



Montana Nonprofit Association

## We're glad you asked\*....

### Why do I need Directors, Officers and Organizational liability insurance for my organization when we are immune from claims under Montana Code 27-1-732?

Montana has a number of laws intended to protect volunteers in the state. Montana Code Section 27-1-732 specifically provides the following:

#### **Immunity of nonprofit corporation officers, directors, and volunteers.**

(1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission *made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.*

(2) For purposes of this section, "nonprofit corporation" means:

- (a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended;
- (b) a corporation or organization that is eligible for or has been granted tax-exempt status by the department of revenue under the provisions of [15-31-102](#); or
- (c) the comprehensive health association created by [33-22-1503](#).

**History:** En. Sec. 1, Ch. 437, L. 1987; amd. Sec. 4, Ch. 357, L. 1995; amd. Sec. 69, Ch. 114, L. 2003. (Emphasis supplied)

While the statute provides some immunity from litigation, the protection is limited. First, nonprofit corporations are specifically excluded from immunity under Section 27-1-732. Thus, a lawsuit may be brought against the organization and it may be found liable for damages. One common example of such a situation is a lawsuit brought by an organization's employee against the organization for a wrongful employment act such as wrongful termination.

Second, it is important to note the individual immunity does not preclude a claim or lawsuit from being brought against directors, officers or volunteers. It provides an affirmative defense, which must be asserted during the pendency of the claim or lawsuit. The statute also includes two important exceptions that may preclude an individual from being dismissed early in the litigation. To be protected by the immunity, the defense must show that 1. the individual was acting within his or her official capacity on behalf of the organization and, 2. the individual's conduct was not "willful or wanton". A plaintiff's attorney may allege facts in such a way as to raise the issues of "official capacity" and "willful" conduct necessitating full discovery by way of depositions and written discovery, all of which may then be considered by a judge or jury. Therefore, even if the statutory immunity is successfully asserted, substantial defense expenses may be incurred in mounting the affirmative defense.

The Montana immunity statute should not be relied upon to preclude all litigation and expense when the organization, its officers, directors and volunteers are alleged to be liable for conduct causing injury or damages. A broad nonprofit directors, officers and organizational liability policy is intended to protect the organization's assets and those of the individuals working on its behalf by paying for defense expenses and indemnity. Terms and conditions will vary so consult with a knowledgeable insurance agent on actual coverage.

The Montana Nonprofit Association endorses Monitor Liability Managers' Director's and Officer's Policy. For more information, contact MNA today at 406-449-3717 or [brobinson@mtnonprofit.org](mailto:brobinson@mtnonprofit.org)



\*This article is not intended as legal or professional advice. If legal advice is required, the services of a competent and licensed professional should be obtained. Charitable immunity law does not guarantee protection from litigation or an early dismissal of the lawsuit. It does not mean that the individuals and organization cannot be sued. It raised the bar for finding liability on behalf of the individual.