

What, Legislation Affects My Practice?

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Seminar of the Masters
MTLA 31st Annual Convention – August 6 & 7, 2020
Live Streaming Only

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Like it or not, the rights of your clients, and the viability of your practices, are subject to the electoral winds. I have gone through my legislative files to give you an idea of some of the kinds of legislation that we can expect - if we all do nothing in the 2020 elections. These are bill titles from legislation that did not pass because we had helped to elect legislators and governors that were willing to protect the civil justice system.

- * Prohibit contingency fees for attorneys where "liability is reasonably clear" - only hourly rate contracts would be allowed.
- * Plaintiffs pay attorney fees if they file a "frivolous" lawsuit - "frivolous" being any suit which plaintiffs lose.
- * Revise medical insurance and medical payment laws - provided for exhaustion of all auto insurance (3rd party, UM, UIM) for medical costs before health insurance pays.
- * Providing for "nonduplication" of health insurance benefits - render made whole doctrine inapplicable
- * Revise medical lien laws - delete attorney lien priority, and provide for direct payment of all auto insurance (3rd party, UM, UIM, MedPay) proceeds directly to healthcare providers.
- * Allow admissibility of nonuse of seat belts as evidence in civil cases - for purpose of deciding contributory negligence and limiting damages to a statutorily set percentage.
- * Revise insurance stacking law, again, in attempt to thwart *Hardy*.
- * Provide for offset of economic consumption expenses in all survival actions.
- * Limit noneconomic damages in motor vehicle accidents if the victim was uninsured.
- * Revise third-party bad faith litigation - essentially precluding third part actions.
- * Revise laws related to restitution for insurance consumers - Insurance Commissioner able to unilaterally make binding settlement of consumers' claims against insurers.
- * Limit contingency fees for attorneys to 25% in medical malpractice cases.
- * Revise laws related to "defensive medicine" by changing the standard of care in medical malpractice to a "reasonably prudent" standard, defined as a physician charting that the treatment, or non-treatment, recommended was in his opinion "reasonably prudent."

- * Provide medical liability protection – gross negligence standard - for “hard-to-recruit subspecialists.”
- * Provide for offset of economic consumption expenses in medical malpractice survival actions.
- * Clarify applicability of "at work" for work comp purposes.
- * Revise workers' compensation laws pertaining to release of information – allowing insurers to hoodwink a claimant into signing a carte blanche release.
- * Disallowing workers' compensation benefits for certain false statements – denying benefits for an untruthful job application.
- * Revise workers compensation to allow termination of payments due to fraud.
- * Generally revise loan agreement statute of frauds laws - eliminating tort actions on written transactions such as the Bank of America actions found to be fraudulent in Morrow.
- * Generally revise consumer protection damage laws to limit recovery for damages, and exclude punitive damages, for actions taken by a lender that may injure a borrower.
- * Give safe harbors for employers, schools, landlords for criminal rehabilitation by providing immunity from liability.
- * Limit lost wage and benefit award for wrongful discharge to 2 yrs from discharge - cutting in half the damages a wrongfully discharged employee might be able to receive.

Electoral Activity

2020 will feature electoral contests for the U.S. Senate, U.S. House, a Supreme Court seat, the governorship, attorney general, insurance commissioner, and the legislature, the results of which will impact your practices.

When candidates ask for your support, ask them where they stand on the rights of all Montanans to a speedy remedy for every injury of person, property, or character.

If you have questions about how a candidate voted on civil justice issues, just shoot me an email [monttla@mt.net] or give me a call [406-443-3124]. **AND**, if you have clients that would testify on any of the above issues, or any other civil justice issue, please let me know!