

HOUSE BILL NO. 251
INTRODUCED BY R. STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A CITY OR TOWN TO ESTABLISH A CITY COURT OF RECORD AND PROVIDING FOR THE JURISDICTION, POWERS, DUTIES, AND PROCEDURE OF THE COURT; PROVIDING THAT AN APPEAL FROM A CITY COURT OF RECORD TO A DISTRICT COURT IS AN APPEAL UPON THE RECORD; AND AMENDING SECTIONS 3-1-102, 3-11-101, 3-11-203, 3-11-206, AND 25-33-301, MCA."

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

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the municipal courts, ~~and the justices' courts of record, and the city courts of record~~ are courts of record."

Section 2. Section 3-11-101, MCA, is amended to read:

"3-11-101. City court established. (1) ~~A~~ Unless a city court of record is established by a city or town pursuant to [section 3], a city court not of record is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) Except as otherwise provided in this chapter, the provisions of this chapter apply to both a city court not of record and a city court of record."

NEW SECTION. **Section 3. Establishment of city court of record -- qualifications of judge -- jurisdiction, powers, duties, and procedure.** (1) A city or town may establish a city court of record. The proceedings of a city court of record must be recorded by electronic recording or stenographic transcription.

(2) The qualifications for a judge of a city court of record are the same as those for a judge of a city court not of record, ~~except that the judge of a city court of record must be trained in the rules of procedure and evidence. A judge of a city court not of record who is a sitting judge on October 1, 2007, may sit as a judge of a city court of record if the city or town creates the city court of record from the city court not of record on or after that date.~~

(3) Except as otherwise provided by [section 4], Title 25, chapter 24, and this section, the jurisdiction, the powers of a judge of a city court of record, and the proceedings in that court are the same as in a city court not of record. The judge of a city court of record may make and alter rules for the conduct of its business and prescribe forms of process that conform to law.

(4) The city court of record shall establish rules for appeals to district court consistent with [section 4]. The rules are subject to the supreme court's rulemaking and supervisory authority.

NEW SECTION. Section 4. Appeal from city court of record to district court. (1) A party may appeal to district court a judgment or order from a city court of record. The appeal is confined to review of the record and questions of law and is subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be held in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a city court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, in Title 25, chapter 30, apply to appeals to district court from a city court of record.

Section 5. Section 3-11-203, MCA, is amended to read:

"3-11-203. When substitute for judge called in. (1) The city judge or mayor may call in a city judge, a justice of the peace, or some qualified person to act in the judge's place whenever the judge is:

- (a) a party in a case;
- (b) interested in a case;
- (c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree;

or

- (d) sick, absent, or unable to act.

(2) The city judge may call in a city judge, justice of the peace, or some qualified person to act in ~~his~~ the judge's stead when a disqualifying affidavit is filed ~~against him~~ pursuant to the supreme court's rules on disqualification and substitution of judges.

(3) A city judge of any city or a justice of the peace of any county may sit as city judge OR A CITY JUDGE

OF RECORD at the city judge's request.

(4) For a city court of record, only a judge with experience as a judge in a court of record may be called to sit."

Section 6. Section 3-11-206, MCA, is amended to read:

"3-11-206. City to provide facilities -- conduct of court business -- electronic filing and storage of court records. (1) The governing body of the city in which the judge has been elected or appointed:

(a) shall provide for the city court:

(i) the office space, courtroom, and clerical assistance necessary to enable the judge and the clerk of city court, if any, to conduct business in dignified surroundings;

(ii) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the court and the transaction of business; ~~and~~

(iii) if the city has created a city court of record pursuant to [section 3], the electronic recording or stenographic equipment required by [section 3] for the creation of the record; and

(iv) one copy of the latest edition of the Montana Code Annotated and all official supplements or immediate access to the code and supplements; and

(b) may provide a clerk of city court.

(2) The provisions of 3-6-302(1) and 3-6-303 concerning conduct of municipal court business apply to the city court.

(3) The records of the court may be kept by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to paper records."

Section 7. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in ~~subsection subsections~~ (3) and (4), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court of record pursuant to 3-10-101 is on the record as provided in 3-10-115.

(4) The appeal from a city court of record pursuant to [section 4] is on the record as provided in that section."

NEW SECTION. Section 8. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 3, chapter 11, and the provisions of Title 3, chapter 11, apply to [sections 3 and 4].

NEW SECTION. Section 9. 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].

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