

CONSTITUTIONAL AMENDMENT

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INTRODUCED BY *Senate* BILL NO. 231
Wells *BENEDICT*
Brainard

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 2, OF THE MONTANA CONSTITUTION TO REESTABLISH THE SEPARATION OF POWERS BETWEEN THE THREE BRANCHES OF GOVERNMENT AND TO GIVE THE CITIZENS OF MONTANA MORE EFFECTIVE CONTROL OVER THE STATE JUDICIARY."

WHEREAS, The Constitution of the State of Montana states in Article II, section 1: "Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."; and

WHEREAS, The Constitution of the State of Montana states in Article III, section 1: "Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."; and

WHEREAS, the Montana Supreme Court states in In re the Petitions of McCabe & Zeman, 168 Mont. 334, 544 P.2d 825 (1975), that legislative power to disapprove rules of procedure adopted by the Supreme Court does not extend to admission to the practice of law or to rules issued by the court relative to the practice of law or the conduct of lawyers.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to submit the following referendum to the people of Montana in order to reestablish the separation of powers between the three branches of government and to give the citizens of Montana more effective control over the state judiciary.

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

Section 1. Article VII, section 2, of The Constitution of the State of Montana is amended to read:
"Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.



1 (2) It has general supervisory control over all other courts.

2 (3) It may ~~make~~ recommend to the legislature rules governing appellate procedure, and practice
3 and procedure for all other courts, ~~admission to the bar and the conduct of its members. Rules of procedure~~
4 ~~shall be subject to disapproval by the legislature in either of the two sessions following promulgation.~~

5 (4) Supreme court process shall extend to all parts of the state."
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7 **NEW SECTION. Section 2. Submission to electorate.** This amendment shall be submitted to the
8 qualified electors of Montana at the general election to be held in November 1998 by printing on the ballot
9 the full title of this act and the following:

10 [] FOR limiting Montana supreme court authority over practice of law and repealing the court's
11 authority to make rules on practice of law and lawyer conduct.

12 [] AGAINST limiting Montana supreme court authority over practice of law and repealing the
13 court's authority to make rules on practice of law and lawyer conduct.

14 -END-