

HOUSE BILL NO. 369

INTRODUCED BY C. FISCUS

A BILL FOR AN ACT ENTITLED: "AN ACT SEEKING TO ENSURE THAT THE LOSING PARTY IN MOST CIVIL ACTIONS IS REQUIRED TO PAY THE REASONABLE ATTORNEY FEES OF THE PREVAILING PARTY; AMENDING SECTIONS 25-10-201 AND 72-12-206, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, some attorneys file lawsuits that are frivolous, unreasonable, and without foundation and file lawsuits without evidence or facts to justify the case; and

WHEREAS, attorneys are not generally disciplined for filing frivolous and unreasonable lawsuits; and

WHEREAS, the defendants with deep pockets in these lawsuits, who have sufficient financial resources, are forced to pay thousands of dollars in court costs and legal fees before the case is dismissed or when the defendant prevails in a jury or bench trial; and

WHEREAS, the district courts and the Montana supreme court do not always have the statutory authority to allow prevailing parties to recover their attorney fees in these cases, including cases that are frivolous, unreasonable, and without foundation; and

WHEREAS, the legal system in Montana does not recognize the financial damage caused by lawsuits that are frivolous, unreasonable, and without foundation.

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

Section 1. Section 25-10-201, MCA, is amended to read:

"25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in the party's bill of costs the party's necessary disbursements, as follows:

- (1) the legal fees ~~of witnesses~~, including mileage, of witnesses or referees and other officers;
- (2) the expenses of taking depositions;
- (3) the legal fees for publication when publication is directed;
- (4) the legal fees paid for filing and recording papers and certified copies of papers necessarily used in the action or on the trial;
- (5) the legal fees paid to stenographers for per diem or for copies;



- 1 (6) the reasonable expenses of printing papers for a hearing when required by a rule of court;
- 2 (7) the reasonable expenses of making transcript for the supreme court;
- 3 (8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or
- 4 hearing; ~~and~~
- 5 (9) reasonable attorney fees as determined by the court; and
- 6 ~~(9)(10)~~ other reasonable and necessary expenses that are taxable according to the course and practice
- 7 of the court or by express provision of law."

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9 **Section 2.** Section 72-12-206, MCA, is amended to read:

10 **"72-12-206. Fees and expenses -- by whom paid.** When the validity or probate of a will is contested

11 through court action, the ~~attorney fees and~~ costs, as provided in 25-10-201, incurred in defending the validity or

12 probate of the will must be paid by the party contesting the validity or probate of the will if the will in probate is

13 confirmed. If the probate is revoked, costs, as provided in 25-10-201, ~~but not excluding~~ attorney fees, must be

14 paid by the party who resisted the revocation or out of the property of the decedent, as the court directs."

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16 NEW SECTION. **Section 3. Applicability.** [This act] applies to actions and proceedings filed on or after

17 [the effective date of this act].

18 - END -