

1 SENATE BILL NO. 400

2 INTRODUCED BY T. MANZELLA, K. BOGNER, B. BROWN, J. ELLSWORTH, C. GLIMM, B. HOVEN, D.
 3 KARY, B. KEENAN, B. MOLNAR, J. SMALL, C. SMITH, G. VANCE, S. BERGLEE, J. CARLSON, J. HINKLE,
 4 D. LENZ, B. LER, B. PHALEN, A. REGIER

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO
 7 INTERFERE WITH FUNDAMENTAL PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR
 8 INTERFERENCE WITH PARENTAL RIGHTS; PROVIDING A FILING FEE; AMENDING SECTION 25-1-202,
 9 MCA; AND PROVIDING AN APPLICABILITY DATE."

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 11 WHEREAS, the interests and role of parents in the care, custody, and control of their children are both
 12 implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition; and

13 WHEREAS, the right to parent is among the unalienable rights retained by the people under the
 14 Constitution of the United States; and

15 WHEREAS, the right to parent includes the high duty and right of parents to nurture and direct their
 16 children's destiny, including their upbringing, moral or religious training, health care, and education; and

17 WHEREAS, the State of Montana has independent authority to protect parents' fundamental right to
 18 nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and
 19 education; and

20 WHEREAS, parental rights are as fundamental to the human condition as to be considered inalienable.
 21 Termination of parental rights equals or exceeds the detriment of criminal sanctions. Therefore, parents whose
 22 parental rights are subject to termination must have the right to fundamental due process in all cases.

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

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 26 **NEW SECTION. Section 1. Interference with fundamental parental rights restricted -- cause of**
 27 **action.** (1) A governmental entity may not interfere with the fundamental right of parents to direct the
 28 upbringing, education, health care, and mental health of their children unless the governmental entity

1 demonstrates that the interference:

2 (a) furthers a compelling governmental interest; and

3 (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling
4 governmental interest.

5 (2) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
6 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

7 (3) When a parent's fundamental rights protected by this section are violated, a parent may assert
8 that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the
9 governmental entity. ~~If the parent prevails in an action against the governmental entity as provided in this~~
10 ~~subsection, the parent~~ THE PREVAILING PARTY IN AN ACTION FILED PURSUANT TO THIS SECTION is entitled to
11 reasonable attorney fees and costs.

12 (4) As used in this section, "governmental entity" has the meaning provided in 2-9-101.

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14 **Section 2.** Section 25-1-202, MCA, is amended to read:

15 **"25-1-202. Additional filing fee fees.** (1) In addition to other filing fees, the following fees must be
16 paid to the clerk of the district court at the time of filing a civil action in the district court:

17 (a) a fee of \$20 must be paid to the clerk of district court at the time of filing a civil action in the district
18 court; and

19 (b) if the action is brought pursuant to [section 1], in addition to the fee required under subsection
20 (1)(a), a fee of \$5.

21 (2) The fee fees must be forwarded by the clerk to the department of revenue for deposit in the state
22 general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as
23 proper disbursements."

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25 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as a new
26 part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [section 1].

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28 NEW SECTION. Section 4. Applicability. [This act] applies to an interference with parental rights

1 existing on or after [the effective date of this act].

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