

1 HOUSE BILL NO. 358

2 INTRODUCED BY B. MERCER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PRIVACY AND THE
5 PUBLIC RIGHT TO KNOW; PROVIDING DISCLOSURE REQUIREMENTS FOR THE COMPROMISE AND
6 SETTLEMENT OF CLAIMS AGAINST THE STATE; REQUIRING QUARTERLY REPORTS ON DEMANDS TO
7 RESOLVE CLAIMS; PROVIDING DEFINITIONS; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN
8 EFFECTIVE DATE."

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

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

15 WHEREAS, a recent performance audit performed by the Legislative Audit Division, State Employee
16 Settlements: Trends, Transparency, and Administration, concluded that the state used nondisclosure
17 agreements in approximately two-thirds of its monetary settlements with employees; and

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

21 WHEREAS, there is no basis to protect disclosure of details of settlements given that parties who sue
22 the state in court are typically unable to conceal their identities and allegations from public disclosure; and

23 WHEREAS, there is no public policy basis to conceal facts about a claim against the state when a party
24 settles a claim given that the same treatment is not afforded to a party who chooses to litigate a claim against
25 the state; and

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

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

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

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6 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], the following definitions
7 apply:

8 (1) (a) "Claim" means any claim against a government entity for monetary damages, including but not
9 limited to employment-related claims and tort claims.

10 (b) The term does not include benefits disputes under Title 39, chapter 51 or 71.

11 (2) "Department" means the department of administration provided for in 2-15-1001.

12 (3) "Employee" has the meaning provided in 2-9-101. The term includes a permanent employee,
13 short-term worker, student intern, seasonal employee, personal staff, and temporary employee as those terms
14 are defined in 2-18-101.

15 (4) "Nondisclosure agreement" means any kind of contract or agreement requiring the parties to
16 maintain confidentiality of any information related to a settlement with the state, or compromise or settlement
17 agreements with the state.

18 (5) "Settlement" means a binding legal agreement between the state or its agencies, departments, or
19 other state entities and a party who accepts monetary compensation in return for releasing claims against the
20 state or its entities. Monetary compensation includes anything of financial value, including but not limited to
21 reinstatement or rehiring of a terminated state employee and paid administrative leave.

22 (6) "State" and "governmental entity" means the state of Montana or any office, department, agency,
23 authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

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

28 (a) the names of the parties settling claims with the state unless the right to individual privacy

1 outweighs the public right to know;

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

4 (c) the identity of the entity of the state where the claim originated;

5 (d) the dollar amount of the compromise or settlement;

6 (e) a description of the conduct, acts, or omissions by one or more employees, officers, or agents of
7 the state that caused the state to find it was in its best interests to settle the case; and

8 (f) the source of funds utilized to pay the settlement and the legal basis for utilizing the funds for
9 settlement.

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

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

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

17 (5) Nondisclosure agreements are disfavored in compromise or settlement agreements when the
18 state is a party and may be utilized only in the rare instance in which the right to individual privacy outweighs
19 the public right to know. Nondisclosure agreements may not exempt the state from its reporting obligations in
20 subsections (1)(b) through (1)(f).

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

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

27 (1) all initial demands submitted to the state to resolve claims for money, including demands made to
28 any state agency or department; and

1 (2) all civil and administrative complaints filed about which the state is aware or for which service has
2 been effectuated on the state and the identity of the court or entity of the state where the complaint is filed.

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

5 **"2-9-303. Compromise or settlement of claim against state.** (1) (a) The department of
6 administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the
7 terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund
8 exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been
9 filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

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

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

15 (b) Unless the state or its entities pay nothing to resolve a claim, the compromise or settlement
16 agreement must include a description of the alleged acts, omissions, or other basis of liability that caused the
17 state to enter into the compromise or settlement agreement as necessary and beneficial.

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

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23 NEW SECTION. Section 6. Use of existing resources. It is the intent of the legislature that the
24 executive branch agencies and entities implement the provisions of [this act] within existing resources.

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

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NEW SECTION. **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.

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2021.

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