



AN ACT REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT TO KNOW; PROVIDING REQUIREMENTS FOR THE COMPROMISE AND SETTLEMENT OF CLAIMS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO CREATE AND MAINTAIN A WEBSITE PUBLISHING INFORMATION ON COMPROMISE AND SETTLEMENTS; PROVIDING RECORDS RELATED TO A COMPROMISE OR SETTLEMENT OF CLAIMS AGAINST THE STATE MUST BE RETAINED FOR 20 YEARS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, there is a strong public policy supporting the public's right to know the precise reason for the expenditure of public money to settle claims against the government, as discussed in *Citizens to Recall Whitlock v. Whitlock*, 255 Mont. 517, 524, 844 P.2d 74, 78 (1992); and

WHEREAS, the concept of accountability of government includes accountability of how taxpayer dollars are spent; and

WHEREAS, anything that prohibits disclosure of how taxpayer dollars are spent inhibits the public's right to know under Article II, section 9, of the Montana Constitution and will rarely be precluded by the right to privacy contained in Article II, section 10, of the Montana Constitution; and

WHEREAS, the legislature's intent is to create sunshine and transparency when public money is used to settle claims based on the acts or omissions of state employees and state actors.

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

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Sunshine and Transparency Act for the State's Settlement of Claims".

**Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1)(a) "Claim" means any claim against a government entity for money damages, including but not limited

to employment-related claims and tort claims, that any person is legally entitled to recover.

(b) Claims do not include benefits disputes under Title 39, chapter 51 or 71.

(2) "Employee" means permanent employee, short-term worker, student intern, seasonal employee, personal staff, or temporary employee as those terms are defined in 2-18-101.

**Section 3. Requirements for compromise and settlement of claims against state.** (1) The department of administration shall create, monitor, maintain, and update, on an ongoing basis, a website that is available to the public and publishes the following information:

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

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

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

(2) If a member of the public requests a paper copy of information on the website or a paper copy of the quarterly report in [section 4], the department shall charge a fee for paper copies that is commensurate with the cost of printing.

(3) All information regarding the compromise or settlement of a claim involving a minor is exempted from disclosure and is designated confidential information as defined in 2-6-1002.

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

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

(6) All money paid by warrant pursuant to a settlement or compromise must be consistently coded in the statewide accounting, budgeting, and human resource system so that when the code or codes are reviewed a complete list of all settled claims is provided. The department of administration shall set the standards for the coding.

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

(1) all initial demands to resolve claims for money damages, including demands made to any state

agency or department;

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

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

(4) all initial requests for settlement negotiations to resolve claims for money damages and the amount requested to resolve the claims.

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

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

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

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

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

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

**Section 6. Legislative intent.** It is the intent of the legislature that the executive branch agencies and entities implement the provisions of [this act] within existing resources.

**Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 4].

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

**Section 9. Effective date.** [This act] is effective July 1, 2019.

**Section 10. Retroactive applicability.** [Section 5(1)(b)] applies retroactively, within the meaning of 1-2-109, to any records related to a compromise or settlement that exist or are created from [the effective date of this act] retroactively 10 years to the same date in 2009 as [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0532, originated in the House.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Chief Clerk of the House

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 532

INTRODUCED BY B. MERCER

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