

1 *Senate* BILL NO. *206*
 2 INTRODUCED BY *Wasson Olson* *Walt Aber*
 3 *Abraham Manly* *Kelvin Winkler* *Brown*
 4 *Stimel*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO SOVEREIGN IMMUNITY AND LIABILITY INSURANCE
 6 FOR GOVERNMENTAL ENTITIES; PROVIDING FOR SOVEREIGN IMMUNITY
 7 UNDER CERTAIN CIRCUMSTANCES: AMENDING AND RENUMBERING
 8 SECTION 83-703, R.C.M. 1947, AND REPEALING SECTIONS 83-701,
 9 33-702, 83-704, 83-705, 83-706.1, AND 82-4310 THROUGH
 10 82-4327, R.C.M. 1947."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. There is a new R.C.M. section numbered
 14 83-701.1 that reads as follows:

15 83-701.1. Declaration of policy. It is recognized by
 16 the legislature that the state and its political
 17 subdivisions by virtue of the services and functions
 18 provided, the powers exercised, and the consequences of
 19 unlimited liability to the governmental process, should be
 20 immune from liability for their actions and those of their
 21 agents to such an extent, and subject to such conditions, as
 22 are provided by this chapter.

23 Section 2. There is a new R.C.M. section numbered
 24 83-701.2 that reads as follows:

25 83-701.2. Definitions. As used in this chapter:

1 (1) "State" means the state of Montana or any office,
 2 department, agency, authority, commission, board,
 3 institution, hospital, college, university or other
 4 instrumentality thereof.

5 (2) "Political subdivision" means any county, city,
 6 municipal corporation, school district, special improvement
 7 or taxing district, or any other political subdivision or
 8 public corporation.

9 (3) "Governmental entity" means the state and
 10 political subdivision as herein defined.

11 (4) "Employee" means an officer, employee, or servant
 12 of a governmental entity, including elected or appointed
 13 officials, and persons acting on behalf of the governmental
 14 entity in any official capacity temporarily or permanently
 15 in the service of the governmental entity whether with or
 16 without compensation, but the term employee shall not mean a
 17 person or other legal entity while acting in the capacity of
 18 an independent contractor under contract to the governmental
 19 entity to which this chapter applies in the event of a
 20 claim.

21 (5) "Personal injury" means any injury resulting from
 22 libel, slander, malicious prosecution, or false arrest, any
 23 bodily injury, sickness, mental distress, disease or death,
 24 sustained by any person and caused by an occurrence, for
 25 which a governmental entity may be held liable.

1 (6) "Property damage" means injury or destruction to
 2 real or personal property, including loss of use thereof,
 3 caused by an occurrence, for which a governmental entity may
 4 be held liable.

5 (7) "Claim" means any claim against a governmental
 6 entity, for money damages only, which any person is legally
 7 entitled to recover as damages because of personal injury or
 8 property damage caused by a negligent or wrongful act or
 9 omission committed by any employee of the governmental
 10 entity while acting within the scope of his employment,
 11 under circumstances where the governmental entity, if a
 12 private person, would be liable to the claimant for such
 13 damages under the laws of the state of Montana.

14 Section 3. There is a new R.C.M. section numbered
 15 83-701.3 that reads as follows:

16 83-701.3. Governmental immunity limited. Governmental
 17 entities shall have no immunity from suit for injury to a
 18 person or property, except as may be specifically provided
 19 by law by a 2/3 vote of each house of the legislature. This
 20 provision shall apply only to claims for relief and causes
 21 of action arising after July 1, 1973. The state, through
 22 the department of administration, may provide for self
 23 insurance for claims for injury to a person or property.
 24 Governmental entities have the right also, but not the duty,
 25 to purchase insurance to protect against claims for injury

1 to a person or property.

2 Section 4. There is a new R.C.M. section numbered
 3 83-701.4 that reads as follows:

4 83-701.4. Scope of immunity. A governmental entity or
 5 its employees acting within the scope of their office and
 6 employment shall be immune from liability for any claim
 7 which:

8 (1) arises out of any act or omission of any employee
 9 of a governmental entity exercising due care, in the
 10 execution of a statute or regulation, whether or not the
 11 statute or regulation be valid, or based upon the exercise
 12 or performance or the failure to exercise or perform a
 13 discretionary function or duty on the part of a governmental
 14 entity or employee thereof, whether or not the discretion be
 15 abused;

16 (2) arises out of the assessment or collection of any
 17 tax or fee, or the detention of any goods or merchandise by
 18 any law enforcement officer;

19 (3) arises out of the imposition or establishment of a
 20 quarantine by a governmental entity, whether such quarantine
 21 relates to persons or property;

22 (4) arises out of assault, battery, abuse of process,
 23 misrepresentation, deceit, interference with contract
 24 rights, or inverse condemnation; however, the immunity
 25 provided in this subsection applies only to the governmental

1 entity and does not immunize officers and employees from
2 personal liability for intentional torts or crimes committed
3 in the scope of their office or employment.

4 (5) arises out of the activities of the Montana
5 national guard when acting under a call of the governor, or
6 when engaged in rescue and evacuation activities, or when it
7 is engaged in activities responding to an emergency or
8 disaster, or by being engaged in combatant activities, or
9 during a time of war;

10 (6) arises out of or results from riots, unlawful
11 assemblies, public demonstrations, mob violence and civil
12 disturbances, or out of any act or omission in connection
13 with the prevention of any of the foregoing;

14 (7) arises out of a plan or design for construction or
15 improvement to the highways, roads, streets, bridges,
16 buildings, or other public property where such plan or
17 design is prepared in conformity with standards in effect at
18 the time of construction, previously approved in advance of
19 the construction or approved by the legislative body of the
20 governmental entity or by some other body or administrative
21 agency, exercising discretion by authority to give such
22 approval;

23 (8) arises out of injury to or death of any person
24 engaged in an activity that is covered by the workmen's
25 compensation law;

1 (9) arises out of or caused by the natural condition
2 or any unimproved public property, whether or not such
3 property is located in a park or recreation area, or on a
4 highway, road, or street right of way;

5 (10) arises from a circumstance where the governmental
6 entity, if a private person, would not be liable to the
7 claimant for such damages under the laws of the state of
8 Montana;

9 (11) arises from an occurrence which is not subject to
10 the immunity provided in this chapter unless a claim against
11 the state is filed with the secretary of state within one
12 hundred twenty (120) days from the date of the occurrence
13 from which the claim arose or when the injury should
14 reasonably have been discovered, whichever is later;

15 (12) arises from an occurrence which is not subject to
16 the immunity provided by this chapter unless a claim against
17 a political subdivision is filed with the clerk or secretary
18 of the political subdivision within one hundred twenty (120)
19 days from the date of the occurrence from which the claim
20 arose or when the injury should reasonably have been
21 discovered, whichever is later;

22 (13) arises out of the activity of a governmental
23 entity when engaged in fire fighting, or when engaged in
24 rescue and evacuation activities, or when engaged in
25 activities responding to an emergency or disaster;

1 (14) arises out of personal injury or property damage
2 incurred before July 2, 1973;

3 (15) arises out of the operation or ownership of
4 hospitals, nursing homes or any other health care
5 facilities; and the operation or ownership of airports or of
6 public transportation equipment or facilities;

7 (16) arises out of the promotion or operation of any
8 commercial fairs, county fairs and carnivals, political or
9 civic gatherings, or other public gatherings of a similar
10 nature.

11 Section 5. There is a new R.C.M. section numbered
12 83-701.5 that reads as follows:

13 83-701.5. Punitive or exemplary damages, attorney
14 fees, interest. A governmental entity or its employees
15 acting within the scope of their office and employment shall
16 not be liable for punitive or exemplary damages, attorney
17 fees or interest before final judgment on appeal, if any, on
18 any claim allowed under the provisions of this chapter.

19 Section 6. There is a new R.C.M. section numbered
20 83-701.6 that reads as follows:

21 83-701.6. Filing of claims against state -- time of
22 filing. All claims against the state arising under the
23 provisions of this chapter shall be filed with the secretary
24 of state within one hundred twenty (120) days from the date
25 of the occurrence from which the claim arose or when the

1 injury should reasonably have been discovered, whichever is
2 later. Notwithstanding any provision of the law to the
3 contrary, no filing fee may be charged by the state.

4 Section 7. There is a new R.C.M. section numbered
5 83-701.7 that reads as follows:

6 83-701.7. Filing of claims against political
7 subdivisions -- time for filing. All claims against a
8 political subdivision arising under the provisions of this
9 chapter shall be filed with the clerk or secretary of the
10 political subdivision within one hundred twenty (120) days
11 from the date of the occurrence from which the claim arose
12 or when the injury should reasonably have been discovered,
13 whichever is later.

14 Section 8. There is a new R.C.M. section numbered
15 83-701.8 that reads as follows:

16 83-701.8. Contents of claim -- agent filing --
17 inaccuracies. All claims filed with a governmental entity
18 shall accurately describe conduct and circumstances which
19 brought about the injury or damage, describe the injury or
20 damage, state the time and place the injury or damage
21 occurred, state the names of all persons involved, if known,
22 and shall contain the amount of damages claimed, together
23 with a statement of the actual residence of the claimant at
24 the time of presenting and filing the claim and for a period
25 of six (6) months immediately prior to the time of the

1 occurrence from which the claim arose. If the claimant is
 2 incapacitated and unable to file his claim within the time
 3 prescribed or is a minor or a non-resident of the state and
 4 is absent during the time within which his claim is required
 5 to be filed, the claim may be filed on behalf of the
 6 claimant by any relative, attorney, or agent representing
 7 the claimant. A claim filed under the provisions of this
 8 section shall not be held invalid or insufficient by reason
 9 of any inaccuracy in stating the time, place, nature or
 10 cause of the claim, or otherwise, unless it is shown that
 11 the governmental entity was in fact misled to its injury
 12 thereby.

13 Section 9. There is a new R.C.M. section numbered
 14 83-701.9 that reads as follows:

15 83-701.9. Approval or denial of claim -- notice. The
 16 governmental entity shall act within sixty (60) days after
 17 the filing of the claim, if at all, and notify the claimant
 18 in writing of its approval or denial. A claim is considered
 19 denied if at the end of sixty (60) days the governmental
 20 entity has failed to approve or deny the claim.

21 Section 10. There is a new R.C.M. section numbered
 22 83-701.10 that reads as follows:

23 83-701.10. Action after denial of claim. If the claim
 24 is denied, a claimant may institute an action in the
 25 district court against the governmental entity in those

1 circumstances where an action is permitted by this chapter.

2 Section 11. There is a new R.C.M. section numbered
 3 83-701.11 that reads as follows:

4 83-701.11. Late claims not allowed. No claim or
 5 action shall be allowed against a governmental entity unless
 6 the claim has been presented and filed within the time
 7 limits prescribed by this chapter.

8 Section 12. There is a new R.C.M. section numbered
 9 83-701.12 that reads as follows:

10 83-701.12. Limitation of actions on claims. A claim
 11 against a governmental entity permitted under the provisions
 12 of this chapter shall be forever barred unless an action is
 13 begun within two (2) years after the claim is filed with the
 14 governmental entity.

15 Section 13. There is a new R.C.M. section numbered
 16 83-701.13 that reads as follows:

17 83-701.13. Jurisdiction of district court -- rules of
 18 procedure. The district courts of the state of Montana shall
 19 have exclusive jurisdiction of all tort actions brought
 20 under this chapter and such actions shall be governed by the
 21 Montana Rules of Civil Procedure insofar as they are
 22 consistent with this chapter.

23 Section 14. There is a new R.C.M. section numbered
 24 83-701.14 that reads as follows:

25 83-704.14. Venue of actions. (1) Actions against the

1 state shall be brought in the county in which the cause of
2 action arose or in Lewis and Clark County.

3 (2) Actions against a political subdivision shall be
4 brought in the county in which the cause of action arose or
5 in any county where the political subdivision is located.

6 Section 15. There is a new R.C.M. section numbered
7 83-701.15 that reads as follows:

8 83-701.15. Service of summons on state. In all
9 actions against the state, the state shall be named the
10 defendant, and the summons shall be served on the secretary
11 of state.

12 Section 16. Section 83-703, R.C.M. 1947, is
13 renumbered 83-701.16, and is amended to read as follows:

14 ~~83-703.~~ "83-701.16. Right of appeal--bond not to be
15 required of state governmental entity. The right of appeal
16 from final judgment in the district court shall be governed
17 by the same rules of practice and procedure that exist for
18 private persons, except the ~~state--of--Montana~~ governmental
19 entity shall at no time be required to post a bond either on
20 appeal or at any other time during the said litigation."

21 Section 17. There is a new R.C.M. section numbered
22 83-701.17 that reads as follows:

23 83-701.17. Compromise of claims -- settlement of
24 actions. (1) A claim against the state may be compromised
25 or settled for and on behalf of the state by the attorney

1 general, with the concurrence of the head of the affected
2 department, agency, board, commission, institution,
3 hospital, college, university, or other instrumentality
4 thereof, subject to the terms of the insurance, if any.

5 (2) Claims against a political subdivision may be
6 compromised or settled by the governing body of the
7 political subdivision after conferring with its legal
8 officer subject to the terms of insurance, if any.

9 Section 18. There is a new R.C.M. section numbered
10 83-701.18 that reads as follows:

11 83-701.18. Payment of judgments. (1) A governmental
12 entity or designated insurer shall pay any compromise,
13 settlement, or final judgment in the manner provided in this
14 section.

15 (2) The state shall pay out of any funds that are or
16 may become available from any of the following:

17 (a) Insurance procured by the state;

18 (b) A self-insurance reserve fund;

19 (c) Funds appropriated for the operation of the agency
20 or department whose operations and activities give rise to
21 the liability, provided that the payment would not seriously
22 disrupt or prevent substantial performance of the operations
23 or activities of the state agency;

24 (d) Funds appropriated by the session of the
25 legislature first convening after such settlement or

1 judgment.

2 (3) A political subdivision shall pay out of any funds
3 that are or may become available from any of the following:

4 (a) Insurance procured by the political subdivision;

5 (b) A tax, levied and collected at the earliest time
6 possible, in an amount necessary to pay the claim or
7 judgment in the event no other funds are available.

8 Section 19. There is a new R.C.M. section numbered
9 83-701.19 that reads as follows:

10 83-701.19. Legislative purpose. It is the purpose of
11 section 83-701.20, R.C.M. 1947, to provide for the
12 immunization and indemnification of public officers and
13 employees sued for their actions, other than intentional
14 tort or felonious acts, taken within the course and scope of
15 their employment.

16 Section 20. There is a new R.C.M. section numbered
17 83-701.20 that reads as follows:

18 83-701.20. Governmental entity to be joined as
19 defendant -- employees immune from personal liability or
20 from suit in certain cases -- recovery against governmental
21 entity bar to recovery against employee -- indemnity.

22 (1) In an action brought against any employee of a state,
23 county, city, town or other governmental entity for a
24 negligent act, error or omission, or other actionable
25 conduct of the employee committed while acting within the

1 course and scope of his office or employment, the
2 governmental entity employer shall be made a party defendant
3 to the action.

4 (2) Recovery against a governmental entity under the
5 provisions of this chapter shall constitute a complete bar
6 to any action or recovery of damages by the claimant, by
7 reason of the same subject matter, against the employee
8 whose negligence or wrongful act, error, or omission or
9 other actionable conduct gave rise to the claim. In any
10 such action against a governmental entity, the employee
11 whose conduct gave rise to the suit shall be immune from
12 suit by reasons of the same subject matter, if the
13 governmental entity acknowledges or is bound by a judicial
14 determination that the conduct upon which the claim is
15 brought arises out of the course and scope of such
16 employee's employment, unless the claim is based upon an
17 intentional tort or felonious act of the employee.

18 (3) In any action in which a governmental entity
19 employee is a party defendant, the employee shall be
20 indemnified by the governmental entity employer for any
21 money judgments or legal expenses to which he may be subject
22 as a result of the suit unless the conduct upon which the
23 claim is brought did not arise out of the course and scope
24 of his employment or is an intentional tort or felonious act
25 of the employee.

1 Section 21. There is a new R.C.M. section numbered
2 83-701.21 that reads as follows:

3 83-701.21. Attachment, execution. No levy of
4 attachment or writ of execution shall issue against any
5 property of a governmental entity for the security or
6 collection of any claim or judgment against any governmental
7 entity under this chapter.

8 Section 22. Severability. If a part of this act is
9 invalid, all valid parts that are severable from the invalid
10 part remain in effect. If a part of this act is invalid in
11 one or more of its applications, the part remains in effect
12 in all valid applications that are severable from the
13 invalid applications.

14 Section 23. Sections 83-701, 83-702, 83-704, 83-705,
15 83-706.1, and 82-4310 through 82-4327, R.C.M. 1947, are
16 repealed.

17 Section 24. This act is effective upon passage and
18 approval.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 206

2 INTRODUCED BY THIESSEN, OLSON, GALT; ABER, GRAHAM, MANLEY,

3 KOLSTAD, DUNKLE, BROWN, HIMSL

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

6 LAWS RELATING TO SOVEREIGN IMMUNITY AND LIABILITY INSURANCE

7 FOR GOVERNMENTAL ENTITIES; PROVIDING FOR SOVEREIGN IMMUNITY

8 UNDER CERTAIN CIRCUMSTANCES; AMENDING AND RENUMBERING

9 SECTION 83-703, R.C.M. 1947, AND REPEALING SECTIONS 83-701,

10 83-702, 83-704, 83-705, 83-706.1, AND 82-4310 THROUGH

11 82-4327, R.C.M. 1947."

12

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

14 Section 1. There is a new R.C.M. section numbered

15 83-701.1 that reads as follows:

16 83-701.1. Declaration of policy. It is recognized by

17 the legislature that the state and its political

18 subdivisions by virtue of the services and functions

19 provided, the powers exercised, and the consequences of

20 unlimited liability to the governmental process, should be

21 immune from liability for their actions and those of their

22 agents to such an extent, and subject to such conditions, as

23 are provided by this chapter.

24 Section 2. There is a new R.C.M. section numbered

25 83-701.2 that reads as follows:

1 83-701.2. Definitions. As used in this chapter:

2 (1) "State" means the state of Montana or any office,

3 department, agency, authority, commission, board,

4 institution, hospital, college, university or other

5 instrumentality thereof.

6 (2) "Political subdivision" means any county, city,

7 municipal corporation, school district, special improvement

8 or taxing district, or any other political subdivision or

9 public corporation.

10 (3) "Governmental entity" means the state and

11 political subdivision as herein defined.

12 (4) "Employee" means an officer, employee, or servant

13 of a governmental entity, including elected or appointed

14 officials, and persons acting on behalf of the governmental

15 entity in any official capacity temporarily or permanently

16 in the service of the governmental entity whether with or

17 without compensation, but the term employee shall not mean a

18 person or other legal entity while acting in the capacity of

19 an independent contractor under contract to the governmental

20 entity to which this chapter applies in the event of a

21 claim.

22 (5) "Personal injury" means any injury resulting from

23 libel, slander, malicious prosecution, or false arrest, any

24 bodily injury, sickness, mental distress, disease or death,

25 sustained by any person and caused by an occurrence, for

1 which a governmental entity may be held liable.

2 (6) "Property damage" means injury or destruction to
3 real or personal property, including loss of use thereof,
4 caused by an occurrence, for which a governmental entity may
5 be held liable.

6 (7) "Claim" means any claim against a governmental
7 entity, for money damages only, which any person is legally
8 entitled to recover as damages because of personal injury or
9 property damage caused by a negligent or wrongful act or
10 omission committed by any employee of the governmental
11 entity while acting within the scope of his employment,
12 under circumstances where the governmental entity, if a
13 private person, would be liable to the claimant for such
14 damages under the laws of the state of Montana.

15 Section 3. There is a new R.C.M. section numbered
16 83-701.3 that reads as follows:

17 83-701.3. Governmental immunity limited. ~~Governmental~~
18 ~~entities shall have no immunity from suit for injury to a~~
19 ~~person or property, except as may be specifically provided~~
20 ~~by law by a 2/3 vote of each house of the legislature. This~~
21 ~~provision shall apply only to claims for relief and causes~~
22 ~~of action arising after July 1, 1973.~~ The state, through
23 the department of administration, may provide for self
24 insurance for claims for injury to a person or property.
25 Governmental entities have the right also, but not the duty,

1 to purchase insurance to protect against claims for injury
2 to a person or property.

3 Section 4. There is a new R.C.M. section numbered
4 83-701.4 that reads as follows:

5 83-701.4. Scope of immunity. A governmental entity or
6 its employees acting within the scope of their office and
7 employment shall be immune from liability for any claim
8 which:

9 ~~(1) arises out of any act or omission of any employee~~
10 ~~of a governmental entity exercising due care, in the~~
11 ~~execution of a statute or regulation, whether or not the~~
12 ~~statute or regulation be valid, or based upon the exercise~~
13 ~~or performance or the failure to exercise or perform a~~
14 ~~discretionary function or duty on the part of a governmental~~
15 ~~entity or employee thereof, whether or not the discretion be~~
16 ~~abused;~~

17 ~~(2) arises out of the assessment or collection of any~~
18 ~~tax or fee, or the detention of any goods or merchandise by~~
19 ~~any law enforcement officer;~~

20 ~~(3) arises out of the imposition or establishment of a~~
21 ~~quarantine by a governmental entity, whether such quarantine~~
22 ~~relates to persons or property;~~

23 ~~(4) arises out of assault, battery, abuse of process,~~
24 ~~misrepresentation, deceit, interference with contract~~
25 ~~rights, or inverse condemnation; however, the immunity~~

1 provided-in-this-subsection-applies-only-to-the-governmental
2 entity-and-does-not-immunize--officers--and--employees--from
3 personal-liability-for-intentional-torts-or-crimes-committed
4 in-the-scope-of-their-office-or-employment.

5 {5} (1) arises out of the activities of the Montana
6 national guard when acting under a call of the governor, or
7 when engaged in rescue and evacuation activities, or when it
8 is engaged in activities responding to an emergency or
9 disaster, or by being engaged in combatant activities;~~7--or
10 during-a-time-of-war;~~

11 {6} (2) arises out of or results from riots, unlawful
12 assemblies, public demonstrations, mob violence and civil
13 disturbances, or out of any LAWFUL act or omission in
14 connection with the prevention of any of the foregoing;

15 {7}--arises-out-of-a-plan-or-design-for-construction-or
16 improvement--to--the--highways,--roads,--streets,--bridges,
17 buildings,--or--other--public--property--where--such-plan-or
18 design-is-prepared-in-conformity-with-standards-in-effect-at
19 the-time-of-construction,--previously-approved-in-advance--of
20 the--construction-or-approved-by-the-legislative-body-of-the
21 governmental-entity-or-by-some-other-body-or--administrative
22 agency,--exercising--discretion--by--authority--to-give-such
23 approval;

24 {8}--arises-out-of-injury-to-or--death--of--any--person
25 engaged--in--an--activity--that--is-covered-by-the-workmen's

1 compensation-law

2 {9}--arises-out-of-or-caused-by-the--natural--condition
3 or--any--unimproved--public--property,--whether--or--not-such
4 property-is-located-in-a-park-or-recreation-area,--or--on--a
5 highway,--road,--or--street-right-of-way;

6 {10}--arises-from-a-circumstance-where-the-governmental
7 entity,--if--a--private--person,--would-not-be-liable-to-the
8 claimant-for-such-damages-under-the-laws--of--the--state--of
9 Montana;

10 {11} (3) arises from an occurrence which is not
11 subject to the immunity provided in this chapter unless a
12 claim against the state is filed with the secretary of state
13 within one hundred-twenty-~~(120)~~-days YEAR from the date of
14 the occurrence from which the claim arose or when the injury
15 should reasonably have been discovered, whichever is later;

16 {12}--arises-from-an-occurrence-which-is-not-subject-to
17 the-immunity-provided-by-this-chapter-unless-a-claim-against
18 a-political-subdivision-is-filed-with-the-clerk-or-secretary
19 of-the-political-subdivision-within-one-hundred-twenty-~~(120)~~-
20 days-from-the-date-of-the-occurrence-from--which--the--claim
21 arose--or--when--the--injury--should--reasonably--have--been
22 discovered,--whichever-is-later;

23 {13} (4) arises out of the activity of a governmental
24 entity when engaged in fire fighting, or when engaged in
25 rescue and evacuation activities, or when engaged in

1 activities responding to an emergency or disaster;
 2 ~~(14)~~ (5) arises out of personal injury or property
 3 damage incurred before July 2, 1973.

4 ~~(15) arises out of the operation or ownership of~~
 5 ~~hospitals, nursing homes or any other health care~~
 6 ~~facilities, and the operation or ownership of airports or of~~
 7 ~~public transportation equipment or facilities;~~

8 ~~(16) arises out of the promotion or operation of any~~
 9 ~~commercial fairs, county fairs and carnivals, political or~~
 10 ~~civic gatherings, or other public gatherings of a similar~~
 11 ~~nature.~~

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 25 of state within one hundred twenty ~~(120)~~ days YEAR from the

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 8 subdivisions -- time for filing. All claims against a
 9 political subdivision arising under the provisions of this
 10 chapter shall be filed with the clerk or secretary of the
 11 political subdivision within one hundred twenty ~~(120)~~ days
 12 YEAR from the date of the occurrence from which the claim
 13 arose or when the injury should reasonably have been
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 16 ~~83-701.8 that reads as follows:~~

17 ~~83-701.8. Contents of claim -- agent filing --~~
 18 ~~inaccuracies. All claims filed with a governmental entity~~
 19 ~~shall accurately describe conduct and circumstances which~~
 20 ~~brought about the injury or damage, describe the injury or~~
 21 ~~damage, state the time and place the injury or damage~~
 22 ~~occurred, state the names of all persons involved, if known,~~
 23 ~~and shall contain the amount of damages claimed, together~~
 24 ~~with a statement of the actual residence of the claimant at~~
 25 ~~the time of presenting and filing the claim and for a period~~

~~1 of six (6) months immediately prior to the time of the~~
~~2 occurrence from which the claim arose. If the claimant is~~
~~3 incapacitated and unable to file his claim within the time~~
~~4 prescribed or is a minor or a non-resident of the state and~~
~~5 is absent during the time within which his claim is required~~
~~6 to be filed, the claim may be filed on behalf of the~~
~~7 claimant by any relative, attorney, or agent representing~~
~~8 the claimant. A claim filed under the provisions of this~~
~~9 section shall not be held invalid or insufficient by reason~~
~~10 of any inaccuracy in stating the time, place, nature or~~
~~11 cause of the claim, or otherwise, unless it is shown that~~
~~12 the governmental entity was in fact misled to its injury~~
~~13 thereby.~~

14 Section 8. There is a new R.C.M. section numbered
 15 83-701.9 that reads as follows:

16 83-701.9. Approval or denial of claim -- notice. The
 17 governmental entity shall act within sixty (60) days after
 18 the filing of the claim, if at all, and notify the claimant
 19 in writing of its approval or denial. A claim is considered
 20 denied if at the end of sixty (60) days the governmental
 21 entity has failed to approve or deny the claim.

22 Section 9. There is a new R.C.M. section numbered
 23 83-701.10 that reads as follows:

24 83-701.10. Action after denial of claim. If the claim
 25 is denied, a claimant may institute an action in the

1 district court against the governmental entity in those
 2 circumstances where an action is permitted by this chapter.

3 Section 10. There is a new R.C.M. section numbered
 4 83-701.11 that reads as follows:

5 83-701.11. Late claims not allowed. No claim or
 6 action shall be allowed against a governmental entity unless
 7 the claim has been presented and filed within the time
 8 limits prescribed by this chapter.

9 Section 11. There is a new R.C.M. section numbered
 10 83-701.12 that reads as follows:

11 83-701.12. Limitation of actions on claims. A claim
 12 against a governmental entity permitted under the provisions
 13 of this chapter shall be forever barred unless an action is
 14 begun within two (2) years after the claim is filed with the
 15 governmental entity.

16 Section 12. There is a new R.C.M. section numbered
 17 83-701.13 that reads as follows:

18 83-701.13. Jurisdiction of district court -- rules of
 19 procedure. The district courts of the state of Montana shall
 20 have exclusive jurisdiction of all tort actions brought
 21 under this chapter and such actions shall be governed by the
 22 Montana Rules of Civil Procedure insofar as they are
 23 consistent with this chapter.

24 Section 13. There is a new R.C.M. section numbered
 25 83-701.14 that reads as follows:

1 83-701.14. Venue of actions. (1) Actions against the
2 state shall be brought in the county in which the cause of
3 action arose or in Lewis and Clark County.

4 (2) Actions against a political subdivision shall be
5 brought in the county in which the cause of action arose or
6 in any county where the political subdivision is located.

7 Section 14. There is a new R.C.M. section numbered
8 83-701.15 that reads as follows:

9 83-701.15. Service of summons on state. In all
10 actions against the state, the state shall be named the
11 defendant, and the summons shall be served on the secretary
12 of state.

13 Section 15. Section 83-703, R.C.M. 1947, is
14 renumbered 83-701.16, and is amended to read as follows:

15 ~~83-703.~~ "83-701.16. Right of appeal--bond not to be
16 required of state governmental entity. The right of appeal
17 from final judgment in the district court shall be governed
18 by the same rules of practice and procedure that exist for
19 private persons, except the ~~state of Montana~~ governmental
20 entity shall at no time be required to post a bond either on
21 appeal or at any other time during the said litigation."

22 Section 16. There is a new R.C.M. section numbered
23 83-701.17 that reads as follows:

24 83-701.17. Compromise of claims -- settlement of
25 actions. (1) A claim against the state may be compromised

1 or settled for and on behalf of the state by the attorney
2 general, with the concurrence of the head of the affected
3 department, agency, board, commission, institution,
4 hospital, college, university, or other instrumentality
5 thereof, subject to the terms of the insurance, if any.

6 (2) Claims against a political subdivision may be
7 compromised or settled by the governing body of the
8 political subdivision after conferring with its legal
9 officer subject to the terms of insurance, if any.

10 Section 17. There is a new R.C.M. section numbered
11 83-701.18 that reads as follows:

12 83-701.18. Payment of judgments. (1) A governmental
13 entity or designated insurer shall pay any compromise,
14 settlement, or final judgment in the manner provided in this
15 section.

16 (2) The state shall pay out of any funds that are or
17 may become available from any of the following:

- 18 (a) Insurance procured by the state;
- 19 (b) A self-insurance reserve fund;
- 20 (c) Funds appropriated for the operation of the agency
21 or department whose operations and activities give rise to
22 the liability, provided that the payment would not seriously
23 disrupt or prevent substantial performance of the operations
24 or activities of the state agency;
- 25 (d) Funds appropriated by the session of the

1 legislature first convening after such settlement or
2 judgment.

3 (3) A political subdivision shall pay out of any funds
4 that are or may become available from any of the following:

- 5 (a) Insurance procured by the political subdivision;
- 6 (b) A tax, levied and collected at the earliest time
7 possible, in an amount necessary to pay the claim or
8 judgment in the event no other funds are available.

9 Section 18. There is a new R.C.M. section numbered
10 83-701.19 that reads as follows:

11 83-701.19. Legislative purpose. It is the purpose of
12 section 83-701.20, R.C.M. 1947, to provide for the
13 immunization and indemnification of public officers and
14 employees sued for their actions, other than intentional
15 tort or felonious acts, taken within the course and scope of
16 their employment.

17 Section 19. There is a new R.C.M. section numbered
18 83-701.20 that reads as follows:

19 83-701.20. Governmental entity to be joined as
20 defendant -- employees immune from personal liability or
21 from suit in certain cases -- recovery against governmental
22 entity bar to recovery against employee -- indemnity.

23 (1) In an action brought against any employee of a state,
24 county, city, town or other governmental entity for a
25 negligent act, error or omission, or other actionable

1 conduct of the employee committed while acting within the
2 course and scope of his office or employment, the
3 governmental entity employer shall be made a party defendant
4 to the action.

5 (2) Recovery against a governmental entity under the
6 provisions of this chapter shall constitute a complete bar
7 to any action or recovery of damages by the claimant, by
8 reason of the same subject matter, against the employee
9 whose negligence or wrongful act, error, or omission or
10 other actionable conduct gave rise to the claim. In any
11 such action against a governmental entity, the employee
12 whose conduct gave rise to the suit shall be immune from
13 suit by reasons of the same subject matter, if the
14 governmental entity acknowledges or is bound by a judicial
15 determination that the conduct upon which the claim is
16 brought arises out of the course and scope of such
17 employee's employment, unless the claim is based upon an
18 intentional tort or felonious act of the employee.

19 (3) In any action in which a governmental entity
20 employee is a party defendant, the employee shall be
21 indemnified by the governmental entity employer for any
22 money judgments or legal expenses to which he may be subject
23 as a result of the suit unless the conduct upon which the
24 claim is brought did not arise out of the course and scope
25 of his employment or is an intentional tort or felonious act

1 of the employee.

2 Section 20. There is a new R.C.M. section numbered
3 83-701.21 that reads as follows:

4 83-701.21. Attachment, execution. No levy of
5 attachment or writ of execution shall issue against any
6 property of a governmental entity for the security or
7 collection of any claim or judgment against any governmental
8 entity under this chapter.

9 Section 21. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

15 Section 22. Sections 83-701, 83-702, 83-704, 83-705,
16 83-706.1, and 82-4310 through 82-4327, R.C.M. 1947, are
17 repealed.

18 ~~Section 24. This act is effective upon passage and~~
19 ~~approval.~~

-End-

SENATE BILL NO. 206

INTRODUCED BY THIESSEN, OLSON, GALT, ABER, GRAHAM, MANLEY,
KOLSTAD, DUNKLE, BROWN, HIMSL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS RELATING TO SOVEREIGN IMMUNITY AND LIABILITY INSURANCE
FOR GOVERNMENTAL ENTITIES; PROVIDING FOR SOVEREIGN IMMUNITY
UNDER CERTAIN CIRCUMSTANCES; AMENDING AND RENUMBERING
SECTION 83-703, R.C.M. 1947, AND REPEALING SECTIONS 83-701,
83-702, 83-704, 83-705, 83-706.1, AND 82-4310 THROUGH
82-4327, R.C.M. 1947."

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

Section 1. There is a new R.C.M. section numbered
83-701.1 that reads as follows:

83-701.1. Declaration of policy. It is recognized by
the legislature that the state and its political
subdivisions by virtue of the services and functions
provided, the powers exercised, and the consequences of
unlimited liability to the governmental process, should be
immune from liability for their actions and those of their
agents to such an extent, and subject to such conditions, as
are provided by this chapter.

Section 2. There is a new R.C.M. section numbered
83-701.2 that reads as follows:

83-701.2. Definitions. As used in this chapter:

(1) "State" means the state of Montana or any office,
department, agency, authority, commission, board,
institution, hospital, college, university or other
instrumentality thereof.

(2) "Political subdivision" means any county, city,
municipal corporation, school district, special improvement
or taxing district, or any other political subdivision or
public corporation.

(3) "Governmental entity" means the state and
political subdivision as herein defined.

(4) "Employee" means an officer, employee, or servant
of a governmental entity, including elected or appointed
officials, and persons acting on behalf of the governmental
entity in any official capacity temporarily or permanently
in the service of the governmental entity whether with or
without compensation, but the term employee shall not mean a
person or other legal entity while acting in the capacity of
an independent contractor under contract to the governmental
entity to which this chapter applies in the event of a
claim.

(5) "Personal injury" means any injury resulting from
libel, slander, malicious prosecution, or false arrest, any
bodily injury, sickness, mental distress, disease or death,
sustained by any person and caused by an occurrence, for

1 which a governmental entity may be held liable.

2 (6) "Property damage" means injury or destruction to
3 real or personal property, including loss of use thereof,
4 caused by an occurrence, for which a governmental entity may
5 be held liable.

6 (7) "Claim" means any claim against a governmental
7 entity, for money damages only, which any person is legally
8 entitled to recover as damages because of personal injury or
9 property damage caused by a negligent or wrongful act or
10 omission committed by any employee of the governmental
11 entity while acting within the scope of his employment,
12 under circumstances where the governmental entity, if a
13 private person, would be liable to the claimant for such
14 damages under the laws of the state of Montana.

15 Section 3. There is a new R.C.M. section numbered
16 83-701.3 that reads as follows:

17 83-701.3. ~~Governmental-----immunity-----limited~~
18 SELF-INSURANCE PERMITTED. ~~Governmental-entities-shall-have~~
19 ~~no-immunity-from-suit-for-injury-to-a--person--or--property,~~
20 ~~except--as-may-be-specifically-provided-by-law-by-a-2/3-vote~~
21 ~~of-each-house-of--the--legislature,---This--provision--shall~~
22 ~~apply-only-to-claims-for-relief-and-causes-of-action-arising~~
23 ~~after--July--17--1973.~~ The state, through the department of
24 administration, may provide for self insurance for claims
25 for injury to a person or property. Governmental entities

1 have the right also, but not the duty, to purchase insurance
2 to protect against claims for injury to a person or
3 property.

4 Section 4. There is a new R.C.M. section numbered
5 83-701.4 that reads as follows:

6 83-701.4. Scope of immunity. A governmental entity or
7 its employees acting within the scope of their office and
8 employment shall be immune from liability for any claim
9 which:

10 ~~(1)--arises-out-of-any-act-or-omission-of-any--employee~~
11 ~~of--a--governmental--entity--exercising--due--care,--in--the~~
12 ~~execution-of-a-statute-or-regulation,--whether--or--not--the~~
13 ~~statute--or--regulation-be-valid,--or-based-upon-the-exercise~~
14 ~~or-performance-or-the--failure--to--exercise--or--perform--a~~
15 ~~discretionary-function-or-duty-on-the-part-of-a-governmental~~
16 ~~entity-or-employee-thereof,--whether-or-not-the-discretion-be~~
17 ~~abused;~~

18 ~~(2)--arises--out-of-the-assessment-or-collection-of-any~~
19 ~~tax-or-fee,--or-the-detention-of-any-goods-or-merchandise--by~~
20 ~~any-law-enforcement-officer;~~

21 ~~(3)--arises-out-of-the-imposition-or-establishment-of-a~~
22 ~~quarantine-by-a-governmental-entity,--whether-such-quarantine~~
23 ~~relates-to-persons-or-property;~~

24 ~~(4)--arises--out-of-assault,--battery,--abuse-of-process,~~
25 ~~misrepresentation,--deceit,---interference---with---contract~~

1 rights,--or--inverse--condemnation,--however,--the--immunity
 2 provided-in-this-subsection-applies-only-to-the-governmental
 3 entity-and-does-not-immunize--officers--and--employees--from
 4 personal-liability-for-intentional-torts-or-crimes-committed
 5 in-the-scope-of-their-office-or-employment.

6 ~~(5)~~ (1) arises out of the activities of the Montana
 7 national guard when acting under a call of the governor, or
 8 when engaged in rescue and evacuation activities, or when it
 9 is engaged in activities responding to an emergency or
 10 disaster, or by being engaged in combatant activities;~~;~~
 11 during-a-time-of-war;

12 ~~(6)~~ (2) arises out of or results from riots, unlawful
 13 assemblies, public demonstrations, mob violence and civil
 14 disturbances, or out of any LAWFUL act or omission in
 15 connection with the prevention of any of the foregoing;

16 ~~(7)~~--arises-out-of-a-plan-or-design-for-construction-or
 17 improvement--to--the--highways,--roads,--streets,--bridges,
 18 buildings,--or--other--public--property--where--such-plan-or
 19 design-is-prepared-in-conformity-with-standards-in-effect-at
 20 the-time-of-construction,--previously-approved-in-advance--of
 21 the--construction-or-approved-by-the-legislative-body-of-the
 22 governmental-entity-or-by-some-other-body-or--administrative
 23 agency,--exercising--discretion--by--authority--to-give-such
 24 approval;

25 ~~(8)~~--arises-out-of-injury-to-or--death--of--any--person

1 engaged--in--an--activity--that--is-covered-by-the-workmen's
 2 compensation-law;

3 ~~(9)~~--arises-out-of-or-caused-by-the--natural--condition
 4 or--any--unimproved--public--property,--whether--or--not-such
 5 property-is-located-in-a-park-or-recreation-area,--or--on--a
 6 highway,--road,--or--street-right-of-way;

7 ~~(10)~~--arises-from-a-circumstance-where-the-governmental
 8 entity,--if-a--private--person,--would-not-be-liable-to-the
 9 claimant-for-such-damages-under-the-laws--of--the--state--of
 10 Montana;

11 ~~(11)~~ (3) arises from an occurrence which is not
 12 subject to the immunity provided in this chapter unless a
 13 claim against the state is filed with the secretary of state
 14 within one hundred-twenty-~~(120)~~-days YEAR from the date of
 15 the occurrence from which the claim arose or when the injury
 16 should reasonably have been discovered, whichever is later;

17 ~~(12)~~--arises-from-an-occurrence-which-is-not-subject-to
 18 the-immunity-provided-by-this-chapter-unless-a-claim-against
 19 a-political-subdivision-is-filed-with-the-clerk-or-secretary
 20 of-the-political-subdivision-within-one-hundred-twenty-~~(120)~~
 21 days-from-the-date-of-the-occurrence-from-which--the--claim
 22 arose--or--when--the--injury--should--reasonably--have--been
 23 discovered,--whichever-is-later;

24 ~~(13)~~ (4) arises out of the activity of a governmental
 25 entity when engaged in fire fighting, or when engaged in

1 rescue and evacuation activities, or when engaged in
2 activities responding to an emergency or disaster;

3 ~~(14)~~ (5) arises out of personal injury or property
4 damage incurred before July 2, 1973.

5 ~~(15)---arises-out-of-the-operation-or-ownership-of~~
6 ~~hospitals,---nursing---homes---or---any-other-health-care~~
7 ~~facilities,---and-the-operation-or-ownership-of-airports-or-of~~
8 ~~public-transportation-equipment-or-facilities;~~

9 ~~(16)---arises-out-of-the-promotion-or-operation---of---any~~
10 ~~commercial-fairs,---county-fairs-and-carnivals, political-or~~
11 ~~civic-gatherings,---or-other-public-gatherings---of---a---similar~~
12 ~~nature;~~

13 Section 5. There is a new R.C.M. section numbered
14 83-701.5 that reads as follows:

15 83-701.5. Punitive or exemplary damages, attorney
16 fees, interest. A governmental entity ~~or-its-employees~~
17 ~~acting-within-the-scope-of-their-office-and-employment~~ shall
18 not be liable for punitive or exemplary damages, attorney
19 fees or interest before final judgment on appeal, if any, on
20 any claim allowed under the provisions of this chapter.

21 Section 6. There is a new R.C.M. section numbered
22 83-701.6 that reads as follows:

23 83-701.6. Filing of claims against state -- time of
24 filing. All claims against the state arising under the
25 provisions of this chapter shall be filed with the secretary

1 of state within one ~~hundred-twenty-(120)-days~~ YEAR from the
2 date of the occurrence from which the claim arose or when
3 the injury should reasonably have been discovered, whichever
4 is later. Notwithstanding any provision of the law to the
5 contrary, no filing fee may be charged by the state.

6 Section 7. There is a new R.C.M. section numbered
7 83-701.7 that reads as follows:

8 83-701.7. Filing of claims against political
9 subdivisions -- time for filing. All claims against a
10 political subdivision arising under the provisions of this
11 chapter shall be filed with the clerk or secretary of the
12 political subdivision within one ~~hundred-twenty-(120)-days~~
13 YEAR from the date of the occurrence from which the claim
14 arose or when the injury should reasonably have been
15 discovered, whichever is later.

16 ~~Section-8.---There-is-a-new-R.C.M.---section---numbered~~
17 ~~83-701.8-that-reads-as-follows:~~

18 ~~83-701.8.---Contents---of---claim---agent-filing---~~
19 ~~inaccuracies.---All-claims-filed-with-a-governmental-entity~~
20 ~~shall-accurately-describe-conduct-and-circumstances-which~~
21 ~~brought-about-the-injury-or-damage,---describe-the-injury-or~~
22 ~~damage,---state-the-time-and-place-the-injury-or-damage~~
23 ~~occurred,---state-the-names-of-all-persons-involved,---if-known,~~
24 ~~and-shall-contain-the-amount-of-damages-claimed,---together~~
25 ~~with-a-statement-of-the-actual-residence-of-the-claimant-at~~

~~the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time of the occurrence from which the claim arose, if the claimant is incapacitated and unable to file his claim within the time prescribed or is a minor or a non-resident of the state and is absent during the time within which his claim is required to be filed, the claim may be filed on behalf of the claimant by any relative, attorney, or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.~~

Section 8. There is a new R.C.M. section numbered 83-701.9 that reads as follows:

83-701.9. Approval or denial of claim -- notice. The governmental entity shall act within sixty (60) days after the filing of the claim, if at all, and notify the claimant in writing of its approval or denial. A claim is considered denied if at the end of sixty (60) days the governmental entity has failed to approve or deny the claim.

Section 9. There is a new R.C.M. section numbered 83-701.10 that reads as follows:

83-701.10. Action after denial of claim. If the claim

is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where an action is permitted by this chapter.

Section 10. There is a new R.C.M. section numbered 83-701.11 that reads as follows:

83-701.11. Late claims not allowed. No claim or action shall be allowed against a governmental entity unless the claim has been presented and filed within the time limits prescribed by this chapter.

Section 11. There is a new R.C.M. section numbered 83-701.12 that reads as follows:

83-701.12. Limitation of actions on claims. A claim against a governmental entity permitted under the provisions of this chapter shall be forever barred unless an action is begun within two (2) years after the claim is filed with the governmental entity.

Section 12. There is a new R.C.M. section numbered 83-701.13 that reads as follows:

83-701.13. Jurisdiction of district court -- rules of procedure. The district courts of the state of Montana shall have exclusive jurisdiction of all tort actions brought under this chapter and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with this chapter.

Section 13. There is a new R.C.M. section numbered

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3 state shall be brought in the county in which the cause of
4 action arose or in Lewis and Clark County.

5 (2) Actions against a political subdivision shall be
6 brought in the county in which the cause of action arose or
7 in any county where the political subdivision is located.

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15 renumbered 83-701.16, and is amended to read as follows:

16 ~~83-703.~~ "83-701.16. Right of appeal--bond not to be
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18 from final judgment in the district court shall be governed
19 by the same rules of practice and procedure that exist for
20 private persons, except the state-of-Montana governmental
21 entity shall at no time be required to post a bond either on
22 appeal or at any other time during the said litigation."

23 Section 16. There is a new R.C.M. section numbered
24 83-701.17 that reads as follows:

25 83-701.17. Compromise of claims -- settlement of

1 actions. (1) A claim against the state may be compromised
2 or settled for and on behalf of the state by the attorney
3 general, with the concurrence of the head of the affected
4 department, agency, board, commission, institution,
5 hospital, college, university, or other instrumentality
6 thereof, subject to the terms of the insurance, if any.

7 (2) Claims against a political subdivision may be
8 compromised or settled by the governing body of the
9 political subdivision after conferring with its legal
10 officer subject to the terms of insurance, if any.

11 Section 17. There is a new R.C.M. section numbered
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15 settlement, or final judgment in the manner provided in this
16 section.

17 (2) The state shall pay out of any funds that are or
18 may become available from any of the following:

19 (a) Insurance procured by the state;

20 (b) A self-insurance reserve fund;

21 (c) Funds appropriated for the operation of the agency
22 or department whose operations and activities give rise to
23 the liability, provided that the payment would not seriously
24 disrupt or prevent substantial performance of the operations
25 or activities of the state agency;

1 (d) Funds appropriated by the session of the
2 legislature first convening after such settlement or
3 judgment.

4 (3) A political subdivision shall pay out of any funds
5 that are or may become available from any of the following:

6 (a) Insurance procured by the political subdivision;

7 (b) A tax, levied and collected at the earliest time
8 possible, in an amount necessary to pay the claim or
9 judgment in the event no other funds are available.

10 Section 18. There is a new R.C.M. section numbered
11 83-701.19 that reads as follows:

12 83-701.19. Legislative purpose. It is the purpose of
13 section 83-701.20, R.C.M. 1947, to provide for the
14 immunization and indemnification of public officers and
15 employees sued for their actions, other than intentional
16 tort or felonious acts, taken within the course and scope of
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21 defendant -- employees immune from personal liability or
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23 entity bar to recovery against employee -- indemnity.

24 (1) In an action brought against any employee of a state,
25 county, city, town or other governmental entity for a

1 negligent act, error or omission, or other actionable
2 conduct of the employee committed while acting within the
3 course and scope of his office or employment, the
4 governmental entity employer shall be made a party defendant
5 to the action.

6 (2) Recovery against a governmental entity under the
7 provisions of this chapter shall constitute a complete bar
8 to any action or recovery of damages by the claimant, by
9 reason of the same subject matter, against the employee
10 whose negligence or wrongful act, error, or omission or
11 other actionable conduct gave rise to the claim. In any
12 such action against a governmental entity, the employee
13 whose conduct gave rise to the suit shall be immune from
14 suit by reasons of the same subject matter, if the
15 governmental entity acknowledges or is bound by a judicial
16 determination that the conduct upon which the claim is
17 brought arises out of the course and scope of such
18 employee's employment, unless the claim is based upon an
19 intentional tort or felonious act of the employee.

20 (3) In any action in which a governmental entity
21 employee is a party defendant, the employee shall be
22 indemnified by the governmental entity employer for any
23 money judgments or legal expenses to which he may be subject
24 as a result of the suit unless the conduct upon which the
25 claim is brought did not arise out of the course and scope

1 of his employment or is an intentional tort or felonious act
2 of the employee.

3 Section 20. There is a new R.C.M. section numbered
4 83-701.21 that reads as follows:

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6 attachment or writ of execution shall issue against any
7 property of a governmental entity for the security or
8 collection of any claim or judgment against any governmental
9 entity under this chapter.

10 Section 21. Severability. If a part of this act is
11 invalid, all valid parts that are severable from the invalid
12 part remain in effect. If a part of this act is invalid in
13 one or more of its applications, the part remains in effect
14 in all valid applications that are severable from the
15 invalid applications.

16 Section 22. Sections 83-701, 83-702, 83-704, 83-705,
17 83-706.1, and 82-4310 through 82-4327, R.C.M. 1947, are
18 repealed.

19 ~~Section 24. This act is effective upon passage and~~
20 ~~approval.~~

-End-