

SENATE BILL NO. 404
INTRODUCED BY G. LIND

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LIMITS ON LIABILITY FOR EMERGENCY CARE; LIMITING LIABILITY FOR FIREWARDENS; AND AMENDING SECTION 27-1-714, MCA FIREFIGHTERS; PROVIDING FOR LEGAL REPRESENTATION OF FIREFIGHTERS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND LOCAL GOVERNMENTAL FIRE AGENCIES TO PAY ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1.~~ Section 27-1-714, MCA, is amended to read:

~~"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1)~~

~~Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company a governmental fire agency, or any other person who in good faith renders emergency care or assistance with or without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such the person in rendering such the emergency care or assistance.~~

~~(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual income or \$3,000 a calendar year, whichever is greater.~~

~~(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such the refusal does not constitute gross negligence or a willful or wanton act or omission.~~

~~(4) A person acting within the course and scope of duties described in subsections (1) and (2) is not criminally liable for acts and omissions other than those committed purposely and knowingly.~~

~~(5) As used in this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33.~~

~~NEW SECTION. **Section 2. Liability of firewardens.** A firewarden is not civilly or criminally liable for~~

~~acts and omissions that are committed within the course and scope of employment, other than those committed purposely and knowingly.~~

~~NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2].~~

~~NEW SECTION. **SECTION 1. LIABILITY OF FIREFIGHTERS.** (1) A FIREWARDEN, FIREFIGHTER, OR OFFICER OR EMPLOYEE OF A STATE OR GOVERNMENTAL FIRE AGENCY IS NOT CRIMINALLY LIABLE FOR ANY CIVIL DAMAGES FOR ACTS OR OMISSIONS WHILE FIGHTING FIRES OTHER THAN DAMAGES OCCASIONED BY GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS OR OMISSIONS ACTS OR OMISSIONS COMMITTED WITH DEMONSTRABLE CRIMINAL INTENT.~~

~~(2) FOR THE PURPOSES OF THIS SECTION, "GOVERNMENTAL FIRE AGENCY" MEANS A FIRE PROTECTION ENTITY ORGANIZED UNDER TITLE 7, CHAPTER 33.~~

~~NEW SECTION. **SECTION 2. LEGAL REPRESENTATION FOR STATE FIREFIGHTERS.** THE DEPARTMENT SHALL PROVIDE LEGAL REPRESENTATION TO ITS EMPLOYEES WHO FIGHT FIRES FOR ANY CRIMINAL PROSECUTION ARISING FROM AN ACT OR OMISSION ON A FIRE. (1) THE DEPARTMENT SHALL PAY REASONABLE ATTORNEY FEES AND COSTS FOR OUTSIDE LEGAL COUNSEL TO DEFEND A FIREFIGHTER EMPLOYED BY THE DEPARTMENT AGAINST A CRIMINAL PROSECUTION FOR A GOOD FAITH ACT OR OMISSION BY THE FIREFIGHTER ARISING FROM THE FIREFIGHTER'S PERFORMANCE OF DUTIES DURING A WILDFIRE. THE DEPARTMENT DIRECTOR HAS SOLE DISCRETION TO MAY DETERMINE WHETHER THE FIREFIGHTER'S ACT OR OMISSION WAS IN GOOD FAITH AND ARISING FROM THE PERFORMANCE OF THE FIREFIGHTER'S DUTIES DURING A WILDFIRE. THE REQUIREMENT TO PAY ATTORNEY FEES AND COSTS DOES NOT APPLY TO ANY POSTCONVICTION LEGAL PROCEEDINGS.~~

~~(2) THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT THIS SECTION.~~

~~NEW SECTION. **SECTION 3. LEGAL REPRESENTATION FOR FIREWARDEN, FIREFIGHTER, OR EMPLOYEE -- LOCAL GOVERNMENTAL FIRE AGENCY.** A LOCAL GOVERNMENTAL FIRE AGENCY SHALL PAY REASONABLE ATTORNEY FEES AND COSTS FOR OUTSIDE LEGAL COUNSEL TO DEFEND A FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE OF A LOCAL GOVERNMENTAL FIRE AGENCY MUST BE PROVIDED LEGAL REPRESENTATION BY THE EMPLOYING ENTITY FOR AGAINST A CRIMINAL PROSECUTION ARISING FROM AN ACT OR OMISSION IN THE PERFORMANCE OF DUTIES ON A FIRE OR IN FIRE TRAINING THAT IS MADE IN GOOD FAITH AND WITHIN THE COURSE AND SCOPE OF EMPLOYMENT OF THE FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE. THE LOCAL GOVERNMENTAL FIRE AGENCY MAY~~

DETERMINE WHETHER THE ACT OR OMISSION OF THE FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE WAS IN GOOD FAITH AND ARISING FROM THE PERFORMANCE OF THE EMPLOYEE'S DUTIES IN A FIRE OR IN FIRE TRAINING. THE REQUIREMENT TO PAY ATTORNEY FEES AND COSTS DOES NOT APPLY TO ANY POSTCONVICTION LEGAL PROCEEDINGS.

NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. (1) [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF ~~TITLE 27, CHAPTER 1, PART 7, TITLE 45, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 27, CHAPTER 1, PART 7, TITLE 45, CHAPTER 2, PART 2,~~ APPLY TO [SECTION 1].

(2) ~~[SECTION 2] IS [SECTIONS 2 AND 3] ARE~~ [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 13, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 13, PART 1, APPLY TO ~~[SECTION 2] [SECTIONS 2 AND 3]~~ [SECTION 2].

(3) [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 7, CHAPTER 33, AND THE PROVISIONS OF TITLE 7, CHAPTER 33, APPLY TO [SECTION 3].

~~NEW SECTION. Section 4. Two-thirds vote required. Because [sections 1 and 2] limit governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage:~~

NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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