HOUSE BILL NO. 194

INTRODUCED BY TOOLE, PIPINICH, MEASURE, DAILY

IN THE HOUSE

JANUARY 15, 1991

JANUARY 16, 1991

FIRST READING.

ON JUDICIARY.

JANUARY 23, 1991 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

POSTED ON CONSENT CALENDAR.

INTRODUCED AND REFERRED TO COMMITTEE

JANUARY 24, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

ENGROSSING REPORT.

JANUARY 25, 1991

THIRD READING, PASSED. AYES, 95; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 25, 1991

JANUARY 26, 1991

FEBRUARY 7, 1991

FEBRUARY 9, 1991

FEBRUARY 11, 1991

ON JUDICIARY.

INTRODUCED AND REFERRED TO COMMITTEE

FIRST READING.

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 44; NOES, 4.

RETURNED TO HOUSE.

SENT TO ENROLLING.

IN THE HOUSE

FEBRUARY 12, 1991

FEBRUARY 12, 1991

RECEIVED FROM SENATE.

REPORTED CORRECTLY ENROLLED.

52nd Legislature

LC 0401/01

LC 0401/01

House BILL NO. 194 The Bole Typinich Mean De 1 2 INTRODUCED BY 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING DUE PROCESS TO 5 INDIGENTS BY PROVIDING THAT THE DISTRICT COURT MAY WAIVE THE 6 UNDERTAKING FOR AN APPEAL TO DISTRICT COURT WHEN THE 7 APPEALING PARTY IS INDIGENT; IMPLEMENTING THE MONTANA 8 SUPREME COURT'S DECISION IN MERCHANTS ASSOCIATION V. CONGER, 9 185 MONT. 552, 606 P.2D 125 (1979); AND AMENDING SECTIONS 10 25-33-104 AND 25-33-201, MCA."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONIANA:

13 Section 1. Section 25-33-104, MCA, is amended to read: 14 *25-33-104. Papers to be transmitted. Upon the filing 15 of the notice of appeal and the undertaking as when required in by 25-33-201, 25-33-203, and 25-33-205, the justice or 16 judge must, within 10 days, upon the payment of the fees 17 18 therefor, transmit to the clerk of the district court a 19 certified copy of his docket, the pleadings, all notices, 20 motions, and other papers filed in the cause, the notice of 21 appeal, and the undertaking; and the justice or judge may be 22 compelled by the district court, by an order entered upon 23 motion, to transmit such papers and may be fined for neglect 24 or refusal to transmit the same. A certified copy of such 25 order may be served on the justice or judge by the party or



1 his attorney."

2 Section 2. Section 25-33-201, MCA, is amended to read: 3 "25-33-201. Undertaking on appeal. (1) An Except as 4 provided in subsection (4), an appeal from a justice's or 5 city court is not effectual for any purpose unless an 6 undertaking be filed, with two or more sureties, in a sum 7 equal to twice the amount of the judgment, including costs, я when the judgment is for the payment of money. The 9 undertaking must be conditioned, when the action is for the 10 recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be 11 12 withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against him in the action in the 13 14 district court.

15 (2) An Except as provided in subsection (4), an appeal 16 from a justice's or city court is not effectual for any 17 purpose unless an undertaking be filed, with two or more 18 sureties, in a sum equal to twice the value of the property, 19 including costs, when the judgment is for the recovery of 20 specific personal property. When the action is for the 21 recovery of specific personal property, the undertaking must 22 be conditioned that the appellant will pay the judgment and 23 costs appealed from and obey the order of the court made 24 therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against him in said 25

> INTRODUCED BILL H**B 194**

LC 0401/01

1 action in the district court and obey any order made by the 2 court therein.

3 (3) When Except as provided in subsection (4), when the 4 judgment appealed from directs the delivery of possession of 5 real property, the execution of the same cannot be stayed 6 unless a written undertaking be executed on the part of the 7 appellant, with two or more sureties, to the effect that:

8 (a) during the possession of such property by the
9 appellant, he will not commit or suffer to be committed any
10 waste thereon; and

11 (b) if the appeal be dismissed or withdrawn or the 12 judgment affirmed or judgment be recovered against him in 13 the action in the district court, he will pay the value of 14 the use and occupation of the property from the time of the 15 appeal until the delivery of possession thereof or he will 16 pay any judgment and costs that may be recovered against him 17 in said action in the district court, not exceeding a sum to 18 be fixed by the justice or judge of the court from which the 19 appeal is to be taken, which sum must be specified in the 20 undertaking.

21 (4) When the appealing party is indigent, the district
22 court may waive the undertaking requirements of this
23 section."

-End-

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1 HOUSE BILL NO. 194 2 INTRODUCED BY TOOLE, PIPINICH, MEASURE, DAILY 3 A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING DUE PROCESS TO 4 5 INDIGENTS BY PROVIDING THAT THE DISTRICT COURT MAY SHALL WAIVE THE UNDERTAKING FOR AN APPEAL TO DISTRICT COURT WHEN 6 7 THE APPEALING PARTY IS INDIGENT; IMPLEMENTING THE MONTANA SUPREME COURT'S DECISION IN MERCHANTS ASSOCIATION V. CONGER, 8 9 185 MONT. 552, 606 P.2D 125 (1979); AND AMENDING SECTIONS 25-33-104 AND 25-33-201, MCA." 10

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1 his attorney."

2 Section 2. Section 25-33-201, MCA, is amended to read: 3 "25-33-201. Undertaking on appeal. (1) An Except as provided in subsection (4), an appeal from a justice's or 4 city court is not effectual for any purpose unless an 5 6 undertaking be filed, with two or more sureties, in a sum 7 equal to twice the amount of the judgment, including costs, a when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the Q, 10 recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be 11 12 withdrawn or dismissed or the amount of any judgment and all 13 costs that may be recovered against him in the action in the 14 district court.

15 (2) An Except as provided in subsection (4), an appeal 16 from a justice's or city court is not effectual for any 17 purpose unless an undertaking be filed, with two or more 18 sureties, in a sum equal to twice the value of the property, 19 including costs, when the judgment is for the recovery of 20 specific personal property. When the action is for the 21 recovery of specific personal property, the undertaking must 22 be conditioned that the appellant will pay the judgment and 23 costs appealed from and obey the order of the court made 24 therein if the appeal be withdrawn or dismissed or pay any 25 judgment and costs that may be recovered against him in said THIRD READING

-2- HB 194

CONSENT CALENDAR AS AMENDED

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8 (a) during the possession of such property by the
9 appellant, he will not commit or suffer to be committed any
10 waste thereon; and

11 (b) if the appeal be dismissed or withdrawn or the 12 judgment affirmed or judgment be recovered against him in 13 the action in the district court, he will pay the value of 14 the use and occupation of the property from the time of the 15 appeal until the delivery of possession thereof or he will 16 pay any judgment and costs that may be recovered against him 17 in said action in the district court, not exceeding a sum to 18 be fixed by the justice or judge of the court from which the 19 appeal is to be taken, which sum must be specified in the 20 undertaking.

(4) When the appealing party is DETERMINED BY THE COURT
 TO BE indigent, the district court may SHALL waive the
 undertaking requirements of this section."

-End-

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Montana Legislative Council

HB 0194/02

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