

1 SENATE BILL NO. 278

2 INTRODUCED BY G. HERTZ, M. BLASDEL, J. ELLSWORTH, S. FITZPATRICK, D. HOWARD, D. KARY, C.
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4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO LAWSUITS;
 6 CREATING LAWS RELATING TO ECONOMIC CONSUMPTION THAT IS DEDUCTED FROM DAMAGES IN
 7 A MALPRACTICE CLAIM; PROHIBITING A PERSON FROM INSTITUTING CERTAIN LAWSUITS IF THE
 8 PERSON WAS ENGAGED IN OR ENGAGING IN A FELONY OFFENSE; PROHIBITING CERTAIN
 9 GOVERNMENT LAWSUITS AGAINST FIREARM OR AMMUNITION MANUFACTURES; REVISING LAWS
 10 RELATED TO LEGAL FEES AND COSTS OF NONPROFIT CORPORATIONS CHALLENGING OR
 11 SUPPORTING CERTAIN GOVERNMENTAL ACTIONS; REVISING STATUTES OF LIMITATIONS FOR
 12 CERTAIN ACTIONS RELATING TO REAL PROPERTY AND CERTAIN LOCAL GOVERNMENT OFFICIALS;
 13 PROVIDING THAT COSTS MAY NOT BE ALLOWED TO AN OFFEREE IF THE OFFEROR HAS MADE AN
 14 OFFER OR JUDGMENT AND THE OFFEREE'S JUDGMENT IS NOT MORE FAVORABLE THAN THE
 15 OFFER OF JUDGMENT; REVISING THE DEFINITION OF "INSURER" FOR THE PURPOSES OF UNFAIR
 16 TRADE PRACTICES ACTIONS; REVISING CIVIL LIABILITY LAWS TO PROVIDE A DEADLINE FOR
 17 SERVICE OF PROCESS; AMENDING SECTIONS 15-31-102, 25-10-101, 27-2-208, AND 27-2-209, AND 33-
 18 18-242, MCA; AND PROVIDING AN APPLICABILITY DATE."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
 22 NEW SECTION. Section 1. Economic consumption to be deducted from award. If damages are
 23 awarded for a malpractice claim as defined in 25-9-411 for a deceased party's lost future earnings, the
 24 deceased party's economic consumption must be deducted from the award. Economic consumption is the part
 25 of the projected earnings that the deceased party would have spent on basic necessities and personal
 26 expenditures throughout the party's lifetime, but not including expenses necessary to care for dependents of the
 27 deceased party.

1 **NEW SECTION. Section 2. Prohibition on lawsuit -- criminal actions.** A person who is harmed
 2 while attempting to engage in, engaging in, or fleeing after having engaged in conduct that is classified as a
 3 felony offense may not recover damages from a crime victim or other person that used reasonable self-defense
 4 to protect a crime victim.

5
 6 **NEW SECTION. Section 3. Government entity -- prohibitions on lawsuits related to firearms or**
 7 **manufacturers.** (1) Except as provided in subsection (2), a government entity may not bring suit against a
 8 firearms or ammunition manufacturer, trade association, or seller for recovery of damages resulting from, or
 9 injunctive relief or abatement of a nuisance relating to, the lawful design, manufacture, marketing, or sale of
 10 firearms or ammunition to the public.

11 (2) Nothing in this section prohibits a government entity from bringing an action against a firearms or
 12 ammunition manufacturer, trade association, or seller for recovery of damages for:

13 (a) breach of contract or warranty as to firearms or ammunition purchased by a government entity;

14 (b) damage or harm to property owned or leased by the government entity caused by a defective
 15 firearm or ammunition; or

16 (c) personal injury or death, if the action arises from a government entity or an insurer for a
 17 government entity's claim for subrogation.

18

19 **NEW SECTION. SECTION 4. NONPROFIT CORPORATION -- LEGAL FEES AND COSTS CHALLENGING**
 20 **GOVERNMENT ACTION. (1) (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), THE PAYMENT OF LEGAL FEES AND**
 21 **COSTS ASSOCIATED WITH A NONPROFIT CORPORATION CHALLENGING OR SUPPORTING A GOVERNMENT ACTION IS NOT A**
 22 **CHARITABLE PURPOSE UNDER STATE LAW, AND ANY INCOME USED TO SUPPORT THIS ACTIVITY CONSTITUTES UNRELATED**
 23 **BUSINESS INCOME UNDER 15-31-102 AND THEREFORE IS SUBJECT TO TAXATION AS PROVIDED FOR IN 15-31-121. THIS**
 24 **REQUIREMENT APPLIES TO ANY AFFILIATED CORPORATION OR ENTITY OF THE NONPROFIT CORPORATION ORGANIZED**
 25 **UNDER 26 U.S.C. ~~501(c)(4)~~ 501(c)(3) OR 26 U.S.C. 527.**

26 **(B) EACH 501(C)(3) OR 527 NONPROFIT CORPORATION THAT UNDERTAKES AN ACTIVITY IN SUBSECTION (1)(A)**
 27 **SHALL FILE, UNDER PENALTY OF PERJURY, A STATEMENT WITH THE ATTORNEY GENERAL WITHIN 30 CALENDAR DAYS OF**
 28 **THE ACTION LISTING ANY DONATIONS OR OTHER FINANCIAL ASSISTANCE RECEIVED DURING THE PREVIOUS CALENDAR**

1 YEAR THROUGH THE DATE OF SUBMISSION OF THE STATEMENT WITH THE ATTORNEY GENERAL, INCLUDING PROVIDING
 2 THE NAME AND ADDRESS OF ANY INDIVIDUAL OR ENTITY PROVIDING FINANCIAL SUPPORT IN EXCESS OF \$50.

3 (2) THIS SECTION DOES NOT APPLY:

4 (A) IF THE NONPROFIT CORPORATION IS EITHER DEFENDING OR PROSECUTING A GOVERNMENT ACTION THAT
 5 INVOLVES:

6 (A)(i) PROPERTY BELONGING TO THE NONPROFIT CORPORATION;

7 (B)(ii) A CONTRACT TO WHICH THE NONPROFIT CORPORATION IS A PARTY;

8 (C)(iii) A PERMIT OR LICENSE HELD OR OWNED BY THE NONPROFIT CORPORATION; OR

9 (D)(iv) ANY PROFESSIONAL LICENSE ASSOCIATED WITH AN EMPLOYEE OR THE NONPROFIT CORPORATION; OR

10 (B) TO A HEALTH CARE FACILITY LICENSED UNDER 50-5-101 OR OTHER NONPROFIT CORPORATIONS

11 PROVIDING OR ADVOCATING FOR CRITICAL HEALTH CARE DELIVERY SYSTEMS.

12 (3) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

13 (A) "GOVERNMENT ACTION" MEANS THE IMPLEMENTATION OR APPLICATION OF ANY:

14 (I) FEDERAL LAW, INCLUDING BUT NOT LIMITED TO FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, RULES,
 15 REGULATIONS, AND POLICIES, WHETHER STATUTORY OR OTHERWISE, OR OTHER ACTION BY A FEDERAL, STATE, OR
 16 LOCAL GOVERNMENT BODY OR OFFICIAL ACTING IN THEIR OFFICIAL CAPACITY; OR

17 (II) STATE LAW CODIFIED IN TITLE 75, 76, 77, 80, 81, 82, OR 87, INCLUDING BUT NOT LIMITED TO STATE
 18 RULES, REGULATION, AND POLICIES, WHETHER STATUTORY OR OTHERWISE, OR OTHER ACTION BY A STATE GOVERNMENT
 19 BODY OR OFFICIAL ACTING IN THEIR OFFICIAL CAPACITY.

20 (B) "LEGAL FEES AND COSTS" INCLUDE BUT ARE NOT LIMITED TO:

21 (I) INTERNAL LAWYER, INTERNAL PARALEGAL, INTERNAL LEGAL ASSISTANT, INTERNAL EXPERT WITNESS, AND
 22 OTHER INTERNAL EMPLOYEE TIME AND COSTS, INCLUDING A CALCULATION OF EMPLOYEE BENEFITS, ASSOCIATED WITH
 23 EMPLOYEE PARTICIPATION IN THE CHALLENGE OR SUPPORT OF A GOVERNMENT ACTION; AND

24 (II) EXTERNAL LAWYER, EXTERNAL PARALEGAL, EXTERNAL LEGAL ASSISTANT, EXPERT WITNESS, AND OTHER
 25 EXTERNAL RESOURCE TIME AND COSTS ASSOCIATED WITH PARTICIPATION IN THE CHALLENGE OR SUPPORT OF A
 26 GOVERNMENT ACTION UNDER THIS SECTION.

27 (C) "NONPROFIT CORPORATION" MEANS A NONPROFIT CORPORATION EXEMPT FROM TAXATION UNDER 26
 28 U.S.C. 501(C)(3) AND ORGANIZED FOR CHARITABLE PURPOSES.

1
 2 **NEW SECTION. SECTION 5. SERVICES OF PROCESS TIME LIMIT. EXCEPT AS PROVIDED IN 25-3-106, A**
 3 **PLAINTIFF SHALL MAKE SERVICE OF PROCESS NO LATER THAN 1 YEAR AFTER FILING THE COMPLAINT. IF THE PLAINTIFF**
 4 **FAILS TO DO SO, THE COURT, ON MOTION OR ON ITS OWN INITIATIVE, SHALL DISMISS THE ACTION WITHOUT PREJUDICE**
 5 **UNLESS THE DEFENDANT HAS MADE AN APPEARANCE.**

6
 7 **SECTION 6. SECTION 15-31-102, MCA, IS AMENDED TO READ:**
 8 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
 9 as provided in subsection (3), there may not be taxed under this title any income received by any:

- 10 (a) labor, agricultural, or horticultural organization;
- 11 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
 12 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the
 13 payment of life, sick, accident, or other benefits to the members of the society, order, or association or their
 14 dependents;
- 15 (c) cemetery company owned and operated exclusively for the benefit of its members;
- 16 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,
 17 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or
 18 individual;
- 19 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the
 20 net income of which inures to the benefit of any private stockholder or individual;
- 21 (f) civic league or organization not organized for profit but operated exclusively for the promotion of
 22 social welfare;
- 23 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
 24 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- 25 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation
 26 company, mutual or cooperative telephone company, or similar organization of a purely local character, the
 27 income of which consists solely of assessments, dues, and fees collected from members for the sole purpose
 28 of meeting its expenses;

1 (i) cooperative association or corporation engaged in the business of operating a rural electrification
2 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

3 (j) corporations or associations organized for the exclusive purpose of holding title to property,
4 collecting income from the property, and turning over the entire amount of the income, less expenses, to an
5 organization that itself is exempt from the tax imposed by this title;

6 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
7 organized to market association members' wool and sheep, the income of which consists solely of
8 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for
9 this purpose, does not include expenses and money distributed to members contributing wool and sheep.

10 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions
11 of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the
12 entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that
13 election under federal law, each person who at any time is a shareholder of the corporation is subject to
14 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by
15 federal law for all periods for which the election is effective.

16 (m) farmers' market association not organized for profit, no part of the net income of which inures to
17 the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of
18 homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

19 (n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

20 (2) In determining the corporate income tax imposed under this part, there may not be included any
21 earnings derived from any public utility managed or operated by any subdivision of the state or from the
22 exercise of any governmental function.

23 (3) (a) Any Except as provided in subsection (3)(b), any unrelated business taxable income, as
24 defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt
25 corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as
26 other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated
27 business income under this section shall file a copy of its federal exempt organization business income tax
28 return on which it reports its unrelated business income with the department.

1 **(b)** Income associated with the activities set forth in [section 4] is deemed unrelated business taxable
 2 income and taxable under 15-31-121."

3

4 **SECTION 7. SECTION 25-10-101, MCA, IS AMENDED TO READ:**

5 **"25-10-101. When costs allowed, of course, to plaintiff. (1) ~~Costs~~ Except as provided in subsection**
 6 **(2), costs** are allowed, of course, to the plaintiff upon a judgment in the plaintiff's favor in the following cases:

7 ~~(1)(a)~~ in an action for the recovery of real property or damages to real property;

8 ~~(2)(b)~~ in an action to recover the possession of personal property when the value of the property
 9 exceeds \$50, with the value determined by the jury, court, or referee by whom the action is tried;

10 ~~(3)(c)~~ in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers
 11 over \$50;

12 ~~(4)(d)~~ in a special proceeding;

13 ~~(5)(e)~~ in an action that involves the title or possession or right of possession of real estate;

14 ~~(6)(f)~~ in an action that involves the legality of any tax, impost, assessment, toll, or municipal fine;

15 ~~(7)(g)~~ in quo warranto proceedings;

16 ~~(8)(h)~~ in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

17 ~~(9)(i)~~ in an action for property damage arising out of the ownership, maintenance, or use of a motor
 18 vehicle if the plaintiff is entitled to attorney fees under 25-10-303.

19 **(2) Costs are not allowed if the offeror has made an offer or judgment as provided in Rule 68 of the**
 20 **Montana Rules of Civil Procedure and the offeree has not recovered a judgment more favorable than the**
 21 **offeror's offer."**

22

23 **Section 8.** Section 27-2-208, MCA, is amended to read:

24 **"27-2-208. Actions for damages arising out of work on improvements to real property or land**
 25 **surveying.** (1) Except as provided in 70-19-427(1) and subsections (2) and (3) of this section, an action to
 26 recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in
 27 writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or
 28 observation of construction of any improvement to real property or resulting from or arising out of land

1 surveying of real property may not be commenced more than ~~40~~9 years after completion of the improvement or
2 land surveying.

3 (2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred
4 during the ~~40th-ninth~~ year after the completion of the improvement or land surveying may be commenced within
5 1 year after the occurrence of the injury.

6 (3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or
7 person in actual possession and control of the improvement or real property that is surveyed at the time a right
8 of action arises.

9 (4) As used in this section:

10 (a) "completion" means that degree of completion at which the owner can utilize the improvement for
11 the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

12 (b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

13 (5) This section may not be construed as extending the period prescribed by the laws of this state for
14 the bringing of any action."
15

16 **Section 9.** Section 27-2-209, MCA, is amended to read:

17 **"27-2-209. Actions against local government or local government official.** (1) The period
18 prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred
19 by the doing of an act in that person's official capacity and in virtue of that person's office or by the omission of
20 an official duty, including the nonpayment of money collected upon an execution, is within ~~3~~2 years, except that
21 this subsection does not apply to an action for an escape.

22 (2) The period prescribed for the commencement of an action against a sheriff or other officer for the
23 escape of a prisoner arrested or imprisoned on civil process is within 1 year.

24 (3) Actions for claims against a county that have been rejected by the county commissioners must be
25 commenced within 6 months after the first rejection.

26 (4) The period prescribed for the commencement of an action against a municipality for damages or
27 injuries to property caused by a mob or riot is within 1 year.

28 (5) The period prescribed for the commencement of an action against a municipality arising from a

1 decision of the municipality relating to a land use, construction, or development project is 6 months from the
2 date of the written decision."

3

4 **SECTION 10. SECTION 33-18-242, MCA, IS AMENDED TO READ:**

5 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party
6 claimant has an independent cause of action against an insurer for actual damages caused by the insurer's
7 violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

8 (2) In an action under this section, a plaintiff is not required to prove that the violations were of such
9 frequency as to indicate a general business practice.

10 (3) An insured who has suffered damages as a result of the handling of an insurance claim may bring
11 an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not
12 under any other theory or cause of action. An insured may not bring an action for bad faith in connection with
13 the handling of an insurance claim.

14 (4) In an action under this section, the court or jury may award such damages as were proximately
15 caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also
16 be assessed in accordance with 27-1-221.

17 (5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or
18 in fact for contesting the claim or the amount of the claim, whichever is in issue.

19 (6) (a) An insured may file an action under this section, together with any other cause of action the
20 insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

21 (b) A third-party claimant may not file an action under this section until after the underlying claim has
22 been settled or a judgment entered in favor of the claimant on the underlying claim.

23 (7) The period prescribed for commencement of an action under this section is:

24 (a) for an insured, within 2 years from the date of the violation of 33-18-201; and

25 (b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment
26 on the underlying claim.

27 (8) As used in this section, ~~an "insurer" includes~~ does not include a person, firm, or corporation
28 utilizing self-insurance or a captive insurance company to pay claims made against them."

1

2 NEW SECTION. Section 11. Codification instruction. (1) [Section 1] is intended to be codified as
3 an integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to [section
4 1].

5 (2) [Section 2] is intended to be codified as an integral part of Title 27, and the provisions of Title 27
6 apply to [section 2].

7 (3) [Section 3] is intended to be codified as an integral part of Title 2, chapter 9, and the provisions of
8 Title 2, chapter 9, apply to [section 3].

9 (4) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 25, CHAPTER 10, AND THE
10 PROVISIONS OF TITLE 25, CHAPTER 10, APPLY TO [SECTION 4].

11 (5) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 25, CHAPTER 3, PART 1, AND
12 THE PROVISIONS OF TITLE 25, CHAPTER 3, PART 1, APPLY TO [SECTION 5].

13

14 NEW SECTION. Section 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT
15 ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
16 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
17 APPLICATIONS.

18

19 NEW SECTION. Section 13. SAVING CLAUSE. [SECTION 7] DOES NOT AFFECT RIGHTS AND DUTIES THAT
20 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF
21 THIS ACT].

22

23 NEW SECTION. Section 14. Applicability. (1) ~~[This act]~~ EXCEPT AS PROVIDED IN SUBSECTION (2),
24 [THIS ACT] applies to civil actions filed on or after [the effective date of this act]. This act does not apply to any
25 claim or cause of action that accrued prior to [the effective date of this act].

26 (2) [SECTION 4] APPLIES TO ANY DISBURSEMENTS, CONTRIBUTIONS, EXPENDITURES, AND PROMISES
27 ASSOCIATED WITH THE PAYMENT OF LEGAL FEES AND COSTS PURSUANT TO [SECTION 4] ON OR AFTER [THE EFFECTIVE
28 DATE OF THIS ACT], REGARDLESS OF WHETHER THE PROCEEDING ASSOCIATED WITH THE GOVERNMENT ACTION HAS

1 ALREADY BEGUN.

2 - END -