

SENATE BILL NO. 418
INTRODUCED BY M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO MEDICAL LIABILITY IN CIVIL LAWSUITS; PROVIDING THAT IF A PERSON BRINGS A CLAIM BEFORE THE MONTANA MEDICAL LEGAL PANEL AND LOSES AND PROCEEDS TO COURT AND LOSES, THE CLAIMANT MUST PAY THE DEFENDANT'S COSTS AND ATTORNEY FEES; PROVIDING THAT A MEDICAL PRACTITIONER MAY NOT RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE WHO PROVIDES INFORMATION THAT MAY BE USED TO DISCIPLINE THE MEDICAL PRACTITIONER; AND AMENDING SECTION 27-6-606, MCA."

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

NEW SECTION. Section 1. Court actions -- payment of costs and attorney fees. If a claimant files a malpractice claim in a court after the panel has decided both questions required by 27-6-602 in the negative and the defendant prevails in that action, the claimant shall pay the defendant's reasonable costs and attorney fees incurred in defending the court action.

Section 2. Section 27-6-606, MCA, is amended to read:

"27-6-606. Decision not binding -- settlement agreements -- nonbinding mediation. (1) ~~The~~ Except as provided in [section 1], the panel's decision is without administrative or judicial authority and is not binding upon any party.

(2) The panel may recommend an award, approve settlement agreements, and discuss the settlement agreements, all in a manner consistent with this part. All approved settlement agreements are binding on the parties.

(3) If the panel decides both questions required by 27-6-602 in the affirmative, the court in which the complaint is filed shall, at the request of a party, require the parties to participate in court-supervised, nonbinding mediation prior to proceeding."

NEW SECTION. Section 3. Retaliation or discrimination prohibited. (1) A medical practitioner, as defined in 37-2-101, or any agent or employee of a medical practitioner may not retaliate or discriminate unfairly against an employee of the medical practitioner who in good faith:

(a) reports to the medical practitioner's licensing authority information relating to the conduct of the medical practitioner that may constitute grounds for initiating disciplinary action against the medical practitioner or that otherwise raises a reasonable question regarding the competence of the medical practitioner to practice medicine with reasonable skill and safety to patients; or

(b) cooperates or otherwise participates in an investigation or proceeding conducted by a licensing authority or other governmental entity relating to conduct described in subsection (1)(a).

(2) An employee of a medical practitioner who believes that the employee has been retaliated or discriminated against in violation of subsection (1) may file an action in a court of competent jurisdiction for such relief as may be appropriate under the law.

(3) (a) For purposes of this section, "retaliate or discriminate" includes, without limitation, the following action if the action is taken solely because the employee took an action described in subsection (1):

(i) frequent or undesirable changes in the location where the employee works;

(ii) frequent or undesirable transfers or reassignments;

(iii) the issuance of letters of reprimand, letters of admonition, or evaluations of poor performance;

(iv) a demotion;

(v) a reduction in pay;

(vi) the denial of a promotion;

(vii) a suspension;

(viii) a dismissal;

(ix) a transfer; or

(x) frequent changes in working hours or workdays.

(b) The term does not include an action described in subsection (3)(a) if the action is taken in the normal course of employment or as a form of discipline.

NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 27, chapter 6, part 7, and the provisions of Title 27, chapter 6, part 7, apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 3].

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