

HOUSE BILL NO. 194

INTRODUCED BY TOOLE, PIPINICH, MEASURE, DAILY

IN THE HOUSE

JANUARY 15, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 16, 1991 FIRST READING.

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

POSTED ON CONSENT CALENDAR.

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 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 26, 1991 FIRST READING.

FEBRUARY 7, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

FEBRUARY 9, 1991 SECOND READING, CONCURRED IN.

FEBRUARY 11, 1991 THIRD READING, CONCURRED IN.
AYES, 44; NOES, 4.

RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991 RECEIVED FROM SENATE.

FEBRUARY 12, 1991 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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HOUSE BILL NO. 194
INTRODUCED BY *Bob Barto* *Tommy* *Meacham* *Duffy*

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

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

Section 1. Section 25-33-104, MCA, is amended to read:

"25-33-104. Papers to be transmitted. Upon the filing 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 judge must, within 10 days, upon the payment of the fees therefor, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; and the justice or judge may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice or judge by the party or

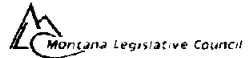
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his attorney."

Section 2. Section 25-33-201, MCA, is amended to read:

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

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



INTRODUCED BILL
HB 194

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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his attorney."

Section 2. Section 25-33-201, MCA, is amended to read:

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

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

THIRD READING



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 DETERMINED BY THE COURT
22 TO BE indigent, the district court may SHALL waive the
23 undertaking requirements of this section."

-End-

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Section 2. Section 25-33-201, MCA, is amended to read:

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

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

REFERENCE BILL



1 action in the district court and obey any order made by the
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6 unless a written undertaking be executed on the part of the
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22 TO BE indigent, the district court may SHALL waive the
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