

CHAPTER NO. 501,

HOUSE BILL NO. 699

INTRODUCED BY RAMIREZ, KEEDY

IN THE HOUSE

February 9, 1979	Introduced and referred to Committee on Judiciary.
February 15, 1979	Committee recommend bill do pass. Report adopted.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 20, 1979	Introduced and referred to Committee on Judiciary.
March 13, 1979	Committee recommend bill be concurrent in as amended. Report adopted.
March 15, 1979	Motion pass consideration.
March 16, 1979	Second reading, concurred in.
March 20, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 21, 1979	Returned from second house. Concurred in as amended.
March 22, 1979	On motion consideration passed until the 71st Legislative Day.
March 30, 1979	Second reading, amendments adopted.

March 31, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 699
2 INTRODUCED BY Ramirez Kelly

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE
5 IN THE SMALL CLAIMS DIVISION OF JUSTICE'S COURT; AMENDING
6 SECTIONS 25-35-201, 25-35-203, 25-35-206, AND 25-35-207,
7 MCA."

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

10 Section 1. Section 25-35-201, MCA, is amended to read:

11 "25-35-201. Commencement of action ~~--- assistance to~~
12 ~~claimant.~~ (1) A small claims action is commenced whenever
13 any person appears before a justice of the peace and
14 executes a sworn small claims complaint in substantially the
15 same form as set forth in 25-35-202.

16 (2) The justice shall assist any claimant in preparing
17 his complaint or instruct his clerk to provide such
18 assistance. ~~The attorney general shall prepare a pamphlet~~
19 ~~explaining in plain language the procedures for prosecuting~~
20 ~~and defending a claim in small claims court and distribute a~~
21 ~~sufficient number of copies of the pamphlet to each small~~
22 ~~claims court. The justice or his clerk shall give the~~
23 ~~plaintiff a copy when the plaintiff appears to execute his~~
24 ~~complaint, and a copy must be attached to the order of the~~
25 ~~court/notice to defendant."~~

1 Section 2. Section 25-35-203, MCA, is amended to read:
2 "25-35-203. Hearing date. The date for the appearance
3 of the defendant to be set forth in the order shall be
4 determined by the justice of the peace or by his clerk in
5 accordance with rules adopted by the justice of the peace
6 and may not be more than 20 ~~40~~ or less than 10 days from the
7 date of the order. Service of the order and a copy of the
8 sworn complaint shall be made upon the defendant not less
9 than 5 days prior to the date set for his appearance by the
10 order. If the order is not timely served, the plaintiff may
11 have a new appearance date set by the justice of the peace
12 or his clerk and a new order issued and delivered to the
13 sheriff, constable, or other process server. If necessary,
14 repeated orders may be issued at any time within 1 year
15 after the commencement of the action."

16 NEW SECTION. Section 3. Defendant's counterclaim. (1)
17 The defendant may assert a counterclaim against the
18 plaintiff arising out of the same transaction or occurrence
19 that is the subject matter of the plaintiff's claim by
20 appearing before the justice of the peace and executing a
21 sworn small claims counterclaim in substantially the same
22 form as set forth in subsection (3). The defendant shall
23 cause the counterclaim to be served on the plaintiff not
24 less than 72 hours before the date set for the hearing.
25 Service shall be made in the same manner in which service of

1 the order of court/notice to defendant is made on the
2 defendant. A defendant may not assert as a counterclaim any
3 claim not arising out of the transaction or occurrence that
4 is the subject matter of the plaintiff's claim.

5 (2) If the counterclaim exceeds \$750, exclusive of
6 costs, the action must be removed to the appropriate
7 district court, in which case the prevailing party in the
8 district court is entitled to costs and reasonable
9 attorney's fees.

10 (3) The counterclaim shall be made on a blank
11 substantially in the following form:

12 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
13 COUNTY, MONTANA
14 BEFORE JUSTICE OF THE PEACE
15
16
17 Plaintiff
18 vs. Counterclaim
19 Case No. ...
20
21 Defendant(s)
22

23 Comes now the defendant, being first duly sworn, upon
24 oath, and alleges that defendant is entitled to counterclaim
25 against the plaintiff in the plaintiff's pending action in

1 the sum of \$..... for
2
3
4 which sum is now due, together with defendant's costs herein
5 expended.

6 Dated this ... day of, 19...
7
8 Defendant
9
10 Defendant's address

11 Subscribed and sworn to before me this day of
12, 19...
13
14 Justice of the peace
15 By:
16 Clerk, small claims division

17 Section 4. Section 25-35-206, MCA, is amended to read .
18 "25-35-206. No further pleadings. No form of pleading
19 other than the complaint, and the order of the court/notice
20 to defendant, and the counterclaim of the defendant, if
21 there is one, is allowed."

22 Section 5. Section 25-35-207, MCA, is amended to read:
23 "25-35-207. Fees. (1) The clerk of the justice's court
24 shall collect a fee of ~~\$3.50~~ \$5:

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

1 complaint; and

2 (b) from the defendant upon his appearance and
3 contesting of the complaint or execution of a counterclaim.

4 (2) The laws relating to paupers' affidavits apply to
5 actions before the small claims court."

6 Section 6. Codification. Section 3 is intended to be
7 codified as an integral part of Title 25, chapter 35, and
8 the provisions contained in Title 25, chapter 35, apply to
9 section 3.

-End-

HB 699

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9 ~~attorney's fees. A COUNTERCLAIM OR SETOFF MAY NOT EXCEED~~
10 ~~\$750. IF A COUNTERCLAIM OR SETOFF IS ASSERTED IN EXCESS OF~~
11 ~~\$750, THE JURISDICTION OF THE SMALL CLAIMS COURT OVER THE~~
12 ~~PLAINTIFF'S CLAIM IS NOT DEFEATED, BUT THE COURT SHALL LIMIT~~
13 ~~ITS DETERMINATION OF THE COUNTERCLAIM OR SETOFF TO THE~~
14 ~~QUESTION OF WHETHER THE PLAINTIFF'S CLAIM IS DISCHARGED~~
15 ~~THEREBY, LEAVING THE DEFENDANT TO PROSECUTE THE BALANCE OF~~
16 ~~HIS CLAIM IN AN APPROPRIATE DISTRICT COURT ACTION.~~

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18 substantially in the following form:

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-End-

March 13, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 699 be amended as follows:

1. Page 3, lines 5 through 9.

Following: "(2)" on line 5

Strike: remainder of line 5 through "fees" on line 9

Insert: "A counterclaim or setoff may not exceed \$750.

If a counterclaim or setoff is asserted in excess of \$750, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate district court action."