

HOUSE BILL NO. 261

INTRODUCED BY M. NOENNIG

BY REQUEST OF THE JOINT SELECT COMMITTEE ON CI-75

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING GOVERNMENTAL IMMUNITY AND DEFENSE AND INDEMNIFICATION OF PUBLIC OFFICERS AND EMPLOYEES; AMENDING SECTIONS 2-9-111, 2-9-112, 2-9-113, 2-9-114, AND 2-9-305, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 2-9-111, MCA, is amended to read:

**"2-9-111. Immunity from suit for legislative acts and omissions.** (1) As used in this section:

(a) the term "governmental entity" means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana;

or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) ~~A~~ Except as provided in Article VIII, section 17, of the Montana constitution, a governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) ~~Any~~ Except as provided in Article VIII, section 17, of the Montana constitution, any member or staff

1 of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty  
2 associated with legislative acts of the legislative body.

3 (4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a  
4 governmental entity does not waive the immunity provided by this section.

5 (5) The immunity provided for in this section does not extend to:

6 (a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

7 (b) any act or omission that results in or contributes to personal injury or property damage caused by  
8 contamination or other alteration of the physical, chemical, or biological properties of surface water or ground  
9 water, for which a cause of action exists in statutory or common law or at equity. This subsection (5)(b) does not  
10 create a separate or new cause of action."  
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12 **Section 2.** Section 2-9-112, MCA, is amended to read:

13 **"2-9-112. Immunity from suit for judicial acts and omissions.** (1) The Subject to Article VIII, section  
14 17, of the Montana constitution, the state and other governmental units are immune from suit for acts or omissions  
15 of the judiciary.

16 (2) A member, officer, or agent of the judiciary is immune from suit for damages arising from ~~his~~ the  
17 lawful discharge of an official duty associated with judicial actions of the court.

18 (3) The judiciary includes those courts established in accordance with Article VII of The Constitution of  
19 the State of Montana."  
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21 **Section 3.** Section 2-9-113, MCA, is amended to read:

22 **"2-9-113. Immunity from suit for certain gubernatorial actions.** The Subject to Article VIII, section  
23 17, of the Montana constitution, the state and the governor are immune from suit for damages arising from the  
24 lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the  
25 legislature."  
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27 **Section 4.** Section 2-9-114, MCA, is amended to read:

28 **"2-9-114. Immunity from suit for certain actions by local elected executives.** A Subject to Article  
29 VIII, section 17, of the Montana constitution, a local governmental entity and the elected executive officer thereof  
30 of the entity are immune from suit for damages arising from the lawful discharge of an official duty associated with

1 vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body."

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3 **Section 5.** Section 2-9-305, MCA, is amended to read:

4 **"2-9-305. Immunization, defense, and indemnification of employees.** (1) ~~Subject to Article VIII,~~  
 5 section 17, of the Montana constitution concerning immunity for tax-related matters, it is the purpose of this  
 6 section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued  
 7 for their actions taken within the course and scope of their employment.

8 (2) In any noncriminal action brought against any employee of a state, county, city, town, or other  
 9 governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to  
 10 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope  
 11 of the employee's office or employment, the governmental entity employer, except as provided in subsection (6),  
 12 shall defend the action on behalf of the employee and indemnify the employee.

13 (3) Upon receiving service of a summons and complaint in a noncriminal action against ~~him~~ an  
 14 employee, the employee shall give written notice to ~~his~~ the employee's supervisor requesting that a defense to  
 15 the action be provided by the governmental entity employer. If the employee is an elected state official or other  
 16 employee not having ~~no~~ a supervisor, the employee shall give notice of the action to the legal officer or agency  
 17 of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6),  
 18 the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense  
 19 provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice,  
 20 whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the  
 21 defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all  
 22 expenses relating to the retained defense and pay any judgment for damages entered in the action that may be  
 23 otherwise payable under this section.

24 (4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee  
 25 ~~shall~~ must be indemnified by the employer for any money judgments or legal expenses, including attorney fees  
 26 either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as  
 27 a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

28 (5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter  
 29 constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject  
 30 matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct

1 gave rise to the claim. In any ~~such~~ action against a governmental entity, the employee whose conduct gave rise  
 2 to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges  
 3 or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course  
 4 and scope of the employee's employment, unless the claim constitutes an exclusion provided in ~~(b) through (d)~~  
 5 ~~of subsection~~ subsections (6)(b) through (6)(d).

6 (6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee  
 7 may not be defended or indemnified by the employer for any money judgments or legal expenses, including  
 8 attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

9 (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice; or for any other  
 10 reason does not arise out of the course and scope of the employee's employment;

11 (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through  
 12 7;

13 (c) the employee compromised or settled the claim without the consent of the government entity  
 14 employer; or

15 (d) the employee failed or refused to cooperate reasonably in the defense of the case.

16 (7) If ~~no~~ a judicial determination has not been made applying the exclusions provided in subsection (6),  
 17 the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute  
 18 as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should  
 19 clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or  
 20 other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the  
 21 employee until a final judgment is rendered in ~~such~~ the action holding that the employer had no obligation to  
 22 defend the employee. The governmental entity employer has no obligation to provide a defense to the employee  
 23 in a declaratory judgment action or other legal action brought against the employee by the employer under this  
 24 subsection."  
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26 NEW SECTION. Section 6. Contingent voidness. If Constitutional Initiative No. 75, enacting Article  
 27 VIII, section 17, of the Montana constitution, is declared invalid, then [this act] is void.

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29 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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