1   HOUSE BILL NO. 546

2   INTRODUCED BY A. OLSEN

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4   A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONSTITUTIONAL RIGHTS;

5   PROVIDING THAT A PERSON WHO ALLEGES THEIR CONSTITUTIONAL RIGHTS WERE VIOLATED BY A

6   PUBLIC OFFICIAL HAS A CAUSE OF ACTION; PROVIDING EXCEPTIONS; AND PROVIDING A

7   DEFINITION."

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

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11   NEW SECTION. **Section 1.   Protection of constitutional rights.** (1) It is the purpose of the

12   legislature to create in state law civil actions that are adapted to the special needs of the state and that allow a

13   person to seek redress for deprivations of the rights they have reserved to themselves under Article II of the

14   Montana constitution.

15   (2)   A public official who, under color of law, denies, restricts, or infringes on the right of a person to

16   exercise any right contained in the declaration of rights found in Article II of the Montana constitution is subject

17   to a civil action by the person for compensatory and punitive damages. The action may be brought in the district

18   court of the county in which the plaintiff resides.

19   (3)   A public official who orders or directs another public official or another person to deny, restrict, or

20   infringe on the exercise of any right contained in the declaration of rights found in Article II of the Montana

21   constitution is accountable for the act of the directed or ordered public official or other person as if the directing

22   or ordering public official committed the act.

23   (4)   This section does not apply to:

24   (a)   a peace officer making an arrest if the officer has probable cause to believe that the person being

25   arrested has committed a crime, or a peace officer serving a warrant if the officer has reasonable cause to

26   believe that the warrant has been issued with probable cause, due process, and proper authority;

27   (b)   a judicial officer acting in a normal and usual judicial capacity;

28   (c)   a circumstance arising out of the lawful incarceration of a person convicted of a crime;

1   (d)   a person or group of persons with authority to recommend or grant a parole or pardon, with

2   respect to a failure to recommend or grant a parole or pardon, a recommendation to revoke a parole, or a

3   revocation of parole;

4   (e)   a juror with respect to circumstances arising out of service on a jury;

5   (f)   a witness who truthfully testifies at a trial; or

6   (g)   a member of a legislative body with respect to circumstances arising out of an authorized

7   legislative act.

8   (5)   Either party to an action under this section must be granted a jury trial on demand.

9   (6)   In an action under this section, the prevailing party is entitled to be awarded reasonable court

10   costs and attorney fees.

11   (7)   In an action under this section, the jury or, in the absence of a jury, the court shall determine the

12   damages.

13   (8)   If this section conflicts with any other law, this section prevails.

14   (9)   For the purposes of this section, "public official" means a person, officer, or agent employed or

15   sanctioned by any level or unit of government or anyone else who presumes to assert the authority to compel

16   or prohibit the conduct of others on behalf of any level or unit of government, including a person elected or

17   appointed to office and an official of the federal government or of another nation or an organization of nations.

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19   NEW SECTION. **Section 2.   Codification instruction.** [Section 1] is intended to be codified as an

20   integral part of Title 2, chapter 9, and the provisions of Title 2, chapter 9, apply to [section 1].

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22   NEW SECTION. **Section 3.   Saving clause.** [This act] does not affect rights and duties that matured,

23   penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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25   NEW SECTION. **Section 4.   Severability.** If a part of [this act] is invalid, all valid parts that are

26   severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

27   the part remains in effect in all valid applications that are severable from the invalid applications.

28   - END -

*Legislative
Services
Division*