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INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROTECTION OF CONSTITUTIONAL RIGHTS

THROUGH ACTIONS AGAINST PUBLIC OFFICIALS, EMPLOYEES, AND AGENTS."

Thomas

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

NEW SECTION. Section 1. Protection of constitutional rights. (1) This section may be cited as

the "Montana Constitutional Rights Protection Act".

(2) It is the purpose of the legislature to create in state law civil actions that are adapted to the special needs of Montana and that are similar to those created in federal law by 42 U.S.C. 1983 and by Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

(3) It is not within the official duty of a public official, including a public official within the boundaries of the state, to deny, restrict, or infringe upon the exercise of a constitutional right of another person without due process of law. A public official who denies, restricts, or infringes upon the exercise of a constitutional right of another person without due process of law does so as a private person and not as a public official, and the act is not an official act.

(4) A public official who, under color of law, denies, restricts, or infringes upon the exercise of a constitutional right of another person is subject to a civil action by the other person for compensatory and punitive damages. An action against a public official is against the official as a private person acting outside of the public official's official capacity. The public treasury may not be called upon to pay any costs of legal defense for or damages awarded against the public official.

(5) A public official who orders or directs another public official or other person to deny, restrict, or infringe upon the exercise of a constitutional right of another person is accountable for the act of the directed or ordered public official or other person as if the directing or ordering public official committed the act. A person who attempts to cover up a violation under this section or to obstruct an action or the prosecution of an action under this section is also accountable for the act giving rise to the action as if the person had committed the act.

(6) This section does not apply to:



- 1 (a) a peace officer making an arrest if the officer has probable cause to believe that the person
 - 2 being arrested has committed a crime or a peace officer serving a warrant if the officer has reasonable
 - 3 cause to believe that the warrant has been issued with probable cause, due process, and proper authority;
 - 4 (b) a judicial officer acting in a normal and usual judicial capacity;
 - 5 (c) a circumstance that included full compliance with due process of law;
 - 6 (d) a circumstance arising out of the lawful incarceration of a person convicted of a crime;
 - 7 (e) a person or group of persons with authority to recommend or grant parole or pardon, with
 - 8 respect to a failure to recommend or grant a parole or pardon, a recommendation to revoke a parole, or a
 - 9 revocation of parole;
 - 10 (f) a juror with respect to circumstances arising out of service on a jury;
 - 11 (g) a witness who truthfully testified at a trial; or
 - 12 (h) a member of a legislative body with respect to circumstances arising out of an authorized
 - 13 legislative act.
- 14 (7) For purposes of this section, a public official is a person, officer, or agent employed or
- 15 sanctioned by any level or unit of any government or anyone else who presumes to assert the authority to
- 16 compel or prohibit the conduct of others on behalf of any level of government, including a person elected
- 17 or appointed to office and an official of the federal government or of another nation or an organization of
- 18 nations.
- 19 (8) Either party to an action under this section must be granted a jury trial upon demand.
- 20 (9) In an action under this section, the prevailing party is entitled to be awarded reasonable court
- 21 costs and attorney fees.
- 22 (10) In an action under this section, the jury or, in the absence of a jury, the court shall determine
- 23 the damages.
- 24 (11) If this section conflicts with any other law, this section prevails.

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0484, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that creates the Montana Constitutional Rights Protection Act; requires public officials to bear personal responsibility for defending actions brought against them under the act.

ASSUMPTIONS:

1. The bill creates a new cause of action if a person under color of law deprives another person of any right, privilege, or immunity secured or protected by the Constitution or laws of Montana. Because of this new cause of action, it is assumed that complaints against state employees may increase by people who believe an employee has violated their rights or privileges. However, because the bill prohibits use of the public treasury to pay legal defense costs or damages, those employees would not be defended or indemnified by the state, but would have to pay their own defense costs.
2. Although it is assumed that few employees would actually be found liable for damages, because the bill creates a cause of action for which individual employees would have to pay their own defense costs, the State of Montana could have difficulty recruiting and retaining qualified employees.

FISCAL IMPACT:

The fiscal impact is impossible to determine.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

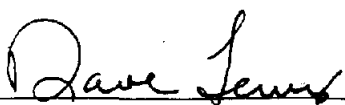
The circumstances which give rise to the restriction or infringement of a constitutional right by a public official as defined in this bill are varied and complex. Each year, plaintiffs sue state employees in their individual capacities seeking damages alleging that civil or constitutional rights were violated.

In almost all cases, state employees were acting in the scope and course of their employment.

This bill will force state employees to pay for defense costs, settlements, and judgments even in cases involving acts done in the scope and course of employment.

These employees will in turn sue the state for recovery of defense costs and indemnification. At a minimum, there will be a cost to the state in defending suits by employees who seek to be defended and indemnified for actions taken in the scope and course of their employment. If this bill is found to be unconstitutional, the state will also pay the employees for those costs.

State agencies will have difficulty retaining experienced state employees and hiring new employees given personal liability for compensatory and punitive damages.

 2.13-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BOB CLARK, PRIMARY SPONSOR DATE

Fiscal Note for HB0484, as introduced

HB 484