

1 HOUSE BILL NO. 435

2 INTRODUCED BY B. MERCER, S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIVIL LIABILITY LAWS; SETTING
5 CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING GOVERNMENT LIABILITY;
6 LIMITING LIABILITY OF GOVERNMENT ENTITIES; LIMITING LIABILITY OF HEALTH CARE PROVIDERS;
7 PROVIDING AN AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF
8 REGULATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

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12 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6], unless the context clearly
13 indicates otherwise, the following definitions apply:

14 (1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the
15 novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused
16 by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

17 (2) "Government entity" means the state and political subdivisions, including but not limited to:

18 (a) political subdivisions as defined in 2-9-101(5);

19 (b) the legislature, legislative committees, and legislators acting in their official capacity; and

20 (c) employees of the state or a political subdivision.

21 (3) "Health care provider" means a health care professional, whether the health care professional
22 works for a health care provider or a government health care provider, health care facility, home health care
23 facility, assisted living facility, or any other person or facility otherwise authorized or permitted by any federal or
24 state statute, regulation, order, or public health guidance to administer health care services or treatment.

25 (4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited
26 liability company, business or similar trust, association, joint venture, place of worship, personal representative,
27 trustee, government entity, or any other legal or commercial entity.

28 (5) "Premises" includes any real property and any appurtenant building or structure, as well as any

1 other location, vehicle, or place serving a commercial, residential, educational, religious, governmental, cultural,
2 charitable, or health care purpose.

3 (6) "Public health guidance" includes guidance related to covid-19 issued by the following:

4 (a) the centers for disease control and prevention of the United States department of health and
5 human services;

6 (b) the centers for medicare and medicaid services of the United States department of health and
7 human services;

8 (c) the federal occupational safety and health administration;

9 (d) the office of the governor;

10 (e) a state agency, including the Montana department of public health and human services; or

11 (f) a local government, including a local government health department or local government board of
12 health.

13

14 **NEW SECTION. Section 2. Liability.** Except as provided in [sections 3 through 6], a government
15 entity is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to
16 covid-19 unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton
17 misconduct, or intentional tort.

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19 **NEW SECTION. Section 3. Duty of care -- limited liability.** (1) A government entity that possesses
20 or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly
21 invites or permits an individual onto a premises, is not liable for civil damages for injuries or death sustained
22 from the individual's exposure to covid-19, whether the exposure occurs on a premises or during an activity
23 managed by the person who possesses or is in control of a premises, unless the civil action involves an act or
24 omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

25 (2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-
26 303(1)(b) through (1)(e) for injuries or death sustained from an individual's exposure to covid-19.

27 (3) The standard established in subsection (1) is not violated by:

28 (a) a school district admitting students and up to six guests for each student to an extracurricular

1 event including a graduation ceremony; or

2 (b) a school district or unit of the university system conducting in-person instruction or extracurricular
3 activities.

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5 **NEW SECTION. Section 4. Liability of health care providers.** A health care provider is not liable
6 for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a
7 result of the health care provider's acts or omissions while providing or arranging health care in support of the
8 response to covid-19 unless the health care provider caused the death or injury of an individual through an act
9 or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This section
10 applies to:

11 (1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals
12 with a suspected or confirmed case of covid-19;

13 (2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a
14 suspected or confirmed case of covid-19; or

15 (3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19
16 when those acts or omissions support the response to covid-19, including the following:

17 (a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the
18 diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public
19 health guidance;

20 (b) diagnosing or treating patients outside the normal scope of the health care provider's license or
21 practice;

22 (c) using medical devices, equipment, or supplies outside of their normal use for the provision of
23 health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

24 (d) conducting tests or providing treatment to an individual outside the premises of a health care
25 facility;

26 (e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities,
27 medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care
28 provider unable to provide the level or manner of care to a person that otherwise would have been required in

1 the absence of covid-19; or

2 (f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal
3 protective equipment.

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5 **NEW SECTION. Section 5. Affirmative defense -- reasonable measures consistent with**

6 **regulations, orders, and public health guidance.** (1) In addition to all other defenses, a government entity
7 may assert as an affirmative defense that the government entity took reasonable measures consistent with a
8 federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to
9 the government entity or activity at issue at the time of the alleged injury, death, or property damage.

10 (2) If two or more sources of public health guidance are applicable, a government entity does not
11 breach a duty of care if the person took reasonable measures consistent with one applicable set of public
12 health guidance.

13 (3) If a government entity proves the affirmative defense contained in this section, the affirmative
14 defense is a complete bar to any action relating to covid-19.

15 (4) This section may not be construed to impose liability on a government entity for failing to comply
16 with a federal or state statute, regulation, order, or public health guidance related to covid-19.

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18 **NEW SECTION. Section 6. Limitation on requirements.** (1) If a federal or state statute, regulation,
19 order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a
20 government entity is not required to ensure face masks are being used or a face mask is sufficient to stop the
21 spread of covid-19 to meet the standard of care.

22 (2) If a federal or state statute, regulation, order, or public health guidance related to covid-19
23 recommends or requires temperature checks, a government entity is not required to conduct a temperature
24 check before allowing an individual to enter a premises if the individual refuses to allow the temperature check.

25 (3) If a federal or state statute, regulation, order, or public health guidance related to covid-19
26 recommends or requires a vaccine, an individual is not required to receive a vaccine and a government entity is
27 not required to ensure employees or agents are vaccinated to meet the standard of care.

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1 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be
2 codified as an integral part of Title 2, chapter 9, and the provisions of Title 2, chapter 9, apply to [sections 1
3 through 6].
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5 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
6 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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8 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
10 the part remains in effect in all valid applications that are severable from the invalid applications.
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12 **NEW SECTION. Section 10. Two-thirds vote required.** Because [sections 2, 3, and 5] limit
13 government liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the
14 members of each house of the legislature for passage.
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16 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.
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18 **NEW SECTION. Section 12. Termination.** [This act] terminates December 31, 2031.
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