

## 1 HOUSE BILL NO. 358

2 INTRODUCED BY B. MERCER, J. ESP

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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."

9  
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~~ 2020 performance audit performed by the Legislative Audit Division, State  
16 Employee 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 \$10,000 OR MORE IN monetary  
9 COMPENSATION damages, including but not 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) "MONETARY COMPENSATION" INCLUDES MONEY AND ANYTHING OF FINANCIAL VALUE THAT IS USED BY A  
16 GOVERNMENTAL ENTITY TO RESOLVE A CLAIM, INCLUDING BUT NOT LIMITED TO PAID ADMINISTRATIVE LEAVE AND  
17 REINSTATEMENT OR REHIRING OF A TERMINATED EMPLOYEE.

18 (5) "Nondisclosure agreement" means any kind of contract or agreement requiring the parties to  
19 maintain confidentiality of any information related to a settlement with the state, or compromise or settlement  
20 agreements with the state.

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

25 (7) "State" and "governmental entity" means the state of Montana or any office, department, agency,  
26 authority, commission, board, institution, hospital, college, OR university, ~~or other instrumentality~~ of the state.

27

28 NEW SECTION. Section 3. Requirements for compromise and settlement of claims against

1 **state.** (1) The department shall create, monitor, maintain, and update, on an ongoing basis, a website that is  
2 available to the public and publishes the following information:

3 (a) the names of the parties settling claims with the state unless the right to individual privacy  
4 outweighs the public right to know;

5 (b) the date of each compromise or settlement of a claim against the state that results in a monetary  
6 ~~settlement~~ COMPENSATION;

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

8 (d) the ~~dollar amount of the~~ OF MONETARY COMPENSATION CONTAINED IN THE compromise or settlement;

9 AND

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

12 (f) ~~the source of funds utilized to pay the settlement and the legal basis for utilizing the funds for~~  
13 ~~settlement.~~

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

17 (3) All information regarding the compromise or settlement of a claim involving a minor is exempted  
18 from disclosure UNDER SUBSECTION (1) ~~and is designated confidential information as defined in 2-6-1002.~~

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

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

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

28 (7) AMONG THE RECORDS TO BE MAINTAINED PURSUANT TO 2-9-303(1)(B) ARE DOCUMENTS FROM THE

1 STATE:

2 (A) CERTIFYING THAT NO CONDITION OR LIMITATION PRECLUDES THE USE OF THE FUNDS UTILIZED TO PAY THE  
3 SETTLEMENT OR OTHER MONETARY COMPENSATION OR DAMAGES;

4 (B) DESCRIBING THE CONDUCT, ACTS, OR OMISSIONS BY ONE OR MORE EMPLOYEES, OFFICERS, OR AGENTS  
5 OF THE STATE AND OTHER RELEVANT FACTORS THAT CAUSED THE STATE TO FIND IT WAS IN THE STATE'S BEST  
6 INTERESTS TO SETTLE THE CASE; AND

7 (C) THE SETTLEMENT TERMS.

8 (8) WHEN A GOVERNMENTAL ENTITY PROVIDES MONETARY COMPENSATION OTHER THAN MONEY TO RESOLVE  
9 A CLAIM, THE GOVERNMENTAL ENTITY MUST EVALUATE THE VALUE CONVEYED PURSUANT TO THE SETTLEMENT OR  
10 COMPROMISE TO DETERMINE WHETHER IT MEETS THE \$10,000 THRESHOLD REQUIRING DISCLOSURE UNDER THIS  
11 SECTION.

12  
13 **NEW SECTION. Section 4. Quarterly report on demands to resolve claims.** (1) Each agency and  
14 administratively attached entity shall submit a quarterly report to the legislative fiscal division capturing:

15 ~~(4)~~(A) all initial demands, EXCLUSIVE OF INITIAL DEMANDS MADE IN MEDIATIONS OR SETTLEMENT  
16 CONFERENCES IN WHICH COURT RULES OR ORDERS PRECLUDE DISCLOSURE OF DEMANDS, submitted to the state to  
17 resolve claims for ~~money~~ MONETARY COMPENSATION, including demands made to any state agency or  
18 department; and

19 ~~(2)~~(B) EXCEPT AS PROVIDED IN SUBSECTION (2), all civil and administrative complaints filed WITH A COURT  
20 OR AGENCY about which the state is aware HAS KNOWLEDGE or for which service has been effectuated on the  
21 state and the identity of the court or entity of the state where the complaint is filed.

22 (2) THE PROVISIONS OF SUBSECTION (1)(B) DO NOT APPLY TO AN EMPLOYEE OR OFFICIAL IN THE JUDICIAL  
23 BRANCH.

24

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

26 **"2-9-303. Compromise or settlement of claim against state.** (1) (a) The department of  
27 administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the  
28 terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund

1 exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been  
2 filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

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

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

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

11 (3) An employee who is a party to a compromise or settlement entered into or approved pursuant to  
12 subsection (1) may waive the right of individual privacy and allow the state to release all records or details of  
13 the compromise or settlement, such as personnel records, that pertain to the employee personally and that  
14 would otherwise be protected by the right of individual privacy subject to the merits of public disclosure."  
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16 NEW SECTION. Section 6. Use of existing resources. It is the intent of the legislature that the  
17 executive branch agencies and entities implement the provisions of [this act] within existing resources.  
18

19 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be  
20 codified as an integral part of Title 2, chapter 9 6, PART 10, and the provisions of Title 2, chapter 9 6, PART 10,  
21 apply to [sections 1 through 4].  
22

23 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are  
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
25 the part remains in effect in all valid applications that are severable from the invalid applications.  
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27 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2021.  
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