

1 SENATE BILL NO. 382
2 INTRODUCED BY D. EMRICH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO IMMUNIZATION EXEMPTIONS;
5 PROVIDING REMEDIES FOR VIOLATIONS OF RELIGIOUS OR INFORMED CONSENT EXEMPTIONS;
6 AMENDING SECTIONS 20-5-405 AND 49-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. **Section 1. Acceptance of religious or informed consent exemptions to**
12 **immunizations required -- penalties -- damages.** (1) The following entities or persons shall accept without
13 question or malice any religious or informed consent exemption that is provided for an immunization, as the
14 term is defined in 20-5-402, an injection, a drug, or a medication that is required for employment purposes or for
15 school or child care attendance:

- 16 (a) a state agency;
- 17 (b) any political subdivision as defined in 2-9-101;
- 18 (c) any person licensed or registered pursuant to Title 52, chapter 2, part 7, to provide day care;
- 19 (d) a licensed health care provider; or
- 20 (e) any other organization or entity licensed by the state.

21 (2) An entity or person listed in subsection (1) that fails to comply with the requirements of this
22 section may not receive funding from the state.

23 (3) A person who is aggrieved by a violation of this section may:

- 24 (a) file a complaint as provided in Title 49, chapter 2, part 5; and
- 25 (b) seek compensatory damages and costs and attorney fees.

26
27 **Section 2.** Section 20-5-405, MCA, is amended to read:

28 **"20-5-405. Exemptions -- limitations on agency actions.** (1) (a) There is a religious exemption to

1 the immunizations required under 20-5-403. A person enrolled or seeking to enroll in school may attend the
2 school without obtaining the immunizations required under 20-5-403 if the person files with the governing
3 authority ~~an affidavit on a form prescribed by the department~~ a signed statement or letter stating that
4 immunization is contrary to the religious tenets and practices of the signer.

5 (b) The statement must be signed:

6 (i) by the person enrolled or seeking to enroll in the school, if the person is an adult; or

7 (ii) if the person is a minor, by a parent, guardian, or adult who has the responsibility for the care
8 and custody of the minor.

9 (c) The statement must be maintained as part of the person's immunization records.

10 (2) (a) There is a medical exemption to the immunizations required under 20-5-403. A person
11 enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if a written
12 medical exemption statement signed by a health care provider specified in subsection (2)(c) is filed with the
13 governing authority. The medical exemption statement must:

14 (i) attest that the physical condition of the person enrolled or seeking to enroll in school or the
15 medical circumstances relating to the person indicate that some or all of the required immunizations are not
16 considered safe; and

17 (ii) indicate the specific nature and probable duration of the medical condition or circumstances
18 that contraindicate immunization.

19 (b) The person is exempt from the requirements of this part to the extent indicated by the medical
20 exemption statement.

21 (c) The medical exemption statement must be signed by a person who:

22 (i) is licensed, certified, or otherwise authorized by the laws of any state or Canada to provide
23 health care as defined in 50-16-504;

24 (ii) is authorized within the person's scope of practice to administer the immunizations to which the
25 exemption applies; and

26 (iii) has previously provided health care to the person seeking the exemption or has administered
27 an immunization to which the person seeking an exemption has had an adverse reaction.

28 (3) There is an exemption to the immunizations required under 20-5-403 that is based on informed

1 consent. A person enrolled or seeking to enroll in school may attend the school without obtaining the
 2 immunizations if the person files with the governing authority a signed statement, letter, or notarized affidavit
 3 stating that the signer received information about the required immunizations and declined to be immunized.

4 (a) The statement, letter, or notarized affidavit must be signed:

5 (i) if the person is an adult, by the person enrolled or seeking to enroll in the school; or

6 (ii) if the person is a minor, by a parent, guardian, or adult who has the responsibility for the care
 7 and custody of the minor.

8 (b) The statement, letter, or notarized affidavit must be maintained as part of the person's
 9 immunization records.

10 ~~(3)~~(4) (a) The department may not require an exemption form under this section that imposes
 11 requirements that are more burdensome or otherwise in excess of the requirements described in this section. A
 12 form prescribed by the department that contains requirements not expressly described in this section is void to
 13 the extent that it purports to impose requirements not included in this section.

14 (b) A governing authority may not deny an exemption on the basis that a person has not
 15 completed portions of the exemption form that are void under this subsection ~~(3)~~ (4).

16 (c) The department is not authorized to review a completed medical exemption statement or
 17 medical exemption form for the purpose of granting or denying a medical exemption.

18 (d) An exemption statement or form under this section must be maintained as part of the person's
 19 immunization records and may not be photocopied or otherwise duplicated for use by a third party without the
 20 permission of the student's parent or, if the student is an adult, the written consent of the student.

21 ~~(4)~~(5) Whenever there is good cause to believe that a person for whom an exemption has been filed
 22 under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of
 23 school attendance be exposed to the disease, the person may be excluded from the school by the local health
 24 officer or the department until the excluding authority is satisfied that the person no longer risks contracting or
 25 transmitting that disease."

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27 **Section 3.** Section 49-2-312, MCA, is amended to read:

28 **"49-2-312. Discrimination based on vaccination status or possession of immunity passport**

1 **prohibited -- definitions.** (1) ~~Except as provided in subsection (2), it~~ It is an unlawful discriminatory practice
2 for:

3 (a) a person or a ~~governmental~~ government entity to refuse, withhold from, or deny to a person any
4 local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care
5 access, or employment opportunities based on the person's vaccination status or whether the person has an
6 immunity passport;

7 (b) an employer to refuse employment to a person, to bar a person from employment, or to
8 discriminate against a person in compensation or in a term, condition, or privilege of employment based on the
9 person's vaccination status or whether the person has an immunity passport; or

10 (c) a public accommodation to exclude, limit, segregate, refuse to serve, or otherwise discriminate
11 against a person based on the person's vaccination status or whether the person has an immunity passport.

12 ~~(2) — This section does not apply to vaccination requirements set forth for schools pursuant to Title~~
13 ~~20, chapter 5, part 4, or day care facilities pursuant to Title 52, chapter 2, part 7.~~

14 ~~(3)(2)~~ (a) A person, ~~governmental~~ government entity, or an employer does not unlawfully discriminate
15 under this section if they recommend that an employee receive a vaccine.

16 (b) A health care facility, as defined in 50-5-101, does not unlawfully discriminate under this
17 section if it complies with both of the following:

18 (i) asks an employee to volunteer the employee's vaccination or immunization status for the
19 purpose of determining whether the health care facility should implement reasonable accommodation measures
20 to protect the safety and health of employees, patients, visitors, and other persons from communicable
21 diseases. A health care facility may consider an employee to be nonvaccinated or nonimmune if the employee
22 declines to provide the employee's vaccination or immunization status to the health care facility for purposes of
23 determining whether reasonable accommodation measures should be implemented.

24 (ii) implements reasonable accommodation measures for employees, patients, visitors, and other
25 persons who are not vaccinated or not immune to protect the safety and health of employees, patients, visitors,
26 and other persons from communicable diseases.

27 ~~(4)(3)~~ An individual may not be required to receive any vaccine whose use is allowed under an
28 emergency use authorization or any vaccine undergoing safety trials.

