**Chapter 2: VIOLATING HB 702 IS A CRIME!**

***Don’t do the Crime if You Can’t Do the Time***

Last week we posted a piece about HB 702 and how it protects you from discrimination. HB 702 is a well written and impactful law. We have a sense that some opposed to it don’t understand the full consequences if they violate the law. They might be confused between how a federal executive order impacts them versus a state law. They might also think that there are competing civil laws, or even that they have liability protections and coverage. Whatever the reason, HB 702 is clear. Violating HB 702 is a misdemeanor, which is a crime, punishable by a fine, jail, or both. Corporate and Government officers, directors, boards, agents and others can be held accountable, and you cannot insure yourself against criminal acts.

The Attorney General will sort out legal conflicts with the federal government in court from the looks of it. Meanwhile HB 702 is the law now and we are confident it will continue to be. Regardless, pending litigation only addresses situations involving hospitals and doctors’ offices so until there’s a dramatic shift HB 702 will remain in place and there are severe consequences for violating it.

The penalty and enforcement provisions of HB 702 might be easily overlooked because HB 702 doesn’t have its own unique penalty provision. But HB 702 does have one. In the codification section [Section 4.] the substantive provisions of the law, protecting you from discrimination, are subject to the general provisions of Montana’s Human Rights Act (MCA, Title 49, chapter 2, part 3) and violating that makes a person or government entity subject to part 6 of the same chapter and title (49).

This makes violating HB 702 a crime not just a civil sanction. Under HB 702, a person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter….is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

Corporations are legally considered persons, so HB 702 clearly applies to them and other businesses. In Montana, corporations and corporate boards and officers are criminally culpable and responsible for the acts and omissions of their corporation. Here's the Montana law on that:

**45-2-311. Criminal responsibility of corporations.** (1) A corporation may be prosecuted for the commission of an offense only if:

(a) the offense is a misdemeanor,…. is defined by another statute that clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct that is an element of the offense while acting within the scope of the agent's office or employment and in behalf of the corporation,….; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of that agent's employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct that is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection. [This subsection is clearly inconsistent with the legislative purpose behind HB 702, so corporations, their boards and high managers do not have the benefit of this defense].

Title 49 has specific misdemeanor provisions that subscribe criminal penalties for illegal discrimination contained within the Chapters of Title 49 ( per HB 702 Codification [Section 4.] that specifically and clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation when they perform conduct that amounts to discrimination based on vaccination or vaccine passports.

Furthermore, and in conclusion, corporations, other businesses and government entities should take particular notice of 49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so. Other laws are also worthy of note: 49-2-303 (Discrimination in employment), 49-2-304 (Discrimination in public accommodations) and 49-2-308 (Discrimination by the state).

For your convenience we attached the laws we referenced here so you can read them for yourself. Once again, we requested the review of our legal counsel, Chris J. Gallus, but the opinions expressed here are ours and they are not legal advice. Also, your situation is probably unique and specific facts matter. Lastly, stay respectful. It’s working.

**REFERENCES:**

**HB 702 Penalty and enforcement:**

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 49, chapter 2, part 3, and the provisions of Title 49, chapter 2, part 3, apply to [sections 1 and 2].

**THE CONSTITUTION OF THE STATE OF MONTANA, ARTICLE II. DECLARATION OF RIGHTS, Part II. DECLARATION OF RIGHTS**

**Individual Dignity:**

**Section 4. Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

**TITLE 49. HUMAN RIGHTS**

**CHAPTER 2. ILLEGAL DISCRIMINATION**

**Part 3. Prohibited Discriminatory Practices**

**Retaliation prohibited:**

**• 49-2-301. Retaliation prohibited.** It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

• 49-2-302 Aiding, coercing, or attempting

**Aiding, Coercing, Or Attempting:**

**49-2-302. Aiding, coercing, or attempting.** It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

• 49-2-303 Discrimination in employment

• 49-2-304 Discrimination in public accommodations

• 49-2-308 Discrimination by the state

**TITLE 49. HUMAN RIGHTS**

**CHAPTER 2. ILLEGAL DISCRIMINATION**

**Part 6. Penalties**

**Criminal Penalty:**

**49-2-601. Criminal penalty.** A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

**TITLE 45. CRIMES**

**CHAPTER 2. GENERAL PRINCIPLES OF LIABILITY**

**Part 3. Liability for Acts Committed by or for Another**

• 45-2-301 Accountability for conduct of another

• 45-2-302 When accountability exists

• 45-2-303 Separate conviction of person accountable

• 45-2-304 through 45-2-310 reserved

• 45-2-311 Criminal responsibility of corporations

• 45-2-312 Accountability for conduct of corporation

**Criminal Responsibility of Corporations:**

**45-2-311. Criminal responsibility of corporations**. (1) A corporation may be prosecuted for the commission of an offense only if: (a) the offense is a misdemeanor, is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-8-113, 114, 212, 214, 82-1-201, or 82-10-104, or is defined by another statute that clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct that is an element of the offense while acting within the scope of the agent's office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of that agent's employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct that is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

**Accountability For Conduct Of Corporation**

**45-2-312. Accountability for conduct of corporation.** (1) A person is legally accountable for conduct that is an element of an offense and that, in the name or in behalf of a corporation, the person performs or causes to be performed to the same extent as if the conduct were performed in the person's own name or behalf.

(2) An individual who has been convicted of an offense by reason of legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of the offense although only a lesser or different punishment is authorized for the corporation.