

SENATE BILL NO. 289

INTRODUCED BY E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT AWARDING ATTORNEY FEES AND COSTS TO A PREVAILING PARTY IN CERTAIN PROCEEDINGS; REQUIRING A COURT TO AWARD ATTORNEY FEES TO A PREVAILING PARTY IF A COURT GRANTS A MOTION TO DISMISS A PROCEEDING FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTION 25-10-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Award of attorney fees to prevailing party -- motion to dismiss for failure to state claim. (1) Upon an order by a court granting a motion to dismiss for failure to state a claim upon which relief can be granted under the Montana Rules of Civil Procedure, the court shall award reasonable attorney fees to the prevailing party incurred as a result of defending the dismissed proceeding.

(2) This section does not apply to a civil proceeding brought against the state, a political subdivision or agency of the state, or a public officer acting in the officer's official capacity.

Section 2. Section 25-10-102, MCA, is amended to read:

"25-10-102. When costs allowed, of course, to defendant. (1) Costs must be allowed, of course, to the defendant;

(a) upon a judgment in the defendant's favor in the actions mentioned in 25-10-101; and

(b) upon a court order granting a motion to dismiss for failure to state a claim upon which relief can be granted under the Montana Rules of Civil Procedure.

(2) Subsection (1)(b) does not apply to a civil proceeding brought against the state, a political subdivision or agency of the state, or a public officer acting in the officer's official capacity."

NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, chapter 10, part 3, and the provisions of Title 25, chapter 10, part 3, apply to [section 1].

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2 NEW SECTION. **Section 4. Effective date.** [This act] is effective upon approval by the electorate.
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4 NEW SECTION. **Section 5. Applicability.** [This act] applies to proceedings filed on or after [the
5 effective date of this act].
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7 NEW SECTION. **Section 6. Submission to electorate.** [This act] shall be submitted to the qualified
8 electors of Montana at the general election to be held in November 2018 by printing on the ballot the full title of
9 [this act] and the following:
10 ☐ YES on Legislative Referendum _____.
11 ☐ NO on Legislative Referendum _____.
12 - END -