

# Freedom Protection Project

## Series Regarding HB 702

### Chapter 1: HB 702

#### ***HB 702 Protects You From Employment & Other Discrimination When You Refuse to Vaccinate or Carry a Vaccination Passport***

We sense there's a lot of questions about how HB 702 applies in certain situations, especially since Joe Biden issued his forced mandate via an ill-conceived and aggressive Executive Order. The answers are pretty simple. The Montana Attorney General, Austin Knudsen, is leading the charge to let the federal government know their executive orders, and the regulations based on them, do not supersede legally enacted state statutes, which contradict them.

In short, with HB 702 firmly in place, Montanans should think carefully (and get legal advice) before they boldly decide to discriminate against other Montanans who, for whatever reason, are deciding not to get vaccinated at this time.

Employees in their place of work and customers using places open to the general public should act respectfully in asserting their rights when dealing

with others, but they should know that they have those rights.

As a general matter, HB 702 prohibits discrimination based on your decision to get vaccinated. Whether Joe Biden is getting tired and running out of patience, is completely irrelevant. It isn't a basis for issuing an executive order. It certainly doesn't supersede state constitutionally based and reserved rights with respect to health-related laws, especially when it takes the form of an executive fiat, so HB 702 rather than Biden's Executive Order is likely to ultimately prevail against the order or any federal regulations based on it. Montanans should not discriminate against other Montanans making a choice about what's best for them.

Specifically, under HB 702, it is unlawful for a government entity or a person, including an employer and a place open to the public, to refuse, withhold or deny you access to facilities, as well as advantages, privileges or employment opportunities based on your vaccination status or whether you



have an immunity passport. (See HB 702, Section 1, subsections (1)(a)).

Further, an employer, whether large (100+) or small, may not refuse employment to a person or bar a person from employment privileges and opportunities based on a person's vaccination status or whether the person has an immunity passport. (Id. at subsection (1)(b).

K-12 Schools, day cares, licensed nursing homes, long term care facilities or assisted living facilities are the only ones exempted from the provisions of HB 702. (See, HB 702 section 1. subsection (2) and Section 2., respectively.

The law also clearly, and equally, applies to governments and public accommodations, which are businesses open to the public, even though the business is privately owned. Business must be authorized to do business in Montana, and even businesses with out-of-state headquarters agree to abide by our laws. Consequently, businesses might include stores, restaurants, bars, bakeries, dealerships, salons, gyms, markets, civic centers, theaters, stadiums, municipal and county buildings, libraries, or offices open to the public. Literally, any business or facility open to the public is covered by HB 702, in Section 1(1) of the enacted law:

"It is an unlawful discriminatory practice for:

- (a) a person or a governmental entity to refuse, withhold from, or deny to a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities based on the person's vaccination status or whether the person has an immunity passport; or
- (c) a public accommodation to exclude, limit, segregate, refuse to serve, or otherwise discriminate against a person based on the person's vaccination status or whether the person has an immunity passport."

This is not legal advice. Please see an attorney if you want advice pertaining to your situation. Since FPP started defending your rights we've come to know some good attorneys and we'd be happy to suggest one of them based on your particular circumstances and location. Remember, each case is fact specific so know your rights, but also know your facts and particular circumstances. Above all, be respectful. Things are changing rapidly so you should be aware of that too. It's just how things will be until Attorney General Knudsen successfully defends Montana law,

but we wholeheartedly support him in his efforts.

Hierarchically, state law should reign supreme over executive orders contradicting them and the federal agency regulations based on those faulty orders.

FPP prepared this letter in consultation with our attorney, Chris

J. Gallus, but the opinion, itself, is ours. There are other ways people are being discriminated against and threaten into forced compliance. We intend to address those later, but meanwhile, and in case this affects you right now, Montana also has strong constitutionally based law protecting individual human dignity, including civil, political, and religious ideas.

## **Chapter 2: HB 702 Penalties and Enforcement**

### ***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.

Whatever the reason, HB 702 is clear. The Attorney General will sort that out 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 law (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. See:

**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**

- 49-2-301 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.
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- 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.

## Chapter 3: HB 702

### What Do Laws Like HB 702 Actually Mean *Its Not a Cliche*

Too bad it's getting cliche, but this writing requires the reminder anyway—so, remember we are a society of laws. We craft our laws in a deliberative process of elected bodies comprised of elected people who meet at the federal, state and local level. We are a representative republic. The representatives are always motivated to run for some particular reason. That reason, and the risk of losing their office, is why the system ultimately works.

It is a fundamental principle that all government originated with you and I. Decisions reached by representatives reflect the will of the people because we periodically hold regularly scheduled elections. Representatives that do not reflect our collective will are rejected.

In America, and especially in Montana, it is also fundamental that the law respects the dignity of

individual human. This is why the Bill of Rights embraces respect for individualism and human dignity. In Montana it's in our Article II Declaration of Rights. Since individual dignity is fundamental to the reason we formed as a republic, the Bill of Rights and Declarations of rights stand as sentinels against the oppressive result of simple majority rule.

For the represented, majority rule applies at our elections when we speak as a whole to determine the fate of our representative, but not necessarily the fate of our laws. Even then we each individually cast secret ballots as an expression of will. The collective will of each individual judges the job each representative did or wants to do.

Montana is unique among all of the state's because our constitution contains an express provision



recognizing individual dignity. The notion of rugged individualism is not just left to the whims of sensibility or common understanding of historical thought that shaped the philosophy of the founding fathers. In Montana, we come right out and include individualism as a fundamental constitutional principle by adopting the language that:

“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.”

We do not entrusted outcomes to agitators and debaters. We make agitators and representatives come to us and we decide. We elect. Laws are adopted and govern ourselves when abiding by those laws. If we do not like the law we elect those who will change it, but still we abide by the plain meaning and interpretation of deliberatively enacted laws.

Though it too often does, at the present time, our written laws should not suffer the consequence of precipitous never-ending debate between agitators if people read it, and judges apply it, plainly. Do not

omit what was inserted or insert what was omitted.

The enacted law must be imposed and enforced, right? This is where we are often, once again, checking the respect for individual dignity against the abuse of authority or pandering to popular sentiment of the moment. Consequently, we do not entrust outcomes to those acting outside the legally defined scope of their authority. The law is never what some representative or other authority hopes it is. It's not how they hope to one day change it.

Above all, our Montana law, chooses and respects individual dignity over agitation and chaos brought by never-ending debaters and overreaching wayward authority. Individual dignity is, indeed, inviolable, which is true whether you like it or not. It's how representative republics work. We can send our representatives warnings that they might be heading in the wrong direction, but we ultimately must wait for the election to deliver the blow.

HB 702, and other laws like it, were passed by our elected representatives to reflect this respect for individual dignity, which bureaucrats all but ignored to impose their collective will and belief upon the governed. Their overreach came with consequences and required adjustments. Individuals will decide

themselves whether those adjustments reflect the collective will when we elect legislative representatives in 2022 and our

Governor in 2024. Meanwhile we follow the law or the law real does become the cliché.

