

1 SENATE BILL NO. 31

2 INTRODUCED BY B. USHER

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

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING OPTIONS FOR THE HANDLING OF INTEREST ON
6 ATTORNEY TRUST ACCOUNTS; AND PROVIDING THAT PARTICIPATION IN THE INTEREST ON
7 LAWYER TRUST ACCOUNT PROGRAM IS VOLUNTARY."

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9 WHEREAS, when lawyers hold funds that belong to a client, the lawyers shall deposit the funds into a
10 trust account where the money should be held in trust for the client; and

11 WHEREAS, the Montana Supreme Court ordered that Montana lawyers deposit their clients' money in
12 a specialized interest-bearing trust account called an IOLTA account (Interest on Lawyer Trust Account); and

13 WHEREAS, in an IOLTA account, the interest on the client's money is not paid to the client; instead,
14 the Montana Supreme Court ordered that the interest on the client's money from the IOLTA program must be
15 paid to the Montana Justice Foundation, an organization of the Montana Supreme Court's choosing; and

16 WHEREAS, before the Montana Supreme Court's order making participation in the IOLTA program
17 mandatory, participation was voluntary; and

18 WHEREAS, through the IOLTA program, the Montana Supreme Court in essence taxes the client's
19 interest income at a rate of 100% and then spends the client's money on its favored organization; and

20 WHEREAS, the Montana Legislature is the only body empowered by Article VIII, section 1, of the
21 Montana Constitution to levy taxes, and Article VIII, section 14, of the Montana Constitution, vests solely in the
22 Legislature the power to appropriate funds; and

23 WHEREAS, according to the website of the Montana Justice Foundation, the Montana Supreme Court
24 has unconstitutionally taxed and appropriated more than \$8 million to the Montana Justice Foundation; and

25 WHEREAS, Rule 1.18 of the Montana Rules of Professional Conduct for lawyers provides: "No client
26 may elect whether his/her funds should be deposited in an IOLTA Trust Account, [or] receive interest or
27 dividends earned on funds in an IOLTA Trust Account", meaning the lawyer shall deposit the client's funds into
28 an IOLTA account even if the client objects; and

1 WHEREAS, a fundamental principle of lawyer ethics is to always act with client consent and always
2 "abide by a client's decisions concerning the objectives of representation", as provided in Rule 1.2(a) of the
3 Montana Rules of Professional Conduct, and by forcing lawyers to deposit their client's funds into IOLTA
4 accounts over a client's objection, the Montana Supreme Court is compelling lawyers to violate this ethical
5 principle; and

6 WHEREAS, Article V, section 1, of the Montana Constitution provides that the Legislature alone has
7 "legislative power" to enact laws, including the power to tax and appropriate funds, as provided in Article VIII,
8 section 1, and Article VIII, section 14, of the Montana Constitution, respectively, and Article III, section 1, of the
9 Montana Constitution provides that no branch of government "shall exercise any power properly... belonging to
10 either of the others"; and

11 WHEREAS, under the Montana's Constitution, the proper method to enact the IOLTA program would
12 have been for the Legislature to pass an appropriate bill pursuant to Article V, section 11; for example, this
13 constitutional process was followed, as provided in section 33-25-201(3) through (7), MCA, when the
14 Legislature enacted a similar concept to the IOLTA program for title companies to use pooled interest-bearing
15 accounts for trust money to provide funding for the Montana Land Title Association Foundation; and

16 WHEREAS, instead of following the proper constitutional process to enact the IOLTA program, the
17 Montana Supreme Court simply issued an order authorizing the taxation at a rate of 100% on clients' funds held
18 by their attorneys and appropriated these funds to the Montana Justice Foundation in violation of the Montana
19 Constitution; and

20 WHEREAS, the Montana Legislature finds that the Montana Supreme Court should disband the
21 mandatory IOLTA program or make it voluntary in order to comply with the Montana Constitution; and

22 WHEREAS, by making participation in the IOLTA program voluntary, the IOLTA program would no
23 longer be an unconstitutional tax and spend program but, rather, would be a voluntary donation by a lawyer's
24 client following written consent.

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

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28 NEW SECTION. **Section 1. Attorney trust account interest.** With the client's written consent, a

1 lawyer may deposit a client's money in:

2 (1) a non-interest-bearing trust account;

3 (2) an interest-bearing trust account in which the client's funds earn interest that belongs to the
4 client, in which case the lawyer shall remit the client's interest income to the client at reasonable intervals of
5 time; or

6 (3) a trust account subject to the Montana supreme court's interest on lawyer trust accounts
7 program, through which the interest is paid to an organization of the Montana supreme court's choosing.

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9 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
10 integral part of Title 37, chapter 61, part 4, and the provisions of Title 37, chapter 61, part 4, apply to [section 1].

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