

HOUSE BILL NO. 352

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING PROVISIONS RELATED TO THE APPOINTMENT OF ACTING JUSTICES OF THE PEACE; AMENDING SECTION 3-10-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-10-231, MCA, is amended to read:

"3-10-231. Circumstances in which acting justice called in -- by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, provided for in 3-1-803 and 3-1-805, the justice of the peace shall either transfer the action to another justice's court in the same county, appoint a qualified substitute from the list provided in subsection (2), or call a justice from a neighboring county to preside. ~~OF JUDGES, THE JUSTICE OF THE PEACE SHALL FOLLOW THE PROCEDURES PROVIDED IN 3-1-803 AND 3-1-805 AND TRANSFER THE ACTION TO A DISTRICT COURT JUDGE PRESIDING IN THE DISTRICT OF THE JUSTICE'S COURT; AND SUBSTITUTION OF JUDGES, PROVIDED FOR IN 3-1-803 AND 3-1-805, THE JUSTICE OF THE PEACE SHALL:~~

(A) TRANSFER THE ACTION TO ANOTHER JUSTICE'S COURT IN THE SAME COUNTY; OR

(B) REQUEST A DISTRICT COURT JUDGE PRESIDING IN THE COUNTY TO APPOINT A QUALIFIED SUBSTITUTE FROM THE LIST PROVIDED IN SUBSECTION (2) OR CALL A JUSTICE FROM A NEIGHBORING COUNTY TO PRESIDE.

(2) (a) The following requirements must be met to qualify a substitute for a justice of the peace:

(i) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in the justice's place during a temporary absence ~~when another justice or city judge is not available.~~ EACH PERSON LISTED MUST BE A CURRENT OR FORMER JUDGE, A CURRENT OR FORMER ATTORNEY, CURRENT COURT PERSONNEL, OR A FORMER LAW ENFORCEMENT OFFICER. The persons listed must ALSO be of good moral character and have community support, a sense of community standards, and a basic knowledge of court procedure.

(ii) The sitting justice of the peace shall request and obtain from the commission on courts of limited jurisdiction established by the supreme court a waiver of training for the substitutes.

(iii) Each person on the list; provided for in subsection (2)(a)(i); shall subscribe to the written oath of office

1 as soon as possible after the person has received a waiver of training from the supreme court. The oath may be
2 subscribed before any member of the board of county commissioners or before any other officer authorized to
3 administer oaths.

4 (b) The list of qualified substitutes, the written oath, and the commission's written approval and waiver
5 of training for those substitutes; pursuant to subsection (2)(a)(ii); must be filed with the county clerk as provided
6 in 3-10-202.

7 (c) A county clerk may provide a current list of qualified and sworn substitutes to local law enforcement
8 officers.

9 (3) Whenever a justice is sick, disabled, ~~or absent,~~ or otherwise unable to act, the justice may call in
10 another justice; ~~if there is one readily available,~~ or a city judge or a person from the list provided for in subsection
11 (2) to hold court for the ~~absent justice until the absent justice's return~~ justice is able to act. If the justice is unable
12 to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the
13 list provided for in subsection (2).

14 (4) During the time when a justice of the peace is on vacation or attending a training session, another
15 justice of the peace of the same county is authorized to handle matters that otherwise would be handled by the
16 absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate
17 another person in the same manner as ~~if the justice were sick or absent~~ provided in subsection (3).

18 (5) A justice of the peace of any county may hold the court of any other justice of the peace at that
19 justice's request."
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21 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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