

1 SENATE BILL NO. 32
2 INTRODUCTION BY TOWE, TURNAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AND CLARIFYING
5 STATUTORY REFERENCES TO SOVEREIGN OR GOVERNMENTAL IMMUNITY
6 TO COORDINATE THOSE REFERENCES WITH ARTICLE II, SECTION 18,
7 OF THE CONSTITUTION OF THE STATE OF MONTANA OR PROVISIONS OF
8 TITLE 82, CHAPTER 43, R.C.M. 1947, AS AMENDED; AMENDING
9 SECTIONS 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402,
10 75-8310, AND 93-2815, R.C.M. 1947; AND REPEALING SECTIONS
11 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172,
12 69-6405, 75-5940, AND 76-243, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 1-502, R.C.M. 1947, is amended to
16 read as follows:

17 "1-502. Aeronautics functions governmental -- no
18 liability for torts. ~~††~~ The acquisition of lands for
19 establishing airports or other air navigation facilities;
20 the acquisition of airport protection privileges; the
21 acquisition, establishment, construction, enlargement,
22 improvement, maintenance, equipment, and operation of
23 airports and other air navigation facilities whether by the
24 state separately or jointly with a municipality; the
25 assistance of this state in that acquisition, establishment,

1 construction, enlargement, improvement, maintenance,
2 equipment, and operation; and the exercise of any other
3 powers granted to the department are public and governmental
4 functions exercised for a public purpose, and matters of
5 public necessity, and such lands and other property and
6 privileges acquired and used by the state in the manner and
7 for the purposes enumerated in this title are acquired and
8 used for public and governmental purposes and as a matter of
9 public necessity.

10 ~~{2}--No--suit--in--tort--may--be--brought--or--maintained~~
11 ~~against--the--state--or--any--municipality--of--the--state--or--their~~
12 ~~officers--agents--servants--or--employees--on--account--of--an~~
13 ~~act--done--in--or--about--the--construction--maintenance~~
14 ~~enlargement--operation--superintendence--or--management--of--an~~
15 ~~airport--or--other--air--navigation--facility."~~

16 Section 2. Section 16-1802, R.C.M. 1947, is amended to
17 read as follows:

18 "16-1802. Claims to be itemized -- time for
19 presenting. No account must be allowed by the board unless
20 the same is made out in separate items, the nature of each
21 item stated; if it is for official services for which no
22 specified fees are fixed by law, the time actually and
23 necessarily devoted to such service must be stated. Claims
24 against the county shall contain the following statement: "I
25 certify that this claim is correct and just in all respects"

1 and that payment or credit has not been received." Claims
 2 need not be verified by affidavit. Every claim against the
 3 county, except claims arising from injury to a person or
 4 property, which are limited under provisions of Title 82,
 5 chapter 43, as amended, must be presented within a year
 6 after the last item accrued."

7 Section 3. Section 17-205, R.C.M. 1947, is amended to
 8 read as follows:

9 "17-205. In actions other than contract. In an action
 10 for the breach of an obligation not arising from contract
 11 and in every case of oppression, fraud, or malice, interest
 12 may be given, in the discretion of the jury. This section
 13 does not apply in actions for recovery of damages arising
 14 from injury to a person or property brought against a
 15 governmental entity under Title 82, chapter 43, as amended."

16 Section 4. Section 32-4722, R.C.M. 1947, is amended to
 17 read as follows:

18 "32-4722. Advertising deemed unlawful -- notice to
 19 remove -- hearing -- appeal to district court. (1) The
 20 following outdoor advertising is unlawful:

21 (a) When when erected after June 24, 1971, contrary to
 22 this act, or erected after the effective date of this act
 23 beyond six--hundred--sixty--{660} feet of the nearest edge of
 24 the right-of-way of an interstate or primary highway outside
 25 of an urban area with the purpose of its message being read

1 from such ~~main-traveled~~ main-traveled way and visible from
 2 such ~~main-traveled~~ main-traveled way, unless such outdoor
 3 advertising meets the criteria of subsections (i), (ii), or
 4 (iii) of subsection (a) of section 32-4717; or

5 (b) When when a permit is not obtained as prescribed
 6 in this act; or

7 (c) When when a permittee fails to comply with a
 8 notice of violation as provided in section 32-4721.

9 (2) The department shall give notice in writing,
 10 either by certified mail or by personal service, to the
 11 owner or occupant of the land on which advertising believed
 12 to be unlawful is located and to the owner of the outdoor
 13 advertising structure, if the latter is known, or if
 14 unknown, by posting notice, in a conspicuous place on the
 15 structure, of its intention to remove the unlawful
 16 advertising. Within ~~forty-five~~{45} days after the notice,
 17 the owner of the land or of the structure may make a written
 18 request for a hearing before the commission to show cause
 19 why the structure should not be removed.

20 (3) If a hearing before the commission is not
 21 requested, or if there is no appeal taken from the
 22 commission's decision at the hearing, or if the commission's
 23 decision is affirmed on appeal, the department shall
 24 immediately remove, or cause to be removed, the unlawful
 25 outdoor advertising. The owner of the structure and the

1 owner or occupant of the land are jointly and severally
 2 liable for the costs of the removal. The department may
 3 enter upon lands bearing outdoor advertising and make
 4 examination of such advertising. The department may, upon
 5 final determination by the commission that an item of
 6 outdoor advertising is unlawful, enter upon lands bearing
 7 such advertising and remove the unlawful advertising. ~~The~~
 8 ~~department--incurs--no--liability--for--the--entry--or--entries~~
 9 ~~except--for--injuries--resulting--from--negligence--wantonness--or~~
 10 ~~malice."~~

11 Section 5. Section 40-4401, R.C.M. 1947, is amended to
 12 read as follows:

13 "40-4401. Waiver of defense of ~~sovereign~~ immunity
 14 required. All contracts or policies of casualty insurance
 15 covering state-owned properties or state risks must contain
 16 ~~therein--as--a--part--thereof~~ an agreement on the part of the
 17 insurer waiving all right to raise the defense of ~~sovereign~~
 18 immunity from suit. No money ~~shall~~ may be paid out of the
 19 state treasury to any person, firm, or corporation, as a
 20 consideration or premium on any such policy or contract of
 21 casualty insurance unless the policy or contract contains
 22 such an agreement."

23 Section 6. Section 40-4402, R.C.M. 1947, is amended to
 24 read as follows:

25 "40-4402. ~~Sovereign--immunity~~ immunity defense

1 prohibited when liability insured -- reduction of award to
 2 policy limits. Whenever an insurer accepts any premium,
 3 money, or other consideration from a political subdivision
 4 of the state, municipality, or any public body, corporation,
 5 commission, board, agency, organization, or other public
 6 entity for casualty or liability insurance, neither such
 7 insured nor insurer ~~shall~~ may raise the defense of ~~sovereign~~
 8 ~~or--governmental~~ immunity from suit in any damage action
 9 brought against such insured or insurer, and any agreement
 10 in the insurance contract permitting the defense of
 11 ~~sovereign--or--governmental~~ immunity is hereby ~~declared~~
 12 void. No attempt ~~shall~~ may be made in the trial of an action
 13 brought against such political subdivision of the state,
 14 municipality, or any public body, corporation, commission,
 15 board, agency, organization, or other public entity, to
 16 suggest the existence of any insurance which covers in whole
 17 or in part any judgment or award which may be rendered in
 18 favor of plaintiff. If the court ~~shall--determine~~ determines
 19 that the defendant could have successfully raised the
 20 defense of ~~sovereign--or--governmental~~ immunity, and if the
 21 verdict exceeds the limits of the applicable insurance, the
 22 court shall reduce the amount of such judgment or award to a
 23 sum equal to the applicable limit stated in the policy."

24 Section 7. Section 75-8310, R.C.M. 1947, is amended to
 25 read as follows:

1 "75-8310. School safety patrols. (1) The trustees of
2 any district or the administration of any private school
3 ~~shall have the authority to~~ may organize and supervise
4 school safety patrols for a school under their authority.
5 The purpose of school safety patrols ~~shall be~~ is to
6 influence and encourage other pupils of the school to
7 refrain from crossing public highways at points other than
8 regular crossings and to direct pupils as to when and where
9 to cross highways.

10 (2) The school safety patrol shall be formed from the
11 children of the school who are ~~nine~~ (9) years of age or more
12 or, if there are none, who are of the highest grade of such
13 school. Before any child may serve on the school safety
14 patrol, the parent or guardian of such child shall give
15 written consent for his child to serve on the school safety
16 patrol.

17 (3) No liability ~~shall attach either~~ attaches to the
18 ~~school, educational institution, governing board, directing~~
19 ~~authority, a member of the school safety patrol~~ or parent or
20 guardian, ~~or any individual, director, member of the~~
21 ~~trustees, district, superintendent, principal, teacher, or~~
22 ~~other school authority~~ by virtue of the organization,
23 maintenance, or operation of such school safety patrol
24 because of injuries injury sustained by any pupil, whether a
25 member of the patrol or otherwise by reason of the operation

1 and maintenance thereof unless that injury results from
2 gross negligence or purposeful conduct of such person.

3 (4) Identification and operation of school safety
4 patrols shall be uniform throughout the state and the method
5 of identification and signals to be used shall be as
6 prescribed by the superintendent of public instruction in
7 cooperation with the Montana highway patrol.

8 (5) Any municipality, city, or town of this state may
9 provide for the training of members of the school safety
10 patrol at any authorized school patrol camp located in this
11 state and may pay the expense necessarily incurred in
12 providing such training, out of any funds available for such
13 purpose."

14 Section 8. Section 93-2815, R.C.M. 1947, is amended to
15 read as follows:

16 "93-2815. Joinder of state as defendant in certain
17 actions. In any action or proceeding brought in any district
18 court of the state of Montana affecting the title to real or
19 personal property in which the state of Montana has, or
20 claims to have, an interest or claim, the state of Montana
21 may be made a party defendant to such actions or
22 proceedings, and its rights or interests adjudicated,
23 ~~provided, however, that in no event shall any money judgment~~
24 ~~be rendered against the state of Montana in any action or~~
25 ~~proceeding brought under the provisions of this act."~~

1 Section 9. Repealer. Sections 11-1305, 11-1306,
2 16-2731, 16-2732, 16-2733, 31-172, 46-243, 69-6405, and
3 75-5940, R.C.M.1947, are repealed.

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