

SENATE BILL NO. 250

INTRODUCED BY N. SWANDAL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING PROSECUTORIAL IMMUNITY;  
5 PROVIDING QUALIFIED IMMUNITY FOR PROSECUTORS, LAW ENFORCEMENT OFFICERS, AND LOCAL  
6 GOVERNMENTS REGARDING CLAIMS ARISING FROM AN ADMINISTRATIVE OR INVESTIGATORY  
7 FUNCTION ALLEGING A VIOLATION OF ARTICLE II, SECTION 36, OF THE MONTANA CONSTITUTION;  
8 PROVIDING ABSOLUTE IMMUNITY FOR PROSECUTORS FOR CLAIMS ARISING OUT OF A JUDICIAL  
9 FUNCTION ALLEGING A VIOLATION OF ARTICLE II, SECTION 36, OF THE MONTANA CONSTITUTION; AND  
10 PROVIDING AN EFFECTIVE DATE."

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

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14 NEW SECTION. **Section 1. Prosecutorial immunity.** (1) A prosecutor performing a judicial function  
15 is absolutely immune from a claim based on Article II, section 36, of the Montana constitution.

16 (2) A prosecutor performing an administrative function or an investigatory function has qualified immunity  
17 for a claim based on Article II, section 36, of the Montana constitution.

18 (3) A law enforcement officer has qualified immunity for a claim based on Article II, section 36, of the  
19 Montana constitution.

20 (4) Local governments and the state of Montana are immune from a claim based on Article II, section  
21 36, of the Montana constitution.

22 (5) The provisions of Article II, section 36, of the Montana constitution have no effect on the duty of the  
23 state of Montana or a local government to defend or indemnify prosecutors and law enforcement officers from  
24 a claim based on Article II, section 36, of the Montana constitution.

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26 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
27 integral part of Title 46, and the provisions of Title 46 apply to [section 1].

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29 NEW SECTION. **Section 3. Two-thirds vote required.** Because [section 1] limits governmental liability,  
30 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of

1 the legislature for passage.

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3 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2017.

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