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Senate BILL NO. 314
Brown Drake Deely

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A CAUSE OF ACTION FOR DAMAGES WHERE THERE HAS BEEN A VIOLATION OF RIGHTS PROTECTED BY THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE II, SECTION 11 OF THE MONTANA CONSTITUTION, IN LIEU OF EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE; AND TO REPEAL SECTION 95-1806, R.C.M. 1947."

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

Section 1. Short title. This act may be cited as "The Montana Civil Rights Claims Act".

Section 2. Remedy and admissibility of evidence. (1) Any person subject to search and seizure, if the search and seizure is in violation of the fourth amendment of the United States constitution or Article II, section 11 of the Montana constitution or the laws of the state of Montana relating to search and seizure, has a cause of action for damages.

(2) Evidence secured for use in criminal prosecution in violation of the fourth amendment of the United States constitution or Article II, section 11 of the Montana constitution or the laws of Montana relating to search and

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seizure, if otherwise admissible, shall not be excluded from any criminal prosecution.

Section 3. Exclusive remedy. This act provides the exclusive remedy for the violation of the rights of a person which are protected by the fourth amendment of the United States constitution and by Article II, section 11 of the Montana constitution caused by any employee or agent of the state of Montana or its political subdivisions.

Section 4. Liability. (1) Liability under this act is based upon an affirmative finding by a preponderance of the evidence that there was a violation of the constitutional or legal rights of a person which are protected by the fourth amendment of the United States constitution and the Montana constitution, caused by an employee or agent of the state of Montana, or any political subdivision thereof while the employee or agent was acting in the scope of his employment or under color of law.

(2) No peace officer or other official acting in the scope of his employment, [under color of law], is personally liable unless his actions were committed knowingly, with the intent to violate the constitutional or other legal rights of any person.

(3) Liability under this act is exclusively against the state or governmental agency and not against the individual law enforcement officer, agent, or official if

1 the alleged violation of constitutional rights is based upon
2 the inadequacy or unconstitutionality of any arrest warrant
3 or search warrant.

4 (4) The governmental agency employing or controlling
5 the peace officer or other official is liable for violations
6 under this act when these persons are acting in the scope of
7 employment or under color of state law. It is not a defense
8 that the act causing the violation was illegal.

9 Section 5. Damages. (1) A successful claimant shall
10 be awarded reasonable compensation for:

- 11 (a) property damage;
- 12 (b) personal damage;
- 13 (c) attorney fees; and
- 14 (d) costs.

15 (2) In every case in which it is determined that there
16 was a substantial violation of a constitutional or legal
17 right, damages of not less the five hundred dollars (\$500)
18 shall be presumed, plus reasonable attorney fees and costs.

19 (3) The court may, on preliminary motion, rule as a
20 matter of law on the question of substantial violation.
21 This determination is binding on the government. If the
22 court makes a finding that it is not a substantial
23 violation, the plaintiff is entitled to have the matter
24 submitted as a jury question.

25 Section 6. Jurisdiction. The district court shall

1 have jurisdiction over any action brought under this act and
2 such actions shall be governed by the Montana Rules of Civil
3 Procedure in so far as they are consistent with this act.

4 Section 7. Venue of actions. (1) Actions brought
5 against the state shall be brought in the county in which
6 the cause of action arose or in Lewis and Clark county.

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

10 Section 8. Limitation. Every cause of action
11 permitted under this act shall be forever barred unless an
12 action is begun within two (2) years after the cause of
13 action arises.

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15 political subdivision. A final judgment is an obligation of
16 the state of Montana or political subdivision and shall be
17 paid in the same manner as any other claim against the state
18 or political subdivision.

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20 state or political subdivision. The right of appeal from
21 final judgment in the district court is governed by the same
22 rules of practice and procedure that exist for private
23 persons, except the state of Montana or political
24 subdivision is not required to post a bond either on appeal
25 or at any other time during the litigation.

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2 general, with the consent of the board of examiners, when
3 the claim is against the state of Montana; the county
4 attorney, with the consent of the governing body, when the
5 claim is against a county; and the city attorney, with the
6 consent of the governing body, when the claim is against a
7 city; has full charge of the litigation and is authorized to
8 arbitrate, compromise or settle any claim allowed under this
9 act, subject to the terms of insurance, if any.

10 Section 12. Administrative action. Any law
11 enforcement officer, agent, or other official who violates
12 the constitutional or other legal rights of any person by
13 acting knowingly, with the intent to violate those rights,
14 is subject to official reprimand and for second and
15 subsequent violations that person is subject to suspension
16 or dismissal.

17 Section 13. Act not to affect causes of action arising
18 under Montana Comprehensive State Insurance Plan and Tort
19 Claims Act. Nothing in this act may be construed to affect
20 any cause of action arising under the Montana Comprehensive
21 State Insurance Plan and Tort Claims Act.

22 Section 14. Repealer. Section 95-1806, R.C.M. 1947,
23 is repealed.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 314

INTRODUCED BY BROWN, DRAKE, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A CAUSE OF ACTION FOR DAMAGES WHERE THERE HAS BEEN A VIOLATION OF RIGHTS PROTECTED BY THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE II, SECTION 11 OF THE MONTANA CONSTITUTION, IN LIEU OF EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE; AND TO REPEAL SECTION 95-1806, R.C.M. 1947."

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(2) No peace officer or other official acting in the scope of his employment, AND ~~under color of law~~, is personally liable unless his actions were committed knowingly, with the intent to violate the constitutional or other legal rights of any person.

(3) Liability under this act is exclusively against the state or governmental agency and not against the individual law enforcement officer, agent, or official if

1 the alleged violation of constitutional rights is based upon
2 the inadequacy or unconstitutionality of any arrest warrant
3 or search warrant.

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5 the peace officer or other official is liable for violations
6 under this act when these persons are acting in the scope of
7 employment or under color of state law. It is not a defense
8 that the act causing the violation was illegal.

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10 be awarded reasonable compensation for:

- 11 (a) property damage;
- 12 (b) personal damage;
- 13 (c) attorney fees; and
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16 was a substantial violation of a constitutional or legal
17 right, damages of not less the five hundred dollars (\$500)
18 shall be presumed, plus reasonable attorney fees and costs.

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20 matter of law on the question of substantial violation.
21 This determination is binding on the government. If the
22 court makes a finding that it is not a substantial
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24 submitted as a jury question.

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8 brought in the county in which the cause of action arose or
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12 action is begun within two (2) years after the cause of
13 action arises.

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15 political subdivision. A final judgment is an obligation of
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 6 consent of the governing body, when the claim is against a
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 9 act, subject to the terms of insurance, if any.

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 11 enforcement officer, agent, or other official who violates
 12 the constitutional or other legal rights of any person by
 13 acting knowingly, with the intent to violate those rights,
 14 ~~is--subject--to--official--reprimand--and--for--second--and~~
 15 ~~subsequent--violations--that--person--is--subject--to--suspension~~
 16 ~~or--dismissal.~~ SHALL BE SUSPENDED OR DISMISSED.

17 Section 13. Act not to affect causes of action arising
 18 under Montana Comprehensive State Insurance Plan and Tort
 19 Claims Act. Nothing in this act may be construed to affect
 20 any cause of action arising under the Montana Comprehensive
 21 State Insurance Plan and Tort Claims Act.

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 24 INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS
 25 OR APPLICATIONS OF THE ACT WHICH CAN BE GIVEN EFFECT WITHOUT

1 THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
 2 PROVISIONS OF THIS ACT ARE DECLARED SEVERABLE.

3 Section 15. Repealer. Section 95-1806, R.C.M. 1947,
 4 is repealed.

-End-

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2 INTRODUCED BY BROWN, DRAKE, GREELY

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 7 OF THE UNITED STATES AND ARTICLE II, SECTION 11 OF THE
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 4 is repealed.

-End-

HOUSE OF REPRESENTATIVES

March 20, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 314

Be amended in the third reading bill as follows:

1. Amend title, page 1, lines 8, 9 and 10.
Following: "CONSTITUTION"
Strike: ", IN LIEU OF EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE; AND TO REPEAL SECTION 95-1806, R.C.M. 1947"
2. Amend page 1, section 2, line 15.
Following: "evidence."
Strike: "(1)"
3. Amend page 1, section 2, subsection 2, lines 22 through 25 and page 2, lines 1 and 2.
Strike: All of subsection (2) in its entirety.
4. Amend page 6, section 15, lines 3 and 4.
Strike: Section 15 in its entirety.

AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 314

INTRODUCED BY BROWN, DRAKE, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A CAUSE OF ACTION FOR DAMAGES WHERE THERE HAS BEEN A VIOLATION OF RIGHTS PROTECTED BY THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE II, SECTION 11 OF THE MONTANA CONSTITUTION, ~~IN LIBU OF EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE ADMISSIBLE EVIDENCE, AND TO REPEAL SECTION 95-10067-R.C.M.-1947.~~"

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