

CHAPTER NO. 425

SENATE BILL NO. 380

INTRODUCED BY HAFFERMAN, TOWE, TURNAGE

IN THE SENATE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 14, 1979	Committee recommend bill do pass. Report adopted.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 24, 1979	Third reading, concurred in.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1
2 INTRODUCED BY Sen. Jeffery J. Turriage BILL NO. 380

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN LAWS
5 RELATING TO CASUALTY INSURANCE AND SOVEREIGN IMMUNITY TO
6 MAKE THE LAW CONSISTENT WITH LIMITS SET BY STATUTE; AMENDING
7 SECTIONS 2-9-104, 20-3-331, AND 33-23-102, MCA; AND
8 REPEALING SECTION 33-23-101, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 33-23-102, MCA, is amended to read:

12 "33-23-102. ~~immunity defense prohibited when liability~~
13 ~~insured-----existence~~ Existence of insurance not to be made
14 ~~evident ---reduction of award to policy limits. (1) Whenever~~
15 ~~on---insurer---accepts---any---premium,---money,---or---other~~
16 ~~consideration---from---a---political---subdivision---of---the---state,~~
17 ~~municipality,---or---any---public---body,---corporation,---commission,~~
18 ~~board,---agency,---organization,---or---other---public---entity---for~~
19 ~~casualty---or---liability---insurance,---neither---such---insured---nor~~
20 ~~insurer---may---raise---the---defense---of---immunity---from---suit---in---any~~
21 ~~damage---action---brought---against---such---insured---or---insurer,---and~~
22 ~~any---agreement---in---the---insurance---contract---permitting---the~~
23 ~~defense---of---immunity---is---void.~~

24 (2) No attempt may be made in the trial of an action
25 brought against such a political subdivision of the state,

1 municipality, or any public body, corporation, commission,
2 board, agency, organization, or other public entity to
3 suggest the existence of any insurance which covers in whole
4 or in part any judgment or award which may be rendered in
5 favor of plaintiff.

6 ~~(3) If the court determines that the defendant could~~
7 ~~have successfully raised the defense of immunity and if the~~
8 ~~verdict exceeds the limits of the applicable insurance, the~~
9 ~~court shall reduce the amount of such judgment or award to a~~
10 ~~sum equal to the applicable limit stated in the policy."~~

11 Section 2. Section 2-9-104, MCA, is amended to read:

12 "2-9-104. Limitation on governmental liability for
13 damages in tort -- petition for relief in excess of limits.
14 (1) Neither the state, a county, municipality, taxing
15 district, nor any other political subdivision of the state
16 is liable in tort action for:

- 17 (a) noneconomic damages; or
- 18 (b) economic damages suffered as a result of an act or
19 omission of an officer, agent, or employee of that entity in
20 excess of \$300,000 for each claimant and \$1 million for each
21 occurrence.

22 (2) The legislature or the governing body of a county,
23 municipality, taxing district, or other political
24 subdivision of the state may, in its sole discretion,
25 authorize payments for noneconomic damages or economic

1 damages in excess of the sum authorized in subsection (1)(b)
2 of this section, or both, upon petition of plaintiff
3 following a final judgment. No insurer is liable for such
4 noneconomic damages or excess economic damages unless
5 ~~specifically authorized in the contract of insurance such~~
6 insurer specifically agrees by written endorsement to
7 provide coverage to the governmental agency involved in
8 amounts in excess of the limitation stated in this section
9 or specifically agrees to provide coverage for noneconomic
10 damages, in which case the insurer may not claim the
11 benefits of the limitation specifically waived."

12 Section 3. Section 20-3-331, MCA, is amended to read:
13 "20-3-331. Purchase of liability insurance. The
14 trustees of any district may purchase insurance coverage for
15 the district, trustees, and employees against liability for
16 the death, injury, or disability of any person or damage to
17 property. If such insurance is purchased, the trustees shall
18 pay the insurance premium cost from the general fund. The
19 provisions of 33-23-102 and ~~2-9-104~~ shall apply to the
20 provisions of this section."

21 Section 4. Repealer. Section 33-23-101, MCA, is
22 repealed.

-End-

1 *Sen* BILL NO. *380*
 2 INTRODUCED BY *Hoffman Dan Turriage*
 3

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 5 RELATING TO CASUALTY INSURANCE AND SOVEREIGN IMMUNITY TO
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 16 ~~consideration---from---a---political---subdivision---of---the---state,~~
 17 ~~municipality, or any public body, corporation, commission,~~
 18 ~~board, agency, organization, or other public entity for~~
 19 ~~casualty or liability insurance, neither such insured nor~~
 20 ~~insurer may raise the defense of immunity from suit in any~~
 21 ~~damage action brought against such insured or insurer, and~~
 22 ~~any agreement in the insurance contract permitting the~~
 23 ~~defense of immunity is void.~~

24 (2) No attempt may be made in the trial of an action
 25 brought against such a political subdivision of the state,

1 municipality, or any public body, corporation, commission,
 2 board, agency, organization, or other public entity to
 3 suggest the existence of any insurance which covers in whole
 4 or in part any judgment or award which may be rendered in
 5 favor of plaintiff.

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 7 ~~have successfully raised the defense of immunity and if the~~
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 10 ~~sum equal to the applicable limit stated in the policy."~~

11 Section 2. Section 2-9-104, MCA, is amended to read:

12 "2-9-104. Limitation on governmental liability for
 13 damages in tort — petition for relief in excess of limits.

14 (1) Neither the state, a county, municipality, taxing
 15 district, nor any other political subdivision of the state
 16 is liable in tort action for:

- 17 (a) noneconomic damages; or
- 18 (b) economic damages suffered as a result of an act or
- 19 omission of an officer, agent, or employee of that entity in
- 20 excess of \$300,000 for each claimant and \$1 million for each
- 21 occurrence.

22 (2) The legislature or the governing body of a county,
 23 municipality, taxing district, or other political
 24 subdivision of the state may, in its sole discretion,
 25 authorize payments for noneconomic damages or economic

1 damages in excess of the sum authorized in subsection (1)(b)
2 of this section, or both, upon petition of plaintiff
3 following a final judgment. No insurer is liable for such
4 noneconomic damages or excess economic damages unless
5 ~~specifically authorized in the contract of insurance such~~
6 ~~insurer specifically agrees by written endorsement to~~
7 ~~provide coverage to the governmental agency involved in~~
8 ~~amounts in excess of the limitation stated in this section~~
9 ~~or specifically agrees to provide coverage for noneconomic~~
10 ~~damages, in which case the insurer may not claim the~~
11 ~~benefits of the limitation specifically waived."~~

12 Section 3. Section 20-3-331, MCA, is amended to read:
13 "20-3-331. Purchase of liability insurance. The
14 trustees of any district may purchase insurance coverage for
15 the district, trustees, and employees against liability for
16 the death, injury, or disability of any person or damage to
17 property. If such insurance is purchased, the trustees shall
18 pay the insurance premium cost from the general fund. The
19 provisions of 33-23-102 ~~and 2-9-104~~ shall apply to the
20 provisions of this section."

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16 ~~consideration--from--a--political--subdivision-of-the-state,~~
17 ~~municipality, or any public body, corporation, commission,~~
18 ~~board, agency, organization, or other public entity, for~~
19 ~~casualty or liability insurance, neither such insured nor~~
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21 ~~damage action brought against such insured or insurer, and~~
22 ~~any agreement in the insurance contract permitting the~~
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5 favor of plaintiff.

6 ~~{3}--if--the--court--determines--that--the--defendant--could~~
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1 damages in excess of the sum authorized in subsection (1)(b)
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