

HOUSE BILL NO. 382

Introduced: 01/19/83

Referred to Committee on Judiciary: 01/19/83

Hearing 2/8/83

Died in Committee

1 House BILL NO. 382
2 INTRODUCED BY Hannah Fager - Curtiss Bob Brown
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE
5 EXCLUSIONARY RULE; PROVIDING A CIVIL REMEDY FOR VIOLATION OF
6 A PERSON'S CONSTITUTIONAL PRIVACY RIGHTS OR SEARCH AND
7 SEIZURE RIGHTS; REQUIRING SUSPENSION OR DISMISSAL FROM
8 EMPLOYMENT OF AN AGENT OF THE STATE OR A POLITICAL
9 SUBDIVISION THEREOF WHO WRONGFULLY VIOLATES A PERSON'S
10 CONSTITUTIONAL PRIVACY RIGHTS OR SEARCH AND SEIZURE RIGHTS;
11 AMENDING SECTIONS 20-25-513 AND 46-5-104, MCA; AND REPEALING
12 SECTION 46-13-302, MCA."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 NEW SECTION. Section 1. Short title. [Sections 1
16 through 14] may be cited as the "Montana Civil Rights and
17 Claims Act".
18 NEW SECTION. Section 2. Exclusive remedies. [Sections
19 1 through 14] provide the exclusive remedies in the state of
20 Montana for a violation of the rights of a person that are
21 protected by the fourth amendment to the United States
22 constitution; Article II, section 10 or 11, of the Montana
23 constitution; or the laws of Montana relating to search and
24 seizure caused or committed by an employee or agent of the
25 state or any of its political subdivisions.

1 NEW SECTION. Section 3. Cause of action --
2 admissibility of evidence. (1) Any person subject to search
3 or seizure has a cause of action for damages and
4 disciplinary action under [sections 1 through 14] if the
5 search or seizure is in violation of the fourth amendment to
6 the United States constitution; Article II, section 10 or
7 11, of the Montana constitution; or the laws of Montana
8 relating to search and seizure.
9 (2) Evidence seized in violation of the fourth
10 amendment to the United States constitution; Article II,
11 section 10 or 11, of the Montana constitution; or the laws
12 of Montana relating to search and seizure, if otherwise
13 admissible, may not be excluded from use in any criminal
14 proceeding because of such violation.
15 NEW SECTION. Section 4. Civil and disciplinary
16 liability. (1) Civil and disciplinary liability under
17 [sections 1 through 14] is based upon proof by a
18 preponderance of the evidence that there was a violation of
19 the rights of a person that are protected by the fourth
20 amendment to the United States constitution; Article II,
21 section 10 or 11, of the Montana constitution; or the laws
22 of Montana relating to search and seizure, committed or
23 caused by an employee or agent of the state or any of its
24 political subdivisions.
25 (2) The governmental agency employing or controlling

1 an employee or agent of the state or any of its political
 2 subdivisions is exclusively liable for damages in a civil
 3 action; and no cause of action for damages, fees, or costs
 4 lies against its employee or agent for violations under
 5 [sections 1 through 14] if such violations are committed or
 6 caused by the employee or agent while acting within the
 7 scope of his employment or under color of law. It is not a
 8 defense that the act causing the violation was illegal.

9 (3) If an employee or agent of the state or any of its
 10 political subdivisions causes or commits a violation under
 11 [sections 1 through 14] while acting outside the scope of
 12 his employment and not under color of law or uses deception
 13 or subterfuge in securing a warrant, he is personally liable
 14 to the person whose rights were violated.

15 (4) An agent or employee of the state or any of its
 16 subdivisions who causes or commits a violation under
 17 [sections 1 through 14] is subject to disciplinary action as
 18 provided in [section 12].

19 NEW SECTION. Section 5. Joinder of civil and
 20 disciplinary actions — waiver of omitted action. (1) If
 21 both a civil action for damages and a disciplinary action
 22 are initiated under [sections 1 through 14] for the same
 23 occurrence, they must be joined.

24 (2) Except when leave is granted for good cause by the
 25 district court to amend the pleadings to include the omitted

1 action prior to judgment, the initiation of a claim either
 2 for civil damages or disciplinary action under [sections 1
 3 through 14] constitutes a waiver of the omitted action for
 4 the same occurrence and that omitted action may not be the
 5 basis of any subsequent action.

6 NEW SECTION. Section 6. Damages. (1) If it is
 7 determined that there was a violation of a constitutional or
 8 statutory right under [sections 1 through 14], a claimant
 9 may be awarded reasonable compensation for:

10 (a) property damage;
 11 (b) personal injury; and
 12 (c) attorney fees and costs incurred in processing a
 13 claim hereunder.

14 (2) The limitations on damages contained in
 15 2-9-104(1)(a) and 2-9-105 concerning suits against the state
 16 or any political subdivision do not apply.

17 (3) The compensation provided for in this section
 18 applies only to violations occurring on or after October 1,
 19 1983.

20 NEW SECTION. Section 7. Jurisdiction. The district
 21 court has jurisdiction over any action, whether for damages
 22 or personal discipline, brought under [sections 1 through
 23 14]. Any district court judge who has passed upon the
 24 sufficiency of any process involved in the search or seizure
 25 or who has been involved in criminal proceedings against a

1 person who brings a suit under [sections 1 through 14] is
 2 disqualified to sit and act on a cause of action under
 3 [sections 1 through 14] except to arrange the calendar, to
 4 transfer the action to another court, or to call in another
 5 judge to sit and act. Such actions are governed by the
 6 Montana rules of civil procedure and the Montana rules of
 7 evidence insofar as they are consistent with [sections 1
 8 through 14].

9 NEW SECTION. Section 8. Venue. Civil actions brought
 10 against the state or any of its political subdivisions under
 11 [sections 1 through 14] shall be brought in Lewis and Clark
 12 County or the county where the alleged violation occurred.

13 NEW SECTION. Section 9. Statute of limitations. Each
 14 civil cause of action permitted under [sections 1 through
 15 14] is forever barred unless an action is begun within 2
 16 years after the violation occurs.

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

23 NEW SECTION. Section 11. Appeal — bond not required
 24 of state or political subdivision. An appeal from final
 25 judgment in the district court may be filed directly with

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

6 NEW SECTION. Section 12. Disciplinary action. (1)
 7 Except as provided in subsection (2), an employee or agent
 8 of the state or any of its political subdivisions who is
 9 determined by the district court to have violated the
 10 constitutional or statutory rights of a person under
 11 [sections 1 through 14] shall be suspended or dismissed from
 12 employment as follows:

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

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

17 (c) Upon the third occurrence, he shall be permanently
 18 dismissed.

19 (2) No employee or agent of the state or any of its
 20 political subdivisions may be suspended or dismissed if the
 21 agent or employee causing or committing the violation proves
 22 by a preponderance of the evidence that he acted in good
 23 faith and in the reasonable belief that his conduct
 24 comported with existing law. However, if it is determined
 25 that an employee or agent of the state purposely or

1 knowingly acted in violation of a person's constitutional
2 rights, he shall be permanently dismissed regardless of
3 whether the act constitutes the first, second, or later
4 occurrence.

5 (3) The disciplinary actions provided for herein are
6 in addition to and not in limitation of the employing
7 agency's rights to take other disciplinary action.

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 [sections 1
11 through 14] affects any cause of action arising under Title
12 2, chapter 9, parts 1 through 3, popularly known as the
13 Montana Comprehensive State Insurance Plan and Tort Claims
14 Act.

15 NEW SECTION. Section 14. Criminal liability. Nothing
16 in [sections 1 through 14] affects the criminal liability of
17 an employee or agent of the state or any of its political
18 subdivisions.

19 Section 15. Section 20-25-513, MCA, is amended to
20 read:

21 "20-25-513. Written notice required for entry to
22 student's room — emergency. An authorized official of the
23 university or college may not enter the room of a student
24 located at such institution unless he has given the student
25 a notice in writing. An emergency such as a fire or a call

1 for help or where there is probable cause to believe the
2 occupant needs assistance is the only exception to the
3 written notice requirement. In such an emergency, evidence
4 of crime obtained as a result of such emergency entry shall
5 not ~~must~~ be ~~admissible in any court of law unless obtained~~
6 in accordance with due process of law ~~has been satisfied in~~
7 ~~obtaining such evidence."~~

8 Section 16. Section 46-5-104, MCA, is amended to read:
9 "46-5-104. Admissibility in other proceedings.
10 Instruments, articles, or things lawfully seized are
11 admissible as evidence upon any prosecution or proceeding
12 whether or not the prosecution or proceeding is for the
13 offense in connection with which the search or seizure was
14 originally made."

15 NEW SECTION. Section 17. Nonseverability. If a part
16 of this act is invalid, all parts are invalid and do not
17 remain in effect.

18 NEW SECTION. Section 18. Repealer. Section 46-13-302,
19 MCA, is repealed.

-End-