

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
April 13, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Teague, who was excused and Reps. McLane, Keedy and Yardley were absent. Jim Lear, Legislative Council, was present.

SENATE BILL 485 SENATOR BERG, chief sponsor, stated the reason the bill is introduced so late in the session is because of the result of a Supreme Court case that was just decided. The Supreme Court decided it was unconstitutional because it did not allow for a jury trial or the use of an attorney. This bill makes changes to correct the problems the Supreme Court has pointed out.

Section 17 allows for a case to begin in small claims court and then allows for removal to justice court if the defendant so desires. It would allow for a jury trial or right to counsel at that point.

Section 18 is a new section that the Senate Judiciary Committee placed in the bill. It deals with the failure to request removal within the time provided. If the plaintiff goes through the small claims court that is fine, but if the defendant wants a jury trial he must say so by requesting removal or waive his rights to a jury trial and counsel.

Section 25 allows for attorneys fees to the prevailing party upon removal. If the defendant desires to go to a jury trial and loses, another benefit would be to charge him attorneys fees. This would prevent frivolous suits in small claims court being removed to justice court.

JOHN MAYNARD, representing the Attorney General's Office, was in support of the bill. He became involved in this after last session. Jack Ramirez sponsored a bill to amend procedures enacted in 1977 to prepare a pamphlet explaining how it works. MAYNARD was involved in the preparation of the pamphlet. The Attorney General's Office argued a case in front of the Supreme Court when this was challenged. It was found to be unconstitutional because it did not provide for a jury trial and right to counsel. It was the plaintiff in the small claims court who had the option to decide whether the sides could be represented by an attorney. If the plaintiff decided to have an attorney, then the defendant could also have one. If the plaintiff, however, decided not to be represented by an attorney, then the defendant could not have an attorney.

MAYNARD stated the small claims courts and justice courts are very active. There are thousands of cases each year. This is a quick and easy way to settle disputes.

There were no further proponents.

There were no opponents.

In closing, SENATOR BERG stated there was an editorial in the Missoula newspaper opposing this bill. The article stated we do not need this because it is allowed in the law already by going to district court. The Senator stated the district court small claims division is available under the law but is has not yet been used in the state. This provides for trial and attorney fees, somewhat contrary to the purpose of being a speedy inexpensive method of justice. In the Great Falls area this has worked throughout many cases. There has been problems, but they have all been corrected.

REP. EUDAILY asked if the new section 12 takes care of both problems, that being attorneys fees and the right to a jury trial. The Senator replied yes. MAYNARD stated if you have a case in small claims court for \$150 you will not likely pay an attorney \$100 to represent you. It is the defendant's choice to have an attorney. If he does not want an attorney, the plaintiff has to send his attorney home. The defendant can remove it to justice court. REP. EUDAILY asked if the defendant wanted to go to justice court he could. MAYNARD replied in justice court you have the opportunity to be your own attorney. If you remove that opportunity, then either side can be represented by an attorney.

It was asked by REP. HANNAH if both procedures are necessary to be in the law. REP. HANNAH further stated if you had justice court as it is now, no attorney would be allowed if you did not want one. The appeal procedure would still be in effect. Could the court hold that unconstitutional? MAYNARD stated it would depend on the scope of appeal. When appealing to district court a tape recording and exhibits of what happened at the lower court is reviewed. There is not actually a new hearing or trial de novo as it is called. In California they have an appeal system. Senate Bill 486 would have provided for a whole new trial. District courts, however, are so overloaded it would not be a good form of speedy justice.

REP. CURTISS asked if we can deny a person's right to a trial by jury. MAYNARD replied that is what the old law did. Under this law the person has the right to choose. He can waive the right to a jury trial.

REP. HANNAH asked how this would work, by district or justice court. It was replied that is was by justice court. MAYNARD told the committee when there is a case in small claims court it is because

of a lack of understanding between two parties. A landlord would probably not have an attorney for this type of case because of the expense involved, MAYNARD stated in response to REP. HANNAH's question concerning landlords.

SENATOR BERG stated section 25 will limit the use of attorneys. The landlord that hires an attorney must be very certain of his case or if he loses he will have to pay the other attorney's fees.

REP. KEYSER noted not all the new sections are actually new sections because of the old law being repealed. MAYNARD stated because of the way the Supreme Court's opinion was worded the whole thing had to be thrown out. SENATOR BERG stated the old law did not have a severability clause. The actual new parts are sections 17, 18, 25 and 26, while the balance of the bill merely reenacts the former provisions.

REP. BROWN asked if the present bill has a severability clause. No, it does not.

REP. BENNETT asked what the average amount of a claim in small claims court is. MAYNARD replied \$1,500 is the most common figure.

There was no further discussion on the bill.

The committee went into EXECUTIVE SESSION on SENATE BILL 485.

REP. EUDAILY moved do pass.

REP. EUDAILY asked if a severability clause was necessary. JIM LEAR replied that a severability clause is just decoration on a bill. It is not really necessary to have one. REP. BROWN stated in Washington D.C. bills were not considered if a severability clause was not included. JIM LEAR clarified that state legislation was construed by state, not federal rules, of statutory construction and that in Montana, the severability clause is not mandatory but creates a presumption that the legislature intended severability.

REP. BENNETT felt the figure of \$750 should be increased to \$1,500 or \$2,500. This would help save time in district courts and would allow an option to go to one court or the other. REP. KEYSER stated the district court can remove cases to small claims court division of justice court if they do not go up to \$500.

REP. IVERSON stated the amount listed in section 3 (\$500) and the amount listed in section 2 (\$750) do not have to be the same to be consistent. If fact, they probably should not be the same. REP. KEYSER disagreed.

REP. MATSKO stated anyone can take claims to district or small claims courts. District court might make the person go to small claims court to keep their dockets clear. This might deprive someone from going to district court. JIM LEAR stated there are grievances that do not involve money but are very complex. Many times the parties want the hearing in front of a judge that has experience.

It was moved by REP. BENNETT to strike \$750 and insert \$1,500 on page 2, line 25 of the bill, and to make it consistent throughout. REP. MATSKO questioned whether the bill would survive with amendments this late in the session. REP. IVERSON felt the Senate would suspend the rules.

REP. SHELDEN felt the committee should leave the bill as it is and let it go for two years.

A roll call vote resulted on the amendments. Those voting yes were: KEYSER, BENNETT, CONN, HANNAH, IVERSON, MATSKO, and BROWN. Those voting no were: SEIFERT, CURTISS, EUDAILY, ANDERSON, ABRAMS, and HUENNEKENS. The amendments carried 7 to 6.

REP. BENNETT stated the committee should make it consistent in both places. REP. EUDAILY disagreed. REP. KEYSER stated the new section that allows for jury and court costs meets the objections of the court. Raising it to \$1,500 will reduce pressure on the court.

It was stated by REP. MATSKO that by allowing district court to remove cases back to small claims court some judges might dismiss cases to the lower courts to have the day off.

JIM LEAR stated the amount could be left at \$500 without conflicting with the amendment already passed. It would not impact on an individual's rights.

REP. BENNETT moved to strike \$500 and insert \$1,500 on page 3, line 6. REP. CURTISS was opposed to the amendment because she felt the bill might not go through the Senate.

REP. HANNAH was concerned with the rushing of the bill. He felt the committee was not examining the bill closely enough.

REP. HUENNEKENS supported the amendment. This will help cope with the change in currency.

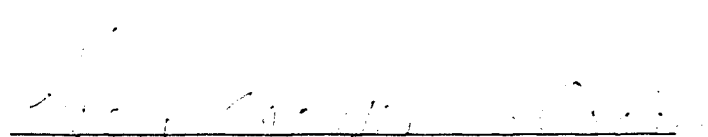
The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, HANNAH, IVERSON, HUENNEKENS, and SHELDEN. Those voting no were: CONN, CURTISS, EUDAILY, MATSKO, ANDERSON, ABRAMS, and BROWN. The amendment failed by a tie vote of 7 to 7.

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REP. EUDAILY asked about the figure used in district court. It was replied \$3,500 is the amount in district court as passed by a bill in the House.

REP. SHELDEN moved do pass as amended. The motion carried unanimously. REP. KEEDY was assigned to carry the bill on the House Floor.

The meeting adjourned at 9:10 a.m.

  
KERRY KEYSER, CHAIRMAN

mr

## VISITORS' REGISTER

HOUSE                      JUDICIARY                      COMMITTEE

SENATE

BILL 485

Date April 13, 1981

SPONSOR      BERG

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.