

1 SENATE BILL NO. 20

2 INTRODUCED BY J. ELLSWORTH

3 BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A RETIRED JUDGE OR JUSTICE FROM SERVING
6 IN ANY CASE IN WHICH A PARTY CHALLENGES THE CONSTITUTIONALITY OF A STATE STATUTE;
7 AMENDING SECTIONS 3-5-202 AND 19-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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11 **Section 1.** Section 3-5-202, MCA, is amended to read:

12 **"3-5-202. Qualifications and residence.** (1) A person is not eligible for the office of judge of a district
13 court unless the person is a citizen of the United States, has resided in the state 2 years immediately before
14 taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of
15 appointment or election.

16 (2) A judge of a district court need not be a resident of the district for which the judge is elected or
17 appointed at the time of election or appointment, but after election or appointment, the judge must reside in the
18 district for which the judge is elected or appointed during the judge's term of office.

19 (3) A retired judge or justice is not eligible to serve in any case in which a party challenges the
20 constitutionality of a state statute."

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22 **Section 2.** Section 19-5-103, MCA, is amended to read:

23 **"19-5-103. Call of retired judges and justices and inactive vested members for duty --**
24 **exception.** (1) (a) If Except as provided in subsection (2), if physically and mentally able, a retired judge or
25 justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to
26 aid and assist any district court or any water court under directions that the chief justice may give or to serve as
27 water judge.

28 (b) When called, a retired judge's or justice's duties include the examination of the facts, cases,

1 and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice
2 is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the
3 court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule
4 that the supreme court may adopt, perform any duties that are not inconsistent with the constitution of the state.

5 (2) A retired judge or justice may not aid and assist in any case in which a party challenges the
6 constitutionality of a state statute.

7 (2)(3) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if
8 any, in responding to the call.

9 (b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

10 (i) the daily salary then currently applicable to the judicial position in which the duty is rendered for
11 each day of duty rendered, up to a total of 180 days in a calendar year; and

12 (ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then
13 currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-
14 twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

15 (3)(4) A judge or justice who is an inactive vested member, who has voluntarily discontinued service
16 as an active judge after at least 8 years of service, and who, by reason of age, is not eligible to receive a
17 retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice
18 called to duty under this subsection must be reimbursed as provided in subsection (2)(a) (3)(a) and
19 compensated as provided in subsection (2)(b)(i) (3)(b)(i) regardless of the number of days served in a calendar
20 year."

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22 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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