

CHAPTER NO. 402.

SENATE BILL NO. 346

INTRODUCED BY TOWE, QUILICI, LOWE

IN THE SENATE

February 2, 1979	Introduced and referred to Committee on Judiciary.
February 17, 1979	Committee recommend bill do pass as amended. Report adopted.
February 19, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
February 22, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1979	Second reading, concurred in.
March 20, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 21, 1979	Returned from second house. Concurred in as amended.
March 22, 1979	Second reading, amendments adopted.
March 23, 1979	Third reading, amendments adopted. Sent to enrolling.  Reported correctly enrolled.

1 *Senate* BILL NO. *346*  
 2 INTRODUCED BY *Sen. Zurlini*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MORE EQUAL  
 5 ACCESS TO THE COURTS OF MONTANA BY REQUIRING THE ALLOWANCE  
 6 OF COSTS AND ATTORNEYS' FEES TO SUCCESSFUL PLAINTIFFS AND  
 7 DEFENDANTS WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND  
 8 WHO ARE SUCCESSFUL IN A LAW SUIT AGAINST A GOVERNMENTAL  
 9 ENTITY; AMENDING SECTIONS 18-1-404 AND 25-10-103, MCA."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [Sections 1  
 13 through 6] may be cited as the "Montana Equal Access to  
 14 Courts Act".

15 NEW SECTION. Section 2. Definition of small business.

16 (1) "Small business", for the purposes of [sections 1  
 17 through 6], means a business that:

- 18 (a) is independently owned and operated;
- 19 (b) is not affiliated with a firm that does not
- 20 qualify as a small business;
- 21 (c) has fewer than 25 shareholders, if it is a
- 22 corporation; and
- 23 (d) meets the relevant criteria enumerated in
- 24 subsection (2).

25 (2) (a) A manufacturing business qualifies as a small

1 business if it has fewer than 250 employees or if the  
 2 average of its annual gross receipts for its preceding 3  
 3 fiscal years is less than \$5 million.

4 (b) A wholesaling business qualifies as a small  
 5 business if it has fewer than 50 employees or if the average  
 6 of its annual gross receipts for its preceding 3 fiscal  
 7 years is less than \$5 million.

8 (c) A retailing business qualifies as a small business  
 9 if it has fewer than 25 employees or if the average of its  
 10 annual gross receipts for its preceding 3 fiscal years is  
 11 less than \$2 million.

12 (d) A service or research business qualifies as a  
 13 small business if it has fewer than 25 employees or if the  
 14 average of its annual gross receipts for its preceding 3  
 15 fiscal years is less than \$1 million.

16 (e) A general construction business qualifies as a  
 17 small business if the average of its annual gross receipts  
 18 for its preceding 3 fiscal years is less than \$5 million.

19 (f) A specialty construction business qualifies as a  
 20 small business if the average of its annual gross receipts  
 21 for its preceding 3 fiscal years is less than \$2 million.

22 (g) A general engineering or architectural business  
 23 qualifies as a small business if the average of its annual  
 24 gross receipts for its preceding 3 fiscal years is less than  
 25 \$1 million.

1 (3) If a firm has been in business for less than 3  
2 years, the average of its annual gross receipts for the  
3 purposes of subsection (2) shall be computed by determining  
4 its average weekly receipts for the period in which it has  
5 been in business and multiplying the result by 52.

6 (4) If a firm has acquired an affiliate during the  
7 accounting period provided for in subsection (2) or (3), the  
8 firm's annual gross receipts include, for the purposes of  
9 subsections (2) and (3), the affiliate's receipts during the  
10 entire accounting period, rather than only its receipts  
11 during the period in which it has been an affiliate. The  
12 receipts of a former affiliate are not included even if it  
13 was an affiliate during a portion of the accounting period.

14 NEW SECTION. Section 3. Costs to defendant sued by  
15 governmental entity. In any civil action brought by the  
16 state, a political subdivision, or an agency of the state or  
17 a political subdivision in which the defendant is a natural  
18 person or small business and not a governmental entity, the  
19 defendant, if he prevails, is entitled to the costs  
20 enumerated in 25-10-201 and reasonable attorney's fees as  
21 determined by the court.

22 NEW SECTION. Section 4. Award of costs against  
23 governmental entity when suit or defense is without  
24 reasonable basis or frivolous. In any civil action brought  
25 by or against the state, a political subdivision, or an

1 agency of the state or a political subdivision, the opposing  
2 party, whether plaintiff or defendant, is entitled to the  
3 costs enumerated in 25-10-201 and reasonable attorney's fees  
4 as determined by the court if:

5 (1) he prevails, wholly or partially, against the  
6 state, political subdivision, or agency;

7 (2) he is a natural person or small business and not a  
8 governmental entity; and

9 (3) the court finds that the state, political  
10 subdivision, or agency brought or defended the action  
11 without a reasonable basis or that its claim or defense was  
12 frivolous.

13 NEW SECTION. Section 5. Certain actions excluded.  
14 [Sections 3 and 4] do not apply to actions involving traffic  
15 offenses or violations of municipal ordinances, actions  
16 under the jurisdiction of the youth court, or actions  
17 undertaken pursuant to Title 49, chapter 2.

18 NEW SECTION. Section 6. Effect on other provisions of  
19 law. Costs shall be granted pursuant to [sections 3 and 4]  
20 notwithstanding any other provision of the law to the  
21 contrary.

22 Section 7. Section 18-1-404, MCA, is amended to read:  
23 "18-1-404. Liability of state -- limitations -- costs.  
24 (1) The state of Montana shall be liable in respect to any  
25 contract entered into in the same manner and to the same

1 extent as a private individual under like circumstances,  
2 except the state of Montana shall not be liable for interest  
3 prior to or after judgment or for punitive damages.

4 (2) ~~Costs shall be allowed to an individual or small~~  
5 ~~business as provided in [sections 1 through 6]. In all other~~  
6 ~~cases, costs~~ shall be allowed in all courts to the  
7 successful claimant to the same extent as if the state of  
8 Montana were a private litigant, except that such costs  
9 shall not include attorney's fees."

10 Section 8. Section 25-10-103, MCA, is amended to read:

11 "25-10-103. When costs discretionary. ~~In~~ Unless  
12 another statute requires the allowance of costs, in other  
13 actions than those mentioned in 25-10-101, costs may be  
14 allowed or not and, if allowed, may be apportioned between  
15 the parties on the same or adverse sides, in the discretion  
16 of the court, but no costs can be allowed in an action for  
17 the recovery of money or damages when the plaintiff fails to  
18 recover more than \$50 or in an action to recover the  
19 possession of personal property when the value of the  
20 property is not more than \$50."

-End-

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7 DEFENDANTS WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND  
8 WHO ARE SUCCESSFUL IN A LAW SUIT AGAINST A GOVERNMENTAL  
9 ENTITY IF THE ENTITY'S CLAIM OR DEFENSE IS FRIVOLOUS;  
10 AMENDING SECTIONS 18-1-404 AND 25-10-103, MCA."

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

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14 through 6 2] may be cited as the "Montana Equal Access to  
15 Courts Act".

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17 (1) "Small business", for the purposes of [sections 1  
18 through 6 2], means a business that:

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21 qualify as a small business;22 (c) has fewer than 25 shareholders, if it is a  
23 corporation; and24 (d) meets the relevant criteria enumerated in  
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8 accounting period provided for in subsection (2) or (3), the  
9 firm's annual gross receipts include, for the purposes of  
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7 state, political subdivision, or agency;

8 (2) he is a natural person or small business and not a  
9 governmental entity; and

10 (3) the court finds that THE CLAIM OR DEFENSE OF the  
11 state, political subdivision, or agency THAT brought or  
12 defended the action ~~without a reasonable basis or that its~~  
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14 NEW SECTION. Section 4. Certain actions excluded.  
15 [Sections SECTION 3 and 4] do DOES not apply to actions  
16 involving traffic offenses or violations of municipal  
17 ordinances, OR actions under the jurisdiction of the youth  
18 courts, or actions undertaken pursuant to Title 49, chapter  
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20 NEW SECTION. Section 5. Effect on other provisions of  
21 law. Costs shall be granted pursuant to [sections SECTION 3  
22 and 4] notwithstanding any other provision of the law to the  
23 contrary.

24 Section 6. Section 18-1-404, MCA, is amended to read:  
25 "18-1-404. Liability of state -- limitations -- costs.

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2 contract entered into in the same manner and to the same  
3 extent as a private individual under like circumstances,  
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7 the court if:

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9 state, political subdivision, or agency; AND

10 (2) he is a natural person or small business and not a  
11 governmental entity; and

12 (3) (2) the court finds that THE CLAIM OR DEFENSE OF  
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5 extent as a private individual under like circumstances,  
6 except the state of Montana shall not be liable for interest  
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9 ~~small-business as provided in [sections 1 through AND 6 5~~  
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17 OTHERWISE PROVIDED IN actions OTHER than those mentioned in  
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19 be apportioned between the parties on the same or adverse  
20 sides, in the discretion of the court, but no costs can be  
21 allowed in an action for the recovery of money or damages  
22 when the plaintiff fails to recover more than \$50 or in an  
23 action to recover the possession of personal property when  
24 the value of the property is not more than \$50."

-End-

March 14, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 346.

1. Title, lines 5 and 6.  
Following: "BY"  
Strike: "REQUIRING THE ALLOWANCE OF"  
Insert: "ALLOWING THE COURT TO AWARD"
2. Title, line 6.  
Strike: "SUCCESSFUL"
3. Title, line 7.  
Strike: "WHO ARE NATURAL PERSONS OR SMALL BUSINESSES AND"
4. Title, line 9.  
Following: "FRIVOLOUS"  
Insert: "OR PURSUED IN BAD FAITH"
5. Page 1, line 13 through line 14, page 3.  
Strike: sections 1 and 2 in their entirety  
Renumber: subsequent sections
6. Page 3, line 25.  
Following: "frivolous"  
Insert: "or pursued in bad faith"
7. Page 4, line 6.  
Strike: ", wholly or partially,"
8. Page 4, line 7.  
Following: " ; "  
Insert: "and"
9. Page 4, lines 8 and 9.  
Strike: subsection (2) in its entirety  
Renumber: subsequent subsection
10. Page 4, line 13.  
Following: "frivolous"  
Insert: "or pursued in bad faith"
11. Page 4, lines 14 through 19.  
Strike: section 4 in its entirety  
Renumber: subsequent sections

March 14, 1979

HOUSE OF REPRESENTATIVES

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Page 2

12. Page 4, line 21.

Following: "Costs"

Strike: "shall"

Insert: "may"

Following: "SECTION"

Strike: "3"

Insert: "1"

13. Page 5, line 6.

Following: "Costs"

Strike: "shall"

Insert: "may"

14. Page 5, lines 6 and 7.

Strike: "to an individual or small business"

15. Page 5, line 7.

Following: "1"

Strike: "through"

Insert: "and"

Following: "6"

Strike: "5"

Insert: "2"

16. Page 5, line 14.

Strike: line 14 in its entirety

17. Page 5, line 15

Following: line 14

Insert: "otherwise provided in"

Following: "actions"

Insert: "other"

AND AS AMENDED BE CONCURRED IN