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House BILL NO. *309*
INTRODUCED BY *John Sully*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES FOR THE DISQUALIFICATION OF JUSTICES, MAGISTRATES, AND JUSTICES OF THE PEACE IN CRIMINAL PROCEEDINGS."

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

Section 1. There is a new R.C.M. section numbered 95-2010 that reads as follows:

Disqualification of justice, magistrate, or justice of the peace. (1) The defendant or the prosecution may move the court in writing for the disqualification of a justice, magistrate, or justice of the peace on the ground that he cannot have a fair and impartial hearing or trial before the justice, magistrate, or justice of the peace. The motion shall be made at least fifteen (15) days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown. Upon the filing of such a motion the justice, magistrate, or justice of the peace against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding

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to some other court, nor to the power of calling in another justice, magistrate, or justice of the peace to sit and act in such criminal action or proceeding, providing that no justice, magistrate, or justice of the peace shall so arrange the calendar as to defeat the purposes of this section. Not more than one (1) justice, magistrate, or justice of the peace can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one (1) justice, magistrate, or justice of the peace at the instance of the defendant or defendants.

If either party in any matter above-mentioned shall file the motion as herein provided such party may not complain of any reasonable delay as the result thereof.

The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

(2) In addition to the provision of subsection (1) any defendant may move at any time for the disqualification of a justice, magistrate, or justice of the peace for cause, supported by affidavit. Upon the filing of such motion the court shall conduct a hearing and determine the merits of the motion.

-End-

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 309
2 INTRODUCED BY SCULLY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES
5 FOR THE DISQUALIFICATION OF JUSTICES, MAGISTRATES, AND
6 JUSTICES OF THE PEACE; ~~IN--CRIMINAL--PROCEEDINGS~~ AMENDING
7 SECTION 93-901, R.C.M. 1947."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. There is a new R.C.M. section numbered
11 95-2010 that reads as follows:
12 95-2010. Disqualification of justice, magistrate, or
13 justice of the peace. (1) The defendant or the prosecution
14 may move the court in writing for the disqualification of a
15 justice, magistrate, or justice of the peace on the ground
16 that he cannot have a fair and impartial hearing or trial
17 before the justice, magistrate, or justice of the peace.
18 The motion shall be made at least fifteen (15) days prior to
19 the trial of the case, or any retrial thereof after appeal,
20 except for good cause shown. Upon the filing of such a
21 motion the justice, magistrate, or justice of the peace
22 against whom the motion is filed shall be without authority
23 to act further in the criminal action, motion or proceeding
24 but the provisions of this section do not apply to the
25 arrangement of the calendar, the regulation of the order of

1 business, the power of transferring the criminal action or
2 proceeding to some other court, nor to the power of calling
3 in another justice, magistrate, or justice of the peace to
4 sit and act in such criminal action or proceeding, providing
5 that no justice, magistrate, or justice of the peace shall
6 so arrange the calendar as to defeat the purposes of this
7 section. Not more than one (1) justice, magistrate, or
8 justice of the peace can be disqualified in the criminal
9 action or proceeding, at the instance of the prosecution and
10 not more than one (1) justice, magistrate, or justice of the
11 peace at the instance of the defendant or defendants.
12 If either party in any matter above-mentioned shall
13 file the motion as herein provided such party may not
14 complain of any reasonable delay as the result thereof.
15 The provision of this section shall be inapplicable to
16 any person in any cause involving a direct contempt of
17 court.
18 (2) In addition to the provision of subsection (1) any
19 defendant may move at any time for the disqualification of a
20 justice, magistrate, or justice of the peace for cause,
21 supported by affidavit. Upon the filing of such motion the
22 court shall conduct a hearing and determine the merits of
23 the motion.
24 SECTION 2. SECTION 93-901, R.C.M. 1947, IS AMENDED TO
25 READ AS FOLLOWS:

1 "93-901. Cases in which judge may be disqualified --
2 calling in another judge. Any justice, judge, or justice of
3 the peace must not sit or act as such in any action or
4 proceeding;

5 1. To which he is a party, or in which he is
6 interested;

7 2. When he is related to either party by consanguinity
8 or affinity within the sixth degree, computed according to
9 the rules of law;

10 3. When he has been attorney or counsel for either
11 party in the action or proceeding, or when he rendered or
12 made the judgment, order, or decision appealed from;

13 4. When either party makes and files an affidavit as
14 hereinafter provided, that he has reason to believe, and
15 does believe, he cannot have a fair and impartial hearing or
16 trial before a ~~district~~ judge, justice, magistrate, or
17 justice of the peace. Such affidavit may be made by any
18 party to an action, motion, or proceeding, personally, or by
19 his attorney or agent, and shall be filed with the clerk of
20 the ~~district~~ court in which the same may be pending.

21 In any ~~judicial~~ district having only one judge,
22 justice, magistrate, or justice of the peace, the affidavit
23 of disqualification with reference to any action or
24 proceeding to be tried before a jury must be filed at least
25 one day before the day appointed or fixed by the court for

1 setting the trial calendar; provided, however, this
2 limitation shall not apply unless notice of such setting
3 date shall be given to all parties by the clerk of the
4 ~~district~~ court at least fifteen (15) days prior thereto. In
5 all other cases the affidavit must be filed at least fifteen
6 (15) days before the day appointed or fixed for the hearing
7 or trial of any such action, motion, or proceeding (provided
8 such party shall have had notice of the hearing of such
9 action, motion, or proceeding for at least the period of
10 fifteen (15) days and in case he shall not have had notice
11 for such length of time, he shall file such affidavit
12 immediately upon receiving such notice). Upon the filing of
13 the affidavit, the judge, justice, magistrate, or justice of
14 the peace, as to whom said disqualification is averred shall
15 be without authority to act further in the action, motion,
16 or proceeding, but the provisions of this section do not
17 apply to the arrangement of the calendar, the regulation of
18 the order of business, the power of transferring the action
19 or proceeding to some other court nor to the power of
20 calling in another ~~district~~ judge, justice, magistrate, or
21 justice of the peace to sit and act in such action or
22 proceeding, providing that no judge, justice, magistrate, or
23 justice of the peace shall so arrange the calendar as to
24 defeat the purposes of this section. No more than two
25 judges, justices, magistrates, or justices of the peace can

1 be disqualified in said action or proceeding, at the
 2 instance of the plaintiff, and no more than two at the
 3 instance of the defendant, in said action or proceeding, and
 4 this limitation shall apply however many parties or persons
 5 in interest may be plaintiffs or defendants in such action
 6 or proceeding. If there be more than one judge, justice,
 7 magistrate, or justice of the peace in any ~~judicial~~ district
 8 in which said affidavit is made and filed, upon the first
 9 disqualification of a judge, justice, magistrate, or justice
 10 of the peace in the cause, another judge, justice,
 11 magistrate, or justice of the peace, residing in the
 12 ~~judicial~~ district wherein the affidavit is made and filed,
 13 must be called in to preside in such action, motion or
 14 proceeding; upon the second or any subsequent
 15 disqualification of a judge, justice, magistrate, or justice
 16 of the peace in the cause, a ~~district~~ judge, justice,
 17 magistrate, or justice of the peace of another ~~judicial~~
 18 district of the state must be called in to preside in such
 19 action, motion, or proceeding, or the action, motion, or
 20 proceeding transferred to a ~~district~~ judge, justice,
 21 magistrate, or justice of the peace of another ~~judicial~~
 22 district of the state; when another judge, justice,
 23 magistrate, or justice of the peace has assumed jurisdiction
 24 of an action, motion, or proceeding, the clerk of the
 25 ~~district~~ court in which the same was pending, shall at once

1 notify the parties or their attorneys of record in the same,
 2 either personally or by registered mail, of the name of the
 3 judge, justice, magistrate, or justice of the peace, called
 4 in, or to whom such action, motion, or proceeding was
 5 transferred. Such second or subsequent affidavit of
 6 disqualification shall be filed with the clerk of the
 7 ~~district~~ court in which such action, motion or proceeding
 8 may be pending within three days after the party or his
 9 attorney of record, filing such affidavit, has received
 10 notice as to the judge, justice, magistrate, or justice of
 11 the peace assuming jurisdiction of such action, motion, or
 12 proceeding."

-End-

HOUSE BILL NO. 309
INTRODUCED BY SCULLY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES FOR THE DISQUALIFICATION OF JUSTICES, MAGISTRATES, AND JUSTICES OF THE PEACE; ~~IN--CRIMINAL--PROCEEDINGS~~ AMENDING SECTION 93-901, R.C.M. 1947."

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

Section 1. There is a new R.C.M. section numbered 95-2010 that reads as follows:

95-2010. Disqualification of justice, magistrate, or justice of the peace. (1) The defendant or the prosecution may move the court in writing for the disqualification of a justice, magistrate, or justice of the peace on the ground that he cannot have a fair and impartial hearing or trial before the justice, magistrate, or justice of the peace. The motion shall be made at least fifteen (15) days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown. Upon the filing of such a motion the justice, magistrate, or justice of the peace against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of

business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another justice, magistrate, or justice of the peace to sit and act in such criminal action or proceeding, providing that no justice, magistrate, or justice of the peace shall so arrange the calendar as to defeat the purposes of this section. Not more than one (1) justice, magistrate, or justice of the peace can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one (1) justice, magistrate, or justice of the peace at the instance of the defendant or defendants.

If either party in any matter above-mentioned shall file the motion as herein provided such party may not complain of any reasonable delay as the result thereof.

The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

(2) In addition to the provision of subsection (1) any defendant may move at any time for the disqualification of a justice, magistrate, or justice of the peace for cause, supported by affidavit. Upon the filing of such motion the court shall conduct a hearing and determine the merits of the motion.

SECTION 2. SECTION 93-901, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

1 "93-901. Cases in which judge may be disqualified --
 2 calling in another judge. Any justice, judge, or justice of
 3 the peace must not sit or act as such in any action or
 4 proceeding:

5 1. To which he is a party, or in which he is
 6 interested;

7 2. When he is related to either party by consanguinity
 8 or affinity within the sixth degree, computed according to
 9 the rules of law;

10 3. When he has been attorney or counsel for either
 11 party in the action or proceeding, or when he rendered or
 12 made the judgment, order, or decision appealed from;

13 4. When either party makes and files an affidavit as
 14 hereinafter provided, that he has reason to believe, and
 15 does believe, he cannot have a fair and impartial hearing or
 16 trial before a district judge, justice, magistrate, or
 17 justice of the peace. Such affidavit may be made by any
 18 party to an action, motion, or proceeding, personally, or by
 19 his attorney or agent, and shall be filed with the clerk of
 20 the district court in which the same may be pending.

21 In any ~~judicial~~ district having only one judge,
 22 justice, magistrate, or justice of the peace, the affidavit
 23 of disqualification with reference to any action or
 24 proceeding to be tried before a jury must be filed at least
 25 one day before the day appointed or fixed by the court for

1 setting the trial calendar; provided, however, this
 2 limitation shall not apply unless notice of such setting
 3 date shall be given to all parties by the clerk of the
 4 district court at least fifteen (15) days prior thereto. In
 5 all other cases the affidavit must be filed at least fifteen
 6 (15) days before the day appointed or fixed for the hearing
 7 or trial of any such action, motion, or proceeding (provided
 8 such party shall have had notice of the hearing of such
 9 action, motion, or proceeding for at least the period of
 10 fifteen (15) days and in case he shall not have had notice
 11 for such length of time, he shall file such affidavit
 12 immediately upon receiving such notice). Upon the filing of
 13 the affidavit, the judge, justice, magistrate, or justice of
 14 the peace, as to whom said disqualification is averred shall
 15 be without authority to act further in the action, motion,
 16 or proceeding, but the provisions of this section do not
 17 apply to the arrangement of the calendar, the regulation of
 18 the order of business, the power of transferring the action
 19 or proceeding to some other court nor to the power of
 20 calling in another district judge, justice, magistrate, or
 21 justice of the peace to sit and act in such action or
 22 proceeding, providing that no judge, justice, magistrate, or
 23 justice of the peace shall so arrange the calendar as to
 24 defeat the purposes of this section. No more than two
 25 judges, justices, magistrates, or justices of the peace can

1 be disqualified in said action or proceeding, at the
 2 instance of the plaintiff, and no more than two at the
 3 instance of the defendant, in said action or proceeding, and
 4 this limitation shall apply however many parties or persons
 5 in interest may be plaintiffs or defendants in such action
 6 or proceeding. If there be more than one judge, justice,
 7 magistrate, or justice of the peace in any ~~judicial~~ district
 8 in which said affidavit is made and filed, upon the first
 9 disqualification of a judge, justice, magistrate, or justice
 10 of the peace in the cause, another judge, justice,
 11 magistrate, or justice of the peace, residing in the
 12 ~~judicial~~ district wherein the affidavit is made and filed,
 13 must be called in to preside in such action, motion, or
 14 proceeding; upon the second or any subsequent
 15 disqualification of a judge, justice, magistrate, or justice
 16 of the peace in the cause, a ~~district~~ judge, justice,
 17 magistrate, or justice of the peace of another ~~judicial~~
 18 district of the state must be called in to preside in such
 19 action, motion, or proceeding, or the action, motion, or
 20 proceeding transferred to a ~~district~~ judge, justice,
 21 magistrate, or justice of the peace of another ~~judicial~~
 22 district of the state; when another judge, justice,
 23 magistrate, or justice of the peace has assumed jurisdiction
 24 of an action, motion, or proceeding, the clerk of the
 25 ~~district~~ court in which the same was pending, shall at once

1 notify the parties or their attorneys of record in the same,
 2 either personally or by registered mail, of the name of the
 3 judge, justice, magistrate, or justice of the peace, called
 4 in, or to whom such action, motion, or proceeding was
 5 transferred. Such second or subsequent affidavit of
 6 disqualification shall be filed with the clerk of the
 7 ~~district~~ court in which such action, motion or proceeding
 8 may be pending within three days after the party or his
 9 attorney of record, filing such affidavit, has received
 10 notice as to the judge, justice, magistrate, or justice of
 11 the peace assuming jurisdiction of such action, motion, or
 12 proceeding."

-End-

1 HOUSE BILL NO. 309
2 INTRODUCED BY SCULLY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES
5 FOR THE DISQUALIFICATION OF JUSTICES, MAGISTRATES, AND
6 JUSTICES OF THE PEACE; ~~IN--CRIMINAL--PROCEEDINGS~~ AMENDING
7 SECTION 93-901, R.C.M. 1947."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. There is a new R.C.M. section numbered
11 95-2010 that reads as follows:

12 95-2010. Disqualification of justice, magistrate, or
13 justice of the peace. (1) The defendant or the prosecution
14 may move the court in writing for the disqualification of a
15 justice, magistrate, or justice of the peace on the ground
16 that he cannot have a fair and impartial hearing or trial
17 before the justice, magistrate, or justice of the peace.
18 The motion shall be made at least fifteen (15) days prior to
19 the trial of the case, or any retrial thereof after appeal,
20 except for good cause shown. Upon the filing of such a
21 motion the justice, magistrate, or justice of the peace
22 against whom the motion is filed shall be without authority
23 to act further in the criminal action, motion or proceeding
24 but the provisions of this section do not apply to the
25 arrangement of the calendar, the regulation of the order of

1 business, the power of transferring the criminal action or
2 proceeding to some other court, nor to the power of calling
3 in another justice, magistrate, or justice of the peace to
4 sit and act in such criminal action or proceeding, providing
5 that no justice, magistrate, or justice of the peace shall
6 so arrange the calendar as to defeat the purposes of this
7 section. Not more than one (1) justice, magistrate, or
8 justice of the peace can be disqualified in the criminal
9 action or proceeding, at the instance of the prosecution and
10 not more than one (1) justice, magistrate, or justice of the
11 peace at the instance of the defendant or defendants.

12 If either party in any matter above-mentioned shall
13 file the motion as herein provided such party may not
14 complain of any reasonable delay as the result thereof.

15 The provision of this section shall be inapplicable to
16 any person in any cause involving a direct contempt of
17 court.

18 (2) In addition to the provision of subsection (1) any
19 defendant may move at any time for the disqualification of a
20 justice, magistrate, or justice of the peace for cause,
21 supported by affidavit. Upon the filing of such motion the
22 court shall conduct a hearing and determine the merits of
23 the motion.

24 SECTION 2. SECTION 93-901, R.C.M. 1947, IS AMENDED TO
25 READ AS FOLLOWS:

1 "93-901. Cases in which judge may be disqualified --
 2 calling in another judge. Any justice, judge, or justice of
 3 the peace must not sit or act as such in any action or
 4 proceeding:

5 1. To which he is a party, or in which he is
 6 interested;

7 2. When he is related to either party by consanguinity
 8 or affinity within the sixth degree, computed according to
 9 the rules of law;

10 3. When he has been attorney or counsel for either
 11 party in the action or proceeding, or when he rendered or
 12 made the judgment, order, or decision appealed from;

13 4. When either party makes and files an affidavit as
 14 hereinafter provided, that he has reason to believe, and
 15 does believe, he cannot have a fair and impartial hearing or
 16 trial before a district judge, justice, magistrate, or
 17 justice of the peace. Such affidavit may be made by any
 18 party to an action, motion, or proceeding, personally, or by
 19 his attorney or agent, and shall be filed with the clerk of
 20 the district court in which the same may be pending.

21 In any ~~judicial~~ district having only one judge,
 22 justice, magistrate, or justice of the peace, the affidavit
 23 of disqualification with reference to any action or
 24 proceeding to be tried before a jury must be filed at least
 25 one day before the day appointed or fixed by the court for

1 setting the trial calendar; provided, however, this
 2 limitation shall not apply unless notice of such setting
 3 date shall be given to all parties by the clerk of the
 4 district court at least fifteen (15) days prior thereto. In
 5 all other cases the affidavit must be filed at least fifteen
 6 (15) days before the day appointed or fixed for the hearing
 7 or trial of any such action, motion, or proceeding (provided
 8 such party shall have had notice of the hearing of such
 9 action, motion, or proceeding for at least the period of
 10 fifteen (15) days and in case he shall not have had notice
 11 for such length of time, he shall file such affidavit
 12 immediately upon receiving such notice). Upon the filing of
 13 the affidavit, the judge, justice, magistrate, or justice of
 14 the peace, as to whom said disqualification is averred shall
 15 be without authority to act further in the action, motion,
 16 or proceeding, but the provisions of this section do not
 17 apply to the arrangement of the calendar, the regulation of
 18 the order of business, the power of transferring the action
 19 or proceeding to some other court nor to the power of
 20 calling in another district judge, justice, magistrate, or
 21 justice of the peace to sit and act in such action or
 22 proceeding, providing that no judge, justice, magistrate, or
 23 justice of the peace shall so arrange the calendar as to
 24 defeat the purposes of this section. No more than two
 25 judges, justices, magistrates, or justices of the peace can

1 be disqualified in said action or proceeding, at the
 2 instance of the plaintiff, and no more than two at the
 3 instance of the defendant, in said action or proceeding, and
 4 this limitation shall apply however many parties or persons
 5 in interest may be plaintiffs or defendants in such action
 6 or proceeding. If there be more than one judge, justice,
 7 magistrate, or justice of the peace in any ~~judicial~~ district
 8 in which said affidavit is made and filed, upon the first
 9 disqualification of a judge, justice, magistrate, or justice
 10 of the peace in the cause, another judge, justice,
 11 magistrate, or justice of the peace, residing in the
 12 ~~judicial~~ district wherein the affidavit is made and filed,
 13 must be called in to preside in such action, motion, or
 14 proceeding; upon the second or any subsequent
 15 disqualification of a judge, justice, magistrate, or justice
 16 of the peace in the cause, a ~~district~~ judge, justice,
 17 magistrate, or justice of the peace of another ~~judicial~~
 18 district of the state must be called in to preside in such
 19 action, motion, or proceeding, or the action, motion, or
 20 proceeding transferred to a ~~district~~ judge, justice,
 21 magistrate, or justice of the peace of another ~~judicial~~
 22 district of the state; when another judge, justice,
 23 magistrate, or justice of the peace has assumed jurisdiction
 24 of an action, motion, or proceeding, the clerk of the
 25 ~~district~~ court in which the same was pending, shall at once

1 notify the parties or their attorneys of record in the same,
 2 either personally or by registered mail, of the name of the
 3 judge, justice, magistrate, or justice of the peace, called
 4 in, or to whom such action, motion, or proceeding was
 5 transferred. Such second or subsequent affidavit of
 6 disqualification shall be filed with the clerk of the
 7 ~~district~~ court in which such action, motion or proceeding
 8 may be pending within three days after the party or his
 9 attorney of record, filing such affidavit, has received
 10 notice as to the judge, justice, magistrate, or justice of
 11 the peace assuming jurisdiction of such action, motion, or
 12 proceeding."

13 5. NOTHING CONTAINED IN SUBSECTION 4 OF THIS SECTION
 14 SHALL APPLY TO A JUSTICE OF THE SUPREME COURT.

-End-