

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIVIL PROCEDURE; ALLOWING A
5 TRIER OF FACT TO ALLOW AN AWARD OF ATTORNEY FEES TO A PREVAILING PARTY IN CERTAIN
6 CASES; PROVIDING A PROCEDURE FOR AWARDED ATTORNEY FEES; PROVIDING DEFINITIONS;
7 AMENDING SECTION 25-10-101, MCA; AND REPEALING SECTIONS 25-10-301, 25-10-302, AND 25-10-
8 303, MCA."

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

11
12 NEW SECTION. Section 1. Definitions. As used in [this act], unless the context clearly indicates
13 otherwise, the following definitions apply:

- 14 (1) "Attorney fees" means reasonable attorney fees incurred in prosecuting or defending a claim.
- 15 (2) "Nonprevailing party" means a party opponent to the prevailing party on a claim.
- 16 (3) "Prevailing party" means a party in whose favor a verdict is rendered on a claim.

17
18 NEW SECTION. Section 2. Allowance of attorney fees. (1) Except as provided in subsections (2)
19 and (3):

- 20 (a) The trier of fact of a civil claim may allow a prevailing party of that claim to enter a motion for
21 attorney fees.
- 22 (b) When the trier of fact delivers a verdict on a claim, it shall state whether the prevailing party to that
23 claim may enter a motion for attorney fees.
- 24 (c) The trier of fact may allow motions for attorney fees on multiple claims and to multiple prevailing
25 parties.
- 26 (2) Subsection (1) does not apply:
 - 27 (a) when a prevailing party and a nonprevailing party have an express or implied agreement
28 regarding attorney fees; or

1 (b) when a more specific statute provides different criteria for entitlement to attorney fees.

2 (3) Except in cases utterly frivolous and without merit, subsection (1) does not apply in cases for:

3 (a) the creation or modification of a parenting plan;

4 (b) probate; or

5 (c) workers' compensation.

6
7 **NEW SECTION. Section 3. Claiming attorney fees -- objections -- inclusion in judgment.** (1) If

8 the trier of fact, pursuant to [section 2], has allowed a prevailing party to enter a motion for attorney fees, the
9 prevailing party may enter a motion for attorney fees:

10 (a) within 14 days;

11 (b) that specifies the judgment and cites this statute;

12 (c) that states the amount of attorney fees sought; and

13 (d) that justifies the amount of attorney fees sought pursuant to [section 5]

14 (2) A nonprevailing party may submit objections to the bill of attorney fees and the prevailing party
15 may submit a reply.

16 (3) The trier of fact shall assess attorney fees and add those fees to the judgment.

17 (4) In a bench trial or on remittitur, a prevailing party may request as of right the empanelment of a
18 jury for the purpose of submitting a bill of attorney fees or may proceed with the judge as the trier of fact for
19 assessing attorney fees.

20
21 **NEW SECTION. Section 4. Question of fact.** The amount of attorney fees to assess is a question of
22 fact.

23
24 **NEW SECTION. Section 5. Assessing attorney fees.** If the trier of fact has decided attorney fees
25 may be awarded in multiple claims and the claims involve a common core of facts or are based on related legal
26 theories and it would be too difficult to divide hours expended on a claim-by-claim basis, then the trier of fact
27 may award attorney fees based on the significance of the overall relief obtained in relation to the hours
28 reasonably expended on the litigation. Otherwise, in determining an award of attorney fees, the trier of fact shall

1 consider as guidelines:

- 2 (1) the amount and character of the services rendered;
- 3 (2) the labor, time, and trouble involved;
- 4 (3) the character and importance of the litigation in which the services were rendered;
- 5 (4) the amount of money or the value of the property to be affected;
- 6 (5) the professional skill and experience called for;
- 7 (6) the attorneys' character and standing in their profession;
- 8 (7) the results secured by the services of the attorneys; and
- 9 (8) any other factors deemed relevant.

10

11 **NEW SECTION. Section 6. Liability for attorney fees.** (1) A nonprevailing party shall be liable for all
12 attorney fees awarded to a prevailing party.

13 (2) If there are multiple nonprevailing parties to a claim, they shall be jointly and severally liable for
14 attorney fees awarded.

15 (3) If a nonprevailing party is represented by an attorney on a contingency fee basis, the attorney
16 shall be jointly and severally liable for one-third of the award. A retainer agreement may not indemnify an
17 attorney's liability under this section.

18
19 **NEW SECTION. Section 7. Probate.** In probate proceedings the court may fix and allow
20 compensation of attorneys representing administrators, executors, guardians, trustees, and agents appointed
21 by the court.

22

23 **Section 8.** Section 25-10-101, MCA, is amended to read:

24 **"25-10-101. When costs allowed, of course, to plaintiff.** Costs are allowed, of course, to the
25 plaintiff upon a judgment in the plaintiff's favor in the following cases:

- 26 (1) in an action for the recovery of real property or damages to real property;
- 27 (2) in an action to recover the possession of personal property when the value of the property
28 exceeds \$50, with the value determined by the jury, court, or referee by whom the action is tried;

- 1 (3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers
- 2 over \$50;
- 3 (4) in a special proceeding;
- 4 (5) in an action that involves the title or possession or right of possession of real estate;
- 5 (6) in an action that involves the legality of any tax, impost, assessment, toll, or municipal fine;
- 6 (7) in quo warranto proceedings; or
- 7 (8) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; ~~or~~
- 8 ~~(9) in an action for property damage arising out of the ownership, maintenance, or use of a motor~~
- 9 ~~vehicle if the plaintiff is entitled to attorney fees under 25-10-303."~~

10

11 NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are
 12 repealed:

- 13 25-10-301. Determining compensation of attorneys.
- 14 25-10-302. Inclusion of attorney's fees in bill of costs.
- 15 25-10-303. Attorney fees -- motor vehicle claim.

16

17 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be
 18 codified as an integral part of Title 25, chapter 10, part 3, and the provisions of Title 25, chapter 10, part 3,
 19 apply to [sections 1 through 7].

20

- END -