

HOUSE BILL NO. 532

INTRODUCED BY B. MERCER

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT
5 TO KNOW; PROVIDING REQUIREMENTS FOR THE DEPARTMENT OF ADMINISTRATION FOR
6 COMPROMISE AND SETTLEMENT OF CLAIMS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
7 CREATE AND MAINTAIN A WEBSITE PUBLISHING INFORMATION ON COMPROMISE AND SETTLEMENTS;
8 REQUIRING THE DEPARTMENT OF JUSTICE TO MONITOR THE WEBSITE AND INVESTIGATE AND
9 PROSECUTE ANY VIOLATIONS; PROVIDING RECORDS RELATED TO A COMPROMISE OR SETTLEMENT
10 OF CLAIMS AGAINST THE STATE MUST BE RETAINED FOR 20 YEARS; AMENDING SECTIONS 2-9-101,
11 2-9-301, AND 2-9-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
12 APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Sunshine and
17 Transparency Act for the State's Settlement of Claims".

18
19 NEW SECTION. **Section 2. Requirements for compromise and settlement of claims against state.**

20 (1) The department of administration shall create, monitor, maintain, and update, on an ongoing basis, a website
21 that is available to the public and publishes the following information:

- 22 (a) the date of each compromise or settlement of claim against the state;
- 23 (b) the identity of the entity of the state where the claim originated;
- 24 (c) the dollar amount of the compromise or settlement; and
- 25 (d) a description of the conduct that formed the basis of the claimant's allegations and settlement
26 demand.

27 (2) All information regarding the compromise or settlement of a claim involving a minor are exempted from
28 disclosure.

29 (3) The information identified in subsection (1) must be:

- 30 (a) published within 5 days of the date the compromise or settlement occurred; and

1 (b) reported to the legislative fiscal division and must include the information identified by subsection (1).

2 (4) Nondisclosure agreements are prohibited in compromise or settlement agreements where the state
3 is a party.

4 (5) Whenever the state pays any public money in compromise or settlement of a claim and in
5 employment-related claims, including but not limited to employment discrimination and sexual harassment and
6 claims that arise from alleged acts regardless of whether the alleged acts occurred within or outside of an
7 employee's scope of employment, the claim must be consistently coded in the statewide accounting, budgeting,
8 and human resource system so that whenever the state authorizes the compromise or settlement of a claim, the
9 money expended to compromise or settle claims is consistently reflected and coded under the same code to
10 ensure that whenever the particular code is reviewed it will contain a complete list of all compromise and
11 settlement of claims where the state is a party.

12 (6) (a) A public servant, as defined in 45-2-101, who commits a violation of [section 2 or 3] is guilty of
13 official misconduct and must be prosecuted by the department of justice pursuant to 45-7-401.

14 (b) The state employee or employees responsible for each violation are also subject to investigation and
15 potential discipline under subsection (7).

16 (7) (a) The department of justice shall:

17 (i) monitor the website and determine whether it meets the requirements of [sections 2 and 3];

18 (ii) investigate all potential violations of [sections 2 and 3]; and

19 (iii) determine whether a violation of [sections 2 and 3] has occurred.

20 (b) If the department of justice determines that a violation has occurred, the department shall:

21 (i) review the violation with the appropriate employee discipline policy governing the conduct of the
22 employee or employees who have committed the violation;

23 (ii) recommend discipline to the department of administration up to and including termination; and

24 (iii) prosecute the employee or employees for a violation under subsection (6)(a).

25

26 **NEW SECTION. Section 3. Monthly report on demands to resolve claims.** The department shall
27 include on the website identified in [section 2] a monthly report capturing:

28 (1) all demands to resolve claims, including demands made to any state agency or department;

29 (2) the identity of the entity of the state that employed the employee who committed one or more acts
30 leading to the claim, regardless of where the demand for compromise or settlement originated;

- 1 (3) all complaints filed and the identity of the court where the complaint is filed;
2 (4) all requests for settlement negotiations and the amount requested to resolve the claim; and
3 (5) all administrative proceedings initiated and the identity of the entity of the state where the claim
4 originated.

5

6 **Section 4.** Section 2-9-101, MCA, is amended to read:

7 **"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter and [sections 1 through 3], the
8 following definitions apply:

9 (1) (a) "Claim" means any claim against a governmental entity, for money damages only, that any person
10 is legally entitled to recover as damages because of personal injury or property damage caused by a negligent
11 or wrongful act or omission committed by any employee of the governmental entity while acting within the scope
12 of employment, under circumstances where the governmental entity, if a private person, would be liable to the
13 claimant for the damages under the laws of the state. For purposes of this section and the limit of liability
14 contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage
15 to property of a person, regardless of the number of persons or entities claiming damages, are considered one
16 claim.

17 (b) Employment-related claims, including but not limited to employment discrimination and sexual
18 harassment, and other claims against the state that may not be tort claims are included in this definition.

19 (c) Claims that arise from alleged acts that occurred within or outside of an employee's scope of
20 employment are included in this definition.

21 (2) (a) "Employee" means an officer, employee, or servant of a governmental entity, including elected
22 or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily
23 or permanently in the service of the governmental entity whether with or without compensation.

24 (b) The term does not mean a person or other legal entity while acting in the capacity of an independent
25 contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

26 (3) "Governmental entity" means the state and political subdivisions.

27 (4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest
28 and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for
29 which the state may be held liable.

30 (5) "Political subdivision" means any county, city, municipal corporation, school district, special

1 improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement
2 between two or more political subdivisions.

3 (6) "Property damage" means injury or destruction to tangible property, including loss of use of the
4 property, caused by an occurrence for which the state may be held liable.

5 (7) "State" means the state of Montana or any office, department, agency, authority, commission, board,
6 institution, hospital, college, university, or other instrumentality of the state."

7

8 **Section 5.** Section 2-9-301, MCA, is amended to read:

9 **"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency**
10 **as prerequisite.** (1) All claims against the state of any type, including employment claims and all other claims
11 of employees against the state, and claims arising under the provisions of parts 1 through 3 of this chapter must
12 be presented in writing to the department of administration.

13 (2) A complaint based on a claim ~~subject to the provisions of subsection (1)~~ may not be filed in district
14 court unless the claimant has first presented the claim to the department of administration and the department
15 has finally denied the claim. The department ~~must~~ shall grant or deny the claim in writing within 120 days after
16 the claim is presented to the department. The failure of the department to make final disposition of a claim within
17 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this
18 subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120
19 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20,
20 by third-party complaint, cross-claim, or counterclaim unless the alleged responsible party or the defendant is the
21 state.

22 (3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be
23 presented to and filed with the clerk or secretary of the political subdivision."

24

25 **Section 6.** Section 2-9-303, MCA, is amended to read:

26 **"2-9-303. Compromise or settlement of claim against state.** (1) (a) The department of administration
27 ~~may~~ shall compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of
28 insurance, if any, or utilizing other state funds on behalf of other entities of the state. A settlement from the
29 self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court
30 of the first judicial district except when suit has been filed in another judicial district, in which case the presiding

1 judge shall approve the compromise settlement.

2 (b) All records related to a compromise or settlement of claim against the state must be retained for a
3 period of 20 years.

4 (2) (a) All terms, conditions, and details of the governmental portion of a compromise or settlement
5 agreement entered into or approved pursuant to subsection (1) are public records available for public inspection
6 unless a right of individual privacy clearly exceeds the merits of public disclosure. A department other than the
7 department of administration may not compromise or settle a claim.

8 (b) The compromise or settlement agreement must include but is not limited to:

9 (i) a description of the alleged acts or omissions forming the basis of the compromise or settlement
10 agreement;

11 (ii) except as provided in subsection (2)(c), the settlement agreement or other document providing the
12 terms of the compromise or settlement with the name and other identifying features of the employee and any
13 third-party witnesses involved redacted;

14 (c) (i) If conduct by a public employee, as defined in 2-2-102, that results in a compromise or settlement
15 constitutes gross misconduct, as defined in 39-51-201, and was committed in the course of employment, any
16 records related to the compromise or settlement except records related to third-party witnesses, including the
17 name of the employee whose conduct constitutes gross misconduct, are public records available for public
18 inspection.

19 (ii) Any records related to a compromise or settlement involving an employee holding a position of great
20 public trust, including but not limited to peace officers as defined in 46-1-202, directors and department heads
21 as defined in 2-15-102, division administrators, bureau chiefs, and section supervisors as provided for in
22 2-15-104, and the chief legal counsel of any executive branch agency and the legislature, except for records
23 related to third-party witnesses, are public records available for public inspection.

24 (iii) Any records contained in the personnel file of an employee meeting the criteria of subsections (2)(c)(i)
25 and (2)(c)(ii) that are unrelated to the compromise or settlement remain confidential unless the merits of public
26 disclosure clearly exceed the right of the individual.

27 (3) The government must ensure that records meeting the description in subsection (2) are retained for
28 20 years and colocated with records retained pursuant to subsection (1)(b).

29 ~~(3)~~(4) An employee who is a party to a compromise or settlement entered into or approved pursuant to
30 subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the

1 compromise or settlement, such as personnel records, that pertain to the employee personally and that would
2 otherwise be protected by the right of individual privacy subject to the merits of public disclosure."

3
4 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified
5 as an integral part of Title 2, chapter 9, and the provisions of Title 2, chapter 9, apply to [sections 1 through 3].

6
7 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
9 remains in effect in all valid applications that are severable from the invalid applications.

10
11 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

12
13 NEW SECTION. Section 10. Retroactive applicability. [This act] applies retroactively, within the
14 meaning of 1-2-109, to any records related to a compromise or settlement that exist or are created from [the
15 effective date of this act] retroactively 10 years to the same date in 2009 as [the effective date of this act].

16 - END -