



AN ACT GENERALLY REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT TO KNOW; PROVIDING DISCLOSURE REQUIREMENTS FOR THE COMPROMISE AND SETTLEMENT OF CLAIMS AGAINST THE STATE; REQUIRING QUARTERLY REPORTS ON DEMANDS TO RESOLVE CLAIMS; PROVIDING DEFINITIONS; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is a strong public policy supporting the public's right to know the precise reason for the expenditure of public money to settle claims against the government, as discussed in *Citizens to Recall Whitlock v. Whitlock*, 255 Mont. 517, 524, 844 P.2d 74, 78 (1992); and

WHEREAS, the concept of accountability of government includes accountability of how taxpayer dollars are spent; and

WHEREAS, a 2020 performance audit performed by the Legislative Audit Division, *State Employee Settlements: Trends, Transparency, and Administration*, concluded that the state used nondisclosure agreements in approximately two-thirds of its monetary settlements with employees; and

WHEREAS, anything that prohibits disclosure of how taxpayer dollars are spent inhibits the public's right to know under Article II, section 9, of the Montana Constitution and should rarely be precluded by the protections in the right to privacy contained in Article II, section 10, of the Montana Constitution; and

WHEREAS, there is no basis to protect disclosure of details of settlements given that parties who sue the state in court are typically unable to conceal their identities and allegations from public disclosure; and

WHEREAS, there is no public policy basis to conceal facts about a claim against the state when a party settles a claim given that the same treatment is not afforded to a party who chooses to litigate a claim against the state; and

WHEREAS, the Legislature's intent is to create sunshine and transparency when public money is used to settle claims based on the acts or omissions of state employees and state actors.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the "State's Settlement of Claims Sunshine and Transparency Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

- (1) (a) "Claim" means any claim against a governmental entity for \$10,000 or more in monetary compensation, including but not limited to employment-related claims and tort claims.
 - (b) The term does not include benefits disputes under Title 39, chapter 51 or 71.
- (2) "Department" means the department of administration provided for in 2-15-1001.
- (3) "Employee" has the meaning provided in 2-9-101. The term includes a permanent employee, short-term worker, student intern, seasonal employee, personal staff, and temporary employee as those terms are defined in 2-18-101.
- (4) "Monetary compensation" includes money and anything of financial value that is used by a governmental entity to resolve a claim, including but not limited to paid administrative leave and reinstatement or rehiring of a terminated employee.
- (5) "Nondisclosure agreement" means any kind of contract or agreement requiring the parties to maintain confidentiality of any information related to a settlement with the state, or compromise or settlement agreements with the state.
- (6) "Settlement" means a binding legal agreement between the state or its agencies, departments, or other state entities and a party who accepts monetary compensation in return for releasing claims against the state or its entities.
- (7) "State" and "governmental entity" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, or university of the state.

Section 3. Requirements for compromise and settlement of claims against state. (1) The department shall create, monitor, maintain, and update, on an ongoing basis, a website that is available to the public and publishes the following information:

- (a) the names of the parties settling claims with the state unless the right to individual privacy outweighs the public right to know;
- (b) the date of each compromise or settlement of a claim against the state that results in monetary compensation;
- (c) the identity of the entity of the state where the claim originated;
- (d) the amount of monetary compensation contained in the compromise or settlement; and
- (e) a brief description of the alleged conduct, acts, or omissions by one or more employees, officers, or agents of the state at issue in the case.

(2) If a member of the public requests a paper copy of information on the website or a paper copy of the quarterly report as provided in [section 4], the department shall charge a fee for paper copies that is commensurate with the cost of printing.

(3) All information regarding the compromise or settlement of a claim involving a minor is exempted from disclosure under subsection (1).

(4) The information identified in subsection (1) must be published within 60 days of the date the compromise or settlement occurred.

(5) (a) Nondisclosure agreements are disfavored in compromise or settlement agreements when the state is a party and may be utilized only in the rare instance in which the right to individual privacy outweighs the public right to know.

(b) Nondisclosure agreements may not exempt the state from its reporting obligations in subsections (1)(b) through (1)(e), except in the rare instance in which:

(i) disclosure of information required to be reported by subsection (1)(c) or (1)(e) would lead to a violation of an individual's right to privacy; and

(ii) the right to privacy arising as a result of the claim outweighs the public right to know.

(c) No privacy interest may overcome the public right to know with respect to the duty to report the information in subsections (1)(b) and (1)(d).

(6) All money paid by the state pursuant to a settlement or compromise must be consistently coded in the statewide accounting, budgeting, and human resource system so that when the code or codes are reviewed a complete list of all settled claims is provided. The department shall set the standards for the coding.

(7) Among the records to be maintained when monetary compensation is utilized to settle or compromise claims are documents signed by an appropriate official, including:

(a) a statement that no condition or limitation precludes the use of the funds utilized to pay the settlement or other monetary compensation or damages;

(b) a detailed description of the alleged conduct, acts, or omissions by one or more employees, officers, or agents of the state, and the state's defenses, including legal and factual defenses at issue in the case; and

(c) the settlement terms.

(8) When a governmental entity provides monetary compensation other than money to resolve a claim, the governmental entity must evaluate the value conveyed pursuant to the settlement or compromise to determine whether it meets the \$10,000 threshold requiring disclosure under this section.

Section 4. Quarterly report on demands to resolve claims. (1) Each governmental entity shall submit a quarterly report to the legislative fiscal division disclosing all civil claims or complaints, including the identity of the court or entity of the state where the complaint is filed, received by or for which service of process has been perfected with initial demands seeking \$10,000 or more in monetary compensation, exclusive of initial demands made in mediations or settlement conferences in which court rules or orders preclude disclosure of demands.

(2) The provisions of this section do not apply to an employee or official in the judicial branch.

(3) Claims for injunctive relief need not be reported as claims seeking monetary compensation.

(4) Demands deemed to be frivolous by governmental entities need not be reported under this section, and judicial review is not available to challenge any such determination made by a governmental entity. If a governmental entity does not disclose a claim or complaint in a quarterly report because the claim is deemed to be frivolous, the governmental entity shall disclose the number of claims or complaints not disclosed under the exemption in this subsection.

Section 5. Section 2-9-303, MCA, is amended to read:

"2-9-303. Compromise or settlement of claim against state. (1) (a) The department of

administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(b) All records related to a compromise or settlement of a claim against the state must be retained for a period of 20 years.

(2) (a) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(b) Unless the state or its entities pay nothing to resolve a claim, the compromise or settlement agreement must include a description of the alleged acts, omissions, or other basis of liability at issue.

(3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure."

Section 6. Use of existing resources. It is the intent of the legislature that the executive branch agencies and entities implement the provisions of [this act] within existing resources.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 6, part 10, and the provisions of Title 2, chapter 6, part 10, apply to [sections 1 through 4].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,
HB 358, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 358

INTRODUCED BY B. MERCER, J. ESP

AN ACT GENERALLY REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT TO KNOW; PROVIDING DISCLOSURE REQUIREMENTS FOR THE COMPROMISE AND SETTLEMENT OF CLAIMS AGAINST THE STATE; REQUIRING QUARTERLY REPORTS ON DEMANDS TO RESOLVE CLAIMS; PROVIDING DEFINITIONS; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN EFFECTIVE DATE.