

SENATE BILL NO. 238

INTRODUCED BY STORY

IN THE SENATE

January 22, 1981	Introduced and referred to Committee on Judiciary.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, pass consideration.
	On motion taken from second reading and rereferred to Committee on Judiciary. Motion adopted.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.
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March 26, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 92; Noes, 7.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 3, 1981	Second reading, amendments concurred in. On motion segregated from report of Committee of the Whole.
April 4, 1981	On motion consideration be passed for the day.
April 10, 1981	Second reading, amendments not concurred in.
April 11, 1981	On motion Conference Committee requested and appointed.
April 15, 1981	Conference Committee dissolved. On motion new Free Conference Committee requested and appointed.
April 16, 1981	Free Conference Committee reported.
April 17, 1981	Second reading, Free Conference Committee report adopted.

April 17, 1981

Third reading, Free Conference Committee report adopted. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

April 21, 1981

Free Conference Committee report adopted.

IN THE SENATE

April 22, 1981

Returned from house. Sent to enrolling.

Reported correctly enrolled.

1 *Steve* BILL NO. *238*
2 INTRODUCED BY *Stony*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS
5 AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION
6 ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR
7 VEHICLE; AMENDING SECTIONS 25-10-101 AND 25-10-302, MCA."

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

10 Section 1. Section 25-10-101, MCA, is amended to read:

11 "25-10-101. When costs allowed, of course, to
12 plaintiff. Costs are allowed, of course, to the plaintiff
13 upon a judgment in his favor in the following cases:

14 (1) in an action for the recovery of real property or
15 damages thereto;

16 (2) in an action to recover the possession of personal
17 property where the value of the property exceeds \$50; such
18 value shall be determined by the jury, court, or referee by
19 whom the action is tried;

20 (3) in an action for the recovery of money or damages,
21 exclusive of interest, when plaintiff recovers over \$50;

22 (4) in a special proceeding;

23 (5) in an action which involves the title or
24 possession or right of possession of real estate; or the
25 legality of any tax, impost, assessment, toll, or municipal

1 fine; or quo warranto proceedings;
2 (6) in an action to foreclose a lien or pledge, to
3 prevent or abate a nuisance, or for an injunction; ~~or~~
4 ~~(7) in an action arising out of the ownership,~~
5 ~~maintenance, or use of a motor vehicle."~~

6 Section 2. Section 25-10-302, MCA, is amended to read:
7 "25-10-302. Inclusion of attorney's fees in bill of
8 costs. The attorney's fees mentioned in 30-9-511, 71-1-233,
9 and 71-3-124, ~~and [section 3]~~ need not be included in the
10 cost bill if they are made a part of the judgment."

11 ~~NEW SECTION.~~ Section 3. Attorney's fees -- motor
12 vehicle claim. In an action involving solely the recovery of
13 damages for the damage to or the loss of use of a motor
14 vehicle, in which the plaintiff secures a judgment greater
15 than the amount offered to the plaintiff by the defendant or
16 by his agent prior to the filing of the cause of action, the
17 court shall allow, as part of the costs, plaintiff's
18 reasonable attorney's fee, which shall be fixed by the
19 court, notwithstanding any agreement between the parties to
20 the contrary. If the defendant or his agent fails to make
21 any offer, after having been requested to do so by the
22 plaintiff, before the filing of the cause of action, the
23 plaintiff, if successful in the action, shall be entitled to
24 his reasonable attorney's fee under this provision.

25 Section 4. Codification instruction. Section 3 is

LC 2101/01

1 intended to be codified as an integral part of Title 25,
2 chapter 10, part 3, and the provisions of Title 25, chapter
3 10, apply to section 3.

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Approved by Committee
on Judiciary

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4 prevent or abate a nuisance, or for an injunction; or

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6 MOTOR VEHICLE out of the ownership, maintenance, or use of a
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17 motor vehicle, in which the plaintiff secures a judgment
18 EQUAL TO OR greater than the amount ~~offered to the plaintiff~~
19 ~~by the defendant or by~~ OF DAMAGES CLAIMED BY THE PLAINTIFF
20 IN HIS LAST WRITTEN OFFER TO THE DEFENDANT OR his agent
21 prior to the filing of the cause of action, the court shall
22 allow, as part of the costs, plaintiff's reasonable
23 attorney's fee, which shall be fixed by the court, not
24 withstanding any agreement between the parties to the
25 contrary. If the defendant or his agent fails to make any

1 offer, after having been requested to do so by the
2 plaintiff, before the filing of the cause of action, the
3 plaintiff, if successful in the action, shall be entitled to
4 his reasonable attorney's fee under this provision.

5 (2) IF THE PLAINTIFF SECURES A JUDGMENT EQUAL TO OR
6 GREATER THAN THE AMOUNT OFFERED TO THE PLAINTIFF BY THE
7 DEFENDANT OR BY HIS AGENT PRIOR TO THE FILING OF THE CAUSE
8 OF ACTION, THE COURT SHALL ALLOW, AS PART OF THE COSTS,
9 DEFENDANT'S REASONABLE ATTORNEY'S FEE, WHICH SHALL BE FIXED
10 BY THE COURT, NOTWITHSTANDING ANY AGREEMENT BETWEEN THE
11 PARTIES TO THE CONTRARY.

12 Section 4. Codification instruction. Section 3 is
13 intended to be codified as an integral part of Title 25,
14 chapter 10, part 3, and the provisions of Title 25, chapter
15 10, apply to section 3.

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25 possession or right of possession of real estate; or the

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18 EQUAL TO OR greater than the amount ~~offered to the plaintiff~~
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20 IN HIS LAST WRITTEN OFFER TO THE DEFENDANT OR his agent
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22 allow ~~as part of the costs~~, plaintiff's reasonable
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 20 ~~offered to the plaintiff by the defendant or by~~ OF DAMAGES
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 22 DEFENDANT OR his agent THAN THE AMOUNT CONTAINED IN THE
 23 DEFENDANT'S LAST WRITTEN OFFER TO THE PLAINTIFF prior to the
 24 filing of the cause of action, the court shall allow ~~as~~
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2 agreement between the parties to the contrary. IF THE
3 REVERSE IS TRUE OF THE PLAINTIFF'S JUDGMENT IN RELATION TO
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5 PREVAILS AT TRIAL, THE COURT SHALL ALLOW DEFENDANT'S
6 REASONABLE ATTORNEY'S FEE, WHICH SHALL BE FIXED BY THE
7 COURT. If the defendant or his agent fails to make any
8 offer~~y~~~~---after---having---been~~ WITHIN 15 DAYS OF THE DATE
9 requested to do so by the plaintiff, ~~before the filing of~~
10 THE PLAINTIFF MAY FILE the cause of action~~y~~~~---the plaintiff~~
11 AND, if successful in the action, shall be entitled to his
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April 16

1981

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 238

(Report No. 1, April 15, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 238, met April 15, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated March 25, 1981, and recommend as follows:

That the House recede from Committee amendment nos. 1 and 3 through 5;

That the Senate accede to Committee amendment nos. 2 and 6 through 8;

That Senate Bill No. 238 be further amended as specified in CLERICAL INSTRUCTION no. 5;

That the reference copy of Senate Bill No. 238 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Committee Report to Senate Bill No. 238 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 5.

Following: "PLAINTIFF"

Strike: "PARTY"

Insert: "SUCCESSFUL PLAINTIFF"

2. Page 2, line 19.

Following: "than"

Strike: "CLOSER IN VALUE TO"

Insert: "equal to or greater than"

3. Page 2, lines 22 and 23.

Following: "agent"

Strike: "THAN THE AMOUNT CONTAINED IN THE DEFENDANT'S
LAST WRITTEN OFFER TO THE PLAINTIFF"

4. Page 3, lines 2 through 7.

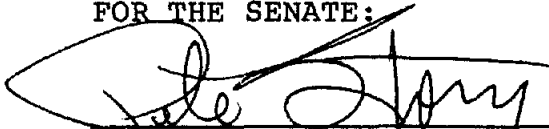
Following: "contrary."


Strike: all underlined language.

FREE CONFERENCE COMMITTEE REPORT NO. 1
Page 2 SENATE BILL NO. 238

5. Page 2, line 5.
Following: "action"
Insert: "for property damage"
Following: "arising"
Strike: "FOR PROPERTY DAMAGE"


FOR THE SENATE:


Story, Chairman


Mazurek


Towe

FOR THE HOUSE:


Eudaily, Chairman


Conn


Daily

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2 court, notwithstanding any agreement between the parties to
3 the contrary. ~~IF THE REVERSE IS TRUE BE THE PLAINTIFFS~~
4 ~~JUDGMENT IN RELATION TO HIS AND THE DEFENDANT'S LAST OFFER~~
5 ~~OR IF THE DEFENDANT PREVAILS AT TRIAL THE COURT SHALL ALLOW~~
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7 ~~BY THE COURT.~~ If the defendant or his agent fails to make
8 any offer, after having been WITHIN 15 DAYS OF THE DATE
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11 AND, if successful in the action, shall be entitled to his
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Respectfully report as follows: That.....

BE AMENDED AS FOLLOWS:

1. Title, line 5.

Following: "A"

Strike: "SUCCESSFUL PLAINTIFF"

Insert: "PARTY"

2. Page 2, line 7.

Following: "vehicle"

Insert: "if he is entitled to attorney's fees under [section 3]"

3. Page 2, line 18.

Following: line 17

Strike: "EQUAL TO OR greater than"

Insert: "closer in value to"

4. Page 2, line 20.

Following: "agent"

Insert: "than the amount contained in the defendant's last written offer
~~XXXXX~~ to the plaintiff"

5. Page 2, line 25.

Following: "."

Insert: "If the reverse is true of the plaintiff's judgment in relation to his and the defendant's last offer or if the defendant prevails at trial, the court shall allow defendant's reasonable attorney's fee, which shall be fixed by the court."

6. Page 3, line 1.

Following: "offer"

Strike: ", after having been"

Insert: "within 15 days of the date"

7. Page 3, line 2.

Following: "plaintiff,"

Strike: "before the filing of"

Insert: "the plaintiff may file"

Following: "action"

Strike: ", the"

8. Page 3, line 3.

Following: line 2

Strike: "plaintiff"

Insert: "and"