

SENATE BILL NO. 465

INTRODUCED BY SENATE JUDICIARY COMMITTEE,
TURNAGE, CHAIRMAN; TOWE

IN THE SENATE

April 14, 1983

On motion rules suspended and
SB 465 accepted and referred
to proper committee.

Introduced and referred to
Committee on Judiciary.

April 15, 1983

Committee recommend bill do
pass. Report adopted.

On motion rules suspended to
consider SB 465 on second and
third reading this day.

Second reading, do pass as
amended.

Third reading, passed. Ayes,
44; Noes, 3. Transmitted to
House.

IN THE HOUSE

April 18, 1983

On motion of April 16, 1983,
rules suspended to allow House
to act upon SB 465.

Introduced and referred to
Committee on Judiciary.

April 19, 1983

Committee recommend bill be
concurrent in as amended.
Report adopted.

April 20, 1983

Second reading, concurred in
as amended.

April 21, 1983

Third reading, concurred in.
Ayes, 91; Noes, 5.

IN THE SENATE

April 21, 1983

On motion Joint Rules
suspended to accept House
amendments.

Returned to Senate with
amendments.

Second reading, amendments
concurred in.

Third reading, amendments
concurred in. Ayes, 50;
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *465*
2 INTRODUCED BY *Senate Judiciary Committee*
3 *Turnage Chairman*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE LIMITS OF
5 RECOVERY IN TORT SUITS AGAINST THE STATE AND LOCAL
6 GOVERNMENTS; AMENDING SECTION 2-9-101, MCA; REPEALING
7 SECTION 2-9-104, MCA; PROVIDING FOR RETROACTIVE
8 APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 WHEREAS, on April 8, 1983, the Montana Supreme Court,
11 in the case of Karla White v. State of Montana, Cause No.
12 82-170, held the limitations contained in section 2-9-104,
13 MCA, on economic and noneconomic damages in tort actions
14 against governmental entities to be an unconstitutional
15 violation of the guarantee of equal protection of the laws;
16 and

17 WHEREAS, Article II, section 18, of the Montana
18 Constitution allows the Legislature to provide by law for
19 immunity from suit for the State and other governmental
20 entities; and

21 WHEREAS, the limitations on liability and damages
22 contained in Title 2, chapter 9, parts 1 through 3, MCA, as
23 amended by this act, are compelled by the interests of all
24 governmental entities in funding all governmental services
25 or in making conscious and deliberate decisions not to fund

1 those services.

2 THEREFORE, it is the intent of the Legislature to make
3 legislative findings of necessity for those limitations on
4 liability and damages contained in Title 2, chapter 9, parts
5 1 through 3, MCA, and to reinstate limited immunity for the
6 State and other governmental entities in a manner consistent
7 with the decision of the Montana Supreme Court in Karla
8 White v. State of Montana.

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

11 NEW SECTION. Section 1. Legislative findings. The
12 legislature finds that there are many functions and services
13 both governmental and proprietary in nature traditionally
14 offered by the state and other governmental entities which,
15 because of the size of government operations and the
16 inherent nature of certain functions and services, entail a
17 potential for civil liability for tortious conduct far
18 beyond the potential for liability of corporations and other
19 persons in the private sector. Despite this potential for
20 liability unparalleled in the private sector, the
21 legislature finds that these functions of government are
22 necessary components of modern life and that, despite
23 limited resources and competition for those resources
24 between necessary programs and entities, all functions and
25 services both governmental and proprietary in nature are

1 deserving of conscious and deliberate continuation or
 2 retirement by the people through their elected
 3 representatives. The legislature further finds that
 4 liability for damages resulting from tortious conduct by a
 5 government or its employees is more than a cost of doing
 6 business and has an effect upon government far beyond a
 7 simple reduction in governmental revenues. Unlimited
 8 liability would, because of the requirement for a balanced
 9 state budget contained in Article VIII, section 9, of the
 10 Montana constitution and because bankruptcy is a remedy
 11 unavailable to the state and most other governmental
 12 entities, result initially in increased taxes to pay
 13 judgments for damages and would eventually have the effect
 14 of reallocating state resources to a degree that would
 15 result in involuntary choices between critical state and
 16 local programs. The legislature finds these potential
 17 results of unlimited liability for tort damages to be
 18 unacceptable and further finds that, given the realities of
 19 modern government and the litigiousness of our society,
 20 there is no practical way of completely preventing tortious
 21 injury by and tort damages against the state and other
 22 governmental entities. The legislature therefore expressly
 23 finds that forced reduction in critical governmental
 24 services that could result from unlimited liability of the
 25 state and other governmental entities for damages resulting

1 from tortious conduct of those governments and their
 2 employees constitutes a compelling state interest requiring
 3 the application of the limitations on liability and damages
 4 provided in parts 1 through 3 of this chapter.

5 NEW SECTION. Section 2. Limitation on governmental
 6 liability for damages in tort. (1) Neither the state, a
 7 county, municipality, taxing district, nor any other
 8 political subdivision of the state is liable in tort action
 9 for damages suffered as a result of an act or omission of an
 10 officer, agent, or employee of that entity in excess of
 11 \$300,000 for each claimant and \$1 million for each
 12 occurrence.

13 (2) No insurer is liable for excess damages unless
 14 such insurer specifically agrees by written endorsement to
 15 provide coverage to the governmental agency involved in
 16 amounts in excess of a limitation stated in this section, in
 17 which case the insurer may not claim the benefits of the
 18 limitation specifically waived.

19 Section 3. Section 2-9-101, MCA, is amended to read:
 20 "2-9-101. Definitions. (1) As used in parts 1 through
 21 3 of this chapter, the following definitions apply:

22 (1) "Claim" means any claim against a governmental
 23 entity, for money damages only, which any person is legally
 24 entitled to recover as damages because of personal injury or
 25 property damage caused by a negligent or wrongful act or

omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state.

(b)(12) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(c)(13) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(d)(14) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(e)(15) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or

public corporation.

(f)(16) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(g)(17) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

~~(2) As used in 2-9-104, the following definitions apply:~~

~~(a) "Economic damages" means tangible pecuniary losses~~

~~(b) "Noneconomic damages" means those damages not included in economic, punitive or exemplary damages including without limitation damages for pain and suffering, loss of consortium, mental distress, and loss of reputation"~~

NEW SECTION. Section 4. Repealer. Section 2-9-104, MCA, is repealed.

NEW SECTION. Section 5. Codification instruction. Sections 1 and 2 are intended to be codified as an integral part of Title 2, chapter 9, parts 1 through 3, and the provisions of Title 2, chapter 9, parts 1 through 3, apply to sections 1 and 2.

NEW SECTION. Section 6. Severability. If a part of

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

6 NEW SECTION. Section 7. Applicability. This act
7 applies retroactively, within the meaning of 1-2-109, to all
8 claims, lawsuits, and causes of action arising after July 1,
9 1977.

10 NEW SECTION. Section 8. Effective date. This act is
11 effective on passage and approval.

-End-

SENATE BILL NO. 465

INTRODUCED BY SENATE JUDICIARY COMMITTEE,

TURNAGE, CHAIRMAN; TOME

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE LIMITS OF RECOVERY IN TORT SUITS AGAINST THE STATE AND LOCAL GOVERNMENTS; AMENDING SECTION 2-9-101, MCA; REPEALING SECTION 2-9-104, MCA; PROVIDING FOR RETROACTIVE APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, on April 8, 1983, the Montana Supreme Court, in the case of Karla White v. State of Montana, Cause No. 82-170, held the limitations contained in section 2-9-104, MCA, on economic and noneconomic damages in tort actions against governmental entities to be an unconstitutional violation of the guarantee of equal protection of the laws; and

WHEREAS, THE OBLIGATIONS IMPOSED UPON GOVERNMENTAL ENTITIES MUST BE PERFORMED, EVEN THOUGH THE RISKS INHERENT IN PERFORMING ABSOLUTE OBLIGATIONS ARE GREAT; AND

WHEREAS, THE RESPONSIBILITY FOR CONFINING, HOUSING, AND REHABILITATION OF PERSONS CONVICTED OF CRIMINAL ACTIVITY; THE TREATMENT AND SUPERVISION OF MENTAL PATIENTS AT GOVERNMENT INSTITUTIONS OR UNDER GOVERNMENT PROGRAMS; THE PLANNING, CONSTRUCTION, AND MAINTENANCE OF THOUSANDS OF

MILES OF HIGHWAYS; THE OPERATION OF MUNICIPAL TRANSPORTATION SYSTEMS AND AIRPORT TERMINALS; AND THE OPERATION AND MAINTENANCE OF SCHOOLS, PLAYGROUNDS, AND ATHLETIC FACILITIES ARE ONLY A FEW OF THOSE OBLIGATIONS; AND

WHEREAS, PRIOR TO THE ADOPTION IN 1977 OF THE LIMITATIONS ON DAMAGES DECLARED UNCONSTITUTIONAL, LIABILITY INSURANCE HAD BECOME INCREASINGLY EXPENSIVE AND UNAVAILABLE TO UNITS OF LOCAL GOVERNMENT; AND

WHEREAS, THE AMOUNT OF DAMAGES AGAINST THE STATE REQUESTED IN ADMINISTRATIVE CLAIMS, PRAYED FOR IN SOME LEGAL ACTIONS AND ESTIMATED TO BE PAYABLE IN OTHER LEGAL ACTIONS, FAR EXCEED EXISTING LOSS RESERVES AND ANTICIPATED REVENUES OF THE STATE'S SELF-INSURANCE RESERVE FUND; AND

WHEREAS, AN INVESTIGATION OF THE LIMITATIONS ON DAMAGES IMPOSED BY OTHER STATES IN LEGAL ACTIONS AGAINST THOSE STATES AND COMPARISON OF THESE LIMITATIONS SHOW THE LIMITATIONS IMPOSED BY THIS ACT TO BE HIGHLY REASONABLE; AND

WHEREAS, Article II, section 18, of the Montana Constitution allows the Legislature to provide by law for immunity from suit for the State and other governmental entities; and

WHEREAS, the limitations on liability and damages contained in Title 2, chapter 9, parts 1 through 3, MCA, as amended by this act, are compelled by the interests of all governmental entities in funding all governmental services

1 or in making conscious and deliberate decisions not to fund
2 those services.

3 THEREFORE, it is the intent of the Legislature to make
4 legislative findings of necessity for those limitations on
5 liability and damages contained in Title 2, chapter 9, parts
6 1 through 3, MCA, and to reinstate limited immunity for the
7 State and other governmental entities in a manner consistent
8 with the decision of the Montana Supreme Court in Karla
9 White v. State of Montana.

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

12 NEW SECTION. Section 1. Legislative findings. (1) THE
13 LEGISLATURE RECOGNIZES AND REAFFIRMS THE REPORT OF THE
14 SUBCOMMITTEE ON JUDICIARY, CONTAINED IN THE INTERIM STUDY ON
15 LIMITATIONS ON THE WAIVER OF SOVEREIGN IMMUNITY (DECEMBER
16 1976), THAT UNLIMITED LIABILITY OF THE STATE AND LOCAL
17 GOVERNMENTS FOR CIVIL DAMAGES MAKES IT INCREASINGLY
18 DIFFICULT IF NOT IMPOSSIBLE FOR GOVERNMENTS TO PURCHASE
19 ADEQUATE INSURANCE COVERAGE AT REASONABLE COSTS.

20 (2) THE LEGISLATURE FINDS THAT THE OBLIGATIONS IMPOSED
21 UPON GOVERNMENTAL ENTITIES MUST BE PERFORMED, EVEN THOUGH
22 THE RISKS INHERENT IN PERFORMING ABSOLUTE OBLIGATIONS ARE
23 GREAT. THE RESPONSIBILITY FOR CONFINING, HOUSING, AND
24 REHABILITATION OF PERSONS CONVICTED OF CRIMINAL ACTIVITY;
25 THE TREATMENT AND SUPERVISION OF MENTAL PATIENTS AT

1 GOVERNMENT INSTITUTIONS OR UNDER GOVERNMENT PROGRAMS; THE
2 PLANNING, CONSTRUCTION, AND MAINTENANCE OF THOUSANDS OF
3 MILES OF HIGHWAYS; THE OPERATION OF MUNICIPAL TRANSPORTATION
4 SYSTEMS AND AIRPORT TERMINALS; AND THE OPERATION AND
5 MAINTENANCE OF SCHOOLS, PLAYGROUNDS, AND ATHLETIC FACILITIES
6 ARE ONLY A FEW OF THOSE OBLIGATIONS.

7 (1) The legislature finds that there are many
8 functions and services both governmental and proprietary in
9 nature traditionally offered by the state and other
10 governmental entities which, because of the size of
11 government operations and the inherent nature of certain
12 functions and services, entail a potential for civil
13 liability for tortious conduct far beyond the potential for
14 liability of corporations and other persons in the private
15 sector. Despite this potential for liability unparalleled
16 in the private sector, the legislature finds that these
17 functions of government are necessary components of modern
18 life and that, despite limited resources and competition for
19 those resources between necessary programs and entities, all
20 functions and services both governmental and proprietary in
21 nature are deserving of conscious and deliberate
22 continuation or retirement by the people through their
23 elected representatives. The legislature further finds that
24 liability for damages resulting from tortious conduct by a
25 government or its employees is more than a cost of doing

business and has an effect upon government far beyond a simple reduction in governmental revenues. Unlimited liability would, because of the requirement for a balanced state budget contained in Article VIII, section 9, of the Montana constitution and because bankruptcy is a remedy unavailable to the state and most other governmental entities, result initially in increased taxes to pay judgments for damages and would eventually have the effect of reallocating state resources to a degree that would result in involuntary choices between critical state and local programs. The legislature finds these potential results of unlimited liability for tort damages to be unacceptable and further finds that, given the realities of modern government and the litigiousness of our society, there is no practical way of completely preventing tortious injury by and tort damages against the state and other governmental entities. The legislature therefore expressly finds that forced reduction in critical governmental services that could result from unlimited liability of the state and other governmental entities for damages resulting from tortious conduct of those governments and their employees constitutes a compelling state interest requiring the application of the limitations on liability and damages provided in parts 1 through 3 of this chapter.

NEW SECTION. Section 2. Limitation on governmental

liability for damages in tort. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$300,000 for each claimant and \$1 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

Section 3. Section 2-9-101, MCA, is amended to read:

"2-9-101. Definitions. ~~††~~ As used in parts 1 through 3 of this chapter, the following definitions apply:

~~††~~ "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state.

(b)(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(c)(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(d)(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(e)(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(f)(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(g)(7) "State" means the state of Montana or any

office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

(2) As used in 2-9-104, the following definitions apply:

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1 NEW SECTION. Section 7. Applicability. This act
2 applies retroactively, within the meaning of 1-2-109, to all
3 claims, lawsuits, and causes of action arising after July 1,
4 1977.

5 NEW SECTION. Section 8. Effective date. This act is
6 effective on passage and approval.

-End-

HOUSE JUDICIARY COMMITTEE AMENDMENTS TO SENATE BILL 465, THIRD READING
COPY (BLUE)

APRIL 19, 1983

1) Page 6, line 6
Strike: "\$300,000"
Insert: "\$1 million"
Following: "and"
Strike: "\$1"
Insert: "\$3"

ADOPT

REJECT

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WHEREAS, THE OBLIGATIONS IMPOSED UPON GOVERNMENTAL ENTITIES MUST BE PERFORMED, EVEN THOUGH THE RISKS INHERENT IN PERFORMING ABSOLUTE OBLIGATIONS ARE GREAT; AND

WHEREAS, THE RESPONSIBILITY FOR CONFINING, HOUSING, AND REHABILITATION OF PERSONS CONVICTED OF CRIMINAL ACTIVITY; THE TREATMENT AND SUPERVISION OF MENTAL PATIENTS AT GOVERNMENT INSTITUTIONS OR UNDER GOVERNMENT PROGRAMS; THE

PLANNING, CONSTRUCTION, AND MAINTENANCE OF THOUSANDS OF MILES OF HIGHWAYS; THE OPERATION OF MUNICIPAL TRANSPORTATION SYSTEMS AND AIRPORT TERMINALS; AND THE OPERATION AND MAINTENANCE OF SCHOOLS, PLAYGROUNDS, AND ATHLETIC FACILITIES ARE ONLY A FEW OF THOSE OBLIGATIONS; AND

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WHEREAS, THE AMOUNT OF DAMAGES AGAINST THE STATE REQUESTED IN ADMINISTRATIVE CLAIMS, PRAYED FOR IN SOME LEGAL ACTIONS AND ESTIMATED TO BE PAYABLE IN OTHER LEGAL ACTIONS, FAR EXCEED EXISTING LOSS RESERVES AND ANTICIPATED REVENUES OF THE STATE'S SELF-INSURANCE RESERVE FUND; AND

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governmental entities in funding all governmental services or in making conscious and deliberate decisions not to fund those services.

THEREFORE, it is the intent of the Legislature to make legislative findings of necessity for those limitations on liability and damages contained in Title 2, chapter 9, parts 1 through 3, MCA, and to reinstate limited immunity for the State and other governmental entities in a manner consistent with the decision of the Montana Supreme Court in Karla White v. State of Montana.

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 2 liability for damages in tort. (1) Neither the state, a
 3 county, municipality, taxing district, nor any other
 4 political subdivision of the state is liable in tort action
 5 for damages suffered as a result of an act or omission of an
 6 officer, agent, or employee of that entity in excess of
 7 ~~\$300,000~~ ~~\$1-MILLION~~ \$300,000 for each claimant and ~~\$1 \$2~~ \$1
 8 million for each occurrence.

9 (2) No insurer is liable for excess damages unless
 10 such insurer specifically agrees by written endorsement to
 11 provide coverage to the governmental agency involved in
 12 amounts in excess of a limitation stated in this section, in
 13 which case the insurer may not claim the benefits of the
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 22 omission committed by any employee of the governmental
 23 entity while acting within the scope of his employment,
 24 under circumstances where the governmental entity, if a
 25 private person, would be liable to the claimant for such

1 damages under the laws of the state.

2 (b)(2) "Employee" means an officer, employee, or
3 servant of a governmental entity, including elected or
4 appointed officials, and persons acting on behalf of the
5 governmental entity in any official capacity temporarily or
6 permanently in the service of the governmental entity
7 whether with or without compensation, but the term employee
8 shall not mean a person or other legal entity while acting
9 in the capacity of an independent contractor under contract
10 to the governmental entity to which parts 1 through 3 apply
11 in the event of a claim.

12 (c)(3) "Governmental entity" means and includes the
13 state and political subdivisions as herein defined.

14 (d)(4) "Personal injury" means any injury resulting
15 from libel, slander, malicious prosecution, or false arrest,
16 any bodily injury, sickness, disease, or death sustained by
17 any person and caused by an occurrence for which the state
18 may be held liable.

19 (e)(5) "Political subdivision" means any county, city,
20 municipal corporation, school district, special improvement
21 or taxing district, or any other political subdivision or
22 public corporation.

23 (f)(6) "Property damage" means injury or destruction
24 to tangible property, including loss of use thereof, caused
25 by an occurrence for which the state may be held liable.

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2 office, department, agency, authority, commission, board,
3 institution, hospital, college, university, or other
4 instrumentality thereof.

5 (2) ~~As used in 2-9-104, the following definitions~~
6 ~~apply:~~

7 (a) ~~"Economic damages" means tangible pecuniary~~
8 ~~losses;~~

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10 ~~included in economic, punitive or exemplary damages~~
11 ~~including, without limitation, damages for pain and~~
12 ~~suffering, loss of consortium, mental distress, and loss of~~
13 ~~reputation."~~

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23 the invalid part remain in effect. If a part of this act is
24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

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1 the invalid applications.

2 NEW SECTION. Section 7. Applicability. This act
3 applies retroactively, within the meaning of 1-2-109, to all
4 claims, lawsuits, and causes of action arising after July 1,
5 1977.

6 NEW SECTION. Section 8. Effective date. This act is
7 effective on passage and approval.

8 SECTION 9. TERMINATION DATE. SECTION 2 TERMINATES
9 JUNE 30, 1985.

-End-