

1 HOUSE BILL NO. 68

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING GOVERNMENTAL LIABILITY FOR TORT DAMAGES
6 TO PERSONS INJURED ON THE PREMISES OF A CORRECTIONAL INSTITUTION WHILE SERVING A
7 SENTENCE IMPOSED UPON CONVICTION OF A CRIME; AMENDING SECTION 2-9-108, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
9

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

11
12 **Section 1.** Section 2-9-108, MCA, is amended to read:

13 **"2-9-108. Limitation on governmental liability for damages in tort.** (1) ~~Neither the~~ The state, a
14 county, municipality, taxing district, ~~nor~~ or any other political subdivision of the state is not liable in tort
15 action for damages suffered;

16 (a) as a result of an act or omission of an officer, agent, or employee of that entity in excess of
17 \$750,000 for each claim and \$1.5 million for each occurrence; or

18 (b) by a person that accrued while the person was confined in or was otherwise in or on the
19 premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction
20 of a criminal offense.

21 (2) ~~No~~ An insurer is not liable for excess damages unless ~~such~~ the insurer specifically agrees by
22 written endorsement to provide coverage to the governmental agency involved in amounts in excess of a
23 limitation stated in this section, in which case the insurer may not claim the benefits of the limitation
24 specifically waived."
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26 **NEW SECTION. Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
28 applications, the part remains in effect in all valid applications that are severable from the invalid
29 applications.
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1 NEW SECTION. Section 3. **Two-thirds vote required.** Because [section 1] abolishes governmental
2 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
3 each house of the legislature for passage.

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5 NEW SECTION. Section 4. **Retroactive Applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, to torts that occurred after January 1, 1990.

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

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0068, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act abolishing governmental liability for tort damages to persons injured on the premises of a correctional institution while serving a sentence imposed upon conviction of a crime and establishing an immediate effective date.

ASSUMPTIONS:

1. This bill exempts the State of Montana for tort liability for harm to incarcerated inmates.
2. This bill applies retroactively to ongoing tort claims and litigation.
3. The Department of Corrections (DOC) is not able to predict the possibility of future occurrences of harm to inmates.
4. Lower expenditures are anticipated as a result of limitations on state government liability for tort damages. The impact on Department of Administration (DOA), Risk Management Division expenditures is difficult to determine because many lawsuits include tort actions as well as §1983 (civil rights) claims.
5. From fiscal year 1990 through fiscal year 1995, there were 71 legal actions containing tort allegations filed against the state by persons serving a sentence upon conviction of a crime. Fourteen of these claims contained solely tort allegations and were resolved at a cost of \$21,352, which includes settlements and defense costs.
6. The 57 remaining cases include §1983 claims. It is impossible to determine the cost attributable solely to the state law claims made in those cases.

FISCAL IMPACT:

While it is impossible to accurately assess the fiscal impact of this bill, the impact will significantly affect costs to the DOC by reducing insurance premiums to DOA, Risk Management Division and reducing litigation costs and the award of damages against the State of Montana as a whole.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local government would also experience savings in insurance premiums, litigation costs and damage awards.

Dave Lewis 1-7-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dan McGee 1/8/97

DAN MCGEE, PRIMARY SPONSOR DATE

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21 A POLITICAL SUBDIVISION OF THE STATE while the person was confined in or was otherwise in or on the
22 premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction
23 of a criminal offense, EXCEPT DAMAGES RESULTING FROM MEDICAL MALPRACTICE. THE IMMUNITY
24 GRANTED BY THIS SUBSECTION (1)(B) DOES NOT EXTEND TO GROSS NEGLIGENCE, WILLFUL OR
25 WANTON MISCONDUCT, OR AN INTENTIONAL TORT.

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27 written endorsement to provide coverage to the governmental agency involved in amounts in excess of a
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1 NEW SECTION. SECTION 2. TORT SUIT BY PRISONER AGAINST STATE OR LOCAL
2 GOVERNMENT -- TEST FOR DISMISSAL AND SUMMARY JUDGMENT. IF, ON A MOTION OF THE STATE
3 OR POLITICAL SUBDIVISION UNDER RULE 12(B)(6), 12(C), OR 56(C), MONTANA RULES OF CIVIL
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7 A SENTENCE IMPOSED UPON CONVICTION OF A CRIMINAL OFFENSE, THERE IS NOT A SUFFICIENT
8 BASIS IN THE LAW FOR A REASONABLE JURY TO FIND FOR THE CLAIMANT WITH RESPECT TO THAT
9 CLAIM, THE MOTION MUST BE GRANTED.

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18 two-thirds of the members of each house of the legislature for passage.

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30 THIRD READING

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(2) THE STATE, A COUNTY, MUNICIPALITY, TAXING DISTRICT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS NOT LIABLE IN TORT ACTION FOR DAMAGES SUFFERED AS A RESULT OF NEGLIGENCE OF AN OFFICER, AGENT, OR EMPLOYEE OF THAT ENTITY BY A PERSON while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense, EXCEPT DAMAGES RESULTING FROM MEDICAL MALPRACTICE. THE IMMUNITY GRANTED BY THIS SUBSECTION ~~(1)(B)~~ DOES NOT EXTEND TO SERIOUS BODILY INJURY OR DEATH RESULTING FROM NEGLIGENCE OR TO DAMAGES RESULTING FROM MEDICAL MALPRACTICE, GROSS NEGLIGENCE, WILLFUL OR WANTON MISCONDUCT, OR AN INTENTIONAL TORT. THE SUBSECTION DOES NOT CREATE AN EXCEPTION FROM THE DOLLAR

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