

HOUSE BILL NO. 815

INTRODUCED BY L. HELLEGAARD

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EVIDENCE LAWS; REQUIRING THE TESTIMONY OF ONE WITNESS TO BE SUPPORTED BY CORROBORATIVE OR OBJECTIVE EVIDENCE; ESTABLISHING THE PRESUMPTION THAT A SINGLE WITNESS TO A FACT IS MISTAKEN; ESTABLISHING A METHOD FOR OVERCOMING PRESUMPTION OF A MISTAKE; PROVIDING INSTRUCTIONS ON HOW CIRCUMSTANTIAL AND OBJECTIVE EVIDENCE IS TO BE WEIGHED; DEFINING "OBJECTIVE EVIDENCE" AND REVISING THE DEFINITION OF "CIRCUMSTANTIAL EVIDENCE"; AND AMENDING SECTIONS 26-1-102, 26-1-301, AND 26-1-302, MCA."

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

Section 1. Section 26-1-102, MCA, is amended to read:

"26-1-102. Definitions -- kinds of evidence. (1) "Circumstantial evidence" is evidence that which tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence seeks to confirm the assertion of a fact but does not conclusively affirm a fact.

(2) (a) "Conclusive evidence" is evidence that which the law does not permit to be contradicted.

(b) No evidence is by law made conclusive unless so declared by statute.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

(4) "Cumulative evidence" is additional evidence of the same character to the same point.

(5) "Direct evidence" is evidence that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact.

(6) "Objective evidence" is a provable fact that contains documentary, electronic, or physical evidence that is capable of entry in a court record as an exhibit, is relevant to the cause at hand, is independent of a single eyewitness or observer, and corroborates the testimony of the eyewitness or observer.

(6)(7) "Prima facie evidence" is that which proves a particular fact until contradicted and overcome by

1 other evidence."

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3 **Section 2.** Section 26-1-301, MCA, is amended to read:

4 **"26-1-301. One witness sufficient to ~~prove~~ assert a fact -- one witness supported by certain**
5 **evidence sufficient to prove fact.** (1) The direct evidence of one witness who is entitled to full credit is
6 sufficient ~~for proof of~~ to assert any fact, except perjury and treason.

7 (2) The direct evidence of one witness who is entitled to full credit and who is supported by
8 corroborative or objective evidence is sufficient to prove any fact, except perjury or treason. The lack of
9 corroborative or objective evidence is sufficient for a defendant to inform the jury that the witness did not prove
10 the witness's assertion."

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12 **Section 3.** Section 26-1-302, MCA, is amended to read:

13 **"26-1-302. Witness presumed to speak ~~the truth -- how presumption rebutted -- single witness~~**
14 **asserting fact -- how presumption rebutted.** A witness is presumed to speak the truth. The jury or the court
15 in the absence of a jury is the exclusive judge of a witness's credibility. This presumption may be controverted
16 and overcome by any matter that has a tendency to disprove the truthfulness of a witness's testimony.

17 (1) The matters include but are not limited to:

18 (1)(a) the demeanor or manner of the witness while testifying;

19 (2)(b) the character of the witness's testimony;

20 (3)(c) bias of the witness for or against any party involved in the case;

21 (4)(d) interest of the witness in the outcome of the litigation or other motive to testify falsely;

22 (5)(e) the witness's character for truth, honesty, or integrity;

23 (6)(f) the extent of the witness's capacity and opportunity to perceive or capacity to recollect or to
24 communicate any matter about which the witness testifies;

25 (7)(g) inconsistent statements of the witness;

26 (8)(h) an admission of untruthfulness by the witness;

27 (9)(i) other evidence contradicting the witness's testimony.

28 (2) A single witness asserting a fact is presumed to be mistaken. The jury, or the court in the

1 absence of a jury, is the exclusive witness of a witness's credibility. This presumption may be controverted and
2 overcome with:

3 (a) testimony by an additional witness who is entitled to full credit in asserting the fact; or

4 (b) corroborative or objective evidence."

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6 **NEW SECTION. Section 4. How circumstantial and objective evidence to be weighed.** (1) A jury,
7 or the court in the absence of a jury, must be hesitant to convict a defendant on the basis of circumstantial
8 evidence.

9 (2) The failure of objective evidence must be stated to the jury.

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11 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an
12 integral part of Title 26, chapter 1, part 3, and the provisions of Title 26, chapter 1, part 3, apply to [section 4].

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