

HOUSE BILL 289

Introduced by Benedict

1/21	Introduced
1/21	Referred to Judiciary
1/21	First Reading
1/30	Hearing
2/04	Tabled in Committee

1 HOUSE BILL NO. 289  
2 INTRODUCED BY Brought

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAWS RELATING TO MARRIAGE TERMINATION; CLARIFYING THE  
6 DISPOSITION OF FEES FOR MARRIAGE TERMINATION; SPECIFYING A  
7 FEE FOR A PETITION FOR INVALID MARRIAGE; PROVIDING THAT THE  
8 FINALITY OF A DECREE OF INVALID MARRIAGE IS THE SAME AS A  
9 DISSOLUTION DECREE; REMOVING THE REQUIREMENT OF NOTICE FOR A  
10 DECREE OF LEGAL SEPARATION; AND AMENDING SECTIONS 19-5-404,  
11 25-1-201, AND 40-4-108, MCA."  
12

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

14 **Section 1.** Section 19-5-404, MCA, is amended to read:

15 "19-5-404. (Temporary) Contributions by the state. The  
16 state of Montana shall contribute monthly to the fund a sum  
17 equal to 6% of the salary of each member. In addition, the  
18 clerk of each district court shall transmit 68% of certain  
19 filing fees as required under 25-1-201(2) and that portion  
20 of the fee for filing a petition for dissolution of marriage  
21 and a motion for substitution of a judge specified in  
22 25-1-201(4) and (6) to the state, which shall first deposit  
23 in the fund an amount equal to 31% of the salaries paid to  
24 district judges and supreme court justices who are covered  
25 by the judges' retirement system and then deposit the

1 balance in the state general fund. The clerk of the supreme  
2 court shall pay one-fourth of the fees collected under  
3 3-2-403 to the public employees' retirement division of the  
4 department of administration to be credited to the fund.

5 19-5-404. (Effective July 1, 1991) Contributions by the  
6 state. The state of Montana shall contribute monthly to the  
7 fund a sum equal to 6% of the salary of each member. In  
8 addition, the clerk of each district court shall transmit  
9 68% of certain filing fees as required under 25-1-201(2) and  
10 that portion of the fee for filing a petition for  
11 dissolution of marriage, invalid marriage, and legal  
12 separation and a motion for substitution of a judge  
13 specified in 25-1-201(4) and (6) to the state, which shall  
14 first deposit in the fund an amount equal to 34.71% of the  
15 salaries paid to district judges and supreme court justices  
16 who are covered by the judges' retirement system and then  
17 deposit the balance in the state general fund. The clerk of  
18 the supreme court shall pay one-fourth of the fees collected  
19 under 3-2-403 to the public employees' retirement division  
20 of the department of administration to be credited to the  
21 fund."

22 **Section 2.** Section 25-1-201, MCA, is amended to read:

23 "25-1-201. Fees of clerk of district court. (1) The  
24 clerk of the district court shall collect the following  
25 fees:

**INTRODUCED BILL**  
**HB 289**



1 (a) at the commencement of each action or proceeding,  
 2 except a petition for dissolution of marriage, invalid  
 3 marriage, or legal separation, from the plaintiff or  
 4 petitioner, \$60; for filing a complaint in intervention,  
 5 from the intervenor, \$60; for filing a petition for  
 6 dissolution of marriage, a fee of \$100; for filing a  
 7 petition for an invalid marriage, a fee of \$100; and for  
 8 filing a petition for legal separation, a fee of \$100;

9 (b) from each defendant or respondent, on his  
 10 appearance, \$40;

11 (c) on the entry of judgment, from the prevailing  
 12 party, \$25;

13 (d) for preparing copies of papers on file in his  
 14 office, 50 cents per page for the first five pages of each  
 15 file, per request, and 25 cents per page thereafter;

16 (e) for each certificate, with seal, \$2;

17 (f) for oath and jurat, with seal, \$1;

18 (g) for search of court records, 50 cents for each year  
 19 searched, not to exceed a total of \$25;

20 (h) for filing and docketing a transcript of judgment  
 21 or abstract of judgment from all other courts, \$25;

22 (i) for issuing an execution or order of sale on a  
 23 foreclosure of a lien, \$5;

24 (j) for transmission of records or files or transfer of  
 25 a case to another court, \$5;

1 (k) for filing and entering papers received by transfer  
 2 from other courts, \$10;

3 (l) for issuing a marriage license, \$30;

4 (m) on the filing of an application for informal,  
 5 formal, or supervised probate or for the appointment of a  
 6 personal representative or the filing of a petition for the  
 7 appointment of a guardian or conservator, from the applicant  
 8 or petitioner, \$50, which includes the fee for filing a will  
 9 for probate;

10 (n) on the filing of the items required in 72-4-303 by  
 11 a domiciliary foreign personal representative of the estate  
 12 of a nonresident decedent, \$35;

13 (o) for filing a declaration of marriage without  
 14 solemnization, \$30;

15 (p) for filing a motion for substitution of a judge,  
 16 \$100.

17 (2) Except as provided in subsections (3) through (7),  
 18 32% of all fees collected by the clerk of the district court  
 19 must be deposited in and credited to the district court  
 20 fund. If no district court fund exists, that portion of the  
 21 fees must be deposited in the general fund for district  
 22 court operations. The remaining portion of the fees must be  
 23 remitted to the state to be deposited as provided in  
 24 19-5-404.

25 (3) In the case of a fee collected for issuing a

1 marriage license or filing a declaration of marriage without  
2 solemnization, \$14 must be deposited in and credited to the  
3 state general fund, \$6.40 must be deposited in and credited  
4 to the county general fund, and \$9.60 must be remitted to  
5 the state to be deposited as provided in 19-5-404.

6 (4) Of the fee for filing a petition for dissolution of  
7 marriage, invalid marriage, or legal separation, \$40 must be  
8 deposited in the state general fund, \$35 must be remitted to  
9 the state to be deposited as provided in 19-5-404, \$5 must  
10 be deposited in the children's trust fund account  
11 established by 41-3-702, and \$20 must be deposited in and  
12 credited to the district court fund. If no district court  
13 fund exists, the \$20 must be deposited in the general fund  
14 for district court operations.

15 (5) (a) Before the percentages contained in subsection  
16 (2) are applied and the fees deposited in the district court  
17 fund or the county general fund or remitted to the state,  
18 the clerk of the district court shall deduct from the  
19 following fees the amounts indicated:

20 (i) at the commencement of each action or proceeding  
21 and for filing a complaint in intervention as provided in  
22 subsection (1)(a), \$35;

23 (ii) from each defendant or respondent, on his  
24 appearance, as provided in subsection (1)(b), \$25;

25 (iii) on the entry of judgment as provided in subsection

1 (1)(c), \$15;

2 (iv) on the entry of judgment as provided in subsection  
3 (1)(h), \$20;

4 (v) for issuing an execution or order of sale as  
5 provided in subsection (1)(i), \$3; and

6 (vi) from the applicant or petitioner, on the filing of  
7 an application for probate or for the appointment of a  
8 personal representative or on the filing of a petition for  
9 appointment of a guardian or conservator, as provided in  
10 subsection (1)(m), \$15.

11 (b) The clerk of the district court shall deposit the  
12 money deducted in subsection (5)(a) in the county general  
13 fund for district court operations unless the county has a  
14 district court fund. If the county has a district court  
15 fund, the money must be deposited in that fund.

16 (6) The fee for filing a motion for substitution of a  
17 judge as provided in subsection (1)(p) must be remitted to  
18 the state to be deposited as provided in 19-5-404.

19 (7) Fees collected under subsections (1)(d) through  
20 (1)(i) must be deposited in the district court fund. If no  
21 district court fund exists, fees must be deposited in the  
22 general fund for district court operations."

23 **Section 3.** Section 40-4-108, MCA, is amended to read:

24 "40-4-108. Decree. (1) A decree of dissolution of  
25 marriage, of invalid marriage, or of legal separation is

1 final when entered, subject to the right of appeal. An  
2 appeal from the decree of dissolution that does not  
3 challenge the finding that the marriage is irretrievably  
4 broken does not delay the finality of that provision of the  
5 decree which dissolves the marriage beyond the time for  
6 appealing from that provision, and either of the parties may  
7 remarry pending appeal.

8 (2) No earlier than 6 months after entry of a decree of  
9 legal separation, the court on motion of either party shall  
10 convert the decree to a decree of dissolution of marriage.

11 (3) The clerk of court shall give notice of the entry  
12 of a decree of dissolution or ~~legal-separation~~ invalid  
13 marriage:

14 (a) if the marriage is registered in this state, to the  
15 clerk of the district court of the county where the marriage  
16 is registered who shall enter the fact of dissolution or  
17 separation invalidity in the book in which the marriage  
18 license and certificate are recorded; or

19 (b) if the marriage is registered in another  
20 jurisdiction, to the appropriate official of that  
21 jurisdiction, with the request that he enter the fact of  
22 dissolution or invalidity in the appropriate record.

23 (4) Upon request by a wife whose marriage is dissolved  
24 or declared invalid, the court shall order her maiden name  
25 or a former name restored."

-End-