

*Palmer*  
*Spuch* *M. Fadden* *House* *William*  
 2 INTRODUCTION BY *Richard Scully* *Walker* *Harper*  
*M. Fadden* *May* *Fuennen* *Harold* *Federico*  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL CLAIMS COURTS IN THE STATE OF MONTANA."  
*Shelden* *Stoltz* *Luebeck* *FARR* *Hammis*  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Herlein*  
*Hummel* *Jordan* *Budman* *Boy*  
 9 Section 1. Small claims court authorized. There may  
 10 be created within the jurisdiction of the district court of  
 11 any county of the state of Montana a separate court, known  
 12 as the "Small Claims Court". *Impile* *Lester* *Thomas*  
 13 Section 2. Creation of small claims court. A small  
 14 claims court may be created by an order of the district  
 15 court or a resolution passed by the board of county  
 16 commissioners or by county initiative as provided in Title  
 17 37, chapter 3, R.C.M. 1947. Upon such order or passage of  
 18 the resolution or initiative, the judge of the appropriate  
 19 judicial district shall, by court order, establish a small  
 20 claims court under the provisions of this act. When the  
 21 order is filed with the clerk of the district court of the  
 22 appropriate county the clerk of the district court becomes  
 23 the clerk of the small claims court.

*Vincent*  
*Magone*  
*73 Bath*  
 TEAGUE  
*Bradley*  
*Amson*  
*Kelly*  
*Waller*  
*Wright*  
*Sole*  
*Wink*  
 Conve//18  
*Sants*  
*Shubert*  
*Russell*

1 commissioners of the appropriate county.  
 2 Section 4. Appointment of judge -- salary --  
 3 qualifications. (1) The judges of the judicial district in  
 4 which a small claims court has been created shall appoint a  
 5 judge of the small claims court who shall:  
 6 (a) take the oath required of judges;  
 7 (b) serve at the pleasure of the district court  
 8 judges;  
 9 (c) be paid a salary set by the board of county  
 10 commissioners but not less than ten thousand dollars  
 11 (\$10,000) per year; and  
 12 (d) be an attorney licensed to practice law in the  
 13 state of Montana.  
 14 (2) The judge of the district court may appoint more  
 15 than one (1) small claims court judge for any small claims  
 16 court and the salary shall be prorated among the judges  
 17 appointed.  
 18 Section 5. Location--office hours--duties of judge.  
 19 The small claims court shall be located in the courthouse of  
 20 the appropriate county and shall be open during all judicial  
 21 days and during regular office hours. In the event that  
 22 more than one (1) small claims court judge has been  
 23 appointed, the judges so appointed may divide their  
 24 responsibility hereunder. The small claims court judge  
 25 shall assist any claimant in preparing an affidavit or may

HB 528

1 direct the clerk of court to provide such assistance.

2 Section 6. Multi-county small claims courts. Where  
3 there is more than one county in the judicial district and  
4 the county commissioners of more than one county in that  
5 district create small claims courts, the district judges may  
6 provide that the same judge of small claims court may  
7 preside over more than one of the small claims courts in the  
8 judicial district. In such cases the salary of the small  
9 claims court judge shall be prorated among the counties in  
10 which he presides. The judge shall be entitled to collect  
11 mileage for the distance actually traveled when required to  
12 convene small claims court in more than one county, pursuant  
13 to section 59-801.

14 Section 7. Act to be liberally construed. It is the  
15 purpose of this act to provide a speedy remedy in claims  
16 falling hereunder, and to promote a forum in which such  
17 claims may be heard and disposed of without the necessity of  
18 formal trial. For this reason, the provisions hereof should  
19 be liberally construed to provide an informal, but  
20 equitable, means of justice, and the judges appointed  
21 hereunder are required to assist all parties before them to  
22 obtain substantial justice.

23 Section 8. Jurisdiction. (1) The small claims court  
24 has original jurisdiction in all actions for the recovery of  
25 money or specific personal property when such action arises

1 out of a contract, express or implied, and the amount of the  
2 claim, exclusive of costs, does not exceed one thousand  
3 dollars (\$1000). More than one (1) claim may be joined, if  
4 all claims joined would separately meet the requirements for  
5 jurisdiction in the small claims court and the total value  
6 of money claimed or property sought does not exceed one  
7 thousand dollars (\$1000).

8 (2) A district court judge may require any action  
9 filed in district court to be removed to the small claims  
10 court, if the amount in controversy does not exceed one  
11 thousand dollars (\$1000). The small claims court shall hear  
12 any action so removed from the district court.

13 Section 9. Parties -- representation. (1) Parties in  
14 the small claims court may be individuals, partnerships,  
15 corporations, unions, associations, or any other kind of  
16 organization or entity.

17 (2) No party shall be represented by an attorney in  
18 the small claims court.

19 (3) An individual shall represent himself in the small  
20 claims court. A partnership shall be represented by a  
21 partner or one of its employees. A union shall be  
22 represented by a union member or union employee. A  
23 corporation shall be represented by one of its employees.  
24 An association shall be represented by one of its members or  
25 by an employee of the association. Any other kind of

1 organization or entity shall be represented by one of its  
2 members or employees.

3 (4) Only a party, natural or otherwise, who has been a  
4 party to the transaction with the defendant for which the  
5 claim is brought may file and prosecute a claim in the small  
6 claims court.

7 (5) No party may file an assigned claim in the small  
8 claims court.

9 (6) No party shall file more than two claims within  
10 any calendar week nor more than ten claims in any calendar  
11 year in the small claims court.

12 (7) Notwithstanding any other provision of this  
13 section, an executor or administrator of a decedent's  
14 estate, a guardian, or a conservator may be a party in the  
15 small claims court.

16 Section 10. Venue. Proper venue for actions commenced  
17 in small claims court is the same as that provided by law  
18 for civil actions commenced in district court.

19 Section 11. Commencement of actions. Actions in small  
20 claims court shall be commenced by filing an affidavit with  
21 the clerk of court. The clerk of court shall provide forms  
22 for the affidavits, which shall be in substantially the  
23 following form:

24 "In the Small Claims Court of the \_\_\_\_\_ Judicial  
25 District in and for the County of \_\_\_\_\_, State of

1 Montana.

2 \_\_\_\_\_,  
3 Plaintiff  
4 vs.  
5 \_\_\_\_\_,  
6 Defendant  
7

Doc. \_\_\_\_\_ No. \_\_\_\_\_

PLAINTIFF'S COMPLAINT,  
NOTICE TO DEFENDANT,  
SEEKING MONEY DAMAGES

8 Plaintiff states that defendant(s) owe and should be  
9 ordered to pay to me the sum of \_\_\_\_\_, because on  
10 \_\_\_\_\_ at \_\_\_\_\_, the defendant(s)  
11 (date) (place)

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 Plaintiff declares that the defendant or defendants are  
15 not a "person in military service" or "person in the  
16 military service of the United States" as defined in Sec.  
17 101 of the Soldier's and Sailor's Relief Act, 1940.

18 I have filed \_\_\_\_\_ small claims within the past calendar  
19 week.

20 I have filed \_\_\_\_\_ small claims within the past calendar  
21 year.

22 To the best of my knowledge and belief, the defendant named  
23 above resides at the following address, or the following is  
24 the business address:

25 \_\_\_\_\_  
26 \_\_\_\_\_

27 My printed name and printed address are as follows:

HB528

1 \_\_\_\_\_  
2 I elect to have the notice served upon the  
3 defendant \_\_\_\_\_ personally \_\_\_\_\_ by mail.

4 Signed in my presence Signature: \_\_\_\_\_

5 \_\_\_\_\_

6 Clerk or Deputy Today's date: \_\_\_\_\_

7 NOTICE TO DEFENDANT

8 This claim has been filed against you. You must appear  
9 before this court on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_  
10 (date) (time) (location)

11 If you do not appear, a judgment may be entered against you.  
12 Costs of the action also may be charged against you. You  
13 should read the information on the back of this claim and  
14 notice. If you have any questions about the procedure, you  
15 may contact the Clerk of the Court in person at

16 \_\_\_\_\_  
17 (location of court)

18 or by telephone at \_\_\_\_\_.  
19 (number)

20 \_\_\_\_\_  
21 Clerk of the Court

22 By: \_\_\_\_\_

23 Section 12. Order of court--contents. (1) Upon filing  
24 the affidavit and payment of the fee hereinafter provided,  
25 the clerk of court shall cause to be delivered to the

1 sheriff of the county of the defendant's residence a copy of  
2 the affidavit together with the original and a copy of an  
3 order issued by the court, directed to the defendant, and  
4 directing the defendant to pay the claim set forth in the  
5 affidavit, or deliver up the property described, or, in the  
6 alternative, to appear and answer the claim set forth in the  
7 affidavit.

8 (2) The order shall:

9 (a) specify the time, date, and place set for hearing  
10 the claim;

11 (b) state that if the defendant fails to appear at the  
12 hearing and has not satisfied the claim, judgment will be  
13 entered against him in the amount or for the relief claimed,  
14 for costs; and

15 (c) be signed by the clerk of court and bear the seal  
16 of the court.

17 Section 13. Service on defendant. The original order  
18 shall be shown to the defendant and a copy of it along with  
19 a copy of the affidavit shall be served upon the defendant  
20 by the sheriff in the same manner provided by law for  
21 service of process in civil actions in district court. The  
22 provisions of law relating to sheriff's fees are applicable  
23 to this section.

24 Section 14. Hearing date--how set. The date for the  
25 appearance of the defendant to be set forth in the order

1 shall be determined by the clerk of court in accordance with  
 2 rules adopted by the small claims judge, and shall not be  
 3 more than thirty (30) nor less than ten (10) days from the  
 4 date of the order. Service of the order and copy of the  
 5 affidavit shall be made upon the defendant not less than  
 6 seven (7) days prior to the date set for his appearance by  
 7 the order. If the order is not timely served, plaintiff may  
 8 have a new appearance date set by the clerk and a new order  
 9 issued and delivered to the sheriff, and, if necessary,  
 10 repeated orders may be issued at any time within one year  
 11 after the commencement of the action.

12 Section 15. Return of service. The sheriff, after  
 13 effecting service, shall make return upon the original order  
 14 and file it with the clerk of court.

15 Section 16. Defendant's counterclaim -- answer.  
 16 (1) If the defendant wishes to assert a counterclaim  
 17 against the plaintiff he shall file a written answer setting  
 18 forth his counterclaim against the plaintiff and shall cause  
 19 the answer to be served upon the plaintiff not less than  
 20 seventy-two (72) hours before the date set for the hearing.  
 21 Service shall be made in the same manner in which service is  
 22 made upon the defendant.

23 (2) A counterclaim or set-off may not exceed one  
 24 thousand dollars (\$1000). If a counterclaim or set-off is  
 25 asserted in excess of one thousand dollars (\$1000), the

1 jurisdiction of the small claims court over the plaintiff's  
 2 claim is not defeated, but the court shall limit its  
 3 determination of the counterclaim or set-off only to the  
 4 question of whether plaintiff's claim is discharged thereby,  
 5 leaving defendant to prosecute the balance of his claim in  
 6 appropriate district court action.

7 Section 17. Attachment--execution. Attachment or  
 8 prejudgment garnishment is not available in actions brought  
 9 in small claims court. Proceedings to enforce or collect a  
 10 judgment are governed by the laws relating to executions  
 11 upon district court judgments.

12 Section 18. Proceedings informal--court reporters. If  
 13 the action is tried to the court, the proceedings shall be  
 14 informal to the extent possible in order to dispense speedy  
 15 justice to the parties. In cases tried to the court a  
 16 reporter is not necessary unless the judge finds the issues  
 17 sufficiently complex that a record is desirable, in which  
 18 case he shall make arrangements with a court reporter of the  
 19 district court to take the testimony. The judge shall make  
 20 findings of fact sufficient to establish in full the basis  
 21 of his judgment, and shall file them with his judgment. If  
 22 a jury is empaneled, it shall try all issues of fact, and in  
 23 such case there shall be a court reporter.

24 Section 19. Evidence--subpoena power. Both parties  
 25 have the right to offer evidence, written and oral, and the

*HB 528*

1 judge may direct the production of evidence as he deems  
2 appropriate. The small claims court has the subpoena power  
3 granted to district courts in civil cases.

4 Section 20. Entry of judgment. Upon the conclusion of  
5 a case tried to the court the judge shall make his findings  
6 and enter judgment.

7 Section 21. Appeals. If either party is dissatisfied  
8 with the judgment of the small claims court he may appeal to  
9 the district court of the county where the judgment was  
10 rendered, in the same fashion as appeals in other civil  
11 actions. Any such appeal shall be tried de novo without a  
12 jury.

13 In the event that the parties are represented by  
14 counsel on appeal, the judge may grant the prevailing party,  
15 in addition to costs, reasonable attorney fees.

16 Section 22. Fees--cost. (1) The clerk of court shall  
17 collect a fee of five dollars (\$5):

18 (a) from the plaintiff upon the filing of the  
19 affidavit;

20 (b) from the defendant upon the filing of a written  
21 answer; and

22 (c) from the losing party upon the filing of a  
23 judgment.

24 (2) The laws relating to paupers' affidavits apply to  
25 actions before the small claims courts.

1 (3) The prevailing party in an action before the small  
2 claims court is entitled to costs.

3 Section 23. It is the intent of the legislature that  
4 if a part of this act is invalid, all valid parts that are  
5 severable from the invalid part remain in effect. If a part  
6 of this act is invalid in one or more of its applications,  
7 the part remains in effect in all valid applications that  
8 are severable from the invalid applications.

-End-

Approved by Committee  
on Judiciary

HOUSE BILL NO. 528

INTRODUCED BY RICHARDS, SCULLY, JAMES MOORE,

HARPER, WILLIAMS, PALMER, MCPADDEN, LYNCH, MCKITTRICK, MELOY,

HUENNEKENS, YARDLEY, FEDERICO, KIMBLE, SLOAN, GILLIGAN,

FISHBAUGH, TRAVIS, VINCENT, MAGONE, GUNDERSON, STOLTZ, FAGG,

SHELDEN, LUEBECK, KEMMIS, R. BAETH, KUMMERFELDT, JACOBSEN,

BARDANOUE, DAY, TEAGUE, BRADLEY, JOHNSON, KELLY, DUSSAULT,

BENGTSON, WOLFE, KENDALL, O'CONNELL, SOUTH, HELMBRECHT,

MANUEL, FINLEY, GWYNN, TROPILA, LESTER, STAIGMILLER,

THOMAS, DRISCOLL, HOLMES, FLEMING, BRAND, GERKE, HERLEVI

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL  
CLAIMS COURTS IN THE STATE OF MONTANA."

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

Section 1. Small claims court authorized. There may  
be created within the jurisdiction of the district court of  
any county of the state of Montana a separate court, known  
as the "Small Claims Court".

Section 2. Creation of small claims court. A small  
claims court may be created by an order of the district  
court or a resolution passed by the board of county  
commissioners or by county initiative as provided in Title  
37, chapter 3, R.C.M. 1947. Upon such order or passage of  
the resolution or initiative, the judge of the appropriate

judicial district shall, by court order, establish a small  
claims court under the provisions of this act. When the  
order is filed with the clerk of the district court of the  
appropriate county the clerk of the district court becomes  
the clerk of the small claims court.

Section 3. Duration of small claims court. A small  
claims court created under this act continues in existence  
until abolished by resolution of the board of county  
commissioners of the appropriate county.

Section 4. Appointment of judge -- salary --  
qualifications. (1) The judges of the judicial district in  
which a small claims court has been created shall appoint a  
judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court  
judges;

(c) be paid a salary set by the ~~board--of--county  
commissioners---but--not--less--than--ten--thousand--dollars~~  
~~(\$10,000)-per-year~~ DISTRICT COURT JUDGE; and

(d) be an attorney licensed to practice law in the  
state of Montana.

(2) The judge of the district court may appoint more  
than one (1) small claims court judge for any small claims  
court and the salary shall be prorated among the judges  
appointed.

1 Section 5. Location--office hours--duties of judge.  
 2 The small claims court shall be located in ~~the courthouse of~~  
 3 the appropriate county DISTRICT and shall be open ~~during all~~  
 4 ~~judicial days and during regular office hours~~ AS REQUIRED BY  
 5 THE DISTRICT JUDGE. In the event that more than one (1)  
 6 small claims court judge has been appointed, the judges so  
 7 appointed may divide their responsibility hereunder. The  
 8 small claims court judge shall assist any claimant in  
 9 preparing an affidavit or may direct the clerk of court to  
 10 provide such assistance.

11 Section 6. Multi-county small claims courts. Where  
 12 there is more than one county in the judicial district and  
 13 the county commissioners of more than one county in that  
 14 district create small claims courts, the district judges may  
 15 provide that the same judge of small claims court may  
 16 preside over more than one of the small claims courts in the  
 17 judicial district. In such cases the salary of the small  
 18 claims court judge shall be prorated among the counties in  
 19 which he presides. The judge shall be entitled to collect  
 20 mileage for the distance acutally traveled when required to  
 21 convene small claims court in more than one county, pursuant  
 22 to section 59-801.

23 Section 7. Act to be liberally construed. It is the  
 24 purpose of this act to provide a speedy remedy in claims  
 25 falling hereunder, and to promote a forum in which such

1 claims may be heard and disposed of without the necessity of  
 2 formal trial. For this reason, the provisions hereof should  
 3 be liberally construed to provide an informal, but  
 4 equitable, means of justice, and the judges appointed  
 5 hereunder are required to assist all parties before them to  
 6 obtain substantial justice.

7 Section 8. Jurisdiction. (1) The small claims court  
 8 has original jurisdiction in all actions for the recovery of  
 9 money or specific personal property when such action arises  
 10 out of a contract, express or implied, and the amount of the  
 11 claim, exclusive of costs, does not exceed one thousand  
 12 dollars (\$1000). More than one (1) claim may be joined, if  
 13 all claims joined would separately meet the requirements for  
 14 jurisdiction in the small claims court and the total value  
 15 of money claimed or property sought does not exceed one  
 16 thousand dollars (\$1000).

17 (2) A district court judge may require any action  
 18 filed in district court to be removed to the small claims  
 19 court, if the amount in controversy does not exceed one  
 20 thousand dollars (\$1000). The small claims court shall hear  
 21 any action so removed from the district court.

22 Section 9. Parties -- representation. (1) Parties in  
 23 the small claims court may be individuals, partnerships,  
 24 corporations, unions, associations, or any other kind of  
 25 organization or entity.



~~(2) No party shall be represented by an attorney in the small claims court.~~

~~(3)~~ (2) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

~~(4)~~ (3) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

~~(5)~~ (4) No party may file an assigned claim in the small claims court.

~~(6)~~ (5) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the small claims court.

~~(7)~~ (6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

Section 10. Venue. Proper venue for actions commenced

in small claims court is the same as that provided by law for civil actions commenced in district court.

Section 11. Commencement of actions. Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the \_\_\_\_\_ Judicial District in and for the County of \_\_\_\_\_, State of Montana.

\_\_\_\_\_, Doc. \_\_\_\_\_ No. \_\_\_\_\_  
Plaintiff  
vs.  
\_\_\_\_\_,  
Defendant  
PLAINTIFF'S COMPLAINT/  
AFFIDAVIT NOTICE TO  
DEFENDANT, SEEKING  
MONEY DAMAGES

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of \_\_\_\_\_, because on \_\_\_\_\_ at \_\_\_\_\_, the defendant(s)  
(date) (place)

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldier's and Sailor's Relief Act, 1940.

I have filed \_\_\_\_\_ small claims within the past calendar

1 week.

2 I have filed \_\_\_\_\_ small claims within the past calendar  
3 year.

4 To the best of my knowledge and belief, the defendant named  
5 above resides at the following address, or the following is  
6 the business address:

7 \_\_\_\_\_  
8 \_\_\_\_\_

9 My printed name and printed address are as follows:

10 \_\_\_\_\_

11 I elect to have the notice served upon the  
12 defendant \_\_\_\_\_ personally \_\_\_\_\_ by mail.

13 Signed in my presence Signature: \_\_\_\_\_

14 \_\_\_\_\_

15 Clerk or Deputy Today's date: \_\_\_\_\_

16 ORDER OF THE COURT/NOTICE TO DEFENDANT

17 This claim has been filed against you. You must appear  
18 before this court on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_  
19 (date) (time) (location)

20 If you do not appear, a judgment may be entered against you.

21 Costs of the action also may be charged against you. You  
22 should read the information on the back of this claim and  
23 notice. If you have any questions about the procedure, you  
24 may contact the Clerk of the Court in person at  
25 \_\_\_\_\_

1 (location of court)

2 or by telephone at \_\_\_\_\_.

3 (number)

4 \_\_\_\_\_  
5 Clerk of the Court

6 By: \_\_\_\_\_

7 Section 12. Order of court--contents. (1) Upon filing  
8 the affidavit and payment of the fee hereinafter provided,  
9 the clerk of court shall cause to be delivered to the  
10 sheriff of the county of the defendant's residence a copy of  
11 the affidavit together with the original and a copy of an  
12 order issued by the court, directed to the defendant, and  
13 directing the defendant to pay the claim set forth in the  
14 affidavit, or deliver up the property described, or, in the  
15 alternative, to appear and answer the claim set forth in the  
16 affidavit.

17 (2) The order shall:

18 (a) specify the time, date, and place set for hearing  
19 the claim;

20 (b) state that if the defendant fails to appear at the  
21 hearing and has not satisfied the claim, judgment will be  
22 entered against him in the amount or for the relief claimed,  
23 for costs; and

24 (c) be signed by the clerk of court and bear the seal  
25 of the court.

1 Section 13. Service on defendant. The original order  
 2 shall be shown to the defendant and a copy of it along with  
 3 a copy of the affidavit shall be served upon the defendant  
 4 by the sheriff in the same manner provided by law for  
 5 service of process in civil actions in district court. The  
 6 provisions of law relating to sheriff's fees are applicable  
 7 to this section.

8 Section 14. Hearing date--how set. The date for the  
 9 appearance of the defendant to be set forth in the order  
 10 shall be determined by the clerk of court in accordance with  
 11 rules adopted by the small claims judge, and shall not be  
 12 more than thirty (30) nor less than ten (10) days from the  
 13 date of the order. Service of the order and copy of the  
 14 affidavit shall be made upon the defendant not less than  
 15 seven (7) days prior to the date set for his appearance by  
 16 the order. If the order is not timely served, plaintiff may  
 17 have a new appearance date set by the clerk and a new order  
 18 issued and delivered to the sheriff, and, if necessary,  
 19 repeated orders may be issued at any time within one year  
 20 after the commencement of the action.

21 Section 15. Return of service. The sheriff, after  
 22 effecting service, shall make return upon the original order  
 23 and file it with the clerk of court.

24 Section 16. Defendant's counterclaim -- answer.  
 25 (1) If the defendant wishes to assert a counterclaim

1 against the plaintiff he shall file a written answer setting  
 2 forth his counterclaim against the plaintiff and shall cause  
 3 the answer to be served upon the plaintiff not less than  
 4 seventy-two (72) hours before the date set for the hearing.  
 5 Service shall be made in the same manner in which service is  
 6 made upon the defendant.

7 (2) A counterclaim or set-off may not exceed one  
 8 thousand dollars (\$1000). If a counterclaim or set-off is  
 9 asserted in excess of one thousand dollars (\$1000), the  
 10 jurisdiction of the small claims court over the plaintiff's  
 11 claim is not defeated, but the court shall limit its  
 12 determination of the counterclaim or set-off only to the  
 13 question of whether plaintiff's claim is discharged thereby,  
 14 leaving defendant to prosecute the balance of his claim in  
 15 appropriate district court action.

16 Section 17. Attachment--execution. Attachment or  
 17 prejudgment garnishment is not available in actions brought  
 18 in small claims court. Proceedings to enforce or collect a  
 19 judgment are governed by the laws relating to executions  
 20 upon district court judgments.

21 Section 18. Proceedings informal--court reporters. If  
 22 the action is tried to the court, the proceedings shall be  
 23 informal to the extent possible in order to dispense speedy  
 24 justice to the parties. In cases tried to the court a  
 25 reporter is not necessary unless the judge finds the issues

1 sufficiently complex that a record is desirable, in which  
 2 case he shall make arrangements with a court reporter of the  
 3 district court to take the testimony. The judge shall make  
 4 findings of fact sufficient to establish in full the basis  
 5 of his judgment, and shall file them with his judgment. ~~if~~  
 6 ~~a jury is empaneled, it shall try all issues of fact, and in~~  
 7 ~~such case there shall be a court reporter.~~

8 Section 19. Evidence--subpoena power. Both parties  
 9 have the right to offer evidence, written and oral, and the  
 10 judge may direct the production of evidence as he deems  
 11 appropriate. The small claims court has the subpoena power  
 12 granted to district courts in civil cases.

13 Section 20. Entry of judgment. Upon the conclusion of  
 14 a case tried to the court the judge shall make his findings  
 15 and enter judgment.

16 Section 21. Appeals. If either party is dissatisfied  
 17 with the judgment of the small claims court he may appeal to  
 18 the district court of the county where the judgment was  
 19 rendered, in the same fashion as appeals in other civil  
 20 actions. Any such appeal shall be tried de novo without a  
 21 jury.

22 In the event that the parties are represented by  
 23 counsel on appeal, the judge may grant the prevailing party,  
 24 in addition to costs, reasonable attorney fees.

25 Section 22. Fees--cost. (1) The clerk of court shall

1 collect a fee of five dollars (\$5):

2 (a) from the plaintiff upon the filing of the  
 3 affidavit;

4 (b) from the defendant upon the filing of a written  
 5 answer; and

6 (c) from the losing party upon the filing of a  
 7 judgment.

8 (2) The laws relating to paupers' affidavits apply to  
 9 actions before the small claims courts.

10 (3) The prevailing party in an action before the small  
 11 claims court is entitled to costs.

12 Section 23. It is the intent of the legislature that  
 13 if a part of this act is invalid, all valid parts that are  
 14 severable from the invalid part remain in effect. If a part  
 15 of this act is invalid in one or more of its applications,  
 16 the part remains in effect in all valid applications that  
 17 are severable from the invalid applications.

-End-

## 1 HOUSE BILL NO. 528

2 INTRODUCED BY RICHARDS, SCULLY, JAMES MOORE,

3 HARPER, WILLIAMS, PALMER, MCFADDEN, LYNCH, MCKITTRICK, MELOY,

4 HUENNEKENS, YARDLEY, FEDERICO, KIMBLE, SLOAN, GILLIGAN,

5 FISHBAUGH, TRAVIS, VINCENT, MAGONE, GUNDERSON, STOLTZ, FAGG,

6 SHELDEN, LUEBECK, KEMMIS, R. BAETH, KUMMERFELDT, JACOBSEN,

7 BARDANOUVE, DAY, TEAGUE, BRADLEY, JOHNSON, KELLY, DUSSAULT,

8 BENGTON, WOLFE, KENDALL, O'CONNELL, SOUTH, HELMBRECHT,

9 MANUEL, FINLEY, GWYNN, TROPILA, LESTER, STAIGMILLER,

10 THOMAS, DRISCOLL, HOLMES, FLEMING, BRAND, GERKE, HERLEVI

11  
12 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL  
13 CLAIMS COURTS IN THE STATE OF MONTANA."14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 Section 1. Small claims court authorized. There may  
17 be created within the jurisdiction of the district court of  
18 any county of the state of Montana a separate court, known  
19 as the "Small Claims Court".20 Section 2. Creation of small claims court. A small  
21 claims court may be created by an order of the district  
22 court or a resolution passed by the board of county  
23 commissioners or by county initiative as provided in Title  
24 37, chapter 3, R.C.M. 1947. Upon such order or passage of  
25 the resolution or initiative, the judge of the appropriate1 judicial district shall, by court order, establish a small  
2 claims court under the provisions of this act. When the  
3 order is filed with the clerk of the district court of the  
4 appropriate county the clerk of the district court becomes  
5 the clerk of the small claims court.6 Section 3. Duration of small claims court. A small  
7 claims court created under this act continues in existence  
8 until abolished by resolution of the board of county  
9 commissioners of the appropriate county.10 Section 4. Appointment of judge -- salary --  
11 qualifications. (1) The judges of the judicial district in  
12 which a small claims court has been created shall appoint a  
13 judge of the small claims court who shall:

14 (a) take the oath required of judges;

15 (b) serve at the pleasure of the district court  
16 judges;17 (c) be paid a salary set by the ~~board--of--county~~  
18 ~~commissioners---but---not---less---than---ten---thousand---dollars~~  
19 ~~{10,000}~~-per-year DISTRICT COURT JUDGE; and20 (d) be an attorney licensed to practice law in the  
21 state of Montana.22 (2) The judge of the district court may appoint more  
23 than one (1) small claims court judge for any small claims  
24 court and the salary shall be prorated among the judges  
25 appointed.

1 Section 5. Location--office hours--duties of judge.  
 2 The small claims court shall be located in ~~the courthouse of~~  
 3 the appropriate county DISTRICT and shall be open ~~during all~~  
 4 ~~judicial days and during regular office hours~~ AS REQUIRED BY  
 5 THE DISTRICT JUDGE. In the event that more than one (1)  
 6 small claims court judge has been appointed, the judges so  
 7 appointed may divide their responsibility hereunder. The  
 8 small claims court judge shall assist any claimant in  
 9 preparing an affidavit or may direct the clerk of court to  
 10 provide such assistance.

11 Section 6. Multi-county small claims courts. Where  
 12 there is more than one county in the judicial district and  
 13 the county commissioners of more than one county in that  
 14 district create small claims courts, the district judges may  
 15 provide that the same judge of small claims court may  
 16 preside over more than one of the small claims courts in the  
 17 judicial district. In such cases the salary of the small  
 18 claims court judge shall be prorated among the counties in  
 19 which he presides. The judge shall be entitled to collect  
 20 mileage for the distance acutally traveled when required to  
 21 convene small claims court in more than one county, pursuant  
 22 to section 59-801.

23 Section 7. Act to be liberally construed. It is the  
 24 purpose of this act to provide a speedy remedy in claims  
 25 falling hereunder, and to promote a forum in which such

1 claims may be heard and disposed of without the necessity of  
 2 formal trial. For this reason, the provisions hereof should  
 3 be liberally construed to provide an informal, but  
 4 equitable, means of justice, and the judges appointed  
 5 hereunder are required to assist all parties before them to  
 6 obtain substantial justice.

7 Section 8. Jurisdiction. (1) The small claims court  
 8 has original jurisdiction in all actions for the recovery of  
 9 money or specific personal property when such action arises  
 10 out of a contract, express or implied, and the amount of the  
 11 claim, exclusive of costs, does not exceed one thousand  
 12 dollars (\$1,000). More than one (1) claim may be joined, if  
 13 all claims joined would separately meet the requirements for  
 14 jurisdiction in the small claims court and the total value  
 15 of money claimed or property sought does not exceed one  
 16 thousand dollars (\$1,000).

17 (2) A district court judge may require any action  
 18 filed in district court to be removed to the small claims  
 19 court, if the amount in controversy does not exceed one  
 20 thousand dollars (\$1,000). The small claims court shall  
 21 hear any action so removed from the district court.

22 Section 9. Parties -- representation. (1) Parties in  
 23 the small claims court may be individuals, partnerships,  
 24 corporations, unions, associations, or any other kind of  
 25 organization or entity.

~~(2) No party shall be represented by an attorney in the small claims court.~~

(2) A PARTY MAY NOT BE REPRESENTED BY AN ATTORNEY UNLESS ALL PARTIES ARE REPRESENTED BY AN ATTORNEY IN A SMALL CLAIMS COURT.

~~(3)~~ (3) An individual shall MAY represent himself in the small claims court. A partnership shall MAY be represented by a partner or one of its employees. A union shall MAY be represented by a union member or union employee. A corporation shall MAY be represented by one of its employees. An association shall MAY be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall MAY be represented by one of its members or employees.

~~(4)~~ (4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

~~(5)~~ (5) No party may file an assigned claim in the small claims court.

~~(6)~~ (6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the small claims court.

~~(7)~~ (7) Notwithstanding any other provision of this section, an executor or administrator of a decedent's

estate, a guardian, or a conservator may be a party in the small claims court.

Section 10. Venue. Proper venue for actions commenced in small claims court is the same as that provided by law for civil actions commenced in district court.

Section 11. Commencement of actions. Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the \_\_\_\_\_ Judicial District in and for the County of \_\_\_\_\_, State of Montana.

\_\_\_\_\_, Doc. \_\_\_\_\_ No. \_\_\_\_\_  
Plaintiff  
vs.  
\_\_\_\_\_, PLAINTIFF'S COMPLAINT/  
AFFIDAVIT NOTICE TO  
DEFENDANT, SEEKING  
MONEY DAMAGES  
Defendant

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of \_\_\_\_\_, because on \_\_\_\_\_ at \_\_\_\_\_, the defendant(s)  
(date) (place)

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the

1 military service of the United States" as defined in Sec.  
2 101 of the Soldier's and Sailor's Relief Act, 1940.

3 I have filed \_\_\_\_\_ small claims within the past calendar  
4 week.

5 I have filed \_\_\_\_\_ small claims within the past calendar  
6 year.

7 To the best of my knowledge and belief, the defendant named  
8 above resides at the following address, or the following is  
9 the business address:

10 \_\_\_\_\_  
11 \_\_\_\_\_

12 My printed name and printed address are as follows:

13 \_\_\_\_\_

14 I elect to have the notice served upon the  
15 defendant \_\_\_\_\_ personally \_\_\_\_\_ by mail.

16 Signed in my presence Signature: \_\_\_\_\_

17 \_\_\_\_\_

18 Clerk or Deputy Today's date: \_\_\_\_\_

19 ORDER OF THE COURT/NOTICE TO DEFENDANT

20 This claim has been filed against you. You must appear  
21 before this court on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_  
22 (date) (time) (location)

23 If you do not appear, a judgment may be entered against you.  
24 Costs of the action also may be charged against you. You  
25 should read the information on the back of this claim and

1 notice. If you have any questions about the procedure, you  
2 may contact the Clerk of the Court in person at

3 \_\_\_\_\_  
4 (location of court)

5 or by telephone at \_\_\_\_\_.  
6 (number)

7 \_\_\_\_\_  
8 Clerk of the Court

9 By: \_\_\_\_\_

10 Section 12. Order of court--contents. (1) Upon filing  
11 the affidavit and payment of the fee hereinafter provided,  
12 the clerk of court shall cause to be delivered to the  
13 sheriff of the county of the defendant's residence a copy of  
14 the affidavit together with the original and a copy of an  
15 order issued by the court, directed to the defendant, and  
16 directing the defendant to pay the claim set forth in the  
17 affidavit, or deliver up the property described, or, in the  
18 alternative, to appear and answer the claim set forth in the  
19 affidavit.

20 (2) The order shall:

21 (a) specify the time, date, and place set for hearing  
22 the claim;

23 (b) state that if the defendant fails to appear at the  
24 hearing and has not satisfied the claim, judgment will be  
25 entered against him in the amount or for the relief claimed,



1 for costs; and

2 (c) be signed by the clerk of court and bear the seal  
3 of the court.

4 Section 13. Service on defendant. The original order  
5 shall be shown to the defendant and a copy of it along with  
6 a copy of the affidavit shall be served upon the defendant  
7 by the sheriff in the same manner provided by law for  
8 service of process in civil actions in district court. The  
9 provisions of law relating to sheriff's fees are applicable  
10 to this section.

11 Section 14. Hearing date--how set. The date for the  
12 appearance of the defendant to be set forth in the order  
13 shall be determined by the clerk of court in accordance with  
14 rules adopted by the small claims judge, and shall not be  
15 more than thirty (30) nor less than ten (10) days from the  
16 date of the order. Service of the order and copy of the  
17 affidavit shall be made upon the defendant not less than  
18 seven (7) days prior to the date set for his appearance by  
19 the order. If the order is not timely served, plaintiff may  
20 have a new appearance date set by the clerk and a new order  
21 issued and delivered to the sheriff, and, if necessary,  
22 repeated orders may be issued at any time within one year  
23 after the commencement of the action.

24 Section 15. Return of service. The sheriff, after  
25 effecting service, shall make return upon the original order

1 and file it with the clerk of court.

2 Section 16. Defendant's counterclaim -- answer.

3 (1) If the defendant wishes to assert a counterclaim  
4 against the plaintiff he shall file a written answer setting  
5 forth his counterclaim against the plaintiff and shall cause  
6 the answer to be served upon the plaintiff not less than  
7 seventy-two (72) hours before the date set for the hearing.  
8 Service shall be made in the same manner in which service is  
9 made upon the defendant.

10 (2) A counterclaim or set-off may not exceed one  
11 thousand dollars (\$1,000). If a counterclaim or set-off is  
12 asserted in excess of one thousand dollars (\$1,000), the  
13 jurisdiction of the small claims court over the plaintiff's  
14 claim is not defeated, but the court shall limit its  
15 determination of the counterclaim or set-off only to the  
16 question of whether plaintiff's claim is discharged thereby,  
17 leaving defendant to prosecute the balance of his claim in  
18 appropriate district court action.

19 Section 17. Attachment--execution. Attachment or  
20 prejudgment garnishment is not available in actions brought  
21 in small claims court. Proceedings to enforce or collect a  
22 judgment are governed by the laws relating to executions  
23 upon district court judgments.

24 Section 18. Proceedings informal--court reporters. If  
25 the action is tried to the court, the proceedings shall be

1 informal to the extent possible in order to dispense speedy  
 2 justice to the parties. ~~In ALL cases SHALL BE~~ tried to the  
 3 court SITTING WITHOUT A JURY, AND a reporter is not  
 4 necessary unless the judge finds the issues sufficiently  
 5 complex that a record is desirable, in which case he shall  
 6 make arrangements with a court reporter of the district  
 7 court to take the testimony. The judge shall make findings  
 8 of fact sufficient to establish in full the basis of his  
 9 judgment, and shall file them with his judgment. ~~if-a-jury~~  
 10 ~~is-empaneled,-it-shall-try-all-issues-of-fact,-and--in--such~~  
 11 ~~case-there-shall-be-a-court-reporter.~~

12 Section 19. Evidence--subpoena power. Both parties  
 13 have the right to offer evidence, written and oral, and the  
 14 judge may direct the production of evidence as he deems  
 15 appropriate. The small claims court has the subpoena power  
 16 granted to district courts in civil cases.

17 Section 20. Entry of judgment. Upon the conclusion of  
 18 a case tried to the court the judge shall make his findings  
 19 and enter judgment.

20 Section 21. Appeals. If either party is dissatisfied  
 21 with the judgment of the small claims court he may appeal to  
 22 the district court of the county where the judgment was  
 23 rendered, in the same fashion as appeals in other civil  
 24 actions. Any such appeal shall be tried de novo without a  
 25 jury.

1 In the event that the parties are represented by  
 2 counsel on appeal, the judge may grant the prevailing party,  
 3 in addition to costs, reasonable attorney fees.

4 Section 22. Fees--cost. (1) The clerk of court shall  
 5 collect a fee of five dollars (\$5):

6 (a) from the plaintiff upon the filing of the  
 7 affidavit;

8 (b) from the defendant upon the filing of a written  
 9 answer; and

10 (c) from the losing party upon the filing of a  
 11 judgment.

12 (2) The laws relating to paupers' affidavits apply to  
 13 actions before the small claims courts.

14 (3) The prevailing party in an action before the small  
 15 claims court is entitled to costs.

16 Section 23. It is the intent of the legislature that  
 17 if a part of this act is invalid, all valid parts that are  
 18 severable from the invalid part remain in effect. If a part  
 19 of this act is invalid in one or more of its applications,  
 20 the part remains in effect in all valid applications that  
 21 are severable from the invalid applications.

-End-

March 26, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 528

That House Bill No. 528, third reading, be amended as follows:

1. Amend page 1, section 2, lines 21 and 22.  
Following: "by"  
Strike: "an order of the district court or"
2. Amend page 1, section 2, line 23.  
Following: "commissioners"  
Insert: "after consultation with the district court judges of the judicial district in which such county is located, "
3. Amend page 2, section 3, lines 8 through 9.  
Following: "by"  
Strike: lines 8 through 9 in their entirety  
Insert: "the same means by which it was formed under section 2 of this act. Any small claims court may be abolished by county initiative as provided in section 2."
4. Amend page 4, section 8, lines 11 and 12.  
Following: "exceed"  
Strike: "one thousand dollars (\$1,000)"  
Insert: "one thousand five hundred dollars (\$1,500)"
5. Amend page 4, section 8, lines 15 and 16.  
Following: "exceed"  
Strike: "one thousand dollars (\$1,000)"  
Insert: "one thousand five hundred dollars (\$1,500)"
6. Amend page 4, section 9, lines 19 and 20.  
Following: "exceed"  
Strike: "one thousand dollars (\$1,000)"  
Insert: "one thousand five hundred dollars (\$1,500)"
7. Amend page 5, section 9, line 5.  
Following: "COURT"  
Strike: "."  
Insert: "except as set forth in subsection (3) herein."
8. Amend page 5, section 9, lines 21 through 23.  
Following: line 20  
Strike: lines 21 through 23 in their entirety  
Re-number: Subsequent subsection )
9. Amend page 10, section 16, lines 10 and 11.  
Following: "exceed"  
Strike: "one thousand dollars (\$1,000)"  
Insert: "one thousand five hundred dollars (\$1,500)"

10. Amend page 10, section 16, line 12.  
Following: "of"  
Strike: "one thousand dollars (\$1,000)"  
Insert: "one thousand five hundred dollars (\$1,500)"
11. Amend page 11, section 18, lines 2 and 3.  
Following: "in"  
Strike: "ALL cases SHALL BE tried to the court SITTING WITHOUT A JURY, AND a"  
Insert: "A"
12. Amend page 11, section 18, line 11.  
Following: line 11  
Insert: "If a jury is empaneled, it shall try all issues of fact, and in such case there shall be a court reporter.

Section 19. Small claims jury - waiver - request. The plaintiff, by filing the affidavit for a proceeding in small claims court waives the right to jury trial. Defendant may request a jury upon a general denial, provided such request is made not less than forty-eight (48) hours prior to the date set for hearing. If defendant pleads a counterclaim or set-off, he, too, waives a jury trial. If a jury is requested, it shall be empaneled in the same fashion as provided for district court juries in civil cases involving less than ten thousand dollars (\$10,000)."

Renumber: All subsequent sections

14. Amend page 11, section 20, line 19.  
Following: "judgment."  
Insert: "Judgment shall be entered upon a jury verdict in the same manner as is provided for district court jury trials."
15. Amend page 11, section 21, line 24.  
Following: "novo"  
Strike: "without a jury"

AND AS SO AMENDED, BE CONCURRED IN

April 2, 1975

SENATE COMMITTEE ON JUDICIARY  
AMENDMENTS TO HOUSE BILL NO. 528

That House Bill No. 528, third reading, be amended as follows:

1. Amend page 4, section 8, line 12.  
Following: "\$1,000"  
Insert: "and the defendant can be served within the county or counties for which the small claims court has been created"
2. Amend page 5, section 9, line 6.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
3. Amend page 5, section 9, line 7.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
4. Amend page 5, section 9, line 9.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
5. Amend page 5, section 9, line 10.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
6. Amend page 5, section 9, line 11.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
7. Amend page 5, section 9, line 13.  
Following: "~~shall~~"  
Strike: "MAY"  
Insert: "shall"
8. Amend page 7, section 11, lines 3 through 6.  
Following: line 2  
Strike: lines 3 through 6 in their entirety
9. Amend page 7, section 11, lines 14 through 15.  
Following: line 13  
Strike: lines 14 through 15 in their entirety

April 2, 1975  
H.B. 528  
Page 2

Amend Senate Committee on Judiciary amendments, dated March 26, 1975,  
as follows:

10. Amend amendment 12, insertion paragraph, line 7.  
Following: "jury"  
Strike: "upon a general denial,"

and amend HB 528, third reading, as follows:

11. Amend page 12, section 22, lines 9 through 11.  
Following: "answer"  
Strike: lines 9 through 11 in their entirety  
Insert: "."

AND AS SO AMENDED, BE CONCURRED IN

1 HOUSE BILL NO. 528  
 2 INTRODUCED BY RICHARDS, SCULLY, JAMES MOORE,  
 3 HARPER, WILLIAMS, PALMER, MCFADDEN, LYNCH, MCKITTRICK, MELOY,  
 4 HUENNEKENS, YARDLEY, FEDERICO, KIMBLE, SLOAN, GILLIGAN,  
 5 FISHEAUGH, TRAVIS, VINCENT, MAGONE, GUNDERSON, STOLTZ, FAGG,  
 6 SHELDEN, LUEBECK, KEMMIS, R. BAETH, KUMMERFELDT, JACOBSEN,  
 7 BARDANOUVE, DAY, TEAGUE, BRADLEY, JOHNSON, KELLY, DUSSAULT,  
 8 BENGTON, WOLFE, KENDALL, O'CONNELL, SOUTH, HELMBRECHT,  
 9 MANUEL, FINLEY, GWYNN, TROPILA, LESTER, STAIGMILLER,  
 10 THOMAS, DRISCOLL, HOLMES, FLEMING, BRAND, GERKE, HERLEVI

11  
 12 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL  
 13 CLAIMS COURTS IN THE STATE OF MONTANA."  
 14

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

16 Section 1. Small claims court authorized. There may  
 17 be created within the jurisdiction of the district court of  
 18 any county of the state of Montana a separate court, known  
 19 as the "Small Claims Court".

20 Section 2. Creation of small claims court. A small  
 21 claims court may be created by ~~an order of the district~~  
 22 ~~court or~~ a resolution passed by the board of county  
 23 commissioners AFTER CONSULTATION WITH THE DISTRICT COURT  
 24 JUDGES OF THE JUDICIAL DISTRICT IN WHICH SUCH COUNTY IS  
 25 LOCATED, or by county initiative as provided in Title 37,

1 chapter 3, R.C.M. 1947. Upon such order or passage of the  
 2 resolution or initiative, the judge of the appropriate  
 3 judicial district shall, by court order, establish a small  
 4 claims court under the provisions of this act. When the  
 5 order is filed with the clerk of the district court of the  
 6 appropriate county the clerk of the district court becomes  
 7 the clerk of the small claims court.

8 Section 3. Duration of small claims court. A small  
 9 claims court created under this act continues in existence  
 10 until abolished by ~~resolution of the board of county~~  
 11 ~~commissioners of the appropriate county.~~ THE SAME MEANS BY  
 12 WHICH IT WAS FORMED UNDER SECTION 2 OF THIS ACT. ANY SMALL  
 13 CLAIMS COURT MAY BE ABOLISHED BY COUNTY INITIATIVE AS  
 14 PROVIDED IN SECTION 2.

15 Section 4. Appointment of judge -- salary --  
 16 qualifications. (1) The judges of the judicial district in  
 17 which a small claims court has been created shall appoint a  
 18 judge of the small claims court who shall:

- 19 (a) take the oath required of judges;
- 20 (b) serve at the pleasure of the district court
- 21 judges;
- 22 (c) be paid a salary set by the ~~board of county~~  
 23 ~~commissioners but not less than ten thousand dollars~~  
 24 ~~(\$10,000) per year~~ DISTRICT COURT JUDGE; and
- 25 (d) be an attorney licensed to practice law in the

1 state of Montana.

2 (2) The judge of the district court may appoint more  
3 than one (1) small claims court judge for any small claims  
4 court and the salary shall be prorated among the judges  
5 appointed.

6 Section 5. Location--office hours--duties of judge.  
7 The small claims court shall be located in ~~the courthouse of~~  
8 the appropriate county DISTRICT and shall be open ~~during all~~  
9 ~~judicial days and during regular office hours~~ AS REQUIRED BY  
10 THE DISTRICT JUDGE. In the event that more than one (1)  
11 small claims court judge has been appointed, the judges so  
12 appointed may divide their responsibility hereunder. The  
13 small claims court judge shall assist any claimant in  
14 preparing an affidavit or may direct the clerk of court to  
15 provide such assistance.

16 Section 6. Multi-county small claims courts. Where  
17 there is more than one county in the judicial district and  
18 the county commissioners of more than one county in that  
19 district create small claims courts, the district judges may  
20 provide that the same judge of small claims court may  
21 preside over more than one of the small claims courts in the  
22 judicial district. In such cases the salary of the small  
23 claims court judge shall be prorated among the counties in  
24 which he presides. The judge shall be entitled to collect  
25 mileage for the distance actually traveled when required to

1 convene small claims court in more than one county, pursuant  
2 to section 59-801.

3 Section 7. Act to be liberally construed. It is the  
4 purpose of this act to provide a speedy remedy in claims  
5 falling hereunder, and to promote a forum in which such  
6 claims may be heard and disposed of without the necessity of  
7 formal trial. For this reason, the provisions hereof should  
8 be liberally construed to provide an informal, but  
9 equitable, means of justice, and the judges appointed  
10 hereunder are required to assist all parties before them to  
11 obtain substantial justice.

12 Section 8. Jurisdiction. (1) The small claims court  
13 has original jurisdiction in all actions for the recovery of  
14 money or specific personal property when such action arises  
15 out of a contract, express or implied, and the amount of the  
16 claim, exclusive of costs, does not exceed ~~one--thousand~~  
17 ~~dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)  
18 AND THE DEFENDANT CAN BE SERVED WITHIN THE COUNTY OR  
19 COUNTIES FOR WHICH THE SMALL CLAIMS COURT HAS BEEN CREATED.

20 More than one (1) claim may be joined, if all claims joined  
21 would separately meet the requirements for jurisdiction in  
22 the small claims court and the total value of money claimed  
23 or property sought does not exceed ~~one-thousand-dollars~~  
24 ~~(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500).

25 (2) A district court judge may require any action



1 filed in district court to be removed to the small claims  
2 court, if the amount in controversy does not exceed ~~one~~  
3 ~~thousand--dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS  
4 (\$1,500). The small claims court shall hear any action so  
5 removed from the district court.

6 Section 9. Parties -- representation. (1) Parties in  
7 the small claims court may be individuals, partnerships,  
8 corporations, unions, associations, or any other kind of  
9 organization or entity.

10 ~~(2)--no-party-shall-be-represented-by--an--attorney--in~~  
11 ~~the-small-claims-court.~~

12 (2) A PARTY MAY NOT BE REPRESENTED BY AN ATTORNEY  
13 UNLESS ALL PARTIES ARE REPRESENTED BY AN ATTORNEY IN A SMALL  
14 CLAIMS COURT, EXCEPT AS SET FORTH IN SUBSECTION (3) HEREIN.

15 ~~(3)(2)~~(3) An individual ~~shall~~ MAY SHALL represent  
16 himself in the small claims court. A partnership ~~shall~~ MAY  
17 SHALL be represented by a partner or one of its employees.  
18 A union ~~shall~~ MAY SHALL be represented by a union member or  
19 union employee. A corporation ~~shall~~ MAY SHALL be  
20 represented by one of its employees. An association ~~shall~~  
21 MAY SHALL be represented by one of its members or by an  
22 employee of the association. Any other kind of organization  
23 or entity ~~shall~~ MAY SHALL be represented by one of its  
24 members or employees.

25 ~~(4)(3)~~(4) Only a party, natural or otherwise, who has

1 been a party to the transaction with the defendant for which  
2 the claim is brought may file and prosecute a claim in the  
3 small claims court.

4 ~~(5)(4)~~(5) No party may file an assigned claim in the  
5 small claims court.

6 ~~(6)(5)(6)--no-party-shall-file--more--than--two--claims~~  
7 ~~within--any--calendar--week--nor--more--than--ten--claims--in--any~~  
8 ~~calendar-year-in-the-small-claims-court.~~

9 ~~(7)(6)(7)~~(6) Notwithstanding any other provision of  
10 this section, an executor or administrator of a decedent's  
11 estate, a guardian, or a conservator may be a party in the  
12 small claims court.

13 Section 10. Venue. Proper venue for actions commenced  
14 in small claims court is the same as that provided by law  
15 for civil actions commenced in district court.

16 Section 11. Commencement of actions. Actions in small  
17 claims court shall be commenced by filing an affidavit with  
18 the clerk of court. The clerk of court shall provide forms  
19 for the affidavits, which shall be in substantially the  
20 following form:

21 "In the Small Claims Court of the \_\_\_\_\_ Judicial  
22 District in and for the County of \_\_\_\_\_, State of  
23 Montana.

24 \_\_\_\_\_, Doc. \_\_\_\_\_ No. \_\_\_\_\_  
25 Plaintiff,

26 vs. PLAINTIFF'S COMPLAINT/  
-6- HB 528

1  
2 AFFIDAVIT NOTICE TO  
3 DEFENDANT, SEEKING  
MONEY DAMAGES  
4 Defendant

5 Plaintiff states that defendant(s) owe and should be  
6 ordered to pay to me the sum of \_\_\_\_\_, because on  
7 \_\_\_\_\_ at \_\_\_\_\_, the defendant(s)  
(date) (place)

8  
9  
10 Plaintiff declares that the defendant or defendants are  
11 not a "person in military service" or "person in the  
12 military service of the United States" as defined in Sec.  
13 101 of the Soldier's and Sailor's Relief Act, 1940.

14 ~~I have filed small claims within the past calendar~~  
15 ~~week.~~

16 ~~I have filed small claims within the past calendar~~  
17 ~~year.~~

18 To the best of my knowledge and belief, the defendant named  
19 above resides at the following address, or the following is  
20 the business address:

21 \_\_\_\_\_  
22 \_\_\_\_\_

23 My printed name and printed address are as follows:

24 \_\_\_\_\_

25 ~~I elect to have the notice served upon the~~  
26 ~~defendant personally by mail.~~

1 Signed in my presence Signature: \_\_\_\_\_

2 \_\_\_\_\_

3 Clerk or Deputy Today's date: \_\_\_\_\_

4 ORDER OF THE COURT/NOTICE TO DEFENDANT

5 This claim has been filed against you. You must appear  
6 before this court on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_  
7 (date) (time) (location)

8 If you do not appear, a judgment may be entered against you.

9 Costs of the action also may be charged against you. You  
10 should read the information on the back of this claim and  
11 notice. If you have any questions about the procedure, you  
12 may contact the Clerk of the Court in person at

13 \_\_\_\_\_  
14 (location of court)

15 or by telephone at \_\_\_\_\_.  
16 (number)

17 \_\_\_\_\_  
18 Clerk of the Court

19 By: \_\_\_\_\_

20 Section 12. Order of court--contents. (1) Upon filing  
21 the affidavit and payment of the fee hereinafter provided,  
22 the clerk of court shall cause to be delivered to the  
23 sheriff of the county of the defendant's residence a copy of  
24 the affidavit together with the original and a copy of an  
25 order issued by the court, directed to the defendant, and

1 directing the defendant to pay the claim set forth in the  
2 affidavit, or deliver up the property described, or, in the  
3 alternative, to appear and answer the claim set forth in the  
4 affidavit.

5 (2) The order shall:

6 (a) specify the time, date, and place set for hearing  
7 the claim;

8 (b) state that if the defendant fails to appear at the  
9 hearing and has not satisfied the claim, judgment will be  
10 entered against him in the amount or for the relief claimed,  
11 for costs; and

12 (c) be signed by the clerk of court and bear the seal  
13 of the court.

14 Section 13. Service on defendant. The original order  
15 shall be shown to the defendant and a copy of it along with  
16 a copy of the affidavit shall be served upon the defendant  
17 by the sheriff in the same manner provided by law for  
18 service of process in civil actions in district court. The  
19 provisions of law relating to sheriff's fees are applicable  
20 to this section.

21 Section 14. Hearing date--how set. The date for the  
22 appearance of the defendant to be set forth in the order  
23 shall be determined by the clerk of court in accordance with  
24 rules adopted by the small claims judge, and shall not be  
25 more than thirty (30) nor less than ten (10) days from the

1 date of the order. Service of the order and copy of the  
2 affidavit shall be made upon the defendant not less than  
3 seven (7) days prior to the date set for his appearance by  
4 the order. If the order is not timely served, plaintiff may  
5 have a new appearance date set by the clerk and a new order  
6 issued and delivered to the sneriff, and, if necessary,  
7 repeated orders may be issued at any time within one year  
8 after the commencement of the action.

9 Section 15. Return of service. The sheriff, after  
10 effecting service, shall make return upon the original order  
11 and file it with the clerk of court.

12 Section 16. Defendant's counterclaim -- answer.

13 (1) If the defendant wishes to assert a counterclaim  
14 against the plaintiff he shall file a written answer setting  
15 forth his counterclaim against the plaintiff and shall cause  
16 the answer to be served upon the plaintiff not less than  
17 seventy-two (72) hours before the date set for the hearing.  
18 Service shall be made in the same manner in which service is  
19 made upon the defendant.

20 (2) A counterclaim or set-off may not exceed ~~one~~  
21 ~~thousand--dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS  
22 (\$1,500). If a counterclaim or set-off is asserted in  
23 excess of ~~one-thousand--dollars--(\$1,000)~~ ONE THOUSAND FIVE  
24 HUNDRED DOLLARS (\$1,500), the jurisdiction of the small  
25 claims court over the plaintiff's claim is not defeated, but

1 the court shall limit its determination of the counterclaim  
 2 or set-off only to the question of whether plaintiff's claim  
 3 is discharged thereby, leaving defendant to prosecute the  
 4 balance of his claim in appropriate district court action.

5 Section 17. Attachment--execution. Attachment or  
 6 prejudgment garnishment is not available in actions brought  
 7 in small claims court. Proceedings to enforce or collect a  
 8 judgment are governed by the laws relating to executions  
 9 upon district court judgments.

10 Section 18. Proceedings informal--court reporters. If  
 11 the action is tried to the court, the proceedings shall be  
 12 informal to the extent possible in order to dispense speedy  
 13 justice to the parties. ~~In all cases shall be tried to the~~  
 14 ~~court--SITTING--WITHOUT--A--JURY--AND--a~~ A reporter is not  
 15 necessary unless the judge finds the issues sufficiently  
 16 complex that a record is desirable, in which case he shall  
 17 make arrangements with a court reporter of the district  
 18 court to take the testimony. The judge shall make findings  
 19 of fact sufficient to establish in full the basis of his  
 20 judgment, and shall file them with his judgment. ~~if a jury~~  
 21 ~~is empaneled, it shall try all issues of fact, and in such~~  
 22 ~~case there shall be a court reporter.~~ IF A JURY IS  
 23 EMpaneLED, IT SHALL TRY ALL ISSUES OF FACT, AND IN SUCH CASE  
 24 THERE SHALL BE A COURT REPORTER.

25 SECTION 19. SMALL CLAIMS JURY -- WAIVER -- REQUEST.

1 THE PLAINTIFF, BY FILING THE AFFIDAVIT FOR A PROCEEDING IN  
 2 SMALL CLAIMS COURT WAIVES THE RIGHT TO JURY TRIAL.  
 3 DEFENDANT MAY REQUEST A JURY UPON A GENERAL DENIAL, PROVIDED  
 4 SUCH REQUEST IS MADE NOT LESS THAN FORTY-EIGHT (48) HOURS  
 5 PRIOR TO THE DATE SET FOR HEARING. IF DEFENDANT PLEADS A  
 6 COUNTERCLAIM OR SET-OFF, HE, TOO, WAIVES A JURY TRIAL. IF A  
 7 JURY IS REQUESTED, IT SHALL BE EMpaneLED IN THE SAME FASHION  
 8 AS PROVIDED FOR DISTRICT COURT JURIES IN CIVIL CASES  
 9 INVOLVING LESS THAN TEN THOUSAND DOLLARS (\$10,000).

10 Section ~~19~~ 20. Evidence--subpoena power. Both parties  
 11 have the right to offer evidence, written and oral, and the  
 12 judge may direct the production of evidence as he deems  
 13 appropriate. The small claims court has the subpoena power  
 14 granted to district courts in civil cases.

15 Section ~~20~~ 21. Entry of judgment. Upon the conclusion  
 16 of a case tried to the court the judge shall make his  
 17 findings and enter judgment. JUDGMENT SHALL BE ENTERED UPON  
 18 A JURY VERDICT IN THE SAME MANNER AS IS PROVIDED FOR  
 19 DISTRICT COURT JURY TRIALS.

20 Section ~~21~~ 22. Appeals. If either party is  
 21 dissatisfied with the judgment of the small claims court he  
 22 may appeal to the district court of the county where the  
 23 judgment was rendered, in the same fashion as appeals in  
 24 other civil actions. Any such appeal shall be tried de novo  
 25 ~~without a jury.~~

1 In the event that the parties are represented by  
2 counsel on appeal, the judge may grant the prevailing party,  
3 in addition to costs, reasonable attorney fees.

4 Section ~~22~~ 23. Fees--cost. (1) The clerk of court  
5 shall collect a fee of five dollars (\$5):

6 (a) from the plaintiff upon the filing of the  
7 affidavit;

8 (b) from the defendant upon the filing of a written  
9 answer, ~~and~~

10 ~~(c) from the losing party upon the filing of a~~  
11 ~~judgment.~~

12 (2) The laws relating to paupers' affidavits apply to  
13 actions before the small claims courts.

14 (3) The prevailing party in an action before the small  
15 claims court is entitled to costs.

16 Section ~~23~~ 24. It is the intent of the legislature  
17 that if a part of this act is invalid, all valid parts that  
18 are severable from the invalid part remain in effect. If a  
19 part of this act is invalid in one or more of its  
20 applications, the part remains in effect in all valid  
21 applications that are severable from the invalid  
22 applications.

-End-