

HOUSE BILL NO. 626

INTRODUCED BY KEEDY, B. BROWN, NORDTVEDT, D. BROWN,
CONROY, DONALDSON, MARKS, FEDA, ANDERSON, CONN

IN THE HOUSE

February 3, 1981	Introduced and referred to Committee on Judiciary.
February 16, 1981	Committee recommend bill do pass. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass as amended.
February 21, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 70; Noes, 29. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 18, 1981	Committee recommend bill be concurrent in as amended by minority report. Report adopted.
March 20, 1981	Second reading, concurred in.
March 23, 1981	Third reading, concurred in as amended. Ayes, 30; Noes, 18.

IN THE HOUSE

March 24, 1981

Returned from Senate with amendments.

April 8, 1981

Second reading, amendments concurred in.

April 9, 1981

Third reading, amendments concurred in. Ayes, 79; Noes, 14. Sent to enrolling.

Reported correctly enrolled.

House Bill 626

In The House

February 3, 1981	Introduced and referred to Committee on Judiciary.
February 16, 1981	Committee recommend bill do pass.
February 17, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading do pass as amended.
February 21, 1981	Correctly engrossed.
February 24, 1981	Third reading passed.

In The Senate

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 18, 1981	Committee recommend bill be concurred in as amended.
March 20, 1981	Second reading concurred.
March 23, 1981	Third reading concurred.

In The House

March 24, 1981	Returned from Senate concurred as amended.
April 8, 1981	Second reading amendment concurred.
April 9, 1981	Third reading amendment concurred.
	Sent to enrolling.
April 11, 1981	Correctly enrolled.
April 13, 1981	Signed by Speaker.

In The Senate

April 13, 1981 Signed by President.

Governor's Office

April 13, 1981 Delivered to Governor.

April 17, 1981 Vetoed.

In The House

April 21, 1981 Override veto.

In The Senate

April 21, 1981 Sustain veto.

April 22, 1981 On motion Senate reconsider
its action taken on governor's
veto. Motion Adopted.

Sustain veto.

In The House

April 22, 1981 Returned from Senate.

1 such violations are committed or caused by the employee or
2 agent while acting within the scope of his employment or
3 under color of law. It is not a defense that the act causing
4 the violation was illegal.

5 (3) Civil liability under [this act] is exclusively
6 against the state or governmental agency and not against its
7 employee or agent if the violation of constitutional or
8 statutory rights was committed or caused in good faith and
9 in the reasonable belief that it comported with existing
10 law.

11 (4) Whenever an employee or agent of the state or any
12 of its political subdivisions causes or commits a violation
13 under [this act] while acting outside the scope of his
14 employment and not under color of law, he is personally
15 liable to the person whose rights were violated.

16 (5) A nonelected employee of the state or any of its
17 subdivisions that causes or commits a violation under [this
18 act] is subject to disciplinary action as provided in
19 [section 12]. An action against an elected officer or
20 official is a criminal action for official misconduct as
21 provided for in 45-7-104.

22 NEW SECTION. Section 5. Joinder of civil and
23 disciplinary actions -- waiver of omitted action. (1) If
24 both a civil action for damages and a disciplinary action
25 are initiated under [this act] for the same occurrence, they

1 must be joined.

2 (2) Except when leave is granted for good cause by the
3 district court to amend the pleadings to include the omitted
4 action prior to judgment, the initiation of a claim either
5 for civil damages or disciplinary action under [this act]
6 constitutes a waiver of the omitted action for the same
7 occurrence and that omitted action may not be the basis of
8 any subsequent action.

9 NEW SECTION. Section 6. Damages. (1) Whenever it is
10 determined that there was a violation of a constitutional or
11 statutory right under [this act], a claimant may be awarded
12 reasonable compensation for:

- 13 (a) property damage;
- 14 (b) personal injury; and
- 15 (c) attorney fees and costs incurred in processing a
16 claim hereunder.

17 (2) The limitations on damages contained in 2-9-104
18 and 2-9-105 concerning suits against the state or any
19 political subdivision do not apply.

20 (3) The compensation provided for in this section
21 shall apply only to violations occurring on or after [the
22 effective date of this act].

23 NEW SECTION. Section 7. Jurisdiction. The district
24 court has jurisdiction over any action brought under [this
25 act]. Any district court judge who has passed upon the

1 sufficiency of any process involved in the search or seizure
 2 or who has been involved in the criminal trial of a person
 3 who brings a suit under [this act] is disqualified to sit
 4 and act on a cause of action under [this act] except to
 5 arrange the calendar, to transfer the action to another
 6 court, and to call in another judge to sit and act. Such
 7 actions are governed by the Montana rules of civil procedure
 8 and the Montana rules of evidence insofar as they are
 9 consistent with [this act].

10 NEW SECTION. Section 8. Venue. Civil actions brought
 11 against the state or any of its political subdivisions under
 12 [this act] shall be brought in Lewis and Clark County or the
 13 county where the alleged violation occurred.

14 NEW SECTION. Section 9. Statute of limitations. Each
 15 civil cause of action permitted under [this act] is forever
 16 barred unless an action is begun within 2 years after the
 17 violation occurs.

18 NEW SECTION. Section 10. Judgment -- obligation of
 19 state or political subdivision. A final judgment against the
 20 state or a political subdivision is an obligation of the
 21 state or the political subdivision and shall be paid in the
 22 same manner as any other claim against the state or
 23 political subdivision.

24 NEW SECTION. Section 11. Appeal -- bond not required
 25 of state or political subdivision. An appeal from final

1 judgment in the district court may be filed directly with
 2 the supreme court of Montana in the manner provided by law
 3 for appeals from the district court in civil cases, except
 4 that the state or political subdivision is not required to
 5 post a bond either on appeal or at any time during the
 6 litigation.

7 NEW SECTION. Section 12. Disciplinary action. (1) An
 8 action may be commenced in the district court to determine
 9 whether an employee or agent of the state or any of its
 10 political subdivisions has committed a violation of the
 11 fourth amendment to the United States constitution; Article
 12 II, section 10 or 11, of the Montana constitution; or the
 13 laws of Montana relating to search and seizure. An action
 14 against a nonelected employee or agent is a civil action
 15 subject to the rules of civil procedure.

16 (2) Except as provided in subsection (3), a nonelected
 17 employee or agent of the state or any of its political
 18 subdivisions who is determined by the district court to have
 19 violated the constitutional or statutory rights of a person
 20 under [this act] shall be suspended or dismissed from
 21 employment as follows:

22 (a) Upon the first occurrence, he shall be suspended
 23 without pay for 30 days.

24 (b) Upon the second occurrence, he shall be suspended
 25 without pay for 90 days.

1 (c) Upon the third occurrence, he shall be permanently
2 dismissed.

3 (3) No employee or agent of the state or any of its
4 political subdivisions may be suspended or dismissed if the
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6 in good faith and in the reasonable belief that his conduct
7 comported with existing law.

8 NEW SECTION. Section 13. No effect on causes of
9 action arising under the Montana Comprehensive State
10 Insurance Plan and Tort Claims Act. Nothing in [this act]
11 affects any cause of action arising under Title 2, chapter
12 9, parts 1 through 3, popularly known as the Montana
13 Comprehensive State Insurance Plan and Tort Claims Act.

14 NEW SECTION. Section 14. Criminal liability. Nothing
15 in [this act] affects the criminal liability of an employee
16 or agent of the state or any of its political subdivisions.

17 Section 15. Section 46-5-104, MCA, is amended to read:

18 "46-5-104. Admissibility in other proceedings.
19 Instruments, articles, or things lawfully seized are
20 admissible as evidence upon any prosecution or proceeding
21 whether or not the prosecution or proceeding is for the
22 offense in connection with which the search or seizure was
23 originally made."

24 Section 16. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 17. Repealer. Section 46-13-302, MCA, is
6 repealed.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 626

INTRODUCED BY *Keesee Bob Brown Lindstedt Dave Brown
Conroy Donaldson Mark John Anderson*

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE
"EXCLUSIONARY RULE"; PROVIDING A CIVIL REMEDY FOR VIOLATION
OF A PERSON'S CONSTITUTIONAL PRIVACY RIGHTS AND SEARCH AND
SEIZURE RIGHTS; REQUIRING SUSPENSION OR DISMISSAL FROM
EMPLOYMENT FOR A NONELECTED AGENT OF THE STATE OR A
POLITICAL SUBDIVISION THEREOF WHO WRONGFULLY VIOLATES A
PERSON'S CONSTITUTIONAL SEARCH AND SEIZURE RIGHTS; AMENDING
SECTION 46-5-104, MCA; REPEALING SECTION 46-13-302, MCA."

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

NEW SECTION. Section 1. Short title. [This act] may
be cited as the "Montana Civil Rights and Claims Act".

NEW SECTION. Section 2. Exclusive remedies. [This
act] provides the exclusive remedies in the state of Montana
for a violation of the rights of a person that are protected
by the fourth amendment to the United States constitution;
Article II, section 10 or 11, of the Montana constitution;
or the laws of Montana relating to search and seizure caused
or committed by an employee or agent of the state or any of
its political subdivisions.

NEW SECTION. Section 3. Cause of action --
admissibility of evidence. (1) Any person subject to search

or seizure has a cause of action for damages and
disciplinary action under [this act] if the search or
seizure is in violation of the fourth amendment to the
United States constitution; Article II, section 10 or 11,
the Montana constitution; or the laws of Montana relating to
search and seizure.

(2) Evidence seized in violation of the fourth
amendment to the United States constitution; Article II,
section 10 or 11, of the Montana constitution; or the laws
of Montana relating to search and seizure, if otherwise
admissible, may not be excluded from use in any criminal
proceeding because of such violation.

NEW SECTION. Section 4. Civil and disciplinary
liability. (1) Civil and disciplinary liability under [this
act] is based upon proof by a preponderance of the evidence
that there was a violation of the rights of a person that
are protected by the fourth amendment to the United States
constitution; Article II, section 10 or 11, of the Montana
constitution; or the laws of Montana relating to search and
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state or any of its political subdivisions.

(2) The governmental agency employing or controlling
an employee or agent of the state or any of its political
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employee or agent, for violations under [this act] whenever

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 2 agent while acting within the scope of his employment or
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2 INTRODUCED BY KEEDY, B. BROWN, NORDTVEOT, D. BROWN,
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE
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23 (2) The governmental agency employing or controlling
24 an employee or agent of the state or any of its political
25 subdivisions is EXCLUSIVELY liable--jointly--and--severally

1 ~~with--the--employee--or--agent~~ FOR DAMAGES IN A CIVIL ACTION
 2 AND NO CAUSE OF ACTION LIES AGAINST ITS EMPLOYEE OR AGENT
 3 for violations under [this act] whenever such violations are
 4 committed or caused by the employee or agent while acting
 5 within the scope of his employment or under color of law. It
 6 is not a defense that the act causing the violation was
 7 illegal.

8 ~~{3}--Civil--liability--under--[this-act]--is--exclusively~~
 9 ~~against--the--state--or--governmental--agency--and--not~~ NO CAUSE OF
 10 ACTION LIES ~~against--its--employee--or--agent--if--the--violation~~
 11 ~~of--constitutional--or--statutory--rights--was--committed--or~~
 12 ~~caused--in--good--faith--and--in--the--reasonable--belief--that--it~~
 13 ~~comported--with--existing--law~~

14 ~~{4}{3}~~ Whenever an employee or agent of the state or
 15 any of its political subdivisions causes or commits a
 16 violation under [this act] while acting outside the scope of
 17 his employment and not under color of law OR USES DECEPTION
 18 OR SUBTERFUGE IN SECURING A WARRANT, he is personally liable
 19 to the person whose rights were violated.

20 ~~{5}{4}~~ A ~~non~~ selected AN AGENT OR employee of the state
 21 or any of its subdivisions that causes or commits a
 22 violation under [this act] is subject to disciplinary action
 23 as provided in [section 12]. ~~An--action--against--an--elected~~
 24 ~~officer--or--official--is--a--criminal--action--for--official~~
 25 ~~misconduct--as--provided--for--in--45-7-104~~ 45-7-401

1 NEW SECTION. Section 5. Joinder of civil and
 2 disciplinary actions -- waiver of omitted action. (1) If
 3 both a civil action for damages and a disciplinary action
 4 are initiated under [this act] for the same occurrence, they
 5 must be joined.

6 (2) Except when leave is granted for good cause by the
 7 district court to amend the pleadings to include the omitted
 8 action prior to judgment, the initiation of a claim either
 9 for civil damages or disciplinary action under [this act]
 10 constitutes a waiver of the omitted action for the same
 11 occurrence and that omitted action may not be the basis of
 12 any subsequent action.

13 NEW SECTION. Section 6. Damages. (1) Whenever it is
 14 determined that there was a violation of a constitutional or
 15 statutory right under [this act], a claimant may be awarded
 16 reasonable compensation for:

- 17 (a) property damage;
- 18 (b) personal injury; and
- 19 (c) attorney fees and costs incurred in processing a
- 20 claim hereunder.

21 (2) The limitations on damages contained in ~~2-9-104~~
 22 2-9-104(1)(A) and 2-9-105 concerning suits against the state
 23 or any political subdivision do not apply.

24 (3) The compensation provided for in this section
 25 shall apply only to violations occurring on or after [the

1 effective date of this act).

2 NEW SECTION. Section 7. Jurisdiction. The district
3 court has jurisdiction over any action brought under [this
4 act]. Any district court judge who has passed upon the
5 sufficiency of any process involved in the search or seizure
6 or who has been involved in the criminal trial of a person
7 who brings a suit under [this act] is disqualified to sit
8 and act on a cause of action under [this act] except to
9 arrange the calendar, to transfer the action to another
10 court, and to call in another judge to sit and act. Such
11 actions are governed by the Montana rules of civil procedure
12 and the Montana rules of evidence insofar as they are
13 consistent with [this act].

14 NEW SECTION. Section 8. Venue. Civil actions brought
15 against the state or any of its political subdivisions under
16 [this act] shall be brought in Lewis and Clark County or the
17 county where the alleged violation occurred.

18 NEW SECTION. Section 9. Statute of limitations. Each
19 civil cause of action permitted under [this act] is forever
20 barred unless an action is begun within 2 years after the
21 violation occurs.

22 NEW SECTION. Section 10. Judgment -- obligation of
23 state or political subdivision. A final judgment against the
24 state or a political subdivision is an obligation of the
25 state or the political subdivision and shall be paid in the

1 same manner as any other claim against the state or
2 political subdivision.

3 NEW SECTION. Section 11. Appeal -- bond not required
4 of state or political subdivision. An appeal from final
5 judgment in the district court may be filed directly with
6 the supreme court of Montana in the manner provided by law
7 for appeals from the district court in civil cases, except
8 that the state or political subdivision is not required to
9 post a bond either on appeal or at any time during the
10 litigation.

11 NEW SECTION. Section 12. Disciplinary action. (1) An
12 action may be commenced in the district court to determine
13 whether an employee or agent of the state or any of its
14 political subdivisions has committed a violation of the
15 fourth amendment to the United States constitution; Article
16 II, section 10 or 11, of the Montana constitution; or the
17 laws of Montana relating to search and seizure. An action
18 against a ~~non~~ AN employee or agent is a civil action
19 subject to the rules of civil procedure.

20 (2) Except as provided in subsection (3), a ~~non~~ AN
21 employee or agent of the state or any of its political
22 subdivisions who is determined by the district court to have
23 violated the constitutional or statutory rights of a person
24 under [this act] shall be suspended or dismissed from
25 employment as follows:

1 (a) Upon the first occurrence, he shall be suspended
2 without pay for 30 days.

3 (b) Upon the second occurrence, he shall be suspended
4 without pay for 90 days.

5 (c) Upon the third occurrence, he shall be permanently
6 dismissed.

7 (3) No employee or agent of the state or any of its
8 political subdivisions may be suspended or dismissed if the
9 agent or employee causing or committing the violation acted
10 in good faith and in the reasonable belief that his conduct
11 comported with existing law. HOWEVER, IF IT IS DETERMINED
12 THAT AN EMPLOYEE OR AGENT OF THE STATE PURPOSELY OR
13 KNOWINGLY ACTED IN VIOLATION OF A PERSON'S CONSTITUTIONAL
14 RIGHTS HE SHALL BE PERMANENTLY DISMISSED NOTWITHSTANDING THE
15 PROVISIONS OF SUBSECTION (2).

16 (4) THE DISCIPLINARY ACTIONS PROVIDED FOR HEREIN ARE
17 IN ADDITION TO AND NOT IN LIMITATION OF THE EMPLOYING
18 AGENCY'S RIGHTS TO OTHERWISE DISCIPLINE.

19 NEW SECTION. Section 13. No effect on causes of
20 action arising under the Montana Comprehensive State
21 Insurance Plan and Tort Claims Act. Nothing in [this act]
22 affects any cause of action arising under Title 2, chapter
23 9, parts 1 through 3, popularly known as the Montana
24 Comprehensive State Insurance Plan and Tort Claims Act.

25 NEW SECTION. Section 14. Criminal liability. Nothing

1 in [this act] affects the criminal liability of an employee
2 or agent of the state or any of its political subdivisions.

3 Section 15. Section 46-5-104, MCA, is amended to read:
4 "46-5-104. Admissibility in other proceedings.
5 Instruments, articles, or things lawfully seized are
6 admissible as evidence upon any prosecution or proceeding
7 whether or not the prosecution or proceeding is for the
8 offense in connection with which the search or seizure was
9 originally made."

10 Section 16. ~~Severability~~ NONSEVERABILITY. If a part of
11 this act is invalid, all valid parts that are severable from
12 the ARE invalid part AND DO NOT remain in effect. ~~if a part~~
13 ~~of this act is invalid in one or more of its applications,~~
14 ~~the part remains in effect in all valid applications that~~
15 ~~are severable from the invalid applications.~~

16 Section 17. Repealer. Section 46-13-302, MCA, is
17 repealed.

-End-

March 17, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 626 be amended as follows:

1. Title, line 9.
Following: "FOR"
Strike: "A NONELECTED"
Insert: "AN"
2. Page 2, line 25 through line 1 on page 3.
Following: "is" on line 25
Insert: "exclusively"
Following: "liable" on line 25
Strike: remainder of line 25 through "agent," on line 1, page 3
Insert: "for damages in a civil action and no cause of action lies
against its employee or agent"
3. Page 3, lines 6 through 11.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
4. Page 3, line 15.
Following: "law"
Insert: "or uses deception or subterfuge in securing a warrant"
5. Page 3, line 17.
Following: "(5)"
Strike: "A nonelected"
Insert: "An agent or"
6. Page 3, lines 20 through 22.
Following: "." on line 20
Strike: remainder of line 20 through line 22 in their entirety
7. Page 4, line 18.
Following: "in"
Strike: "2-9-104"
Insert: "2-9-104(1)(a)"
8. Page 6, line 15.
Following: "against"
Strike: "a nonelected"
Insert: "an"
9. Page 6, line 17.
Following: ","
Strike: "a nonelected"
Insert: "an"
10. Page 7.
Following: line 8
Insert: "(4) The disciplinary actions provided for herein are
in addition to and not in limitation of the employing agency's
rights to otherwise discipline."

11. Page 7, line 25.
Following: "16."
Strike: "Severability"
Insert: "Nonseverability"

12. Page 8, line 1.
Following: "all"
Strike: "valid"
Following: "parts"
Strike: "that are severable from the"
Insert: "are"

13. Page 8, lines 2 through 5.
Following: line 1
Strike: "part"
Insert: "and do not"
Following: "." on line 2
Strike: remainder of line 2 through line 5 in their entirety

14. Page 7, line 8.
Following: "."
Insert: "However, if it is determined that an employee or agent of the state purposely or knowingly acted in violation of a person's constitutional rights he shall be permanently dismissed notwithstanding the provisions of subsection (2)."