

SENATE BILL 386

IN THE SENATE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill, as amended.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 16, 1979	Committee recommend bill, as amended, not concurred.

IN THE SENATE

March 20, 1979	Returned from House, not concurred, as amended.
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1 *Agnes* BILL NO. *386*
 2 INTRODUCED BY *Boyer*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DISAPPROVE THE
 5 SUPREME COURT'S RULES ON DISQUALIFICATION AND SUBSTITUTION
 6 OF JUDGES AND TO ADOPT THE FEDERAL RULE."
 7

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

9 Section 1. Disapproval of supreme court's rules on
 10 disqualification. Pursuant to Article VII, section 2, of the
 11 Montana constitution, the legislature disapproves the
 12 supreme court's rules on disqualification and substitution
 13 of judges adopted by supreme court order on December 29,
 14 1976, and found at 34 State Reporter 26.

15 Section 2. Disqualification of judicial officers. (1) A
 16 judicial officer, as defined in 1-1-202, shall disqualify
 17 himself in any proceeding in which his impartiality might
 18 reasonably be questioned.

19 (2) He shall also disqualify himself if:

20 (a) he has a personal bias or prejudice concerning a
 21 party or personal knowledge of disputed evidentiary facts
 22 concerning the proceeding;

23 (b) in private practice he served as a lawyer in the
 24 matter in controversy, a lawyer with whom he previously
 25 practiced law served during such association as a lawyer in

1 the matter, or he or such lawyer has been a material witness
 2 concerning it;

3 (c) he has served in governmental employment and in
 4 such capacity participated as counsel, adviser, or material
 5 witness concerning the proceeding or expressed an opinion
 6 concerning the merits of the particular case in controversy;

7 (d) he knows that he, individually or as a fiduciary,
 8 or his spouse or minor child residing in his household has a
 9 financial interest in the matter in controversy or in a
 10 party to the proceeding or any other interest that could be
 11 substantially affected by the outcome of the proceeding;

12 (e) he or his spouse or a person related to either of
 13 them by consanguinity within the third degree or the spouse
 14 of such a person is:

15 (i) a party to the proceeding or an officer, director,
 16 or trustee of a party;

17 (ii) acting as a lawyer in the proceeding;

18 (iii) known by him to have an interest that could be
 19 substantially affected by the outcome of the proceeding;

20 (iv) to his knowledge likely to be a material witness
 21 in the proceeding.

22 (3) A judicial officer shall inform himself about his
 23 personal and fiduciary financial interests and make a
 24 reasonable effort to inform himself about the personal
 25 financial interests of his spouse and minor children

1 residing in his household.

2 (4) For the purposes of this section, the following
3 definitions apply:

4 (a) "Proceeding" includes pretrial, trial, and
5 appellate review proceedings and all other stages of
6 litigation.

7 (b) "Fiduciary" includes such relationships as
8 executor, administrator, trustee, and guardian.

9 (c) "Financial interest" means ownership of a legal or
10 equitable interest, however small, or a relationship as
11 director, adviser, or other active participant in the
12 affairs of a party, except that:

13 (i) ownership in a mutual or common investment fund
14 that holds securities is not a financial interest in such
15 securities unless the judicial officer participates in the
16 management of the fund;

17 (ii) an office in an educational, religious,
18 charitable, fraternal, or civic organization is not a
19 financial interest in securities held by the organization;

20 (iii) the proprietary interest of a policyholder in a
21 mutual insurance company or a depositor in a mutual savings
22 association or a similar proprietary interest is a financial
23 interest in the organization only if the outcome of the
24 proceeding could substantially affect the value of the
25 interest;

1 (iv) ownership of government securities is a financial
2 interest in the issuer only if the outcome of the proceeding
3 could substantially affect the value of the securities.

4 (5) No judicial officer may accept from the parties to
5 the proceeding a waiver of any ground for disqualification
6 enumerated in subsection (2). If the ground for
7 disqualification arises only under subsection (1), a waiver
8 may be accepted provided it is preceded by a full disclosure
9 on the record of the basis for disqualification.

-End-

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2 INTRODUCED BY BLAYLOCK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DISAPPROVE THE
5 SUPREME COURT'S RULES ON DISQUALIFICATION AND SUBSTITUTION
6 OF JUDGES AND TO ADOPT A MODIFIED VERSION OF THE FEDERAL
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18 himself in any proceeding in which his impartiality might
19 reasonably be questioned.

20 (2) He shall also disqualify himself if:

21 (a) he has a personal bias or prejudice concerning a
22 party OR A LAWYER REPRESENTING A PARTY or personal knowledge
23 of disputed evidentiary facts concerning the proceeding;

24 (b) in private practice he served ~~as a~~ lawyer
25 REPRESENTED A PARTY INVOLVED in the matter in controversy, a

1 lawyer with whom he previously practiced law served during
2 such association as a lawyer COUNSEL FOR A PARTY INVOLVED in
3 the matter, or he or such lawyer has been a material witness
4 concerning ~~it~~ ON BEHALF OF A PARTY IN ANY PRIOR PROCEEDING;
5 (C) HE HAS MADE STATEMENTS, PUBLICLY OR PRIVATELY,
6 PREJUDGING ANY ISSUE IN CONTROVERSY PRIOR TO THE SUBMISSION
7 OF ALL EVIDENCE CONCERNING THAT ISSUE;

8 (d) ~~(D)~~ he has served in governmental employment and in
9 such capacity participated as counsel, adviser, or material
10 witness concerning the proceeding or expressed an opinion
11 concerning the merits of the particular case in controversy;
12 (e) ~~(E)~~ he knows that he, individually or as a
13 fiduciary, or his spouse or minor child residing in his
14 household has a financial interest in the matter in
15 controversy or in a party to the proceeding or any other
16 interest that could be substantially affected by the outcome
17 of the proceeding;

18 (f) ~~(F)~~ he or his spouse or a person related to either
19 of them by consanguinity within the third degree or the
20 spouse of such a person is:

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22 or trustee of a party;

23 (ii) acting as a lawyer in the proceeding;

24 (iii) known by him to have an interest that could be
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