

1 House BILL NO. 800  
 2 INTRODUCED BY Holmes, Kelly, Metcalf, Muscarel  
 3 Ramirez, Speer, Tosta, Zinke

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH SMALL  
 5 CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF  
 6 MONTANA; REPEALING SECTIONS 93-322 THROUGH 93-344, R.C.M.  
 7 1947."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Purpose. It is the purpose of this act to  
 11 provide a speedy remedy for small claims and to promote a  
 12 forum in which such claims may be heard and disposed of  
 13 without the necessity of a formal trial.

14 Section 2. Creation of small claims court. There is  
 15 established within the jurisdiction of each justice's court  
 16 in this state a small claims division to be known as the  
 17 "small claims court".

18 Section 3. Jurisdiction. (1) The small claims court  
 19 has jurisdiction over all actions for the recovery of money  
 20 or specific personal property when the amount claimed does  
 21 not exceed \$500, exclusive of costs, and the defendant can  
 22 be served within the county where the action is commenced.

23 (2) A district court judge may require any action  
 24 filed in district court to be removed to the small claims  
 25 court if the amount in controversy does not exceed \$500. The

1 small claims court shall hear any action so removed from the  
 2 district court.

3 Section 4. Venue. Proper venue for actions commenced  
 4 in the small claims court is the same as that provided by  
 5 law for civil actions commenced in justice's court.

6 Section 5. Commencement of actions -- pleadings --  
 7 informal proceedings. A small claims action is commenced  
 8 whenever any person appears before a justice of the peace  
 9 and executes a sworn small claims complaint in substantially  
 10 the same form as set forth in [section 6]. No form of  
 11 pleading other than the complaint and the order of the  
 12 court/notice to defendant is allowed, and the hearing and  
 13 disposition of small claims actions shall be informal.

14 Section 6. Form of sworn complaint and order of the  
 15 court/notice to defendant. The sworn complaint and order of  
 16 the court shall be made on a blank substantially in the  
 17 following form:

18 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
 19 COURT OF ..... COUNTY, MONTANA  
 20 BEFORE ..... JUSTICE OF THE PEACE  
 21 .....  
 22 .....  
 23 Plaintiff,  
 24 vs. Complaint  
 25 ..... Case No.....

HB 800

1 .....  
2 Defendant(s)  
3 .....

4 Comes now the plaintiff, being first duly sworn, upon  
5 oath, and complains and alleges that defendant is indebted  
6 to plaintiff in the sum of \$....., for.....  
7 .....  
8 .....  
9 .....  
10 which sum is now due, owing and unpaid despite demands for  
11 the payment thereof, together with plaintiff's costs herein  
12 expended.

13 Dated this ..... day of ....., 19.....  
14 .....  
15 Plaintiff  
16 .....  
17 Plaintiff's address

18 Subscribed and sworn to before me this ..... day of  
19 ....., 19.....  
20 .....  
21 Justice of the peace  
22 By:.....  
23 Clerk, small claims division

24 ORDER OF COURT/  
25 NOTICE TO DEFENDANT  
26 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

1 You are hereby directed to appear and answer the within  
2 and foregoing complaint at:

3 .....  
4 .....  
5 on..... at ....  
6 Reset for ..... at ....  
7 Reset for ..... at ....  
8 Reset for ..... at ....

9 and to have with you, then and there, all books, papers, and  
10 witnesses needed by you to establish your defense to the  
11 claim; and you are further notified that in case you do not  
12 appear, judgment will be taken against you by default, for  
13 the relief demanded in the complaint, and for costs of this  
14 action including costs of service of the complaint and order  
15 of the court/notice to defendant.

16 To the Sheriff, Constable, or Server of process of said  
17 county, greetings:

18 Make legal service and due return thereof on the  
19 defendant at .....  
20 Dated this .... day of ....., 19.....

21 .....  
22 Justice of the peace  
23 By:.....  
24 Clerk of small claims division  
25 Section 7. Service on defendant. The original of the

1 order and notice shall be shown to the defendant and a copy  
 2 of it along with a copy of the sworn complaint shall be  
 3 served upon the defendant by the sheriff, constable, or  
 4 other process server in the same manner provided by law for  
 5 service of process in civil actions in justice's court. The  
 6 provisions of law relating to sheriff's fees are applicable  
 7 to this section.

8 Section 8. 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 justice of the peace or by his  
 11 clerk in accordance with rules adopted by the justice of the  
 12 peace and may not be more than 20 or less than 10 days from  
 13 the date of the order. Service of the order and a copy of  
 14 the sworn complaint shall be made upon the defendant not  
 15 less than 5 days prior to the date set for his appearance by  
 16 the order. If the order is not timely served, the plaintiff  
 17 may have a new appearance date set by the justice of the  
 18 peace or his clerk and a new order issued and delivered to  
 19 the sheriff, constable, or other process server. If  
 20 necessary, repeated orders may be issued at any time within  
 21 1 year after the commencement of the action.

22 Section 9. Return of service. The sheriff, constable,  
 23 or other process server shall, after affecting service,  
 24 return the original order to the justice of the peace or his  
 25 clerk.

1 Section 10. Parties — representation. (1) Parties in  
 2 the small claims court may be individuals, partnerships,  
 3 corporations, unions, associations, or any other kind of  
 4 organization or entity.

5 (2) A party may not be represented by an attorney  
 6 unless all parties are represented by an attorney in a small  
 7 claims court except as provided in subsection (3).

8 (3) An individual may represent himself in a small  
 9 claims court. A partnership may be represented by a partner  
 10 or one of its employees. A union may be represented by a  
 11 union member or union employee. A corporation may be  
 12 represented by one of its employees. An association may be  
 13 represented by one of its members or by an employee of the  
 14 association. Any other kind of organization or entity may be  
 15 represented by one of its members or employees.

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

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

22 (6) Notwithstanding any other provision of this  
 23 section, a personal representative of a decedent's estate, a  
 24 guardian, or a conservator may be a party in the small  
 25 claims court.

1 Section 11. Witnesses -- evidence -- subpoena power.  
 2 The plaintiff and the defendant may offer evidence in their  
 3 behalf by witnesses appearing at such hearing in the same  
 4 manner as in other cases arising in justice's court or by  
 5 written evidence and the judge may direct the production of  
 6 evidence as he considers appropriate. The small claims court  
 7 has the subpoena power granted to justices' courts in all  
 8 civil cases.

9 Section 12. Record. All civil actions tried in a small  
 10 claims court shall be recorded either electronically or  
 11 stenographically.

12 Section 13. Appeals -- no trial de novo. (1) If either  
 13 party is dissatisfied with the judgment of the small claims  
 14 court, he may appeal to the district court of the county  
 15 where the judgment was rendered. An appeal shall be  
 16 commenced by giving written notice to the small claims court  
 17 and serving a copy of the notice of appeal on the adverse  
 18 party within 10 days after entry of judgment. Within 30  
 19 days of the notice, the entire record of the small claims  
 20 court proceedings shall be transmitted to the district court  
 21 or the appeal shall be dismissed. It is the duty of the  
 22 appealing party to perfect the appeal.

23 (2) There shall not be a trial de novo in the district  
 24 court. The appeal shall be limited to questions of law.

25 Section 14. Record on appeal. When notice of appeal is

1 filed, the justice shall forward the electronic recording or  
 2 transcript of the stenographic record of the proceedings to  
 3 the district court, together with the original papers filed  
 4 certified by him to be accurate and complete. When the  
 5 record is transferred to the clerk of the district court,  
 6 the justice shall notify the parties in writing.

7 Section 15. Use of transcripts or tapes by district  
 8 court. The district court may hear the recording of the  
 9 proceedings of the justice court, but in its discretion, it  
 10 may have parts or all of the recordings transcribed at the  
 11 cost of the district court. If the proceedings are  
 12 stenographically taken, the notes will be transcribed in  
 13 full or in designated parts as stipulated by the parties.  
 14 The cost of such transcription shall be computed as  
 15 prescribed by law.

16 Section 16. Location of court -- office hours. The  
 17 small claims division of justice court shall be located at  
 18 the same place as the justice's court and shall be open  
 19 during the same hours as the justice's court.

20 Section 17. Assistance by justice -- record. (1) The  
 21 justice shall assist any claimant in preparing his complaint  
 22 or instruct his clerk to provide such assistance.

23 (2) The justice shall enter in the docket kept by him  
 24 for small claims cases the following:

25 (a) the title of each action;

1 (b) the amount claimed;  
 2 (c) the date the order of court/notice to defendant  
 3 was signed and the date of the trial as stated in the order;  
 4 (d) the date the parties appeared or the date on which  
 5 default was entered;  
 6 (e) each adjournment stating on whose application and  
 7 to what time;  
 8 (f) the judgment of the court;  
 9 (g) a statement of any money paid to the justice,  
 10 when, and by whom;  
 11 (h) the date of the issuance of any abstract of the  
 12 judgment; and  
 13 (i) the date of the receipt of the notice of appeal,  
 14 if any is given, and of the appeal bond, if any is filed.

15 Section 18. Entry of judgment. Upon the conclusion of  
 16 the case tried to the court, the justice shall make his  
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 19 collect a judgment are governed by the laws relating to  
 20 execution upon justice's court judgments.

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 22 justice's court shall collect a fee of \$3.50:  
 23 (a) from the plaintiff upon the filing of the sworn  
 24 complaint; and  
 25 (b) from the defendant upon his appearance and

1 contesting of the complaint.  
 2 (2) The laws relating to paupers' affidavits apply to  
 3 actions before the small claims court.  
 4 (3) The prevailing party in an action before the small  
 5 claims court is entitled to his costs.

6 Section 21. Severability. If a part of this act is  
 7 invalid, all valid parts that are severable from the invalid  
 8 part remain in effect. If a part of this act is invalid in  
 9 one or more of its applications, the part remains in effect  
 10 in all valid applications that are severable from the  
 11 invalid applications.

12 Section 22. Repealer. Sections 93-322 through 93-344,  
 13 R.C.M. 1947, are repealed.

-End-

Approved by Committee on Judiciary

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 2 INTRODUCED BY HOLMES, MELOY, METCALF, DUSSAULT,  
 3 RAMIREZ, FAGG, PORTER, GERKE  
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23 be served within the county where the action is commenced.

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 20 COURT OF ..... COUNTY, MONTANA  
 21 BEFORE ..... JUSTICE OF THE PEACE  
 22 .....  
 23 .....  
 24 Plaintiff,  
 25 vs. Complaint

1 ..... Case No.....  
 2 .....  
 3 Defendant(s)  
 4 .....  
 5  
 6 Comes now the plaintiff, being first duly sworn, upon  
 7 oath, and complains and alleges that defendant is indebted  
 8 to plaintiff in the sum of \$....., for.....  
 9 .....  
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 12 the payment thereof, together with plaintiff's costs herein  
 13 expended.  
 14 Dated this ..... day of ....., 19.....  
 15 .....  
 16 Plaintiff  
 17 .....  
 18 Plaintiff's address  
 19 Subscribed and sworn to before me this ..... day of  
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 22 Justice of the peace  
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 2 You are hereby directed to appear and answer the within  
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 4 .....  
 5 .....  
 6 on..... at ....  
 7 Reset for ..... at ....  
 8 Reset for ..... at ....  
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 10 and to have with you, then and there, all books, papers, and  
 11 witnesses needed by you to establish your defense to the  
 12 claim; and you are further notified that in case you do not  
 13 appear, judgment will be taken against you by default, for  
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 19 Make legal service and due return thereof on the  
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 12 union member or union employee. A corporation may be  
 13 represented by one of its employees. An association may be  
 14 represented by one of its members or by an employee of the  
 15 association. Any other kind of organization or entity may be  
 16 represented by one of its members or employees.

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

21 (5) No party may file an assigned claim in the small  
 22 claims court ~~MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.~~

23 (6) Notwithstanding any other provision of this  
 24 section, a personal representative of a decedent's estate, a  
 25 guardian, or a conservator may be a party in the small



1 claims court.

2 Section 11. Witnesses -- evidence -- subpoena power.  
 3 The plaintiff and the defendant may offer evidence in their  
 4 behalf by witnesses appearing at such hearing in the same  
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 20 days of the notice, the entire record of the small claims  
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 15 The cost of such transcription shall be computed as  
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 18 small claims division of justice court shall be located at  
 19 the same place as the justice's court and shall be open  
 20 during the same hours as the justice's court.

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 22 justice shall assist any claimant in preparing his complaint  
 23 or instruct his clerk to provide such assistance.

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 25 for small claims cases the following:

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  - 4 was signed and the date of the trial as stated in the order;
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  - 6 default was entered;
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  - 8 to what time;
  - 9 (f) the judgment of the court;
  - 10 (g) a statement of any money paid to the justice,
  - 11 when, and by whom;
  - 12 (h) the date of the issuance of any abstract of the
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- 16 Section 18. Entry of judgment. Upon the conclusion of
- 17 the case tried to the court, the justice shall make his
- 18 findings and enter judgment.
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- 20 collect a judgment are governed by the laws relating to
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- 23 justice's court shall collect a fee of \$3.50:
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- 4 actions before the small claims court.
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- 6 claims court is entitled to his costs.
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- 8 invalid, all valid parts that are severable from the invalid
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- 13 ~~Section 22. Repealer. Sections 93-322 through 93-344~~
- 14 ~~Revised 1947, are repealed.~~

-End-

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 14 Dated this ..... day of ....., 19.....  
 15 .....  
 16 Plaintiff  
 17 .....  
 18 Plaintiff's address  
 19 Subscribed and sworn to before me this ..... day of  
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 22 Justice of the peace  
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1 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):  
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 3 and foregoing complaint at:  
 4 .....  
 5 .....  
 6 on..... at ....  
 7 Reset for ..... at ....  
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 10 and to have with you, then and there, all books, papers, and  
 11 witnesses needed by you to establish your defense to the  
 12 claim; and you are further notified that in case you do not  
 13 appear, judgment will be taken against you by default, for  
 14 the relief demanded in the complaint, and for costs of this  
 15 action including costs of service of the complaint and order  
 16 of the court/notice to defendant.  
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 7 unless all parties are represented by an attorney in a small  
 8 claims court ~~except as provided in subsection (3)~~.

9 (3) An individual may represent himself in a small  
 10 claims court. A partnership may be represented by a partner  
 11 or one of its employees. A union may be represented by a  
 12 union member or union employee. A corporation may be  
 13 represented by one of its employees. An association may be  
 14 represented by one of its members or by an employee of the  
 15 association. Any other kind of organization or entity may be  
 16 represented by one of its members or employees.

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

21 (5) No party may file an assigned claim in the small  
 22 claims court MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.

23 (6) Notwithstanding any other provision of this  
 24 section, a personal representative of a decedent's estate, a  
 25 guardian, or a conservator may be a party in the small

1 claims court.

2 Section 11. Witnesses -- evidence -- subpoena power.  
3 The plaintiff and the defendant may offer evidence in their  
4 behalf by witnesses appearing at such hearing in the same  
5 manner as in other cases arising in justice's court or by  
6 written evidence and the judge may direct the production of  
7 evidence as he considers appropriate. The small claims court  
8 has the subpoena power granted to justices' courts in all  
9 civil cases.

10 Section 12. Record. All civil actions tried in a small  
11 claims court shall be recorded either electronically or  
12 stenographically.

13 Section 13. Appeals -- no trial de novo. (1) If either  
14 party is dissatisfied with the judgment of the small claims  
15 court, he may appeal to the district court of the county  
16 where the judgment was rendered. An appeal shall be  
17 commenced by giving written notice to the small claims court  
18 and serving a copy of the notice of appeal on the adverse  
19 party within 10 days after entry of judgment. Within 30  
20 days of the notice, the entire record of the small claims  
21 court proceedings shall be transmitted to the district court  
22 or the appeal shall be dismissed. It is the duty of the  
23 appealing party to perfect the appeal.

24 (2) There shall not be a trial de novo in the district  
25 court. The appeal shall be limited to questions of law.

1 Section 14. Record on appeal. When notice of appeal is  
2 filed, the justice shall forward the electronic recording or  
3 transcript of the stenographic record of the proceedings to  
4 the district court, together with the original papers filed  
5 certified by him to be accurate and complete. When the  
6 record is transferred to the clerk of the district court,  
7 the justice shall notify the parties in writing.

8 Section 15. Use of transcripts or tapes by district  
9 court. The district court may hear the recording of the  
10 proceedings of the justice court, but in its discretion, it  
11 may have parts or all of the recordings transcribed at the  
12 cost of the district court. If the proceedings are  
13 stenographically taken, the notes will be transcribed in  
14 full or in designated parts as stipulated by the parties.  
15 The cost of such transcription shall be computed as  
16 prescribed by law.

17 Section 16. Location of court -- office hours. The  
18 small claims division of justice court shall be located at  
19 the same place as the justice's court and shall be open  
20 during the same hours as the justice's court.

21 Section 17. Assistance by justice -- record. (1) The  
22 justice shall assist any claimant in preparing his complaint  
23 or instruct his clerk to provide such assistance.

24 (2) The justice shall enter in the docket kept by him  
25 for small claims cases the following:

1 (a) the title of each action;

2 (b) the amount claimed;

3 (c) the date the order of court/notice to defendant

4 was signed and the date of the trial as stated in the order;

5 (d) the date the parties appeared or the date on which

6 default was entered;

7 (e) each adjournment stating on whose application and

8 to what time;

9 (f) the judgment of the court;

10 (g) a statement of any money paid to the justice,

11 when, and by whom;

12 (h) the date of the issuance of any abstract of the

13 judgment; and

14 (i) the date of the receipt of the notice of appeal,

15 if any is given, and of the appeal bond, if any is filed.

16 Section 18. Entry of judgment. Upon the conclusion of

17 the case tried to the court, the justice shall make his

18 findings and enter judgment.

19 Section 19. Execution. Proceedings to enforce or

20 collect a judgment are governed by the laws relating to

21 execution upon justice's court judgments.

22 Section 20. Fees -- costs. (1) The clerk of the

23 justice's court shall collect a fee of \$3.50:

24 (a) from the plaintiff upon the filing of the sworn

25 complaint; and

1 (b) from the defendant upon his appearance and

2 contesting of the complaint.

3 (2) The laws relating to paupers' affidavits apply to

4 actions before the small claims court.

5 (3) The prevailing party in an action before the small

6 claims court is entitled to his costs.

7 Section 21. Severability. If a part of this act is

8 invalid, all valid parts that are severable from the invalid

9 part remain in effect. If a part of this act is invalid in

10 one or more of its applications, the part remains in effect

11 in all valid applications that are severable from the

12 invalid applications.

13 ~~Section 22. Repeater. Sections 93-322 through 93-344,~~

14 ~~R.C.M. 1947, are repeated.~~

-End-

April 1, 1977

SENATE  
STANDING COMMITTEE REPORT  
Committee on Judiciary

That House Bill No. 800, third reading, be amended as follows:

1. Amend page 1, section 3, line 22.

Following: "exceed"

Strike: "\$500"

Insert: "\$1,500"

2. Amend page 6, section 10, line 22.

Following: "court"

Strike: "MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR"

3. Amend page 6, section 10, line 23.

Following: line 22

Insert: "(6) No party may file more than three claims in any calendar year."

Renumber: subsequent subsection



HOUSE BILL NO. 800

INTRODUCED BY HOLMES, MELOY, METCALF, DUSSAULT,

RAMIREZ, FAGG, PORTER, GERKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF MONTANA; ~~REPEATING SECTIONS 93-322 THROUGH 93-344; REVISED 1947.~~"

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

Section 1. Purpose. It is the purpose of this act to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

Section 2. Creation of small claims court. There is established within the jurisdiction of each justice's court in this state a small claims division to be known as the "small claims court".

Section 3. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed \$500 ~~\$1,500~~, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action

filed in district court to be removed to the small claims court if the amount in controversy does not exceed \$500. The small claims court shall hear any action so removed from the district court.

Section 4. Venue. Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

Section 5. Commencement of actions -- pleadings -- informal proceedings. A small claims action is commenced whenever any person appears before a justice of the peace and executes a sworn small claims complaint in substantially the same form as set forth in [section 6]. No form of pleading other than the complaint and the order of the court/notice to defendant is allowed, and the hearing and disposition of small claims actions shall be informal.

Section 6. Form of sworn complaint and order of the court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA BEFORE ..... JUSTICE OF THE PEACE

.....  
.....  
Plaintiff,

1 vs. Complaint  
 2 ..... Case No.....  
 3 .....  
 4 Defendant(s)  
 5 .....  
 6  
 7 Comes now the plaintiff, being first duly sworn, upon  
 8 oath, and complains and alleges that defendant is indebted  
 9 to plaintiff in the sum of \$....., for.....  
 10 .....  
 11 .....  
 12 which sum is now due, owing and unpaid despite demands for  
 13 the payment thereof, together with plaintiff's costs herein  
 14 expended.  
 15 Dated this ..... day of ....., 19.....  
 16 .....  
 17 Plaintiff  
 18 .....  
 19 Plaintiff's address  
 20 Subscribed and sworn to before me this ..... day of  
 21 ....., 19.....  
 22 .....  
 23 Justice of the peace  
 24 By:.....  
 25 Clerk, small claims division  
 26 ORDER OF COURT/

1 NOTICE TO DEFENDANT  
 2 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):  
 3 You are hereby directed to appear and answer the within  
 4 and foregoing complaint at:  
 5 .....  
 6 .....  
 7 on..... at ....  
 8 Reset for ..... at ....  
 9 Reset for ..... at ....  
 10 Reset for ..... at ....  
 11 and to have with you, then and there, all books, papers, and  
 12 witnesses needed by you to establish your defense to the  
 13 claim; and you are further notified that in case you do not  
 14 appear, judgment will be taken against you by default, for  
 15 the relief demanded in the complaint, and for costs of this  
 16 action including costs of service of the complaint and order  
 17 of the court/notice to defendant.  
 18 To the Sheriff, Constable, or Server of process of said  
 19 county, greetings:  
 20 Make legal service and due return thereof on the  
 21 defendant at .....  
 22 Dated this .... day of ....., 19.....  
 23 .....  
 24 Justice of the peace  
 25 By:.....

1 Clerk of small claims division

2 Section 7. Service on defendant. The original of the  
 3 order and notice shall be shown to the defendant and a copy  
 4 of it along with a copy of the sworn complaint shall be  
 5 served upon the defendant by the sheriff, constable, or  
 6 other process server in the same manner provided by law for  
 7 service of process in civil actions in justice's court. The  
 8 provisions of law relating to sheriff's fees are applicable  
 9 to this section.

10 Section 8. Hearing date -- how set. The date for the  
 11 appearance of the defendant to be set forth in the order  
 12 shall be determined by the justice of the peace or by his  
 13 clerk in accordance with rules adopted by the justice of the  
 14 peace and may not be more than 20 or less than 10 days from  
 15 the date of the order. Service of the order and a copy of  
 16 the sworn complaint shall be made upon the defendant not  
 17 less than 5 days prior to the date set for his appearance by  
 18 the order. If the order is not timely served, the plaintiff  
 19 may have a new appearance date set by the justice of the  
 20 peace or his clerk and a new order issued and delivered to  
 21 the sheriff, constable, or other process server. If  
 22 necessary, repeated orders may be issued at any time within  
 23 1 year after the commencement of the action.

24 Section 9. Return of service. The sheriff, constable,  
 25 or other process server shall, after affecting service,

1 return the original order to the justice of the peace or his  
 2 clerk.

3 Section 10. Parties -- representation. (1) Parties in  
 4 the small claims court may be individuals, partnerships,  
 5 corporations, unions, associations, or any other kind of  
 6 organization or entity.

7 (2) A party may not be represented by an attorney  
 8 unless all parties are represented by an attorney in a small  
 9 claims court ~~except as provided in subsection (3).~~

10 (3) An individual may represent himself in a small  
 11 claims court. A partnership may be represented by a partner  
 12 or one of its employees. A union may be represented by a  
 13 union member or union employee. A corporation may be  
 14 represented by one of its employees. An association may be  
 15 represented by one of its members or by an employee of the  
 16 association. Any other kind of organization or entity may be  
 17 represented by one of its members or employees.

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

22 (5) No party may file an assigned claim in the small  
 23 claims court ~~MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.~~

24 ~~(6) NO PARTY MAY FILE MORE THAN THREE CLAIMS IN ANY~~  
 25 ~~CALENDAR YEAR.~~

1       ~~(6)~~(7) Notwithstanding any other provision of this  
2 section, a personal representative of a decedent's estate, a  
3 guardian, or a conservator may be a party in the small  
4 claims court.

5       Section 11. Witnesses -- evidence -- subpoena power.  
6 The plaintiff and the defendant may offer evidence in their  
7 behalf by witnesses appearing at such hearing in the same  
8 manner as in other cases arising in justice's court or by  
9 written evidence and the judge may direct the production of  
10 evidence as he considers appropriate. The small claims court  
11 has the subpoena power granted to justices' courts in all  
12 civil cases.

13       Section 12. Record. All civil actions tried in a small  
14 claims court shall be recorded either electronically or  
15 stenographically.

16       Section 13. Appeals -- no trial de novo. (1) If either  
17 party is dissatisfied with the judgment of the small claims  
18 court, he may appeal to the district court of the county  
19 where the judgment was rendered. An appeal shall be  
20 commenced by giving written notice to the small claims court  
21 and serving a copy of the notice of appeal on the adverse  
22 party within 10 days after entry of judgment. Within 30  
23 days of the notice, the entire record of the small claims  
24 court proceedings shall be transmitted to the district court  
25 or the appeal shall be dismissed. It is the duty of the

1       appealing party to perfect the appeal.

2       (2) There shall not be a trial de novo in the district  
3 court. The appeal shall be limited to questions of law.

4       Section 14. Record on appeal. When notice of appeal is  
5 filed, the justice shall forward the electronic recording or  
6 transcript of the stenographic record of the proceedings to  
7 the district court, together with the original papers filed  
8 certified by him to be accurate and complete. When the  
9 record is transferred to the clerk of the district court,  
10 the justice shall notify the parties in writing.

11       Section 15. Use of transcripts or tapes by district  
12 court. The district court may hear the recording of the  
13 proceedings of the justice court, but in its discretion, it  
14 may have parts or all of the recordings transcribed at the  
15 cost of the district court. If the proceedings are  
16 stenographically taken, the notes will be transcribed in  
17 full or in designated parts as stipulated by the parties.  
18 The cost of such transcription shall be computed as  
19 prescribed by law.

20       Section 16. Location of court -- office hours. The  
21 small claims division of justice court shall be located at  
22 the same place as the justice's court and shall be open  
23 during the same hours as the justice's court.

24       Section 17. Assistance by justice -- record. (1) The  
25 justice shall assist any claimant in preparing his complaint

1 or instruct his clerk to provide such assistance.

2 (2) The justice shall enter in the docket kept by him  
 3 for small claims cases the following:

4 (a) the title of each action;

5 (b) the amount claimed;

6 (c) the date the order of court/notice to defendant  
 7 was signed and the date of the trial as stated in the order;

8 (d) the date the parties appeared or the date on which  
 9 default was entered;

10 (e) each adjournment stating on whose application and  
 11 to what time;

12 (f) the judgment of the court;

13 (g) a statement of any money paid to the justice,  
 14 when, and by whom;

15 (h) the date of the issuance of any abstract of the  
 16 judgment; and

17 (i) the date of the receipt of the notice of appeal,  
 18 if any is given, and of the appeal bond, if any is filed.

19 Section 18. Entry of judgment. Upon the conclusion of  
 20 the case tried to the court, the justice shall make his  
 21 findings and enter judgment.

22 Section 19. Execution. Proceedings to enforce or  
 23 collect a judgment are governed by the laws relating to  
 24 execution upon justice's court judgments.

25 Section 20. Fees -- costs. (1) The clerk of the

1 justice's court shall collect a fee of \$3.50:

2 (a) from the plaintiff upon the filing of the sworn  
 3 complaint; and

4 (b) from the defendant upon his appearance and  
 5 contesting of the complaint.

6 (2) The laws relating to paupers' affidavits apply to  
 7 actions before the small claims court.

8 (3) The prevailing party in an action before the small  
 9 claims court is entitled to his costs.

10 Section 21. Severability. If a part of this act is  
 11 invalid, all valid parts that are severable from the invalid  
 12 part remain in effect. If a part of this act is invalid in  
 13 one or more of its applications, the part remains in effect  
 14 in all valid applications that are severable from the  
 15 invalid applications.

16 ~~Section 22. Repealer. Sections 93-322 through 93-344~~  
 17 ~~Revised 1947 are repealed.~~

-End-

HOUSE BILL NO. 800

INTRODUCED BY HOLMES, MELOY, METCALF, DUSSAULT,  
RAMIREZ, FAGG, PORTER, GERKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH SMALL  
CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF  
MONTANA; ~~REPEALING SECTIONS 93-322 THROUGH 93-344, R.C.M.~~  
~~1947."~~

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

Section 1. Purpose. It is the purpose of this act to  
provide a speedy remedy for small claims and to promote a  
forum in which such claims may be heard and disposed of  
without the necessity of a formal trial.

Section 2. Creation of small claims court. There is  
established within the jurisdiction of each justice's court  
in this state a small claims division to be known as the  
"small claims court".

Section 3. Jurisdiction. (1) The small claims court  
has jurisdiction over all actions for the recovery of money  
or specific personal property when the amount claimed does  
not exceed ~~\$500~~ ~~11,500~~ ~~\$500~~ ~~1750~~, exclusive of costs, and  
the defendant can be served within the county where the  
action is commenced.

(2) A district court judge may require any action

filed in district court to be removed to the small claims  
court if the amount in controversy does not exceed \$500. The  
small claims court shall hear any action so removed from the  
district court.

Section 4. Venue. Proper venue for actions commenced  
in the small claims court is the same as that provided by  
law for civil actions commenced in justice's court.

Section 5. Commencement of actions -- pleadings --  
informal proceedings. A small claims action is commenced  
whenever any person appears before a justice of the peace  
and executes a sworn small claims complaint in substantially  
the same form as set forth in [section 6]. No form of  
pleading other than the complaint and the order of the  
court/notice to defendant is allowed, and the hearing and  
disposition of small claims actions shall be informal.

Section 6. Form of sworn complaint and order of the  
court/notice to defendant. The sworn complaint and order of  
the court shall be made on a blank substantially in the  
following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
COURT OF ..... COUNTY, MONTANA  
BEFORE ..... JUSTICE OF THE PEACE  
.....  
.....  
Plaintiff,

1 vs. Complaint  
 2 ..... Case No.....  
 3 .....  
 4 Defendant(s)  
 5 .....  
 6  
 7 Comes now the plaintiff, being first duly sworn, upon  
 8 oath, and complains and alleges that defendant is indebted  
 9 to plaintiff in the sum of \$....., for.....  
 10 .....  
 11 .....  
 12 which sum is now due, owing and unpaid despite demands for  
 13 the payment thereof, together with plaintiff's costs herein  
 14 expended.  
 15 Dated this ..... day of ....., 19.....  
 16 .....  
 17 Plaintiff  
 18 .....  
 19 Plaintiff's address  
 20 Subscribed and sworn to before me this ..... day of  
 21 ....., 19.....  
 22 .....  
 23 Justice of the peace  
 24 By:.....  
 25 Clerk, small claims division  
 26 ORDER OF COURT/

1 NOTICE TO DEFENDANT  
 2 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):  
 3 You are hereby directed to appear and answer the within  
 4 and foregoing complaint at:  
 5 .....  
 6 .....  
 7 on..... at ....  
 8 Reset for ..... at ....  
 9 Reset for ..... at ....  
 10 Reset for ..... at ....  
 11 and to have with you, then and there, all books, papers, and  
 12 witnesses needed by you to establish your defense to the  
 13 claim; and you are further notified that in case you do not  
 14 appear, judgment will be taken against you by default, for  
 15 the relief demanded in the complaint, and for costs of this  
 16 action including costs of service of the complaint and order  
 17 of the court/notice to defendant.  
 18 To the Sheriff, Constable, or Server of process of said  
 19 county, greetings:  
 20 Make legal service and due return thereof on the  
 21 defendant at .....  
 22 Dated this .... day of ....., 19.....  
 23 .....  
 24 Justice of the peace  
 25 By:.....

1 Clerk of small claims division

2 Section 7. Service on defendant. The original of the  
3 order and notice shall be shown to the defendant and a copy  
4 of it along with a copy of the sworn complaint shall be  
5 served upon the defendant by the sheriff, constable, or  
6 other process server in the same manner provided by law for  
7 service of process in civil actions in justice's court. The  
8 provisions of law relating to sheriff's fees are applicable  
9 to this section.

10 Section 8. Hearing date -- how set. The date for the  
11 appearance of the defendant to be set forth in the order  
12 shall be determined by the justice of the peace or by his  
13 clerk in accordance with rules adopted by the justice of the  
14 peace and may not be more than 20 or less than 10 days from  
15 the date of the order. Service of the order and a copy of  
16 the sworn complaint shall be made upon the defendant not  
17 less than 5 days prior to the date set for his appearance by  
18 the order. If the order is not timely served, the plaintiff  
19 may have a new appearance date set by the justice of the  
20 peace or his clerk and a new order issued and delivered to  
21 the sheriff, constable, or other process server. If  
22 necessary, repeated orders may be issued at any time within  
23 1 year after the commencement of the action.

24 Section 9. Return of service. The sheriff, constable,  
25 or other process server shall, after affecting service,

1 return the original order to the justice of the peace or his  
2 clerk.

3 Section 10. Parties -- representation. (1) Parties in  
4 the small claims court may be individuals, partnerships,  
5 corporations, unions, associations, or any other kind of  
6 organization or entity.

7 (2) A party may not be represented by an attorney  
8 unless all parties are represented by an attorney in a small  
9 claims court ~~except as provided in subsection (3).~~

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12 or one of its employees. A union may be represented by a  
13 union member or union employee. A corporation may be  
14 represented by one of its employees. An association may be  
15 represented by one of its members or by an employee of the  
16 association. Any other kind of organization or entity may be  
17 represented by one of its members or employees.

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

22 (5) No party may file an assigned claim in the small  
23 claims court ~~MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.~~

24 (6) NO PARTY MAY FILE MORE THAN THREE CLAIMS IN ANY  
25 CALENDAR YEAR.



1        ~~(6)(1)~~ Notwithstanding any other provision of this  
 2 section, a personal representative of a decedent's estate, a  
 3 guardian, or a conservator may be a party in the small  
 4 claims court.

5        Section 11. Witnesses -- evidence -- subpoena power.  
 6 The plaintiff and the defendant may offer evidence in their  
 7 behalf by witnesses appearing at such hearing in the same  
 8 manner as in other cases arising in justice's court or by  
 9 written evidence and the judge may direct the production of  
 10 evidence as he considers appropriate. The small claims court  
 11 has the subpoena power granted to justices' courts in all  
 12 civil cases.

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 14 claims court shall be recorded either electronically or  
 15 stenographically.

16        Section 13. Appeals -- no trial de novo. (1) If either  
 17 party is dissatisfied with the judgment of the small claims  
 18 court, he may appeal to the district court of the county  
 19 where the judgment was rendered. An appeal shall be  
 20 commenced by giving written notice to the small claims court  
 21 and serving a copy of the notice of appeal on the adverse  
 22 party within 10 days after entry of judgment. Within 30  
 23 days of the notice, the entire record of the small claims  
 24 court proceedings shall be transmitted to the district court  
 25 or the appeal shall be dismissed. It is the duty of the

1        appealing party to perfect the appeal.

2        (2). There shall not be a trial de novo in the district  
 3 court. The appeal shall be limited to questions of law.

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 5 filed, the justice shall forward the electronic recording or  
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 7 the district court, together with the original papers filed  
 8 certified by him to be accurate and complete. When the  
 9 record is transferred to the clerk of the district court,  
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 12 court. The district court may hear the recording of the  
 13 proceedings of the justice court, but in its discretion, it  
 14 may have parts or all of the recordings transcribed at the  
 15 cost of the district court. If the proceedings are  
 16 stenographically taken, the notes will be transcribed in  
 17 full or in designated parts as stipulated by the parties.  
 18 The cost of such transcription shall be computed as  
 19 prescribed by law.

20        Section 16. Location of court -- office hours. The  
 21 small claims division of justice court shall be located at  
 22 the same place as the justice's court and shall be open  
 23 during the same hours as the justice's court.

24        Section 17. Assistance by justice -- record. (1) The  
 25 justice shall assist any claimant in preparing his complaint

1 or instruct his clerk to provide such assistance.

2 (2) The justice shall enter in the docket kept by him

3 for small claims cases the following:

4 (a) the title of each action;

5 (b) the amount claimed;

6 (c) the date the order of court/notice to defendant

7 was signed and the date of the trial as stated in the order;

8 (d) the date the parties appeared or the date on which

9 default was entered;

10 (e) each adjournment stating on whose application and

11 to what time;

12 (f) the judgment of the court;

13 (g) a statement of any money paid to the justice,

14 when, and by whom;

15 (h) the date of the issuance of any abstract of the

16 judgment; and

17 (i) the date of the receipt of the notice of appeal,

18 if any is given, and of the appeal bond, if any is filed.

19 Section 16. Entry of judgment. Upon the conclusion of

20 the case tried to the court, the justice shall make his

21 findings and enter judgment.

22 Section 19. Execution. Proceedings to enforce or

23 collect a judgment are governed by the laws relating to

24 execution upon justice's court judgments.

25 Section 20. Fees -- costs. (1) The clerk of the

1 justice's court shall collect a fee of \$3.50:

2 (a) from the plaintiff upon the filing of the sworn

3 complaint; and

4 (b) from the defendant upon his appearance and

5 contesting of the complaint.

6 (2) The laws relating to paupers' affidavits apply to

7 actions before the small claims court.

8 (3) The prevailing party in an action before the small

9 claims court is entitled to his costs.

10 Section 21. Severability. If a part of this act is

11 invalid, all valid parts that are severable from the invalid

12 part remain in effect. If a part of this act is invalid in

13 one or more of its applications, the part remains in effect

14 in all valid applications that are severable from the

15 invalid applications.

16 ~~Section 22 -- Repeater -- Sections 93-322 through 93-344~~

17 ~~R66M-1947, are repealed.~~

-end-