

1 HOUSE BILL NO. 403

2 INTRODUCED BY E. HILL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FEES COLLECTED BY DISTRICT COURT CLERKS;
5 ESTABLISHING FEES FOR PROVIDING COPIES BY FACSIMILE, E-MAIL, OR OTHER ELECTRONIC MEANS;
6 ESTABLISHING FEES FOR FILING A PLEADING BY FACSIMILE OR E-MAIL; AMENDING SECTIONS
7 7-4-2516, 25-1-201, 25-10-404, AND 25-10-405, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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11 **Section 1.** Section 7-4-2516, MCA, is amended to read:

12 **"7-4-2516. Fees not required in certain cases.** No fees must be charged the state, any county, or any
13 subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services
14 rendered, and all such services must be performed without the payment of fees, except the fees under
15 25-1-201(1)(d) and (1)(r)."

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17 **Section 2.** Section 25-1-201, MCA, is amended to read:

18 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

19 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from
20 the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for
21 dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested
22 amendment of a final parenting plan, \$120;

23 (b) from each defendant or respondent, on appearance, \$60;

24 (c) on the entry of judgment, from the prevailing party, \$45;

25 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office
26 in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents
27 for each additional page;

28 (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

29 (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means
30 in all criminal and civil proceedings, 50 cents per page;

- 1 (e) for each certificate, with seal, \$2;
- 2 (f) for oath and jurat, with seal, \$1;
- 3 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years,
4 and an additional \$1 for each name for any additional year searched;
- 5 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the
6 fee for entry of judgment provided for in subsection (1)(c);
- 7 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 8 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 9 (k) for filing and entering papers received by transfer from other courts, \$10;
- 10 (l) for issuing a marriage license, \$53;
- 11 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of
12 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the
13 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 14 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the
15 estate of a nonresident decedent, \$55;
- 16 (o) for filing a declaration of marriage without solemnization, \$53;
- 17 (p) for filing a motion for substitution of a judge, \$100;
- 18 (q) for filing a petition for adoption, \$75;
- 19 (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.
- 20 (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court
21 must be deposited in the state general fund as specified by the supreme court administrator.
- 22 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's
23 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims
24 of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family
25 member assault intervention and treatment fund established in 40-15-110.
- 26 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund
27 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention
28 and treatment fund established in 40-15-110.
- 29 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an
30 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may

1 not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under
2 subsection (1)(a).

3 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be
4 deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

5 (6) The fees collected under subsections (1)(d), (1)(g), ~~and (1)(j)~~, and (1)(r) must be deposited in the
6 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general
7 fund to be used for district court operations.

8 (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without
9 solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-4-310 and
10 \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be
11 deposited in the county general fund to be used for district court operations.

12 (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not
13 otherwise specifically allocated must be deposited in the state general fund."
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15 **Section 3.** Section 25-10-404, MCA, is amended to read:

16 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in
17 subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial
18 statement, stating that the person has a good cause of action or defense and is unable to pay the costs or
19 procure security to secure the cause of action or defense. Except as provided in subsections (2) and (6), upon
20 issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may
21 commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and
22 the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in
23 the action without demanding or receiving their fees in advance, except the fees under 25-1-201(1)(d) and (1)(r).

24 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for
25 a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request
26 is subsequently denied, the fees must be paid before the case may proceed further.

27 (3) A person represented by an entity that provides free legal services to indigent persons is not required
28 to file the financial statement required by subsection (1).

29 (4) The department of justice shall, by rule, prescribe the form of the financial statement required by
30 subsection (1) for use in determining indigence. The form may require the disclosure of income and assets,

1 including but not limited to the ownership of real and personal property, cash, and savings.

2 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a
3 judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing
4 the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement,
5 obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any
6 filing.

7 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or
8 an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay
9 the total filing fee, the court shall order the prisoner to make partial payments of any fees required by law when
10 funds exist. The court shall consider the indigence policy of the department when determining whether funds
11 exist.

12 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or criminal
13 conviction because of lack of assets or money to pay the initial partial filing fee. The court shall dismiss an action
14 if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by the court.

15 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or adjudicated
16 delinquent for violations of criminal law or the terms and conditions of parole, probation, or a diversionary program
17 and who is subject to incarceration, detention, or admission to any facility."
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19 **Section 4.** Section 25-10-405, MCA, is amended to read:

20 "**25-10-405. Governmental entities not required to prepay fees -- exceptions.** The state, a county,
21 a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the
22 state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or
23 with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a
24 motion for substitution of a judge, the fee under 25-1-201(1)(r) for filing a pleading by facsimile or e-mail, and all
25 fees for photocopies, postage and handling, certifications, authentications, and record searches."
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27 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2013.

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