

Senate Bill 224

In The Senate

January 21, 1981

Introduced and referred
to Committee on Judiciary.

April 23, 1981

Died in Committee.

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Senate BILL NO. *224*
Ryan Bob Brown

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A REMEDY UNDER STATE LAW 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; ARTICLE II, SECTIONS 10 AND 11, OF THE MONTANA CONSTITUTION; OR THE LAWS OF MONTANA RELATING TO SEARCH AND SEIZURE; AND TO PROVIDE STANDARDS FOR THE EXCLUSION OF EVIDENCE IN CRIMINAL PROSECUTIONS WHEN SEIZED IN VIOLATION OF SAID RIGHTS; TO PROVIDE FOR THE DISCIPLINE OF EMPLOYEES OR AGENTS OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS CAUSING VIOLATION OF SAID RIGHTS; TO CLARIFY THAT CRIMINAL LIABILITY IS NOT AFFECTED; TO AMEND SECTIONS 46-5-104 AND 46-13-302, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 16] may be cited as the "Montana Civil Rights and Claims Act".

NEW SECTION. Section 2. Exclusive remedies. [Sections 1 through 16] provide the exclusive remedies in the state of Montana for the violation of the rights of a person that are protected by the fourth amendment of the United States

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constitution or Article II, section 10 or 11, of the Montana constitution or the laws of Montana relating to search and seizure caused or committed in violation of the constitutional or statutory rights of another by an employee or agent of the state or any of its political subdivisions.

NEW SECTION. Section 3. Cause of action for damages -- admissibility of evidence. (1) Any person subject to search or seizure has a cause of action for damages under [sections 1 through 16] if the search or seizure is in violation of the fourth amendment of the United States constitution or Article II, section 10 or 11, of the Montana constitution or the laws of Montana relating to search and seizure against any agent or employee of the state or any of its political subdivisions who knowingly or through gross negligence causes or commits a violation of the constitutional or statutory rights of another and who was not then acting for the immediate preservation of human life.

(2) Persons, papers, homes, effects, or other things searched or seized in violation of the fourth amendment of the United States constitution or 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 except as provided in 45-13-302.

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1 NEW SECTION. Section 4. Civil liability. (1) Civil
 2 liability under [sections 1 through 16] is based upon proof
 3 by a preponderance of the evidence that there was a
 4 violation of the rights of a person that are protected by
 5 the fourth amendment of the United States constitution or
 6 Article II, section 10 or 11, of the Montana constitution or
 7 the laws of Montana relating to search and seizure,
 8 knowingly or through gross negligence, committed or caused
 9 by an employee or agent of the state or any of its
 10 political subdivisions who was not then acting for the
 11 immediate preservation of human life.

12 (2) The governmental agency employing or controlling
 13 an employee or agent of the state or any of its political
 14 subdivisions is liable for violations under [sections 1
 15 through 16] whenever such violations are committed or caused
 16 by the employee or agent while acting within the scope of
 17 his employment or under color of law. It is not a defense
 18 that the act causing the violation was illegal.

19 (3) Whenever an employee or agent of the state or any
 20 of its political subdivisions causes or commits a violation
 21 under [sections 1 through 16] while acting outside the scope
 22 of his employment and not under color of law, he is
 23 personally liable to the person whose rights were violated.

24 NEW SECTION. Section 5. Damages. (1) Whenever it is
 25 determined that there was a violation of a constitutional or

1 statutory right, a claimant may be awarded reasonable
 2 compensation for:

- 3 (a) property damage;
- 4 (b) personal damage;
- 5 (c) attorney fees; and
- 6 (d) costs.

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

10 NEW SECTION. Section 6. Waiver of sovereign immunity.
 11 The state, counties, cities, towns, and all other local
 12 governmental entities have no immunity from suit for a cause
 13 of action under [sections 1 through 16].

14 NEW SECTION. Section 7. Jurisdiction. The district
 15 court has jurisdiction over any action brought under
 16 [sections 1 through 16]; provided, however, that any
 17 district court judge who has passed upon the sufficiency of
 18 any process involved in the search or seizure or who has
 19 been involved in the criminal trial of a person who brings a
 20 suit under [sections 1 through 16] is disqualified to sit
 21 and act on a cause of action under [sections 1 through 16]
 22 except to arrange the calendar, to transfer the action to
 23 another court, or to call in another judge to sit and act.
 24 Such actions are governed by the Montana Rules of Civil
 25 Procedure and the Montana Rules of Evidence insofar as they

1 are consistent with [sections 1 through 16].

2 NEW SECTION. Section 8. Venue. Civil actions brought
3 against the state or any of its political subdivisions under
4 [sections 1 through 16] must be brought in Lewis and Clark
5 County or the county where the violation occurred.

6 NEW SECTION. Section 9. Statute of limitations. Each
7 civil cause of action permitted under [sections 1 through
8 16] is forever barred unless an action is begun within 2
9 years after the violation occurs.

10 NEW SECTION. Section 10. Judgment as obligation of
11 state or political subdivision. A final judgment against the
12 state or a political subdivision is an obligation of the
13 state or the political subdivision and must be paid in the
14 same manner as any other claim against the state or
15 political subdivision.

16 NEW SECTION. Section 11. Appeal -- bond not required
17 of state or political subdivision. The right of appeal from
18 final judgment in the district court must be filed directly
19 with the supreme court of Montana in the manner provided by
20 law for appeals from the district court in civil cases,
21 except that the state or political subdivision is not
22 required to post a bond either on appeal or at any time
23 during the litigation.

24 NEW SECTION. Section 12. Disciplinary action. (1) An
25 employee or agent of the state or any of its political

1 subdivisions who was not then acting for the immediate
2 preservation of human life and is determined by the district
3 court to have knowingly through gross negligence violated
4 the constitutional or statutory rights of a person shall be
5 suspended or dismissed as follows:

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

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

10 (c) Upon the third occurrence, he shall be suspended
11 for 6 months.

12 (2) No employee or agent of the state or any of its
13 political subdivisions may be suspended or dismissed if the
14 agent or employee committing or causing the violation acted
15 in good faith and believed his conduct comported with
16 existing law and he had reasonable grounds for this belief.

17 NEW SECTION. Section 13. No effect on causes of
18 action arising under the Montana Comprehensive State
19 Insurance Plan and Tort Claims Act. Nothing in [sections 1
20 through 16] affects any cause of action arising under Title
21 2, chapter 9, parts 1 through 3, known as the "Montana
22 Comprehensive State Insurance Plan and Tort Claims Act".

23 NEW SECTION. Section 14. Criminal liability. Nothing
24 in [sections 1 through 16] affects the criminal liability of
25 an employee or agent of the state or any of its political

1 subdivisions.

2 Section 15. Section 46-5-104, MCA, is amended to read:
 3 "46-5-104. Admissibility in other proceedings.
 4 Instruments, articles, or things lawfully seized are
 5 admissible as evidence upon any prosecution or proceeding
 6 whether or not the prosecution or proceeding is for the
 7 offense in connection with which the search or seizure was
 8 originally made except as provided in 43-13-302."

9 Section 16. Section 46-13-302, MCA, is amended to
 10 read:

11 "46-13-302. Motion to suppress evidence illegally
 12 seized. (1) A defendant aggrieved by an unlawful search and
 13 or seizure made in violation of the fourth amendment of the
 14 constitution of the United States; Article II, section 10 or
 15 11 of the Montana constitution; or the laws of Montana
 16 relating to search and seizure may move the court to
 17 suppress as evidence anything so obtained. The motion shall
 18 be in writing and state facts showing wherein the search and
 19 or seizure were unlawful was a violation of constitutional
 20 or statutory rights.

21 (2) The motion shall be made before trial unless for
 22 good cause shown the court shall otherwise direct.

23 (3) The defendant shall give at least 10 days' notice
 24 of such motion to the attorney prosecuting or such other
 25 time as the court may direct. The defendant shall serve a

1 copy of the notice and motion upon the attorney prosecuting.
 2 ~~(4) If the allegations of the motion state facts which~~
 3 ~~if true show that the search and seizure were unlawful, the~~
 4 ~~court shall conduct a hearing into the merits of the motion.~~
 5 ~~The burden of proving that the search and seizure were~~
 6 ~~unlawful shall be on the defendant.~~

7 (5)(4) The court shall conduct a hearing into the
 8 merits of the motion. If the motion is granted, the evidence
 9 shall not be admissible against the movant at any trial of
 10 the case. The court may not exclude such evidence unless the
 11 violation was knowingly or through gross negligence caused
 12 or committed and the employee or agent of the state or any
 13 of its political subdivisions not then acting for the
 14 immediate preservation of human life and was an
 15 unconscionable violation of the constitutional or statutory
 16 rights protected by the fourth amendment of the United
 17 States constitution or Article II, section 10 or 11, of the
 18 Montana constitution or the laws of Montana relating to
 19 search and seizure."

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