SENATE BILL NO. 238

INTRODUCED BY STORY

IN THE SENATE

January 22, 1981

February 9, 1981

February 10, 1981

Pebruary 11, 1981

Pebruary 20, 1981

February 21, 1981

February 24, 1981

February 25, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill do pass as amended. Report adopted.

Bill printed and placed on members' desks.

Second reading, pass consideration.

On motion taken from second reading and rereferred to Committee on Judiciary. Motion adopted.

Committee recommend bill do pass as amended. Report adopted.

Bill printed and placed on members' desks.

Second reading, do pass.

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

Introduced and referred to Committee on Judiciary.

March 2, 1981

March	26, 1981		Committee recommend bill be concurred in as amended. Report adopted.
March	28, 1981		Second reading, concurred in.
Harch	30, 1981		On motion rules suspended and bill allowed to be trans- mitted on the 71st legislative day. Motion adopted.
March	31, 1981		Third reading, concurred in as amended. Ayes, 92; Noes, 7.
		IN THE SE	NATE
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 Pree Conference Committee requested and appointed.
April	16, 1981		Pree Conference Committee reported.
April	17, 1981		Second reading, Free Confer- ence Committee report adopted.

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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.

LC 2101/01

acter BILL NO. 238 1 INTRODUCED BY __ 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS 4 AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION 5 ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR 6 VEHICLE: AMENDING SECTIONS 25-10-101 AND 25-10-302, MCA." 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 Section 1. Section 25-10-101, MCA, is amended to read: 10 #25-10-101. When costs allowed, of course, to 11 plaintiff. Costs are allowed, of course, to the plaintiff 12 upon a judgment in his favor in the following cases: 13 (1) in an action for the recovery of real property or 14 damages thereto; 15 (2) in an action to recover the possession of personal 16 17 property where the value of the property exceeds \$50; such value shall be determined by the jury, court, or referee by 18 19 whom the action is tried; 20 (3) in an action for the recovery of money or damages; exclusive of interest, when plaintiff recovers over \$50; 21 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

fine; or quo warranto proceedings; 1 (6) in an action to foreclose a lien or pledge, to 2 3 prevent or abate a nuisance, or for an injunctionion [7] in an action arising out of the ownership. 4 maintenance. or use of a motor vehicle." Б. Section 2. Section 25-10-302, MCA, is amended to read: 6 #25-10-302. Inclusion of attorney's fees in bill of 7 costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 8 and 71-3-124+ and [section 3] need not be included in the 9 10 cost bill if they are made a part of the judgment." NEW_SECTION. Section 3. Attorney's fees -- motor 11 vehicle claim. In an action involving solely the recovery of 12 13 damages for the damage to or the loss of use of a motor vehicle, in which the plaintiff secures a judgment greater 14 15 than the amount offered to the plaintiff by the defendant or by his agent prior to the filing of the cause of action, the 16 17 court shall allow, as part of the costs, plaintiff's reasonable attorney's fee, which shall be fixed by the 18 19 court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make 20 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 his reasonable attorney's fee under this provision. 24 25 Section 4. Codification Instruction. Section 3 is

LC 2101/01

INTRODUCED BILL 5B 238 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.

-End-

47th Legislature

Approved by Committee on Judiciary

1 SENATE BILL NO. 238 1 2 2 INTRODUCED BY STORY 3 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS 4 5 AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION 5 6 FOR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP. ń 7 motor_vehicle." 7 MAINTENANCE, DR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 8 25-10-101 AND 25-10-302+ MCA." A 0 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 10 11 Section 1. Section 25-10-101, MCA, is amended to read: 11 12 #25-10-101. When costs allowed, of course, to 12 13 plaintiff. Costs are allowed, of course, to the plaintiff. 13 14 upon a judgment in his favor in the following cases: 14 15 (1) in an action for the recovery of real property or 15 damages thereto; 16 16 17 (2) in an action to recover the possession of personal 17 property where the value of the property exceeds \$50; such 18 18 19 value shall be determined by the jury, court, or referee by 19 20 20 whom the action is tried; 21 21 (3) in an action for the recovery of money or damages. exclusive of interest, when plaintiff recovers over \$50; 22 allow. 22 23 (4) in a special proceeding; 23 24 (5) in an action which involves the title or 24 25 possession or right of possession of real estate; or the

legality of any tax, impost, assessment, toll, or municipal fine: or quo warranto proceedings; (6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or (7) in an action arising FOR PROPERTY DAMAGE TO A MOTOR VEHICLE out of the ownership, maintenance, or use of a Section 2. Section 25-10-302, MCA, is amended to read: "25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, and 71-3-124, and [section 3] need not be included in the cost bill if they are made a part of the judgment." NEW SECTION. Section 3. Attorney's fees -- motor vehicle claim. (1) In an action involving solely the recovery of PROPERTY damages for-the-damage-to-or-the-loss of ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR use of a motor vehicle, in which the plaintiff secures a judgment EQUAL TO OR greater than the amount affered-to-the-plaintiff by-the-defendant-or-by OF DAMAGES CLAIMED BY_THE_PLAINTIFF IN HIS LAST WRITTEN DEFER TO THE DEFENDANT OR his agent prior to the filing of the cause of action, the court shall as part of the costs, plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the 25 contrary. If the defendant or his agent fails to make any

-2- SECOND READING

offer, after having been requested to do so by the
 plaintiff, before the filing of the cause of action, the
 plaintiff, if successful in the action, shall be entitled to
 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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Approved by Committee on Judiciary

1 1 SENATE BILL NO. 238 2 2 INTRODUCED BY STORY 3 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS 4 4 5 AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION 5 6 FOR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP, 6 7 motor_vehicle." MAINTENANCE. OR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 7 8 25-10-101 AND 25-10-302+ MCA.* 8 9 9 10 AF IT FNACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 11 Section 1. Section 25-10-101, MCA, is amended to read: 11 12 #25-10-101. When costs allowed, of course, to 12 13 plaintiff. Costs are allowed, of course, to the plaintiff 13 14 upon a judgment in his favor in the following cases: 14 (1) in an action for the recovery of real property or 15 15 16 damages thereto: 16 17 (2) in an action to recover the possession of personal 17 18 property where the value of the property exceeds \$50; such 18 19 value shall be determined by the jury, court, or referee by 19 20 20 whom the action is tried: (3) in an action for the recovery of money or damages, 21 21 22 exclusive of interest, when plaintiff recovers over \$50; 22 23 23 [4] in a special proceeding; (5) in an action which involves the title or 24 24 possession or right of possession of real estate; or the

legality of any tax, impost, assessment, toll, or municipal fine; or quo warranto proceedings; (6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or (7) in an action arising FOR PROPERTY DAMAGE TO-A MOTOR-YEHIGLE out of the ownership, maintenance, or use of a Section 2. Section 25-10-302, NCA, is amended to read: "25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, and 71-3-124, and [section 3] need not be included in the cost bill if they are made a part of the judgment." NEW_SECTION. Section 3. Attorney's fees -- motor vehicle claim. tt In an action involving solely the recovery of <u>PROPERTY</u> damages for-the-damage-to-or-the-toss of ARISING_OUT OF THE_OWNERSHIP+_MAINTENANCE, DR use of a motor vehicle, in which the plaintiff secures a judgment EQUAL TO OR greater than the amount offered-to-the-plaintiff by-the-defendant-or-by OF_DAMAGES_CLAINED_BY_THE PLAINTIFF IN HIS LAST WRITTEN OFFER TO THE DEFENDANT OR his agent prior to the filing of the cause of action, the court shall allowy---as---part--of--the--costsy plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make any 25 SECOND PRINTING -2-SB 238

> SECOND READING

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 his reasonable attorney's fee under this provision. 4 5 121-1F--THE--PLAINTEFF--SECURES-A-JUDGNENT-EQUAL-TO-BR 6 GREATER-THAN-THE-AMOUNT-OFFERED-TO-THE-PLAINTIFF--BY-THE 7 BEFENDANT -- BR -- BY -HIS-AGENT-PRIBR-FU-THE-FILING-BF-THE-EAUSE 8 OF-ACTION-THE-COURT-SHALL-ALLON-AS--PART-OF-THE-COSTSY 9 DEFENDANTAS--REASONABLE-ATTORNEYAS-FEEV-WHIGH-SHALL-BE-FIXED BY-THE-EBURTY--NOTHITHSTANDING--ANY--AGREEMENT-BETWEEN-THE 10 11 PARTIES-TO-THE-CONTRARY Section 4. Codification instruction. Section 3 is 12 intended to be codified as an integral part of Title 25, 13

15 10, apply to section 3.

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chapter 10, part 3, and the provisions of Title 25, chapter

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L SENATE BILL ND. 238 1 legality of any tax, impost, assessment, toll, or municipal. INTRODUCED BY STURY 2 2 fine; or quo warranto proceedings: 3 (6) in an action to foreclose a lien or pledge, to 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS prevent or abate a nuisance, or for an injunction; or 4 4 5 AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION 5 (7) in an action arising FOR PROPERTY DAMAGE TO-A MOTOR-VEHICLE out of the ownership, maintenance, or use of a FOR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP, 6 6 MAINTENANCE, OR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 7 motor vehicle." 7 8 я 25-10-101 AND 25-10-302. MCA.* Section 2. Section 25-10-302, MCA, is amended to read: 9 "25-10-302. Inclusion of attorney's fees in bill of 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 10 10 11 and 71-3-124, and (section 3) need not be included in the Section 1. Section 25-10-101+ MCA+ is amended to read: 11 "25-10-101. When costs allowed, of course, to 12 cost bill if they are made a part of the judgment." 12 13 13 plaintiff. Costs are allowed, of course, to the plaintiff NEW_SECTION. Section 3. Attorney's fees -- motor 14 upon a judgment in his favor in the following cases: vehicle claim. <u>tit</u> in an action involving solely the 14 (1) in an action for the recovery of real property or 15 recovery of <u>PROPERTY</u> damages for-the-damage-to-or-the-loss 15 16 of ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR use of a damages thereto; 16 (2) in an action to recover the possession of personal 17 17 motor vehicle, in which the plaintiff secures a judgment property where the value of the property exceeds \$50; such 18 18 EQUAL TO DR greater than the amount offered-to-the-plaintiff value shall be determined by the jury, court, or referee by 19 19 by-the-defendent-or-by OF DAMAGES CLAINED BY THE PLAINTIFF whom the action is tried; 20 20 IN HIS LAST WRITTEN OFFER TO THE DEFENDANT OR his agent 21 (3) in an action for the recovery of money or damages. 21 prior to the filing of the cause of action, the court shall 22 exclusive of interest, when plaintiff recovers over \$50; 22 allowy---as---part--of--the--costsy plaintiff's reasonable 23 (4) in a special proceeding; 23 attorney's fee, which shall be fixed by the court, not 24 (5) in an action which involves the title or 24 withstanding any agreement between the parties to the possession or right of possession of real estate; or the 25 25 contrary. If the defendant or his agent fails to make any

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THIRD READING

SB 238

SB 230

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 his reasonable attorney's fee under this provision. 4 5 121--IF--THE--PLAINTIFF--SECURES-A-JUDGMENT-EQUAL-TO-OR 6 GREATER-THAN-THE-ANOUNT-OFFERED-TO-THE-PLAINTIFF--BY-THE 7 DEFENDANT--OR---BY-HIS-AGENT-PRIDR-TO-THE-FILING-OF-THE-GAUSE 8 OF-AETION-THE-COURT-SHALL-ALLOH--AS--PART-BE--THE--COSTGY 9 DEFENDANT+S--REASONABLE-ATTORNEY-S-FEEV-WHICH-SHALL-BE-FEXED 10 11 PARTIES-TO-THE-CONTRARY-Section 4. Codification instruction. Section 3 is 12

13 intended to be codified as an integral part of Title 25.
14 chapter: 10. part 3. and the provisions of Title 25. chapter
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-End-

1 legality of any tax, impost, assessment, toll, or municipal SENATE BILL NO. 238 1 2 fine: or quo warranto proceedings: 2 INTRODUCED BY STORY 3 (6) in an action to foreclose a lien or pledge, to з prevent or abate a nuisance, or for an injunction; or 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS 4 5 (7) in an action arising FOR PROPERTY DAMAGE TO-A AND ATTORNEY'S FEES TO A SUCCESSFUL-PLAINTIFF PARTY IN AN 5 HOFOR-VEHICLE out of the ownership, maintenance, or use of a 6 ACTION FOR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP. 6 motor vehicle IF HE IS ENTITLED TO ATTORNEY'S FEES UNDER 7 7 MAINTENANCE. OR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 8 [SECTION 31." 25-10-101 AND 25-10-302, MCA." 8 9 Section 2. Section 25-10-302, MCA, is amended to read: 9 "25-10-302. Inclusion of attorney's fees in bill of 10 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 11 Section 1. Section 25-10-101, MCA, is amended to read: and 71-3-124, and [section_3] need not be included in the 12 "25-10-101. When costs allowed, of course, to 12 13 cost bill if they are made a part of the judgment." plaintiff. Costs are allowed, of course, to the plaintiff 13 14 NEW SECTION. Section 3. Attorney's fees -- motor upon a judgment in his favor in the following cases: 14 15 vehicle claim. <u>ftt</u> In an action involving solely the (1) in an action for the recovery of real property or 15 16 recovery of PROPERTY damages for-the-damage-to-or--the--loss 16 damages thereto; 17 of ARISING__UUT__OF_THE OWNERSHIP, MAINTENANCE, OR use of a 17 (2) in an action to recover the possession of personal motor vehicle, in which the plaintiff secures a judgment 18 property where the value of the property exceeds \$50; such 18 19 value shall be determined by the jury, court, or referee by 19 20 offered-to-the-plaintiff-by-the-defendant-or-by OF DAMAGES 20 whom the action is tried: CLAIMED BY THE PLAINTIFF IN HIS LAST WRITTEN OFFER TO THE 21 (3) in an action for the recovery of money or damages, 21 22 DEFENDANT OR his agent THAN THE AMOUNT CONTAINED IN THE 22 exclusive of interest, when plaintiff recovers over \$50; 23 DEFENDANT'S LAST WRITTEN OFFER TO THE PLAINTIFF prior to the (4) in a special proceeding; 23 filing of the cause of action, the court shall allowy-as 24 (5) in an action which involves the title or 24 25 part-of-the-costsy plaintiff's reasonable attorney's fee, possession or right of possession of real estate; or the 25

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REFERENCE BILL

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1	which shall be fixed by the court, not withstanding any
z	agreement between the parties to the contrary. <u>IF_THE</u>
3	REVERSE IS TRUE OF THE PLAINTIFF'S JUDGMENT IN RELATION TO
4	HIS AND THE DEFENDANT'S LAST OFFER OR IF THE DEFENDANT
5	PREVAILS AT TRIAL, THE COURT SHALL ALLOW DEFENDANT'S
6	REASONABLE ATTORNEY'S FEE. WHICH SHALL BE FIXED BY THE
7	<u>COURT.</u> If the defendant or his agent fails to make any
8	offervafterhavingbeen 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+the plaintiff
11	AND, if successful in the action, shall be entitled to his
12	reasonable attorney's fee under this provision.
13	<u>t211F-THE-PLAINFIFF-SEEWRES-A-JUDGMENTEQUALFDDR</u>
14	<u>GREATERTHANTHEANOUNTOFFEREDTO-THE-PLAINTEFF-DY-THE</u>
15	<u>DEFENDANT-OR-BY-HIS-AGENT-PRIOR-ID-IHE-FILING-BFIHEEAUSE</u>
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17	<u>BEFENDANIAS-REASONABLE-AIIORNEYAS-FEEx-WHICH-SHALL-BEFIXED</u>
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19	PARTIES-TO-THE-EONTRARY=
20	Section 4. Codification instruction. Section 3 is
21	intended to be codified as an integral part of Title 25,
22	chapter 10, part 3, and the provisions of Title 25, chapter
23	10, apply to section 3.

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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:

and the second second

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.

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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: FOR THE HOUSE: SEC Chairman Éudai Chairman 12 Conn **la** Towe Dail

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SB 238

REFERENCE BILL: Includes Free Conference Committee Report

Dated 4-15-81

1 SENATE BILL NO. 238 1 legality of any tax, impost, assessment, toll, or municipal INTRODUCED BY STORY 2 2 fine: or quo warranto proceedings; 3 3 (6) in an action to foreclose a lien or pledge. to 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE COURT COSTS 4 prevent or abate a nuisance, or for an injunction; or 5 AND ATTORNEY'S FEES TO A SUCCESSFUL--PLAINTIFF PARTY 5 (7) in an action FOR PROPERTY DAMAGE arising FOR 6 SUCCESSFUL PLAINTIFF IN AN ACTION FOR PROPERTY DAMAGE 6 PROPERTY---DAMAGE TO--A- NOTOR-VEHICLE out of the ownership. 7 ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR maintenance, or use of a motor vehicle IF HE IS ENTITLED. TO 7 8 VEHICLE; AMENDING SECTIONS 25-10-101 AND 25-10-302. MCA.* 8 ATTORNEY'S FEES_UNDER [SECTION 3]." 9 9 Section 2. Section 25-10-302, MCA, is amended to read: 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 *25-10-302. Inclusion of attorney's fees in bill of 11 Section 1. Section 25-10-101, MCA, is amended to read: 11 costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 12 "25-10-101. When costs allowed, of course, to 12 and 71-3-124, and [section_3] need not be included in the 13 cost bill if they are made a part of the judgment." plaintiff. Costs are allowed, of course, to the plaintiff 13 14 upon a judgment in his favor in the following cases: 14 NEW SECTION. Section 3. Attorney's fees -- motor 15 15 vehicle claim. +++ in an action involving solely the (1) in an action for the recovery of real property or 16 damages thereto; 16 recovery of PROPERTY damages for-the-damage-to-or--the--toss 17 17 of ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR use of a (2) in an action to recover the possession of personal 18 motor vehicle, in which the plaintiff secures a judgment 18 property where the value of the property exceeds \$50: such 19 19 value shall be determined by the jury, court, or referee by **Z**0 GREATER THAN the amount offered--to--the--plaintiff--by--the 20 whom the action is tried: 21 (3) in an action for the recovery of money or damages. 21 defendant--- BY OF DAMAGES CLAIMED BY THE PLAINTIFF IN HIS 22 exclusive of interest, when plaintiff recovers over \$50; 22 LAST WRITTEN OFFER TO THE DEFENDANT OR his agent THAN-THE 23 23 (4) in a special proceeding; AMOUNT -- CONTAINED -- IN-- THE- DEFENDANT AS-LAST-WRITIEN-OFFER-TO 24 (5) in an action which involves the title or 24 THE-PLAINFIFF prior to the filing of the cause of action, 25 possession or right of possession of real estate; or the 25 the court shall allow--as-part-of-the-costs, plaintiff's

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1	reasonable attorney's fee, which shall be fixed by the
z	court, not withstanding any agreement between the parties to
3	the contrary. <u>IF-THE-REVERSEISIRUEBFIHEPLAINIIFF</u> 5
4	<u>JUDGMENTINRELATION-TO-HIS-AND-THE-DEFENDANT1S-LAST-BFFER</u>
5	<u>CR-IF-THE-DEFENDANT-PREVAILS-AT-TRIAL+-THE-EDURT-SHALL-ALLOW</u>
6	<u>BEFENJANTIS-REASONABLE-ATTORNEYIS-FEEY-WHICH-SHALL-BEFIXED</u>
7	BY = THE = EBURT If the defendant or his agent fails to make
8	any offer y-ofter-having-been WITHIN_15_DAYS_OF_THE_DATE
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22	chapter 10, part 3, and the provisions of Title 25, chapter
23	10, apply to section 3.

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SB 238

HOUSE JUDICIARY 3/25/81

E Bill No. 238 SENATE Respectfully report as follows: That..... BE AMENDED AS FOLLOWS: 1. Title, line 5. Following: "A" Strike: "SUCCESSFUL PLAINTIFF" "PARTY" Insert: 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" "closer in value to" Insert: 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"