



AN ACT REVISING THE AWARD OF COSTS AND ATTORNEY FEES BASED ON LEGISLATIVE CONDUCT; PROHIBITING LEGISLATIVE CONDUCT TO BE CONSIDERED IN A BAD FAITH ANALYSIS; PROVIDING THAT LEGISLATIVE CONDUCT IS INADMISSIBLE FOR A BAD FAITH ANALYSIS OR FOR AWARDING COSTS AND FEES; AMENDING SECTION 25-10-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 25-10-711, MCA, is amended to read:

**"25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith -- legislative branch conduct not considered.** (1) Except as provided in subsection (2), in any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney fees as determined by the court if:

- (a) the opposing party prevails against the state, political subdivision, or agency; and
- (b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) The conduct of the legislative branch in passing legislation may not be considered in a bad faith analysis. This subsection applies to any award of costs or attorney fees against a government entity regardless of whether the defense is frivolous or pursued in bad faith.

(2)(3) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary."

**Section 2. Legislative conduct inadmissible.** The conduct of the legislative branch in passing

legislation is not admissible in a bad faith analysis or for the purpose of awarding costs or attorney fees against a government entity defending an enactment of the legislature.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 26, chapter 1, part 1, and the provisions of Title 26, chapter 1, part 1, apply to [section 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all legislation passed and approved on or after commencement of the 69th legislative session.

- END -

I hereby certify that the within bill,  
HB 365, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

HOUSE BILL NO. 365

INTRODUCED BY S. FITZPATRICK

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