

1 SENATE BILL NO. 370

2 INTRODUCED BY J. ELLSWORTH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DISASTER AND EMERGENCY
5 POWERS LAWS; PROTECTING CERTAIN CONSTITUTIONAL RIGHTS DURING AN EMERGENCY;
6 REVISING THE DECLARATION OF POLICY; CLARIFYING THE LIMITATIONS ON AUTHORITY DURING AN
7 EMERGENCY; PROVIDING FOR CIVIL RELIEF; AMENDING SECTIONS 10-3-101 AND 10-3-102, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11
12 **Section 1.** Section 10-3-101, MCA, is amended to read:
13 **"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence
14 of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage,
15 or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an
16 emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or
17 emergencies, and generally to provide for the common defense and to protect the public peace, health, and
18 safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is
19 declared to be necessary to:

- 20 (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency
21 services in the political subdivisions of this state;
- 22 (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and
23 property resulting from natural or human-caused disasters;
- 24 (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of
25 persons and property affected by disasters;
- 26 (4) clarify and strengthen the roles of the governor, state agencies, local governments, and tribal
27 governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;
- 28 (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and

1 recovery;

2 (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness,
3 mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate,
4 federal-state, and foreign activities in which the state, its political subdivisions, and tribal governments may
5 participate;

6 (7) provide an emergency and disaster management system embodying all aspects of emergency or
7 disaster prevention, preparedness, response, and recovery;

8 (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and
9 private facilities and land use;

10 (9) supplement, without in any way limiting, authority conferred by previous statutes of this state and
11 increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to
12 perform disaster and emergency services; ~~and~~

13 (10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily
14 appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities
15 in providing assistance in the response to, recovery from, and mitigation of disasters in state, tribal government,
16 or federal emergency or disaster declarations;

17 (11) ensure the protections under the first amendment of the United States constitution and under
18 Article II, sections 6 and 7, of the Montana constitution of the rights of free speech, freedom of assembly,
19 freedom of the press, and the right to petition the government for a redress of grievances; and

20 (12) ensure the protection of the rights under the second amendment of the United States constitution
21 and under Article II, section 12, of the Montana constitution."

22

23 **Section 2.** Section 10-3-102, MCA, is amended to read:

24 **"10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state,
25 local, or interjurisdictional agency or public official authority to:

26 (1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by
27 parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or
28 existing danger to public health or safety;

1 (2) interfere with dissemination of news or comment on public affairs. However, any communications
 2 facility or organization, including but not limited to radio and television stations, wire services, and newspapers,
 3 may be required to transmit or print public service messages furnishing information or instructions in connection
 4 with an emergency or disaster.

5 (3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed
 6 forces of the United States, or any personnel of those entities when on active duty, but state, local, and
 7 interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance
 8 of functions related to emergencies and disasters; ~~or~~

9 (4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other
 10 powers vested in the governor under the constitution, statutes, or common law of this state independent of or in
 11 conjunction with any provisions of parts 1 through 4 of this chapter;

12 (5) prohibit, limit, or curtail:

13 (a) political activities, including voter registration drives, fundraising activities, political rallies and
 14 meetings, activities associated with political clubs and parties, campaign speeches, literature or sign
 15 distribution, and campaign efforts of a political party, a candidate for elected office, or a political committee or
 16 relating to a ballot initiative or referendum;

17 (b) rights of free speech or free assembly, including any rallies, gatherings and meetings, speeches,
 18 literature or sign distribution, and the display of signs. A person may be required to comply with neutral health,
 19 safety, or occupational requirements that are applicable to all organizations or businesses providing essential
 20 services.

21 (c) the production, operation, or distribution or any television, radio, cable television or service,
 22 internet service, newspapers, newsletters, email service, literature, or blogs;

23 (d) the operation or functioning of the legislative branch, judicial branch, clerk of court, county
 24 commission, or city or town council; or

25 (e) a right of a person to file a complaint or seek relief from a court of competent jurisdiction;

26 (6) suspend an election law or prohibit, limit, or curtail a regularly scheduled election;

27 (7) prohibit, regulate, or curtail the otherwise lawful possession, carrying, sale, transportation,
 28 transfer, defensive use, or other lawful use of:

1 (a) a firearm, including a component or accessory;

2 (b) ammunition, including any component or accessory;

3 (c) ammunition-reloading equipment and supplies; or

4 (d) a personal weapon other than a firearm;

5 (8) seize, commandeer, or confiscate in any manner:

6 (a) a firearm, including any component or accessory;

7 (b) ammunition, including a component or accessory;

8 (c) ammunition-reloading equipment and supplies; or

9 (d) a personal weapon other than a firearm;

10 (9) suspend or revoke a permit to carry a concealed pistol issued pursuant to Title 45, chapter 8,

11 except as expressly authorized in that chapter;

12 (10) refuse to accept an application for a permit to carry a concealed weapon, provided the application

13 has been properly completed in accordance with Title 45, chapter 8;

14 (11) close or limit the operating hours of an entity engaged in the lawful selling or servicing of a

15 firearm, including:

16 (a) a component or accessory;

17 (b) ammunition, including a component or accessory;

18 (c) ammunition-reloading equipment and supplies; or

19 (d) a personal weapon other than a firearm, unless the closing or limitation of hours applies equally to

20 all forms of commerce within the jurisdiction;

21 (12) close or limit the operating hours of any indoor or outdoor shooting range; or

22 (13) place restrictions or quantity limitations on an entity regarding the lawful sale or servicing of:

23 (a) a firearm, including a component or accessory;

24 (b) ammunition, including a component or accessory;

25 (c) ammunition-reloading equipment and supplies; or

26 (d) a personal weapon other than a firearm."

27

28 **NEW SECTION. Section 3. Claims or defense against state action -- remedies -- limitations. (1)**

1 A person or entity may assert a violation of 10-3-101 or 10-3-102 as a claim against a state, local, or
2 interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any
3 judicial proceeding.

4 (2) In any civil action based on this section, the court may grant:

5 (a) declaratory relief;

6 (b) injunctive relief;

7 (c) compensatory damages for pecuniary and nonpecuniary losses;

8 (d) reasonable attorney fees and costs; and

9 (e) any other appropriate relief.

10 (3) A person or entity may not bring an action to assert a claim under this section later than 2 years
11 after the date that it knew or could have known that a violation occurred.

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13 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an
14 integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 3].

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

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