

2021 Montana Legislature Update

Sen. Steve Fitzpatrick (SD 10 – Cascade County)

Browning, Kaleczyc, Berry, and Hoven, P.C.

COVID-19 Liability

- Senate Bill 65 (private entities) and House Bill 435 (government entities).
- Increases the threshold for providing liability for COVID-19 to gross negligence from ordinary negligence. Also permits claims for willful and wanton conduct and intentional tort.
- Provides an affirmative defense of compliance with government orders and regulations. If a person makes reasonable efforts to comply with government regulations pertaining to COVID-19, an action is barred.
- For private entities, Senate Bill 65 states government orders, regulations, and guidance do not create any new causes of action against a person.
- A person is not subject to liability for the following:
 - Failing to verify a person is wearing a mask;
 - Failing to verify a mask is sufficient to stop the spread of covid-19;
 - Prohibiting people from entering a premises if the person refuses to take a temperature check; and
 - Choosing not to receive a vaccine.
- Effective on passage and approval. Both bills only apply to claims arising after the effective date of the legislation.

House Bill 254 – Revises the Wrongful Discharge Act

- Changes the probationary period to 12 months. Allows the employer to extend the probationary period up to 18 months.
- Changes the definition of “good cause” for termination. Good cause includes any material and repeated violation of the employer’s written policies and any other legitimate business reason determined by the employer while exercising the employer's reasonable business judgment.
- A discharge will be wrongful if the employer materially violated the express provisions of its own written personnel policy prior to the discharge, and the violation deprived the employee of a fair and reasonable opportunity to remain in a position of employment with the employer. The employer has the broadest discretion when making a decision to discharge any managerial or supervisory employee.
- When calculating an award, the district court shall consider any monetary payments, compensation, or benefits the employee received arising from or related to the discharge including unemployment compensation and early retirement and shall deduct those amounts from the amount awarded for lost wages.
- The employer has 14 days to notify the discharged employee about the existence of internal procedures. The time for initiating proceedings begins to run from the date the employer sends the internal procedures to the employee.
- Suit must be served 6 months after filing the complaint.
- Effective on March 31, 2021.

Senate Bill 251 – Revises the Amount of Damages Recoverable for Medical Expenses

- Limits the amount of recoverable damages for medical services. Revises the collateral source statute found at § 27-1-308, MCA.
- The purpose of the bill is to reverse the Meek v. Montana Eight Judicial Dist. Court, 2015 MT 130, 379 Mont. 150, 349 P.3d 493 decision. In Meek, the Montana Supreme Court ruled a plaintiff could present evidence of the billed amount to show the reasonable amount of medical services.
- Under SB 251, the plaintiff's recovery may not exceed the amounts actually paid to the plaintiff's health care providers or the amount necessary to pay any healthcare providers for future treatment.
- The jury shall determine the amount of the award without any consideration of charges which were resolved by way of discount, reduction, disallowance, gift, or write-off.
- Any evidence of the reasonable value of medical bills shall be limited to the amounts actually paid.
- Evidence may not include any reference to sums that exceed the amount for which the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or government sponsored health care benefit.
- Effective on April 30, 2021. Only applies to claims that accrue on or after April 30, 2021.

SB 338 – Revise Civil Liability for Claims by Trespassers

- States a landowner owes a trespasser no duty of care with respect to the condition of property.
- A trespasser enters or remains on trespassed property without any assurance the property is safe for any purpose.
- A landowner may be liable for willful and wanton misconduct.
- A “landowner” is defined as any person or private entity including an agent, lessee, occupant, grantee of a conservation easement, or person in control of property.
- “Property” means any privately owned property including any improvements, buildings, structures, machinery, or equipment on a piece of property.
- Effective April 28, 2021.

Senate Bill 112 – Revise Construction Laws

- Amends the Montana Consumer Protection Act (§§ 30-14-101 to 143) and the Montana Residential Construction Dispute Act (§§ 70-19-426 to 428).
- A consumer may not bring an action under the Montana Consumer Protection Act if the consumer is bringing an action subject to the Montana Residential Construction Dispute Act against a construction professional.
- The effect of the legislation is to prohibit a party from recovering treble damages for construction defects. Attorney fees would be collectible under §70-19-428, MCA.
- Effective October 1, 2021.

House Bill 472 – Revises Civil Liability Under the Montana Consumer Protection Act

- Amends § 30-14-133, MCA, the statutory section authorizing damages under the Montana Consumer Protection Act.
- Changes the measure of damages which may be awarded from “actual damages” to damages resulting from an “ascertainable loss of money or property.” The purpose is to eliminate emotional distress damages.
- Prohibits an award of treble damages and attorney fees if the damages exceed \$100,000.
- Limits attorney fees to no more than \$250.00 an hour.
- Effective October 1, 2021.

Senate Bill 316 - Liability for Restoration Damages for Releases of Hazardous Substances

- Limits restoration damages to “special use” property.
- “Special use” property is real property found by the trier of fact to have objectively reasonable personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value.
- Restoration damages may not be awarded to alter an interim or final remedial action that has been taken or will be undertaken for the benefit of special use property.
- Remedial actions include actions taken pursuant to a federal administrative order, a state administrative order, a judicial consent decree, or any other interim or final action plan approved by the Montana Department of Environmental Quality.
- Restoration damages may only be used to conduct remedial or corrective action necessary to restore the special use property. Restoration work must begin within 3 years from the date the judgment is paid or settlement proceeds are received.
- Any surplus damages after the completion of the work must be returned to the defendant.
- Effective May 14, 2021. Does not apply to proceedings which began before the effective date of the legislation.

House Bill 702 – Prohibiting Discrimination Based on Vaccine Status

- An employer may not refuse to employ a person, bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport.
- An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials.
- An “immunity passport” means a document, digital record, or software application indicating that a person is immune to a disease, either through vaccination or infection and recovery.
- Effective on May 7, 2021.

Additional Information

- The Montana Legislature website. www.leg.mt.gov
- Bill search – click on “Look Up Bills”
- Enter the bill number. You will get a page with bill information. You can see a copy of the bill text and prior versions. It will also show the votes and any fiscal notes or proposed amendments.