

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB352, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

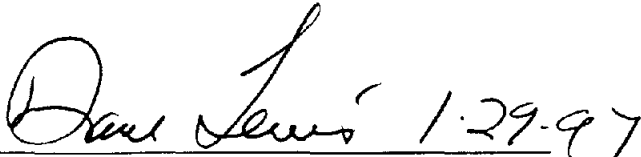
An act providing that the original owner of real property or possessor of stolen personal property or the owner of real property misused without the knowledge of the owner is not liable for injury or damages arising out of the use of misuse of the property while the property is possessed by another.

ASSUMPTIONS:

1. The Risk Management and Tort Defense Division does not recall any previous tort claims regarding these circumstances.
2. If such a claim were to arise it would be denied on the basis of no state negligence.

FISCAL IMPACT:

No fiscal impact on the state.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


PAUL SLITER, PRIMARY SPONSOR DATE

Fiscal Note for HB352, as introduced

HB 352

1 HOUSE BILL NO. 352

2 INTRODUCED BY SLITER, GRINDE, STANG, CLARK, BRAINARD, M. TAYLOR, BEAUDRY, HOLDEN,
3 GAGE, ESTRADA, JORE, TASH, MCCANN, WISEMAN, DEPRATU, MOOD, WELLS, HEAVY RUNNER,
4 BITNEY, BENEDICT, BAER, MCGEE, WALTERS, MILLER, GROSFIELD, RYAN, OHS, ORR, CURTISS,
5 WAGNER, HERTEL, DEBRUYCKER, JABS, MAHLUM, FRANKLIN, ANDERSON, AKLESTAD, CRISMORE,
6 STORY, PROUSE, COBB, SIMON, MESAROS, PECK, SPRAGUE, SWYSGOOD, DEVLIN, THOMAS,
7 MOHL, EMERSON, MCNUTT, BECK, KEATING, BARNETT, RANEY, KEENAN, MERCER, ZOOK, QUILICI,
8 REHBEIN, HOLLAND, FOSTER, DEVANEY, PAVLOVICH, LYNCH, STOVALL, KNOX, GLASER
9

10 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE ORIGINAL OWNER OR POSSESSOR OF
11 STOLEN PERSONAL PROPERTY OR THE OWNER OF REAL PROPERTY CRIMINALLY MISUSED WITHOUT
12 THE KNOWLEDGE OF THE OWNER IS NOT LIABLE FOR INJURY OR DAMAGES ARISING OUT OF THE USE
13 OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER; AND PROVIDING
14 AN APPLICABILITY DATE."
15
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18

19 NEW SECTION. **Section 1. Property owner's immunity from damage caused by use of property**
20 **unlawfully taken.** The original owner or possessor of personal property that is stolen is not liable for injury
21 or damage arising out of the use of the property while the property is possessed by another. The owner
22 of real property that is criminally misused by another without the owner's knowledge is not liable for injury
23 or damage arising out of the misuse. This section includes ~~but is not limited to the taking of a weapon~~
24 PROPERTY TAKEN by theft, robbery, or burglary directly from the person's body or from a place of
25 residence, tent or other recreational structure, or motor vehicle or boat that is owned, possessed, or used
26 by the person owning or possessing the ~~weapon~~ PROPERTY.
27

28 NEW SECTION. **Section 2. Two-thirds vote required.** Because [section 1] limits governmental
29 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
30 each house of the legislature for passage.

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 OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER; AND PROVIDING
 AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Property owner's immunity from damage caused by use of property
 unlawfully taken.** The ~~original~~ owner or possessor of personal property that is stolen is not liable for injury
 or damage arising out of the use of the property while the property is possessed by another. The owner
 of real property that is criminally misused by another without the owner's knowledge is not liable for injury
 or damage arising out of the misuse. This section includes ~~but is not limited to the taking of a weapon~~
PROPERTY TAKEN by theft, robbery, or burglary directly from the person's body or from a place of
 residence, tent or other recreational structure, or motor vehicle or boat that is owned, possessed, or used
 by the person owning or possessing the ~~weapon~~ **PROPERTY**.

NEW SECTION. Section 2. Two-thirds vote required. Because [section 1] limits governmental
 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
 each house of the legislature for passage.

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OR DAMAGES ARISING OUT OF THE USE OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS
POSSESSED BY ANOTHER; PROVIDING THAT THIS IMMUNITY DOES NOT AFFECT THE DOCTRINES OF
NEGLIGENCE PER SE AND ATTRACTIVE NUISANCE; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Property owner's immunity from damage caused by use of property
unlawfully taken.** (1) The ~~original~~ owner or possessor of personal property that is stolen is not liable IN THE
ABSENCE OF GROSS NEGLIGENCE for injury or damage arising out of the use of the property while the
property is possessed by another. The owner of real property that is criminally misused by another without
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by theft, robbery, or burglary directly from the person's body or from a place of residence, tent or other
recreational structure, or motor vehicle or boat that is owned, possessed, or used by the person owning
or possessing the ~~weapon~~ PROPERTY.

(2) THIS SECTION DOES NOT MODIFY, AMEND, OR ELIMINATE THE DOCTRINES OF
NEGLIGENCE PER SE OR ATTRACTIVE NUISANCE.

1 **NEW SECTION.** **Section 2. Two-thirds vote required.** Because [section 1] limits governmental
2 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
3 each house of the legislature for passage.

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5 **NEW SECTION.** **Section 3. Applicability.** [This act] applies to injuries and damages occurring after
6 October 1, 1997.

7

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