triage and standard treatment ~~protocols~~ PATIENT CARE GUIDELINES determining the order
3 of evacuation and treatment of persons needing care.
4 ~~(5)~~(6) "Division" means the division of disaster and emergency services of the department.
5 ~~(6)~~(7) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property
6 that timely action can avert or minimize.
7 ~~(7)~~(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural
8 phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life
9 or damage to property or natural resources. The term includes the imminent threat of an emergency.
10 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to
11 10-3-302 or 10-3-303.
12 ~~(8)~~(9) "Political subdivision" means any county, city, town, or other legally constituted unit of local
13 government in this state.
14 ~~(9)~~(10) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or
15 other chief executive officer of a political subdivision.
16 ~~(10)~~(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile
17 homes, or other readily fabricated dwellings."
18
19 **Section 3.** Section 10-3-111, MCA, is amended to read:
20 **"10-3-111. Personnel immune from liability.** (1) The state, a political subdivision of the state, or the
21 agents or representatives of the state or a political subdivision of the state are not liable for personal injury or
22 property damage sustained by a person appointed or acting as a volunteer civilian defense or other response and
23 recovery activity worker or member of an agency engaged in civilian defense or other response and recovery
24 activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive
25 benefits or compensation to which the person might otherwise be entitled under the workers' compensation law
26 or a pension law or an act of congress.
27 (2) The state or a political subdivision of the state or, except in cases of willful misconduct, gross
28 negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision of the
29 state or a volunteer or auxiliary civilian defense or other response and recovery worker or member of an agency
30 engaged in civilian defense or other response and recovery activity during an incident, disaster, or emergency

or the owners of facilities used for civil defense or other response and recovery shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection."

Section 4. Section 10-3-302, MCA, is amended to read:

"10-3-302. Declaration of emergency -- effect and termination. (1) A state of emergency may be declared by the governor when ~~he~~ the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency ~~shall activate~~ activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies. ~~The~~ AN executive order ~~must specify the need to allow for~~ OR PROCLAMATION MAY AUTHORIZE the practice of disaster medicine.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which ~~shall~~ must ~~be~~ determined by a declaration of an emergency by the president of the United States or ~~by a~~ declaration of the legislature by joint resolution of continuing conditions of the state of emergency." The provisions of [section 6] do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine."

Section 5. Section 10-3-303, MCA, is amended to read:

"10-3-303. Declaration of disaster -- effect and termination. (1) A state of disaster may be declared by the governor when ~~he~~ the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to

The provisions of [section 6] do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

disaster and disaster-related emergencies. The executive order or proclamation may authorize ~~must specify the need to allow for~~ the practice of disaster medicine.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."

NEW SECTION. **Section 6. Medical services during declared emergency or disaster -- limitation of liability -- administrative disciplinary sanctions.** (1) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (3), A health care professional licensed to practice in Montana who, in good faith and regardless of compensation, renders or fails to render emergency care, health care services, or first aid during a declared emergency or disaster is not liable for any civil damages or injury unless the damages or injury, ~~AS A RESULT OF AN ACT OR OMISSION ARISING OUT OF ACTIVITIES UNDERTAKEN IN RESPONSE TO THE DISASTER OR EMERGENCY,~~ was caused by gross negligence or willful and wanton misconduct and as a result of:

(b) ~~(a) as a result of~~ any act or omission related to the rendering of or failure to render services; or

(c) ~~(b) as a result of~~ evacuation or treatment or the failure to evacuate or provide treatment conducted in accordance with disaster medicine or at the direction of military or government authorities.

(2) A licensing program, licensing board, or any other disciplinary authority in Montana may impose administrative sanctions upon a health care professional for unprofessional conduct in response to a declared public health emergency that occurs in Montana. An administrative disciplinary sanction imposed upon a health care professional who is licensed in another state must be reported to the licensing authority in the health care professional's state and each state in which the health care professional is licensed. The standard of review for administrative disciplinary sanctions must be whether the health care professional exercised good faith clinical

(a) an act or omission arising out of activities undertaken in response to the disaster or emergency;

1 judgment given the circumstances under which the judgment was exercised.

2 (3) THIS SECTION DOES NOT APPLY TO A HEALTH CARE PROVIDER EMPLOYED BY THE UNITED STATES, A STATE,

3 OR A POLITICAL SUBDIVISION acting within the scope of the provider's employment or

4 duties

5 NEW SECTION. **Section 7. Codification instruction.** [Section 6] is intended to be codified as an

6 integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [section 6].

7

8 ~~NEW SECTION. **Section 8. Two-thirds vote required.** Because [section 6] limits governmental liability,~~

9 ~~Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of~~

10 ~~the legislature for passage.~~

11 - END -