

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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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; REVISING STATUTES OF
11 LIMITATIONS FOR CERTAIN ACTIONS RELATING TO REAL PROPERTY AND CERTAIN LOCAL
12 GOVERNMENT OFFICIALS; AMENDING SECTIONS 15-31-102, 27-2-208, AND 27-2-209, MCA; AND
13 PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. Section 1. Economic consumption to be deducted from award. If damages are
18 awarded for a malpractice claim as defined in 25-9-411 for a deceased party's lost future earnings, the
19 deceased party's economic consumption must be deducted from the award. Economic consumption is the part
20 of the projected earnings that the deceased party would have spent on basic necessities and personal
21 expenditures throughout the party's lifetime, but not including expenses necessary to care for dependents of the
22 deceased party.

23
24 NEW SECTION. Section 2. Prohibition on lawsuit -- criminal actions. A person who is harmed
25 while attempting to engage in, engaging in, or fleeing after having engaged in conduct that is classified as a
26 felony offense may not recover damages from a crime victim or other person that used reasonable self-defense
27 to protect a crime victim.

28

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

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

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

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

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

13

14 **NEW SECTION. SECTION 4. NONPROFIT CORPORATION -- LEGAL FEES AND COSTS CHALLENGING**

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

21 **(B) EACH 501(C)(3) NONPROFIT CORPORATION THAT UNDERTAKES AN ACTIVITY IN SUBSECTION (1)(A) SHALL**
 22 **FILE, UNDER PENALTY OF PERJURY, A STATEMENT WITH THE ATTORNEY GENERAL WITHIN 30 CALENDAR DAYS OF THE**
 23 **ACTION LISTING ANY DONATIONS OR OTHER FINANCIAL ASSISTANCE RECEIVED DURING THE PREVIOUS CALENDAR YEAR**
 24 **THROUGH THE DATE OF SUBMISSION OF THE STATEMENT WITH THE ATTORNEY GENERAL, INCLUDING PROVIDING THE**
 25 **NAME AND ADDRESS OF ANY INDIVIDUAL OR ENTITY PROVIDING FINANCIAL SUPPORT IN EXCESS OF \$50.**

26 **(2) THIS SECTION DOES NOT APPLY IF THE NONPROFIT CORPORATION IS EITHER DEFENDING OR PROSECUTING**
 27 **A GOVERNMENT ACTION THAT INVOLVES:**

28 **(A) PROPERTY BELONGING TO THE NONPROFIT CORPORATION;**

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

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

3 (D) ANY PROFESSIONAL LICENSE ASSOCIATED WITH AN EMPLOYEE OR THE NONPROFIT CORPORATION.

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

5 (A) "GOVERNMENT ACTION" MEANS THE IMPLEMENTATION OR APPLICATION OF ANY LAW, INCLUDING BUT NOT
 6 LIMITED TO FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, RULES, REGULATIONS, AND POLICIES, WHETHER
 7 STATUTORY OR OTHERWISE, OR OTHER ACTION BY A FEDERAL, STATE, OR LOCAL GOVERNMENT BODY OR OFFICIAL
 8 ACTING IN THEIR OFFICIAL CAPACITY.

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

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

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

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

18

19 **SECTION 5. SECTION 15-31-102, MCA, IS AMENDED TO READ:**

20 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
 21 as provided in subsection (3), there may not be taxed under this title any income received by any:

22 (a) labor, agricultural, or horticultural organization;

23 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
 24 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the
 25 payment of life, sick, accident, or other benefits to the members of the society, order, or association or their
 26 dependents;

27 (c) cemetery company owned and operated exclusively for the benefit of its members;

28 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,

1 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or
2 individual;

3 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the
4 net income of which inures to the benefit of any private stockholder or individual;

5 (f) civic league or organization not organized for profit but operated exclusively for the promotion of
6 social welfare;

7 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
8 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

9 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation
10 company, mutual or cooperative telephone company, or similar organization of a purely local character, the
11 income of which consists solely of assessments, dues, and fees collected from members for the sole purpose
12 of meeting its expenses;

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

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

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

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

28 (m) farmers' market association not organized for profit, no part of the net income of which inures to

1 the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of
 2 homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

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

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

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

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

15

16 **Section 6.** Section 27-2-208, MCA, is amended to read:

17 **"27-2-208. Actions for damages arising out of work on improvements to real property or land**

18 **surveying.** (1) Except as provided in 70-19-427(1) and subsections (2) and (3) of this section, an action to
 19 recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in
 20 writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or
 21 observation of construction of any improvement to real property or resulting from or arising out of land
 22 surveying of real property may not be commenced more than ~~40~~9 years after completion of the improvement or
 23 land surveying.

24 (2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred
 25 during the ~~40th~~ninth year after the completion of the improvement or land surveying may be commenced within
 26 1 year after the occurrence of the injury.

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

1 of action arises.

2 (4) As used in this section:

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

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

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

8

9 **Section 7.** Section 27-2-209, MCA, is amended to read:

10 **"27-2-209. Actions against local government or local government official.** (1) The period
11 prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred
12 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
13 an official duty, including the nonpayment of money collected upon an execution, is within ~~3~~2 years, except that
14 this subsection does not apply to an action for an escape.

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

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

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

21 (5) The period prescribed for the commencement of an action against a municipality arising from a
22 decision of the municipality relating to a land use, construction, or development project is 6 months from the
23 date of the written decision."

24

25 **NEW SECTION. Section 8. Codification instruction.** (1) [Section 1] is intended to be codified as an
26 integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to [section 1].

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

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

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

5
6 NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
7 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
8 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
9 APPLICATIONS.

10
11 NEW SECTION. Section 10. Applicability. (1) ~~[This act]~~ EXCEPT AS PROVIDED IN SUBSECTION (2),
12 [THIS ACT] applies to civil actions filed on or after [the effective date of this act]. This act does not apply to any
13 claim or cause of action that accrued prior to [the effective date of this act].

14 (2) [SECTION 4] APPLIES TO ANY DISBURSEMENTS, CONTRIBUTIONS, EXPENDITURES, AND PROMISES
15 ASSOCIATED WITH THE PAYMENT OF LEGAL FEES AND COSTS PURSUANT TO [SECTION 4] ON OR AFTER [THE EFFECTIVE
16 DATE OF THIS ACT], REGARDLESS OF WHETHER THE PROCEEDING ASSOCIATED WITH THE GOVERNMENT ACTION HAS
17 ALREADY BEGUN.

18 - END -