

1 SENATE BILL NO. 172

2 INTRODUCED BY D. HOWARD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMERGENCY AND DISASTER LAWS;
5 PROHIBITING DISCRIMINATORY ACTION BY THE GOVERNMENT; PROVIDING FOR CIVIL RELIEF;
6 PROVIDING DEFINITIONS; AMENDING SECTIONS 10-3-101, 10-3-102, AND 10-3-103, MCA; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

10
11 **Section 1.** Section 10-3-101, MCA, is amended to read:

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

19 (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency
20 services in the political subdivisions of this state;

21 (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and
22 property resulting from natural or human-caused disasters;

23 (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of
24 persons and property affected by disasters;

25 (4) clarify and strengthen the roles of the governor, state agencies, local governments, and tribal
26 governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

27 (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and
28 recovery;

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

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

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

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

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

16 (11) ensure the continuity of religious services as essential services to the welfare of the people of the
17 state."

18

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

20 **"10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state,
21 local, or interjurisdictional agency or public official authority to:

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

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

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

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

8 (5) limit religious services, except that religious organizations may be required to comply with neutral
 9 health, safety, or occupancy requirements that:

10 (a) are applicable to all organizations or businesses providing essential services; and

11 (b) do not impose a substantial burden on religious services, unless in this instance the burden is
 12 necessary to further a compelling government interest and is the least restrictive means of furthering that
 13 interest."

14

15 **Section 3.** Section 10-3-103, MCA, is amended to read:

16 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

17 (1) "All-hazard incident management assistance team" means a team that includes any combination
 18 of personnel representing local, state, or tribal entities that has been established by the state emergency
 19 response commission provided for in 10-3-1204 for the purpose of local incident management intended to
 20 mitigate the impacts of an incident prior to a disaster or emergency declaration.

21 (2) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and
 22 emergency services.

23 (3) "Department" means the department of military affairs.

24 (4) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or
 25 loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms,
 26 snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic
 27 action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage,
 28 blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services,

1 accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or
2 incidents involving weapons of mass destruction.

3 (5) "Disaster and emergency services" means the preparation for and the carrying out of disaster and
4 emergency functions and responsibilities, other than those for which military forces or other state or federal
5 agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage
6 resulting from emergencies or disasters.

7 (6) "Disaster medicine" means the provision of patient care by a health care provider during a disaster
8 or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and
9 personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized
10 nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and
11 treatment of persons needing care.

12 (7) "Division" means the division of disaster and emergency services of the department.

13 (8) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property
14 that timely action can avert or minimize.

15 (9) (a) "Incident" means an event or occurrence, caused by either an individual or by natural
16 phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life
17 or damage to property or natural resources. The term includes the imminent threat of an emergency.

18 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to
19 10-3-302 or 10-3-303.

20 (10) "Political subdivision" means any county, city, town, or other legally constituted unit of local
21 government in this state.

22 (11) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or
23 other chief executive officer of a political subdivision.

24 (12) "Religious organization" means:

25 (a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and
26 temples; or

27 (b) a religious group, association, educational institution, ministry, order, society, or similar entity,
28 regardless of whether it is integrated or affiliated with a house of worship.

1 (13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by a
 2 religious organization for the purpose of worship, teaching, training, providing educational services, conducting
 3 religious rituals, or other activities that involve the exercise of religion.

4 ~~(12)~~(14) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile
 5 homes, or other readily fabricated dwellings.

6 ~~(13)~~(15) "Tribal government" means the government of a federally recognized Indian tribe within the
 7 state of Montana.

8 ~~(14)~~(16) "Volunteer professional" means an individual with an active, unrestricted license to practice a
 9 profession under the provisions of Title 37, Title 50, or the laws of another state."

10
 11 **NEW SECTION. Section 4. Claim or defense against state action -- remedies -- limitations.** (1) A
 12 religious organization may assert a violation of 10-3-102 or [section 5] as a claim against a state, local, or
 13 interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any
 14 judicial proceeding.

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

16 (a) declaratory relief;

17 (b) injunctive relief;

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

19 (d) reasonable attorney fees and costs; and

20 (e) any other appropriate relief.

21 (3) A religious organization may not bring an action to assert a claim under this section later than 2
 22 years after the date that it knew or could have known that a discriminatory action or other violation occurred.

23
 24 **NEW SECTION. Section 5. Protections against government discrimination.** An agency or a
 25 political subdivision of the state may not take discriminatory action against a religious organization wholly or
 26 partially on the basis that the organization is religious, operates or seeks to operate during an emergency or
 27 disaster, or engages in the exercise of religion as protected under the first amendment to the United States
 28 constitution. Discriminatory action means to:

