

## 1 SENATE BILL NO. 352

2 INTRODUCED BY M. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING LEGISLATIVE IMMUNITY TO LEGISLATIVE STAFF  
5 FOR INFORMATION THAT IS CONSIDERED PRIVILEGED WHEN HELD BY A LEGISLATOR; AMENDING  
6 SECTIONS 2-9-101 AND 2-9-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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8 WHEREAS, Article V, section 8, of the Montana Constitution contains a speech and debate clause  
9 virtually identical to Article I, section 6, of the Constitution of the United States, the federal speech and debate  
10 clause; and

11 WHEREAS, in the case of *United States v. Johnson*, 383 U.S. 169, 178 (1966), the United States  
12 Supreme Court determined that the federal speech and debate clause had origins going back to the English Bill  
13 of Rights of 1689, which reasoned that "the Freedom of Speech, and Debates or Proceedings in Parliament,  
14 ought not to be impeached or questioned in any Court or Place out of Parliament"; and

15 WHEREAS, in the case of *Gravel v. United States*, 408 U.S. 606 (1972), the United States Supreme  
16 Court held that the speech and debate clause in the Constitution of the United States makes the  
17 communications between members of Congress and their staff privileged and confidential; and

18 WHEREAS, the United States Supreme Court explained its reasoning in the *Gravel* case as follows:  
19 "The day-to-day work of [legislative] aides is so critical to the Members' performance that they must be treated  
20 as the latter's alter ego; and that if they are not so recognized, the central role of the Speech and Debate  
21 Clause--to prevent intimidation of legislators by the Executive and accountability before a possibly hostile  
22 judiciary--will inevitably be diminished and frustrated"; and

23 WHEREAS, the Legislature intends by this act to apply the longstanding holding of the *Gravel* case to  
24 the Montana Legislature.

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26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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28 NEW SECTION. **Section 1. Legislative immunity for legislative staff.** (1) Evidentiary privilege and

1 legislative speech and debate immunity extends to legislative staff. Legislative staff may not be questioned in a  
2 judicial proceeding or compelled to testify in any other place regarding privileged legislative information. The  
3 privilege applies to information that is controlled by or in the possession of legislative staff as long as the same  
4 information would be treated as privileged legislative information if it was under the control or possession of a  
5 legislator.

6 (2) Legislative staff may not disclose privileged legislative information, which must be treated as  
7 confidential information. The introduction or public discussion of a bill by a legislator does not waive the  
8 privilege provided by this section.

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10 **Section 2.** Section 2-9-101, MCA, is amended to read:

11 **"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

12 (1) "Claim" means any claim against a governmental entity, for money damages only, that any  
13 person is legally entitled to recover as damages because of personal injury or property damage caused by a  
14 negligent or wrongful act or omission committed by any employee of the governmental entity while acting within  
15 the scope of employment, under circumstances where the governmental entity, if a private person, would be  
16 liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of  
17 liability contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or  
18 damage to property of a person, regardless of the number of persons or entities claiming damages, are  
19 considered one claim.

20 (2) (a) "Employee" means an officer, employee, or servant of a governmental entity, including  
21 elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity  
22 temporarily or permanently in the service of the governmental entity whether with or without compensation.

23 (b) The term does not mean a person or other legal entity while acting in the capacity of an  
24 independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event  
25 of a claim.

26 (3) "Governmental entity" means the state and political subdivisions.

27 (4) "Legislative staff" means:

28 (a) (i) except as provided in subsection (4)(b), an employee or contractor of an entity of the

1 legislative branch that is consolidated as provided in 5-2-504;

2 (ii) personal staff of legislative leadership provided for in 2-18-104; or

3 (iii) an attorney or consultant hired by legislative leadership as a personal service contractor using  
4 state funding.

5 (b) The term does not include an entity of the legislative branch or an employee of the legislative  
6 audit division.

7 (5) "Legislator" means a member of the legislature and includes a person elected to serve in the  
8 next legislative session.

9 (4)(6) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false  
10 arrest and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence  
11 for which the state may be held liable.

12 (7) "Privileged legislative information" means any information that is protected from disclosure by a  
13 legislator based on the common law, constitutional law, or statutory legislative immunity.

14 (5)(8) "Political subdivision" means any county, city, municipal corporation, school district, special  
15 improvement or taxing district, other political subdivision or public corporation, or any entity created by  
16 agreement between two or more political subdivisions.

17 (6)(9) "Property damage" means injury or destruction to tangible property, including loss of use of the  
18 property, caused by an occurrence for which the state may be held liable.

19 (7)(10) "State" means the state of Montana or any office, department, agency, authority, commission,  
20 board, institution, hospital, college, university, or other instrumentality of the state."

21

22 **Section 3.** Section 2-9-901, MCA, is amended to read:

23 **"2-9-901. (Temporary) Definitions.** As used in this part, unless the context clearly indicates  
24 otherwise, the following definitions apply:

25 (1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the  
26 novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused  
27 by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

28 (2) "Government entity" means the state and political subdivisions, including but not limited to:

(a) political subdivisions as defined in 2-9-101~~(5)~~;

(b) the legislature, legislative committees, and legislators acting in their official capacity; and

(c) employees of the state or a political subdivision.

(3) "Health care provider" means a health care professional, whether the health care professional works for a health care provider or a government health care provider, health care facility, home health care facility, assisted living facility, or any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, government entity, or any other legal or commercial entity.

(5) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

(6) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the United States department of health and human services;

(b) the centers for medicare and medicaid services of the United States department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the Montana department of public health and human services; or

(f) a local government, including a local government health department or local government board of health. (Terminates December 31, 2031--sec. 12, Ch. 516, L. 2021.)"

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

**NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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