

*Clark*

*Bob Simich*

House BILL NO. 296

INTRODUCED BY

*Wells* *Con* *Emery* *Brainard*

*Joe N. Lee*

*Kearney*  
*Mr. James*

*HARP*

*Forbes*

*Rob*

*Stutts*

*J. D. Buer*

*James*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF A DEFENDANT IN A CRIMINAL PROCEEDING OR IN A CIVIL PROCEEDING IN WHICH A STATE OR LOCAL GOVERNMENT OR ONE OF ITS AGENCIES IS AN OPPOSING PARTY HAS THE RIGHT TO A JURY TRIAL, THE RIGHT INCLUDES THE RIGHT TO INFORM THE JURORS OF THEIR POWER TO JUDGE THE LAW, AS WELL AS THE FACTS, AND TO VOTE ACCORDING TO THEIR CONSCIENCE; AND AMENDING SECTIONS 25-7-102, 26-1-201, AND 46-16-103, MCA."

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

**NEW SECTION. Section 1. Right to inform jury it may judge law.**

(1) If a defendant in a criminal proceeding or in a civil proceeding in which a state or local government or one of its agencies is an opposing party has the right to a jury trial, the right includes the right to inform the jurors of their power to judge the law, as well as the facts, and to vote according to their conscience. If the right to inform is denied, a party with the right is entitled to a mistrial. The right may not be infringed by a jury selection method that could limit or preclude the empanelment of a juror willing to exercise the power or by any statute, juror oath, court order, or court practice or procedure.

(2) A party may present to the jury arguments pertaining to law and conscience issues, including:

- (a) the merit, intent, constitutionality, or applicability of the law relating to the proceeding;
- (b) the motives, moral perspective, and circumstances of a party with the right granted by this section;
- (c) the degree and direction of guilt or actual harm done; or
- (d) sanctions that may be applied to a party with the right granted by this section.

**Section 2. Section 25-7-102, MCA, is amended to read:**

"25-7-102. **Issues of law to be decided by court.** Except as provided in Article II, section 7, of the Montana constitution and [section 1], all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence,



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INTRODUCED BILL

1 are to be decided by the court unless they are referred upon consent, and all discussions of law are to be  
2 addressed to the court."

3

4 **Section 3.** Section 26-1-201, MCA, is amended to read:

5 "26-1-201. **Questions of law.** Except as provided in Article II, section 7, of the Montana  
6 constitution and [section 1], all questions of law, including the admissibility of testimony, the facts  
7 preliminary to ~~such~~ admission, the construction of statutes and other writings, and other rules of evidence,  
8 must be decided by the court."

9

10 **Section 4.** Section 46-16-103, MCA, is amended to read:

11 "46-16-103. **Who decides questions of law and fact.** (1) All prosecutions deciding issues of fact  
12 must be tried by the court and jury, except on a plea of guilty.

13 (2) ~~Questions~~ Except as provided in [section 1], questions of law must be decided by the court and  
14 questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both  
15 questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury  
16 is waived under 46-16-110(3)."

17

18 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 25, chapter 7, part 1, and the provisions of Title 25, chapter 7, part 1, apply to  
20 [section 1].

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0296, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that if a defendant in a criminal proceeding or in a civil proceeding in which a state or local government or one of its agencies is an opposing party has the right to a jury trial, the right includes the right to inform the jurors of their power to judge the law, as well as the facts, and to vote according to their conscience.

ASSUMPTIONS:

1. This bill has no foreseeable fiscal impact on state government.

FISCAL IMPACT:

None.

 1-24-98

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning



JACK WELLS, PRIMARY SPONSOR      DATE

Fiscal Note for HB0296, as introduced

HB 296

*Clark*

*Bob Simich*

House BILL NO. 296

1  
2 INTRODUCED BY *Wells* *Con* *Emery* *Brainard* *Joe Mc*  
*Keenan* *HARP* *Forbes* *Bob* *Estes* *J. Ober*  
3 *Prime*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF A DEFENDANT IN A CRIMINAL  
5 PROCEEDING OR IN A CIVIL PROCEEDING IN WHICH A STATE OR LOCAL GOVERNMENT OR ONE OF ITS  
6 AGENCIES IS AN OPPOSING PARTY HAS THE RIGHT TO A JURY TRIAL, THE RIGHT INCLUDES THE  
7 RIGHT TO INFORM THE JURORS OF THEIR POWER TO JUDGE THE LAW, AS WELL AS THE FACTS, AND  
8 TO VOTE ACCORDING TO THEIR CONSCIENCE; AND AMENDING SECTIONS 25-7-102, 26-1-201, AND  
9 46-16-103, MCA."

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

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17 denied, a party with the right is entitled to a mistrial. The right may not be infringed by a jury selection  
18 method that could limit or preclude the empanelment of a juror willing to exercise the power or by any  
19 statute, juror oath, court order, or court practice or procedure.

- 20 (2) A party may present to the jury arguments pertaining to law and conscience issues, including:  
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22 (b) the motives, moral perspective, and circumstances of a party with the right granted by this  
23 section;  
24 (c) the degree and direction of guilt or actual harm done; or  
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1 are to be decided by the court unless they are referred upon consent, and all discussions of law are to be  
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8 must be decided by the court."

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16 is waived under 46-16-110(3)."

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18 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 25, chapter 7, part 1, and the provisions of Title 25, chapter 7, part 1, apply to  
20 [section 1].

21

-END-