

HOUSE BILL NO. 532

INTRODUCED BY B. MERCER

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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; PROVIDING LEGISLATIVE INTENT;
11 AMENDING SECTIONS 2-9-101, 2-9-301, AND SECTION 2-9-303, MCA; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

13
14 WHEREAS, THERE IS A STRONG PUBLIC POLICY SUPPORTING THE PUBLIC'S RIGHT TO KNOW THE PRECISE
15 REASON FOR THE EXPENDITURE OF PUBLIC MONEY TO SETTLE CLAIMS AGAINST THE GOVERNMENT, AS DISCUSSED IN
16 CITIZENS TO RECALL WHITLOCK V. WHITLOCK, 255 MONT. 517, 524, 844 P.2D 74, 78 (1992); AND

17 WHEREAS, THE CONCEPT OF ACCOUNTABILITY OF GOVERNMENT INCLUDES ACCOUNTABILITY OF HOW
18 TAXPAYER DOLLARS ARE SPENT; AND

19 WHEREAS, ANYTHING THAT PROHIBITS DISCLOSURE OF HOW TAXPAYER DOLLARS ARE SPENT INHIBITS THE
20 PUBLIC'S RIGHT TO KNOW UNDER ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION AND WILL RARELY BE
21 PRECLUDED BY THE RIGHT TO PRIVACY CONTAINED IN ARTICLE II, SECTION 10, OF THE MONTANA CONSTITUTION; AND

22 WHEREAS, THE LEGISLATURE'S INTENT IS TO CREATE SUNSHINE AND TRANSPARENCY WHEN PUBLIC MONEY IS
23 USED TO SETTLE CLAIMS BASED ON THE ACTS OR OMISSIONS OF STATE EMPLOYEES AND STATE ACTORS.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26 (Refer to Introduced Bill)

27 Strike everything after the enacting clause and insert:

28
29 NEW SECTION. Section 1. Short title. [Sections 1 through 3 4] may be cited as the "Sunshine and
30 Transparency Act for the State's Settlement of Claims".

1
2 NEW SECTION. SECTION 2. DEFINITIONS. AS USED IN [SECTIONS 1 THROUGH 4], THE FOLLOWING DEFINITIONS

3 APPLY:

4 (1) (A) "CLAIM" MEANS ANY CLAIM AGAINST A GOVERNMENT ENTITY FOR MONEY DAMAGES, INCLUDING BUT NOT
5 LIMITED TO EMPLOYMENT-RELATED CLAIMS AND TORT CLAIMS, THAT ANY PERSON IS LEGALLY ENTITLED TO RECOVER.

6 (B) CLAIMS DO NOT INCLUDE BENEFITS DISPUTES UNDER TITLE 39, CHAPTER 51 OR 71.

7 (2) "EMPLOYEE" MEANS PERMANENT EMPLOYEE, SHORT-TERM WORKER, STUDENT INTERN, SEASONAL
8 EMPLOYEE, PERSONAL STAFF, OR TEMPORARY EMPLOYEE AS THOSE TERMS ARE DEFINED IN 2-18-101.

9
10 NEW SECTION. Section 3. Requirements for compromise and settlement of claims against state.

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

13 (a) the date of each compromise or settlement of a claim against the state that results in a monetary
14 settlement;

15 (b) the identity of the entity of the state where the claim originated;

16 (c) the dollar amount of the compromise or settlement.

17 (2) IF A MEMBER OF THE PUBLIC REQUESTS A PAPER COPY OF INFORMATION ON THE WEBSITE OR A PAPER COPY
18 OF THE QUARTERLY REPORT IN [SECTION 4], THE DEPARTMENT SHALL CHARGE A FEE FOR PAPER COPIES THAT IS
19 COMMENSURATE WITH THE COST OF PRINTING.

20 ~~(2)(3)~~ All information regarding the compromise or settlement of a claim involving a minor is exempted
21 from disclosure AND IS DESIGNATED CONFIDENTIAL INFORMATION AS DEFINED IN 2-6-1002.

22 ~~(3)(4)~~ The information identified in subsection (1) must be published within ~~30~~ 60 days of the date the
23 compromise or settlement occurred.

24 ~~(4)(5)~~ Nondisclosure agreements are prohibited in compromise or settlement agreements when the state
25 is a party.

26 ~~(5) Whenever the state pays any public money in the compromise or settlement of a claim and in~~
27 ~~employment-related claims, including but not limited to employment discrimination and sexual harassment and~~
28 ~~claims that arise from alleged acts regardless of whether the alleged acts occurred within or outside of an~~
29 ~~employee's scope of employment, the claim must be consistently coded in the statewide accounting, budgeting,~~
30 ~~and human resource system so that whenever the state authorizes the compromise or settlement of a claim, the~~

1 money expended to compromise or settle claims is consistently reflected and coded under the same code to
2 ensure that whenever the particular code is reviewed it will contain a complete list of all compromise and
3 settlement of claims when the state is a party.

4 ~~—— (6) (a) A state employee who violates [section 2 or 3] is subject to a civil penalty of not more than \$500.~~

5 ~~—— (b) The state employee or employees responsible for each violation are also subject to potential
6 discipline.~~

7 (6) ALL MONEY PAID BY WARRANT PURSUANT TO A SETTLEMENT OR COMPROMISE MUST BE CONSISTENTLY
8 CODED IN THE STATEWIDE ACCOUNTING, BUDGETING, AND HUMAN RESOURCE SYSTEM SO THAT WHEN THE CODE OR
9 CODES ARE REVIEWED A COMPLETE LIST OF ALL SETTLED CLAIMS IS PROVIDED. THE DEPARTMENT OF ADMINISTRATION
10 SHALL SET THE STANDARDS FOR THE CODING.

11
12 **NEW SECTION. Section 4. Quarterly report on demands to resolve claims.** Each agency and
13 administratively attached entity shall submit a quarterly report to the legislative fiscal division capturing:

14 (1) all initial demands to resolve claims FOR MONEY DAMAGES, including demands made to any state
15 agency or department;

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

18 (3) all civil and administrative complaints filed and the identity of the court or entity of the state where
19 the complaint is filed; and

20 (4) all INITIAL requests for settlement negotiations ~~and the amount requested to resolve the claim~~ CLAIMS
21 FOR MONEY DAMAGES AND THE AMOUNT REQUESTED TO RESOLVE THE CLAIMS.

22
23 ~~—— **Section 4.** Section 2-9-101, MCA, is amended to read:~~

24 ~~—— **"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter and [sections 1 through 3], the
25 following definitions apply:~~

26 ~~—— (1) (a) "Claim" means any claim against a governmental entity, for money damages only, that any person
27 is legally entitled to recover as damages because of personal injury or property damage caused by a negligent
28 or wrongful act or omission committed by any employee of the governmental entity while acting within the scope
29 of employment, under circumstances where the governmental entity, if a private person, would be liable to the
30 claimant for the damages under the laws of the state. For purposes of this section and the limit of liability~~

1 contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage
 2 to property of a person, regardless of the number of persons or entities claiming damages, are considered one
 3 claim:

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

6 ~~—— (c) Claims against a government entity that arise from alleged acts that occurred within or outside of an
 7 employee's scope of employment are included in this definition.~~

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

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

13 ~~—— (3) "Governmental entity" means the state and political subdivisions.~~

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

17 ~~—— (5) "Political subdivision" means any county, city, municipal corporation, school district, special
 18 improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement
 19 between two or more political subdivisions.~~

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

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

24

25 ~~—— **Section 5.** Section 2-9-301, MCA, is amended to read:~~

26 ~~—— **"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency
 27 as prerequisite.** (1) All claims against the state of any type, including employment claims and all other claims
 28 of employees against the state, and claims arising under the provisions of parts 1 through 3 of this chapter must
 29 be presented in writing to the department of administration.~~

30 ~~—— (2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district~~

1 court unless the claimant has first presented the claim to the department of administration and the department
 2 has finally denied the claim. The department must shall grant or deny the claim in writing within 120 days after
 3 the claim is presented to the department. The failure of the department to make final disposition of a claim within
 4 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this
 5 subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120
 6 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20,
 7 by third-party complaint, cross-claim, or counterclaim unless the alleged responsible party or the defendant is the
 8 state.

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

11

12 **Section 5.** Section 2-9-303, MCA, is amended to read:

13 **"2-9-303. Compromise or settlement of claim against state.** (1) (a) The department of administration
 14 may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of
 15 insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000
 16 must be approved by the district court of the first judicial district except when suit has been filed in another judicial
 17 district, in which case the presiding judge shall approve the compromise settlement.

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

20 (2) (a) All terms, conditions, and details of the governmental portion of a compromise or settlement
 21 agreement entered into or approved pursuant to subsection (1) are public records available for public inspection
 22 unless a right of individual privacy clearly exceeds the merits of public disclosure.

23 (b) The compromise or settlement agreement must include a description of the alleged acts or omissions
 24 forming the basis of the compromise or settlement agreement.

25 (3) An employee who is a party to a compromise or settlement entered into or approved pursuant to
 26 subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the
 27 compromise or settlement, such as personnel records, that pertain to the employee personally and that would
 28 otherwise be protected by the right of individual privacy subject to the merits of public disclosure."

29

30 NEW SECTION. SECTION 6. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE THAT THE

1 ~~DEPARTMENT OF ADMINISTRATION AND THE DEPARTMENT OF JUSTICE EXECUTIVE BRANCH AGENCIES AND ENTITIES~~
2 ~~IMPLEMENT THE PROVISIONS OF [THIS ACT] WITHIN EXISTING RESOURCES.~~

3
4 ~~NEW SECTION. Section 8. 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 7. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 4] ARE INTENDED TO BE
8 CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 6, AND THE PROVISIONS OF TITLE 2, CHAPTER 6, APPLY TO
9 [SECTIONS 1 THROUGH 4].

10
11 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are severable from the invalid applications.

14
15 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2019.

16
17 NEW SECTION. Section 10. Retroactive applicability. ~~[This act]~~ [SECTION 5(1)(B)] applies
18 retroactively, within the meaning of 1-2-109, to any records related to a compromise or settlement that exist or
19 are created from [the effective date of this act] retroactively 10 years to the same date in 2009 as [the effective
20 date of this act].

21 - END -