

HOUSE BILL NO. 15

INTRODUCED BY RAMIREZ

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 3, 1983	Introduced and referred to Committee on Judiciary.
January 5, 1983	Committee recommend bill do pass. Report adopted.
	Bill printed and placed on members' desks.
January 6, 1983	Second reading, do pass.
January 7, 1983	Considered correctly engrossed.
January 8, 1983	Consent Calendar, do pass. Transmitted to Senate.

IN THE SENATE

January 10, 1983	Introduced and referred to Committee on Judiciary.
January 17, 1983	Committee recommend bill be concurred in as amended. Report adopted.
January 19, 1983	Second reading, concurred in.
January 21, 1983	Third reading, concurred in. Ayes, 43; Noes, 0.

IN THE HOUSE

January 21, 1983

Returned to House with
amendments.

January 26, 1983

Second reading, amendments
concurred in.

January 27, 1983

Third reading, amendments
concurred in. Sent to
enrolling.

Reported correctly enrolled.

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE RETROACTIVE AS
6 WELL AS PROSPECTIVE THE PRESUMPTION THAT A REFERENCE TO A
7 PROVISION OF THE MONTANA CODE ANNOTATED IS A REFERENCE TO
8 THAT PROVISION AS IT MAY BE AMENDED OR CHANGED FROM TIME TO
9 TIME; AMENDING SECTION 1-2-108, MCA."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 1-2-108, MCA, is amended to read:
13 "1-2-108. Reference to other titles, chapters, parts,
14 or sections -- subsequent amendments. (1) A statute which
15 refers to a title, chapter, part, section, or subsection
16 number without further identification or attribution is
17 presumed, unless the context clearly indicates otherwise, to
18 refer to a title, chapter, part, section, or subsection of
19 the Montana Code Annotated.
20 (2) A specific or presumed implied reference to a
21 title, chapter, part, section, or subsection of the Montana
22 Code Annotated is presumed to be a reference to that title,
23 chapter, part, section, or subsection as it may be amended
24 or changed from time to time. This presumption may be
25 overcome only by a clear showing that a subsequent amendment

1 or change in the title, chapter, part, section, or
2 subsection is inconsistent with the continued purpose or
3 meaning of the section referring to it.
4 ~~(3) The presumption contained in subsection (2)~~
5 ~~applies retroactively as well as prospectively to any~~
6 ~~reference to a title, chapter, part, section, or subsection~~
7 ~~of the Montana Code Annotated, regardless of when the~~
8 ~~reference was created."~~

-End-

1983 Legislature
Code Commissioner Bill - Summary

House Bill No. 15

AN ACT TO MAKE RETROACTIVE AS WELL AS PROSPECTIVE THE PRESUMPTION THAT A REFERENCE TO A PROVISION OF THE MONTANA CODE ANNOTATED IS A REFERENCE TO THAT PROVISION AS IT MAY BE AMENDED OR CHANGED FROM TIME TO TIME; AMENDING SECTION 1-2-108, MCA.

Section 1-2-108(2), MCA, was enacted by the 1979 Legislature at the request of the Code Commissioner.

Subsection (2) creates the presumption that a reference to a title, chapter, part, section, or subsection of the MCA is a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time.

Subsection (2) was requested by the Code Commissioner to deal with the difficulty of determining what the law is under a rule laid down by the Montana Supreme Court in the case of Gustafson v. Hammond Irrigation Dist. (1930) 87 Mont. 217, 287 P. 640. The Gustafson rule provided:

The adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted.

Under the Gustafson rule, if a statute contains a reference to another statute you would have to find the year when the reference was added and then determine what version of the referenced section or subsection existed at that time. A user of the code could not find the law by simply using the code but would have to do a legislative history of each section and then search through the session laws to determine what the law is.

Of course, few, if any users of the code go to the trouble of doing legislative histories. Under the Gustafson rule the code by itself is of questionable value but it is treated by attorneys and the public as if it were the law. It is that problem that led the Code Commissioner to request that subsection (2) be enacted and that is why the legislature enacted subsection (2).

The objective, however, wasn't achieved. In 1982 the Montana Supreme Court held that the 1979 enactment applied to references adopted after 1979 and does not apply to references adopted prior to 1979. The court pointed out that to apply the 1979 enactment to all references would clearly be a retroactive application of the law. State v. Conrad ___ M. ___, ___ P.2d ___, 39 St. Rep. 680, 685 (1982).

If a statute is to apply retroactively, it must be expressly declared to do so.

This session, the Code Commissioner again requests the legislature to resolve the difficulty by expressly declaring that subsection (2) applies both retroactively and prospectively to all references in the code.

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25 overcome only by a clear showing that a subsequent amendment

1 or change in the title, chapter, part, section, or
2 subsection is inconsistent with the continued purpose or
3 meaning of the section referring to it.
4 (3) The presumption contained in subsection (2)
5 applies retroactively as well as prospectively to any
6 reference to a title, chapter, part, section, or subsection
7 of the Montana Code Annotated, regardless of when the
8 reference was created."

-End-

SECOND READING

-2-

HB 15

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8 reference was created."

-End-

THIRD READING

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 15 be amended as follows:

1. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Page 2.
Following: line 8.
Insert: "NEW SECTION. Section 2. Effective Date. This
act is effective on passage and approval."

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7 reference to a title, chapter, part, section, or subsection
8 of the Montana Code Annotated, regardless of when the
9 reference was created."
10 NEW SECTION. SECTION 2. EFFECTIVE DATE. THIS ACT IS
11 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-