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*Senate* BILL NO. 320

INTRODUCED BY *Senators Hays & Egan*  
*Cochran, Dyer, Bishop*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA GOVERNMENT ACCOUNTABILITY ACT; PROHIBITING A PERSON FROM TAKING A PROHIBITED PERSONNEL ACTION AGAINST A STATE EMPLOYEE FOR MAKING PROTECTED DISCLOSURES OR REFUSING TO FOLLOW AN ILLEGAL ORDER; PROVIDING ENFORCEMENT REMEDIES FOR A VIOLATION OF THE ACT; PROVIDING DISCIPLINARY MEASURES FOR VIOLATIONS OF THE ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Government Accountability Act".

NEW SECTION. **Section 2. Legislative findings and declarations.** The legislature finds and declares that a state employee must be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The legislature further finds and declares that a public servant best serves the citizenry when the public servant can be candid and honest without reservation in conducting the people's business.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Illegal order" means a directive to violate or assist in violating a federal, state, or local law, a rule or regulation, or an order to work or cause others to work in conditions that may threaten the health or safety of employees or of the public.

(2) "Prohibited personnel action" includes but is not limited to termination, demotion, suspension, reprimand, involuntary transfer or reassignment, referral for psychiatric or psychological counseling, or in any manner discriminating against a former, current, or prospective employee. The term includes threats to take an adverse action as well as threats to withhold a favorable personnel action.

1 (3) "Protected disclosures" means a good faith communication that discloses or demonstrates an  
2 intention to disclose information that may evidence:

3 (a) mismanagement;

4 (b) gross waste of public money;

5 (c) abuse of authority in connection with the administration of a public program or the execution  
6 of a public contract;

7 (d) violation of a federal, state, or local law, rule, or regulation; or

8 (e) a condition that may significantly threaten the health or safety of employees or the public.

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10 **NEW SECTION. Section 4. Prohibitions.** A person may not take a prohibited personnel action  
11 against a former, current, or prospective employee for making protected disclosures or for refusing to follow  
12 an illegal order.

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14 **NEW SECTION. Section 5. Enforcement.** (1) A violation of [sections 1 through 7] constitutes a  
15 complete affirmative defense for a former, current, or prospective employee to a prohibited personnel action  
16 in an administrative review, challenge, or adjudication of that action.

17 (2) A former, current, or prospective employee aggrieved by a violation of [sections 1 through 7]  
18 may bring a civil action in a court of competent jurisdiction seeking relief and damages, including but not  
19 limited to injunction, reinstatement, restoration of lost benefits, back pay and interest on back pay,  
20 compensatory damages, and, when appropriate, punitive damages and reasonable costs and attorney fees.  
21 A civil action must be filed within 2 years after a violation occurs or within 2 years after the employee first  
22 becomes aware of the violation.

23 (3) In a civil action or administrative proceeding, once it has been demonstrated by a  
24 preponderance of evidence that an activity protected by [section 4] was a contributing factor in the alleged  
25 prohibited personnel action against a former, current, or prospective employee, the burden of proof must  
26 be on the employing state agency to prove by clear and convincing evidence that the alleged action would  
27 have occurred for legitimate, independent reasons even if the employee had not engaged in activities  
28 protected by [section 4].

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30 **NEW SECTION. Section 6. Discipline for retaliators.** A supervisor, manager, department director,

1 or other state official who violates [section 4] must be subject to appropriate discipline up to and including  
2 dismissal from office.

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4 NEW SECTION. **Section 7. Effect on other rights.** [Sections 1 through 7] do not diminish the  
5 rights, privileges, or remedies of an employee under another federal or state law or under an employment  
6 contract.

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8 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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 3 *Cochran* *Don Bishop*

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