

House Bill 402

In The House

January 21, 1981	Introduced and referred to Committee on Judiciary.
February 2, 1981	Committee recommend bill do pass.
February 3, 1981	Bill printed and placed on members' desks.
February 5, 1981	Second reading do pass.
February 6, 1981	Considered correctly engrossed.
February 7, 1981	Third reading passed.

In The Senate

February 9, 1981	Introduced and referred to Committee on Local Government.
March 13, 1981	Committee recommend bill not concurred.

In The House

March 14, 1981	Returned from Senate not concurred.
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1 HOUSE BILL NO. 402

2 INTRODUCED BY Keedy

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE FEES
5 PAID TO WITNESSES IN CERTAIN JUDICIAL PROCEEDINGS; AMENDING
6 SECTIONS 26-2-501 THROUGH 26-2-503, 26-2-505, 46-15-112, AND
7 46-15-113, MCA."

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

10 Section 1. Section 26-2-501, MCA, is amended to read:

11 "26-2-501. Witnesses in courts of record and before
12 certain court officers. (1) Witness fees are as follows:

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14 proceeding before any court of record, referee, or officer
15 authorized to take depositions or commissioners to assess
16 damages or otherwise, for each day, ~~\$10~~ \$25;

17 (b) for actual and necessary mileage in traveling to
18 the place of trial or hearing, each way, for each mile, a
19 mileage allowance as provided in 2-18-503;

20 ~~(c) any other actual and necessary expenses, as~~
21 ~~determined by the court.~~

22 (2) However, no officer of the United States, the
23 state of Montana, or any county, incorporated city, or town
24 within the limits of the state of Montana shall receive any
25 per diem when testifying in a criminal proceeding, and no

1 witness shall receive fees in any more than one criminal
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19 "26-2-505. Expert witnesses. An expert is a witness
20 and ~~receives the same compensation as a witness shall~~
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22 reasonable and proper."

23 Section 5. Section 46-15-112, MCA, is amended to read:

24 "46-15-112. Summoning witness in this state to testify
25 in another state. (1) If a judge of a court of record in any

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HB 402

1 state, which by its laws has made provision for commanding
 2 persons within that state to attend and testify in this
 3 state, certifies under the seal of such court that there is
 4 a criminal prosecution pending in such court or that a grand
 5 jury investigation has commenced or is about to commence,
 6 that a person being within this state is a material witness
 7 in such prosecution or grand jury investigation, and that
 8 his presence will be required for a specified number of
 9 days, upon presentation of such certificate to any judge of
 10 a court of record in the county in which such person is,
 11 such judge shall fix a time and place for a hearing and
 12 shall make an order directing the witness to appear at a
 13 time and place certain for the hearing.

14 (2) If at a hearing the judge determines that the
 15 witness is material and necessary, that it will not cause
 16 undue hardship to the witness to be compelled to attend and
 17 testify in the prosecution or a grand jury investigation in
 18 the other state, and that the laws of the state in which the
 19 prosecution is pending or grand jury investigation has
 20 commenced or is about to commence will give to him
 21 protection from arrest and the service of civil and criminal
 22 process, he shall issue a summons with a copy of the
 23 certificate attached directing the witness to attend and
 24 testify in the court where the prosecution is pending or
 25 where a grand jury investigation has commenced or is about

1 to commence at a time and place specified in the summons. In
 2 any such hearing the certificate shall be prima facie
 3 evidence of all the facts stated therein.

4 (3) If said certificate recommends that the witness be
 5 taken into immediate custody and delivered to an officer of
 6 the requesting state to assure his attendance in the
 7 requesting state, such judge may, in lieu of notification of
 8 the hearing, direct that such witness be forthwith brought
 9 before him for said hearing. The judge at the hearing being
 10 satisfied of the desirability of such custody and delivery,
 11 for which determination the certificate shall be prima facie
 12 proof of such desirability, may, in lieu of issuing subpoena
 13 or summons, order that said witness be forthwith taken into
 14 custody and delivered to an officer of the requesting state.

15 (4) If the witness who is summoned as provided in this
 16 section, after being paid or tendered by some properly
 17 authorized person the a sum of ~~10-cents-a-mile-for-each-mile~~
 18 ~~and-\$5-for-each-day-that-he-is-required-to-travel-and-attend~~
 19 ~~as-a-witness equal to the amount he would be paid as a~~
 20 ~~witness in a court of record of this state as provided in~~
 21 ~~26-2-501~~, fails without good cause to attend and testify as
 22 directed in the summons, he shall be punished in the manner
 23 provided for the punishment of any witness who disobeys a
 24 summons issued from a court of record in this state."

25 Section 6. Section 46-15-113, MCA, is amended to read:

1 "46-15-113. Witness from another state summoned to
 2 testify in this state. (1) Whenever a person in any state
 3 which by its laws has made provision for commanding persons
 4 within its borders to attend and testify in criminal
 5 prosecutions or grand jury investigations in this state is a
 6 material witness in a prosecution pending in a court of
 7 record in this state or in a grand jury investigation which
 8 has commenced or is about to commence, a judge of the court
 9 may issue a certificate under the seal of the court stating
 10 these facts and specifying the number of days the witness
 11 will be required. The certificate shall be presented to a
 12 judge of a court of record in the county in which the
 13 witness is found.

14 (2) If the certificate recommends that the witness be
 15 taken into immediate custody and delivered to an officer of
 16 this state to assure his attendance in this state, it is
 17 prima facie proof of the desirability of such custody and
 18 delivery and the judge may direct that the witness be
 19 brought before him immediately. If the judge is satisfied as
 20 to the desirability of such custody and delivery, he may
 21 order that the witness be immediately taken into custody and
 22 delivered to an officer of this state. The order is
 23 sufficient authority for the officer to take the witness
 24 into custody and hold him unless and until he is released by
 25 bail, recognizance, or order of the judge issuing the

1 certificate.

2 (3) Whenever a witness is summoned to attend and
 3 testify in this state, he shall be tendered ~~the a sum of--10~~
 4 ~~cents--a--mile--for--each--mile--and--\$5--for--each--day--that--he--is~~
 5 ~~required--to--travel--and--attend--as--a--witness~~ equal to the
 6 ~~amount he would be paid as a witness in a court of record of~~
 7 ~~this state as provided in 26-2-501.~~ If the state wherein
 8 the witness is found has by statutory enactment required
 9 that the summoned witness be paid an amount in excess of the
 10 amount specified in the preceding sentence, the witness may
 11 be tendered the amount required by that state.

12 (4) A witness who has appeared in accordance with the
 13 provisions of the summons may not be required to remain
 14 within this state for a longer period of time than the
 15 period mentioned in the certificate unless otherwise ordered
 16 by the court.

17 (5) If the witness fails without good cause to attend
 18 and testify as directed in the summons, he shall be punished
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-End-

Approved by Committee on Judiciary

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18 the place of trial or hearing, each way, for each mile, a
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22 (2) However, no officer of the United States, the
23 state of Montana, or any county, incorporated city, or town
24 within the limits of the state of Montana shall receive any
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22 reasonable and proper."

23 Section 5. Section 46-15-112, MCA, is amended to read:

24 "46-15-112. Summoning witness in this state to testify
25 in another state. (1) If a judge of a court of record in any

1 state, which by its laws has made provision for commanding
 2 persons within that state to attend and testify in this
 3 state, certifies under the seal of such court that there is
 4 a criminal prosecution pending in such court or that a grand
 5 jury investigation has commenced or is about to commence,
 6 that a person being within this state is a material witness
 7 in such prosecution or grand jury investigation, and that
 8 his presence will be required for a specified number of
 9 days, upon presentation of such certificate to any judge of
 10 a court of record in the county in which such person is,
 11 such judge shall fix a time and place for a hearing and
 12 shall make an order directing the witness to appear at a
 13 time and place certain for the hearing.

14 (2) If at a hearing the judge determines that the
 15 witness is material and necessary, that it will not cause
 16 undue hardship to the witness to be compelled to attend and
 17 testify in the prosecution or a grand jury investigation in
 18 the other state, and that the laws of the state in which the
 19 prosecution is pending or grand jury investigation has
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 2 any such hearing the certificate shall be prima facie
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4 (3) If said certificate recommends that the witness be
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 8 the hearing, direct that such witness be forthwith brought
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 14 custody and delivered to an officer of the requesting state.

15 (4) If the witness who is summoned as provided in this
 16 section, after being paid or tendered by some properly
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