

1 *Krupp* *House* BILL NO. *774* *House*  
 2 INTRODUCED BY *BURNETT Ramsey, Kenny Meyer*  
 3 *Maiguella, Peter Spalden, Wynne Light*  
 4 *NATHAN* A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN EXCLUSIVE

5 STATE REMEDY IN THE FORM OF A CAUSE OF ACTION FOR DAMAGES  
 6 WHEN THERE HAS BEEN A VIOLATION OF RIGHTS PROTECTED BY THE  
 7 FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES  
 8 AND ARTICLE II, SECTION 11, OF THE MONTANA CONSTITUTION, IN  
 9 LIEU OF EXCLUSION FROM CRIMINAL PROSECUTION OF OTHERWISE  
 10 ADMISSIBLE EVIDENCE; TO PROVIDE FOR THE DISCIPLINE OF  
 11 OFFICIALS CAUSING VIOLATIONS OF RIGHTS; AND TO REPEAL  
 12 SECTION 95-1806, R.C.M. 1947."

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

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

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

23 (2) Evidence secured for use in a criminal prosecution  
 24 in violation of the fourth amendment of the United States  
 25 constitution or Article II, section 11, of the Montana

1 constitution or the laws of Montana relating to search and  
 2 seizure, if otherwise admissible, may not be excluded from  
 3 any criminal prosecution because of such violation.

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

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

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

24 (3) Liability under this act is exclusively against  
 25 the state or governmental agency and not against the

1 individual law enforcement officer, agent, or official if  
 2 the alleged violation of constitutional rights is based upon  
 3 the inadequacy or unconstitutionality of any arrest warrant  
 4 or search warrant.

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

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

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

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

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

1 question.

2 Section 6. Jurisdiction. The district court has  
 3 jurisdiction over any action brought under this act and such  
 4 actions are governed by the Montana rules of civil procedure  
 5 insofar as they are consistent with this act.

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

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

12 Section 8. Limitation. Each cause of action permitted  
 13 under this act is forever barred unless an action is begun  
 14 within 2 years after the cause of action arises.

15 Section 9. Judgment as obligation of state or  
 16 political subdivision. A final judgment is an obligation of  
 17 the state or the political subdivision and shall be paid in  
 18 the same manner as any other claim against the state or  
 19 political subdivision.

20 Section 10. Right of appeal -- bond not required of  
 21 state or political subdivision. The right of appeal from  
 22 final judgment in the district court is governed by the same  
 23 rules of practice and procedure that exist for private  
 24 persons, except that the state or political subdivision is  
 25 not required to post a bond either on appeal or at any other

1 time during the litigation.

2 Section 11. Compromise or settlement. The attorney  
3 general, with the consent of the board of examiners, when  
4 the claim is against the state; the county attorney, with  
5 the consent of the governing body, when the claim is against  
6 a county; and the city attorney, with the consent of the  
7 governing body, when the claim is against a city, have full  
8 charge of the litigation and are authorized to arbitrate,  
9 compromise, or settle any claim allowed under this act,  
10 subject to the terms of insurance, if any.

11 Section 12. Administrative action. (1) Any law  
12 enforcement officer, agent, or other official who is  
13 determined by a court or, in the absence of a court  
14 determination on the issue, by the appropriate disciplinary  
15 authority to have violated the constitutional or other legal  
16 rights of any person by acting knowingly with the intent to  
17 violate such rights, by acting in a grossly negligent  
18 manner, or by acting with a reckless disregard for such  
19 rights shall be suspended or dismissed, without pay, as  
20 follows:

21 (a) Upon the first occurrence, he shall be suspended  
22 for 30 days.

23 (b) Upon the second occurrence, he shall be suspended  
24 for 90 days.

25 (c) Upon the third occurrence, he shall be suspended

1 for 6 months.

2 (d) Upon the fourth occurrence, he shall be  
3 permanently dismissed and is thereafter ineligible to serve  
4 as a law enforcement officer with the state or any political  
5 subdivision thereof.

6 (2) If the violation is unusually serious, the  
7 appropriate disciplinary authority may impose more severe  
8 penalties than those listed in subsection (1).

9 (3) A second or subsequent violation under  
10 circumstances similar to those surrounding a previous  
11 violation shall be presumed to have resulted from gross  
12 negligence or a reckless disregard for the person's rights.

13 Section 13. Act not to affect causes of action arising  
14 under Montana Comprehensive State Insurance Plan and Tort  
15 Claims Act. Nothing in this act affects any cause of action  
16 arising under the Montana Comprehensive State Insurance Plan  
17 and Tort Claims Act.

18 Section 14. Severability. If a part of this act is  
19 invalid, all valid parts that are severable from the invalid  
20 part remain in effect. If a part of this act is invalid in  
21 one or more of its applications, the part remains in effect  
22 in all valid applications that are severable from the  
23 invalid applications.

24 Section 15. Repealer. Section 95-1806, R.C.M. 1947, is  
25 repealed.

-End-  
-6-

STATE OF MONTANA

REQUEST NO. 501-77

FISCAL NOTE

Form BD-15

compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note  
House Bill 774 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members  
of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide an exclusive state remedy in the form of a cause of action for damages when there has been a  
violation of rights protected by the fourth amendment of the Constitution of the United States and Article II, Section II,  
of the Montana Constitution, in lieu of exclusion from criminal prosecution of otherwise admissible evidence; to provide  
for the discipline of officials causing violations of rights; and to repeal Section 95-1806, R.C.M. 1947.

FISCAL IMPACT:

Due to the lack of statistical data on the type of violation, no fiscal impact can be projected; however, if state peace  
officers do violate this act and are found liable, a minimum of \$500 must be paid from existing budgets.

*Richard D. Brown*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77