HOUSE BILL NO. 531

INTRODUCED BY C. HINKLE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING GOVERNMENT LIABILITY LAW; ALLOWING CERTAIN PERSONS DEPRIVED OF RIGHTS BY PUBLIC EMPLOYEES TO SUIT; PROHIBITING QUALIFIED IMMUNITY AS A DEFENSE; ALLOWING ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

NEW SECTION. Section 1. Civil action for deprivation of rights -- limitation of defenses -- attorney fees. (1) Except as provided in 2-9-111 though 2-9-114, a public employee who illegally or unconstitutionally deprives a person of any right provided by the constitution of the United States, the constitution of Montana, or statute is liable to that person in a civil action.

(2) A public employee subject to suit under this section may not assert as a defense:

(a) that the right provided by the constitution of the United States, the constitution of Montana, or statute was not clearly established at the time of the deprivation; or

(b) that the public employee believed the deprivation was legal or constitutional.

(3) If the person bringing a civil action under this section prevails, the court shall award the person reasonable attorney fees.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 9, part 1, and the provisions of Title 2, chapter 9, part 1, apply to [section 1].

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.