

HOUSE BILL NO. 208

INTRODUCED BY K. WAGONER, D. KARY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ETHICS AND STANDARDS OF  
5 CONDUCT FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES; PROVIDING THAT IT IS UNLAWFUL TO  
6 RETALIATE AGAINST A PERSON WHO ALLEGES WASTE, FRAUD, OR ABUSE; AND PROVIDING A  
7 PENALTY FOR CIVIL LIABILITY AND REMEDIES."

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

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11 NEW SECTION. Section 1. Retaliation unlawful -- ~~penalty~~ CIVIL LIABILITY -- REMEDIES -- STATUTE OF  
12 LIMITATIONS. (1) It is unlawful for a state agency, state officer, public officer, or public employee to retaliate  
13 against, or to condone or threaten retaliation against, an individual who, IN GOOD FAITH, alleges waste, fraud, or  
14 abuse. FOR PURPOSES OF THIS SECTION, THE TERM "STATE AGENCY" HAS THE MEANING PROVIDED IN 1-2-116.

15 (2) For purposes of this section, "retaliate" means to take any of the following actions against an  
16 individual because the individual, IN GOOD FAITH, alleged waste, fraud, or abuse:

- 17 (a) terminate employment;
- 18 (b) demote;
- 19 (c) deny overtime, benefits, or promotion;
- 20 (d) discipline;
- 21 (e) decline to hire or rehire;
- 22 (f) threaten or intimidate;
- 23 (g) reassign to a position that hurts future career prospects; ~~or~~
- 24 (h) reduce pay, work hours, or benefits; OR
- 25 (i) TAKE ANOTHER ADVERSE PERSONNEL ACTION.

26 (3) ~~An individual A PERSON convicted of a violation of this section shall be imprisoned for a term not to~~  
27 ~~exceed 5 years or fined an amount not to exceed \$20,000, or both.~~ WHO VIOLATES A PROVISION OF THIS SECTION  
28 IS LIABLE IN A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION. THE PROVISIONS OF 2-9-305 APPLY IF THE PERSON  
29 IS BEING SUED IN A CIVIL ACTION FOR ACTIONS TAKEN WITHIN THE COURSE AND SCOPE OF THE PERSON'S EMPLOYMENT  
30 AND THE PERSON IS A STATE OFFICER, PUBLIC OFFICER, OR PUBLIC EMPLOYEE. FOR PURPOSES OF THIS SECTION, THE



1 TERM "PERSON" HAS THE MEANING PROVIDED IN 2-5-103.

2 (4) REMEDIES AVAILABLE TO AN AGGRIEVED INDIVIDUAL FOR A VIOLATION MAY INCLUDE:

3 (A) REINSTATEMENT TO A LOST POSITION;

4 (B) COMPENSATION FOR LOST BENEFITS, INCLUDING SERVICE CREDIT;

5 (C) COMPENSATION FOR LOST WAGES;

6 (D) PAYMENT OF REASONABLE ATTORNEY FEES;

7 (E) PAYMENT OF COURT COSTS;

8 (F) INJUNCTIVE RELIEF; AND

9 (G) COMPENSATORY DAMAGES.

10 (4)(5) EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT A PREREQUISITE TO FILING AN ACTION UNDER THIS

11 SECTION.

12 (5)(6)(5) A LAWSUIT ALLEGING A VIOLATION OF THIS SECTION MUST BE BROUGHT WITHIN 2 YEARS OF THE

13 ALLEGED VIOLATION.

14 (6) IF A STATE AGENCY MAINTAINS WRITTEN INTERNAL PROCEDURES UNDER WHICH AN INDIVIDUAL MAY APPEAL

15 AN ACTION DESCRIBED IN SUBSECTION (2) WITHIN THE AGENCY'S ORGANIZATIONAL STRUCTURE, THE INDIVIDUAL SHALL

16 FIRST EXHAUST THOSE PROCEDURES BEFORE FILING AN ACTION UNDER THIS SECTION. THE INDIVIDUAL'S FAILURE TO

17 INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A DEFENSE TO AN ACTION BROUGHT UNDER THIS SECTION.

18 (7) FOR PURPOSES OF THIS SUBSECTION, IF THE STATE AGENCY'S INTERNAL PROCEDURES ARE NOT COMPLETED

19 WITHIN 90 DAYS FROM THE DATE THE INDIVIDUAL MAY FILE AN ACTION UNDER THIS SECTION, THE AGENCY'S INTERNAL

20 PROCEDURES ARE CONSIDERED EXHAUSTED. THE LIMITATION PERIOD IN SUBSECTION (5) IS TOLLED UNTIL THE

21 PROCEDURES ARE EXHAUSTED. THE PROVISIONS OF THE AGENCY'S INTERNAL PROCEDURES MAY NOT IN ANY CASE EXTEND

22 THE LIMITATION PERIOD IN SUBSECTION (5) MORE THAN 240 DAYS.

23 (8) IF THE STATE AGENCY MAINTAINS WRITTEN INTERNAL PROCEDURES DESCRIBED IN SUBSECTION (6), THE

24 AGENCY SHALL, WITHIN 7 DAYS OF RECEIVING WRITTEN NOTICE FROM THE COMPLAINING INDIVIDUAL OF THE ACTION

25 DESCRIBED IN SUBSECTION (2), NOTIFY THE INDIVIDUAL OF THE EXISTENCE OF THE WRITTEN PROCEDURES AND SUPPLY

26 THE INDIVIDUAL WITH A COPY. IF THE AGENCY FAILS TO COMPLY WITH THIS SUBSECTION, THE INDIVIDUAL IS RELIEVED FROM

27 COMPLIANCE WITH SUBSECTION (6).

28 (6)(7)(9) THE COMMISSIONER OF POLITICAL PRACTICES IS NOT REQUIRED OR AUTHORIZED TO ENFORCE THIS

29 SECTION.

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