

CHAPTER NO. 21.

SENATE BILL NO. 41

INTRODUCED BY S. BROWN

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 5, 1979	Introduced and referred to Committee on Judiciary.  On motion Senator S. Brown was added as author to the Pre-Filed Bill.
January 8, 1979	Committee recommend bill do pass as amended. Report adopted.
January 9, 1979	On motion taken from Committee on Bills. Referred to Committee on Judiciary.
January 11, 1979	Committee recommend bill do pass as amended. Report adopted.
January 15, 1979	Printed and placed on members' desks.
January 16, 1979	Second reading, pass consideration.
January 17, 1979	Second reading, do pass as amended.
January 18, 1979	Correctly engrossed.
January 19, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

January 20, 1979	Introduced and referred to Committee on Judiciary.
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January 25, 1979

Committee recommend bill  
be concurred in and placed  
on Consent Calendar. Report  
adopted.

January 29, 1979

Third reading, concurred in.

IN THE SENATE

January 31, 1979

Returned from second house.  
Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 41

INTRODUCED BY
BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND COURTS; AMENDING SECTIONS 3-1-101, 3-1-113, 3-1-201, 3-1-601, 3-1-605, 3-1-1001, 3-1-1002, 3-1-1010 THROUGH 3-1-1014, 3-2-205, 3-2-402, 3-5-213, 3-5-214, 3-5-407, 3-5-514, 3-6-204, 3-6-302, 3-10-111, 3-10-221, 3-10-301, 3-10-304, 3-10-502, 3-11-103, 3-11-203, 3-11-205, 3-12-103, 3-12-203, 3-15-403, 3-15-601, AND 3-15-704, MCA."

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

Section 1. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
(2) the supreme court;
(3) the district courts;

(4) the municipal courts;

(5) the justices' courts;

(6) the city courts and such other inferior courts

as the legislature may establish in any incorporated city or town."

Section 2. Section 3-1-113, MCA, is amended to read:

"3-1-113. Means to carry jurisdiction into effect.

When jurisdiction is, by the constitution or this code or any other statute, conferred on a court or judicial officer, all the means necessary to carry into effect for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding be is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

Section 3. Section 3-1-201, MCA, is amended to read:

"3-1-201. What courts have seals. Each of the following courts shall have a seal:

- (1) the supreme court;
(2) the district courts;
(3) the municipal courts."

Section 4. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court shall may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or courts any court of the United States during his continuance in office."

1 (2) Neither the court administrator nor any assistant  
2 may practice law in any of the courts of this state while  
3 holding his position.

4 (3) No justice or judge of a court of record shall ~~may~~  
5 act as administrator or executor of any estate for  
6 compensation."

7 Section 5. Section 3-1-605, MCA, is amended to read:

8 "3-1-605. Restrictions on judges after term has  
9 expired. A judge ~~judicial officer as defined in 1-1-202,~~  
10 after the expiration of his term of office, ~~must~~ may not act  
11 as attorney or counsel in any action or special proceeding  
12 which has been before him in his official character."

13 Section 6. Section 3-1-1001, MCA, is amended to read:

14 "3-1-1001. Creation, composition, and function of  
15 commission. A judicial nomination commission for the state  
16 of ~~Montana~~ is created. Its function is to provide the  
17 governor with a list of candidates for ~~nomination~~  
18 ~~appointment~~ to fill any vacancy on the supreme court or any  
19 district court ~~of the state of Montana~~. The commission shall  
20 be composed of seven members as follows:

21 (1) four lay members who are neither judges nor  
22 attorneys, active or retired, who reside in different  
23 geographical areas of the state, and each of whom is  
24 representative of a different industry, business, or  
25 profession, whether actively so engaged or retired, who

1 shall be appointed by the governor;

2 (2) two attorneys actively engaged in the practice of  
3 law, one from each congressional district, who shall be  
4 appointed by the supreme court;

5 (3) one district judge elected by the district judges  
6 under an elective procedure initiated and conducted by the  
7 supreme court and certified to such election by the chief  
8 justice of the supreme court. The election shall be  
9 considered an appointment for the purposes of this part."

10 Section 7. Section 3-1-1002, MCA, is amended to read:

11 "3-1-1002. Staggered terms of members. (1) All  
12 original members named to the commission shall serve until  
13 January 1, 1976. Their successors shall serve as follows:

14 (a) The members appointed by the governor shall serve  
15 for 4-year terms.

16 (b) The attorneys ~~elected~~ appointed by the supreme  
17 court shall serve 2-year terms.

18 (c) The judge elected shall serve a 2-year term.

19 (2) Thereafter all members shall serve terms of 4  
20 years."

21 Section 8. Section 3-1-1010, MCA, is amended to read:

22 "3-1-1010. List submitted to governor. The commission  
23 shall meet forthwith after a vacancy occurs on the supreme  
24 court or district court and submit to the governor within 30  
25 days ~~from the date of the vacancy~~ a list of not less than

1 three or more than five persons nominees for appointment."

2 Section 9. Section 3-1-1011, MCA, is amended to read:

3 "3-1-1011. Governor to appoint from list. The governor  
4 must make an appointment from ~~those names~~ the list of  
5 nominees submitted by the commission."

6 Section 10. Section 3-1-1012, MCA, is amended to read:

7 "3-1-1012. When governor fails to ~~nominate~~ appoint. If  
8 the governor fails to ~~nominate~~ appoint within 30 days after  
9 receipt of the list, the chief justice or acting chief  
10 justice shall make the ~~nomination~~ appointment."

11 Section 11. Section 3-1-1013, MCA, is amended to read:

12 "3-1-1013. Senate confirmation -- appointment in the  
13 interim. Each ~~nomination~~ appointment shall be confirmed by  
14 the senate, but ~~a nomination~~ an appointment made while the  
15 senate is not in session is effective ~~as an appointment~~  
16 until the end of the next session. If the ~~nomination~~  
17 appointment is not confirmed, the office shall be vacant and  
18 another selection of nominees and ~~nomination~~ appointment  
19 shall be made."

20 Section 12. Section 3-1-1014, MCA, is amended to read:

21 "3-1-1014. Duration of appointment -- election for  
22 remainder of term. ~~A nominee~~ An appointee confirmed by the  
23 senate serves until the next succeeding general election.  
24 The candidate elected at that election holds the office for  
25 the remainder of the unexpired term."

1 Section 13. Section 3-2-205, MCA, is amended to read:

2 "3-2-205. Injunctions. (1) Upon such terms and under  
3 such rules as the supreme court may establish, the supreme  
4 court may continue in force an injunction order made by a  
5 district court or judge or grant an injunction order and  
6 writ pending an appeal to the supreme court from an order of  
7 a district court or judge refusing or dissolving an  
8 injunction.

9 (2) No action to obtain an injunction ~~must~~ may be  
10 commenced in the supreme court except in cases where the  
11 state is a party, the public is interested, or the rights of  
12 the public are involved. The proper district court has  
13 jurisdiction of all injunctions and the commencement of all  
14 actions therefor, except as provided in this section.

15 (3) The supreme court may provide rules for the  
16 commencement and trial of actions for injunctions in that  
17 court."

18 Section 14. Section 3-2-402, MCA, is amended to read:

19 "3-2-402. Duties. It is the duty of the clerk to:

20 (1) keep the seal of the supreme court, its records  
21 and files, and the roll of attorneys and ~~counselors-at-law~~  
22 counselors at law;

23 (2) adjourn the court from day to day at the beginning  
24 of any term in the absence of any judge justice and until  
25 the arrival of a majority of ~~their number~~ the justices;

1 (3) file all papers or transcripts required by law to  
2 be filed ~~by law~~;

3 (4) issue writs and certificates and approve bonds or  
4 undertakings when so required;

5 (5) make out all transcripts to the supreme court of  
6 the United States;

7 (6) make copies of papers or records when demanded by  
8 law or the rules of the court; and

9 (7) perform such other duties as may be required of  
10 him by law and the rules and practice of the supreme court."

11 Section 15. Section 3-5-213, MCA, is amended to read:

12 "3-5-213. Expenses when out of district. A judge who  
13 sits in the place of another judge in the trial or hearing  
14 of an action or proceeding in a district other than his own  
15 or in the supreme court or who attends a conference of  
16 judges in Helena called by the chief justice of the supreme  
17 court shall be paid his actual and necessary travel expenses  
18 while engaged in that service as follows:

19 (1) his travel expenses in going from the county seat  
20 which he makes his place of residence to the place of trial,  
21 ~~hearing~~, or conference and return; and

22 (2) his board and lodging while engaged in the trial,  
23 hearing, or conference."

24 Section 16. Section 3-5-214, MCA, is amended to read:

25 "3-5-214. Certification and filing of expense claim.

1 As soon as his services in connection with the trial, or  
2 hearing, or conference are concluded, the judge shall  
3 certify in detail the amount of money necessarily and  
4 actually expended by him for his traveling ~~travel~~ expenses  
5 and board and lodging, as specified in 3-5-213, and shall  
6 file the claim with the state to be processed as provided by  
7 law."

8 Section 17. Section 3-5-407, MCA, is amended to read:

9 "3-5-407. Sheriff to act as crier. The sheriff in  
10 attendance upon district court must act as the crier  
11 thereof, call the parties and witnesses and all other  
12 persons bound to appear before the court, and make  
13 proclamation of the opening and adjournment of the court and  
14 of any other matter under its direction."

15 Section 18. Section 3-5-514, MCA, is amended to read:

16 "3-5-514. Naturalization records. The clerk of the  
17 district court shall keep two books:

18 (1) The first book must be labeled "~~Declaration~~  
19 ~~Declarations~~ of Intention to Become Citizens a Citizen of  
20 the United States" and must have entered in it, in  
21 alphabetical order, the names ~~name~~ of all persons each  
22 ~~person~~ who from the organization of the court ~~have~~ has  
23 declared their his intention to become ~~citizens~~ a citizen of  
24 the United States, with the date of such declaration.

25 (2) The second book must be labeled

1 "Naturalization--Final Papers" and must have entered in it,  
 2 in alphabetical order, the names ~~name~~ of ~~all--persons~~ ~~each~~  
 3 ~~person~~ who have ~~has~~ been admitted as citizens a citizen of  
 4 the United States by the court of which he is clerk and, in  
 5 a separate column opposite each name, the country of which  
 6 the person was formerly a citizen or subject, the date of  
 7 his admission, and the page of the minute book or book of  
 8 record containing the order admitting him as a citizen."

9 Section 19. Section 3-6-204, MCA, is amended to read:

10 "3-6-204. Disqualification -- judge pro tem. ~~(1)--The~~  
 11 ~~provisions of law applicable to disqualification of judges~~  
 12 ~~of district court shall apply to judges of municipal courts.~~

13 ~~(2)--When a judge of a municipal court has been~~  
 14 ~~disqualified or is sick or unable to act, he shall call in~~  
 15 ~~some practicing attorney ~~et--law~~ of the county in which ~~said~~~~  
 16 ~~his~~ court is located, who shall be judge pro tem with the  
 17 same powers for the purposes of ~~such the~~ cause as the judge  
 18 of ~~said the~~ court."

19 Section 20. Section 3-6-302, MCA, is amended to read:

20 "3-6-302. Records. The records of ~~such the~~ court shall  
 21 be kept by ~~such the~~ clerk. Such records in civil causes  
 22 shall conform as nearly as possible to the records of  
 23 district courts. In criminal causes, and in cases arising  
 24 under city ordinances, and in cases mentioned in 3-11-103,  
 25 the records shall be similar to the records now kept in

1 ~~justice's court~~ justices' courts."

2 Section 21. Section 3-10-111, MCA, is amended to read:

3 "3-10-111. What provisions of code applicable to  
 4 justices' courts. Because justices' courts are courts of  
 5 peculiar and limited jurisdiction, only those provisions of  
 6 this code which are, in their nature, applicable to the  
 7 organization, powers, and course of proceedings in justices'  
 8 courts or which have been made applicable by special  
 9 provisions in this chapter, chapter 31 of Title 25,  
 10 ~~27-9-101, 27-17-102, 27-17-401,~~ and ~~part 10 of chapter 16~~  
 11 ~~and part 15 of chapter 10 of~~ Title 27 are applicable to  
 12 justices' courts and the proceedings therein."

13 Section 22. Section 3-10-221, MCA, is amended to read:

14 "3-10-221. Duties of justices. Justices of the peace  
 15 must perform such duties as are prescribed in this chapter,  
 16 chapter 31 of Title 25, ~~27-9-101, 27-17-101, 27-17-102,~~  
 17 ~~27-17-401,~~ and ~~part 10 of chapter 16 and part 15 of~~  
 18 ~~10 of~~ Title 27 and any other duties prescribed by law."

19 Section 23. Section 3-10-301, MCA, is amended to read:

20 "3-10-301. Civil jurisdiction. Except as provided in  
 21 3-11-103, ~~the the~~ justices' courts have jurisdiction:

22 (1) in actions arising on contract for the recovery of  
 23 money only if the sum claimed does not exceed \$1,500,  
 24 exclusive of court costs;

25 (2) in actions for damages not exceeding \$1,500,

1 exclusive of court costs, for taking, detaining, or injuring  
2 personal property or for injury to real property when no  
3 issue is raised by the verified answer of the defendant  
4 involving the title to or possession of the real property;

5 (3) in actions for damages not exceeding \$1,500,  
6 exclusive of court costs, for injury to the person, except  
7 that, in actions for false imprisonment, libel, slander,  
8 criminal conversation, seduction, malicious prosecution,  
9 determination of paternity, and abduction, the justice of  
10 the peace does not have jurisdiction;

11 (4) in actions to recover the possession of personal  
12 property if the value of the property does not exceed  
13 \$1,500;

14 (5) in actions for a fine, penalty, or forfeiture not  
15 exceeding \$1,500, imposed by a statute or an ordinance of an  
16 incorporated city or town when no issue is raised by the  
17 answer involving the legality of any tax, impost,  
18 assessment, toll, or municipal fine;

19 (6) in actions upon bonds or undertakings conditioned  
20 for the payment of money when the sum claimed does not  
21 exceed \$1,500, though the penalty may exceed that sum;

22 (7) to take and enter judgment for the recovery of  
23 money on the confession of a defendant when the amount  
24 confessed does not exceed \$1,500, exclusive of court costs."

25 Section 24. Section 3-10-304, MCA, is amended to read:

1 "3-10-304. Territorial extent of civil jurisdiction.  
2 The civil jurisdiction of justices ~~courts~~ a justice's court  
3 extends to the limits of the county in which ~~they are~~ it is  
4 held, and mesne and final process of ~~any a~~ justice's court  
5 in a county may be issued to and served in any part of the  
6 county. A summons of a justice's court may be served as  
7 provided in 25-31-407."

8 Section 25. Section 3-10-502, MCA, is amended to read:  
9 "3-10-502. How entries made -- prima facie evidence.  
10 (1) The items listed in 3-10-501 must be entered in the  
11 docket under the title of the action to which they relate  
12 and, unless otherwise provided ~~in this chapter~~ ~~chapter 31~~  
13 ~~of Title 25, or Title 27~~, at the time when they occur.

14 (2) Such entries in a justice's docket or a transcript  
15 thereof certified by the justice or his successor in office  
16 are prima facie evidence of the facts so stated."

17 Section 26. Section 3-11-103, MCA, is amended to read:  
18 "3-11-103. Exclusive jurisdiction. The city court has  
19 exclusive jurisdiction of:

20 (1) proceedings for the violation of an ordinance of  
21 the city or town, both civil and criminal;

22 (2) when the amount of the taxes or assessments sought  
23 does not exceed \$300, actions for the collection of taxes or  
24 assessments levied for any of the following purposes, except  
25 that no lien on the property, taxed or assessed for the



1 nonpayment of the taxes or ~~assessment~~ assessments may be  
2 foreclosed in any such action:

- 3 (a) city or town purposes;
- 4 (b) the erection or improvement of public buildings;
- 5 (c) the laying out, opening, or improving of a public  
6 street, sidewalk, alley, or bridge;
- 7 (d) the acquisition or improvement of any public  
8 grounds; and
- 9 (e) public improvements made or ordered by the city or  
10 town within its limits;
- 11 (3) actions for the collection of money due to the  
12 city or town or from the city or town to any person when the  
13 amount sought, exclusive of interest and costs, does not  
14 exceed \$300;
- 15 (4) when the amount claimed, exclusive of costs, does  
16 not exceed \$300, actions for:
- 17 (a) the breach of an official bond given by a city or  
18 town officer;
- 19 (b) the breach of any contract when the city or town  
20 is a party or is in any way interested;
- 21 (c) damages when the city or town is a party or is in  
22 any way interested;
- 23 (d) the enforcement of forfeited recognizances given  
24 to, for the benefit of, or on behalf of the city or town;  
25 and

1 (e) collection on bonds given upon an appeal taken  
2 from the judgment of the court in any action mentioned in  
3 subsections (4)(a) through (4)(d);

4 (5) actions for the recovery of personal property  
5 belonging to the city or town when the value of the  
6 property, exclusive of the damages for the taking or  
7 detention, does not exceed \$300; and

8 (6) actions for the collection of a license fee  
9 required by an ordinance of the city or town."

10 Section 27. Section 3-11-203, MCA, is amended to read:  
11 "3-11-203. When substitute for judge called in. 11  
12 The city judge or mayor may call in a justice of the peace  
13 or some qualified resident of the city or town to act in the  
14 judge's place whenever the judge is:

- 15 ~~1) (a)~~ a party in a case;
- 16 ~~2) (b)~~ interested in a case;
- 17 ~~3) (c)~~ the spouse of or related to either party in a  
18 case by consanguinity or affinity within the sixth degree;  
19 or
- 20 ~~4) (d)~~ sick, absent, or unable to act.

21 12) The city judge may call in a justice of the peace  
22 or some qualified resident of the city or town to act in his  
23 stead when a disqualifying affidavit is filed against him  
24 pursuant to the supreme court's rules on disqualification  
25 and substitution of judges."

1 Section 28. Section 3-11-205, MCA, is amended to read:  
 2 "3-11-205. Justice of the peace acting as city judge.  
 3 In towns ~~a town~~, the council may designate a justice of the  
 4 peace of the county in which the town is situated to act as  
 5 city judge and may by ordinance fix his ~~the~~ compensation for  
 6 his services, and ~~the~~ ~~the~~ justice of the peace so  
 7 designated may act as a city judge in all cases arising out  
 8 of ~~a~~ ~~violation~~ ~~violations~~ of ordinances where ~~in which~~  
 9 town is a party. Where ~~if~~ the justice of the peace must  
 10 travel from his town ~~place~~ of residence to hold court, he  
 11 shall be paid ~~per diem and mileage as provided in 2-18-503~~  
 12 ~~actual and necessary expenses, including mileage~~ by the  
 13 town in which ~~the~~ court is held."

14 Section 29. Section 3-12-103, MCA, is amended to read:  
 15 "3-12-103. Creation of court. (1) A small claims court  
 16 may be created by a resolution passed by the board of county  
 17 commissioners after consultation with the district court  
 18 judges of the judicial district in which such ~~the~~ county is  
 19 located or by county initiative as provided in Title 7,  
 20 Chapter 5, part 22.

21 (2) Upon ~~such order~~ or passage of the resolution or  
 22 initiative, the judge of the appropriate judicial district  
 23 shall, by court order, establish a small claims court under  
 24 the provisions of this chapter.

25 (3) When the order is filed with the clerk of the

1 district court of the appropriate county, the clerk of the  
 2 district court becomes the clerk of the small claims court."

3 Section 30. Section 3-12-203, MCA, is amended to read:  
 4 "3-12-203. Judge in multicounty district. (1) Where  
 5 ~~Whenever~~ there is more than one county in the judicial  
 6 district and the county commissioners of more than one  
 7 county in that district create small claims courts, the  
 8 district judges may provide that the same judge of small  
 9 claims court may preside over more than one of the small  
 10 claims courts in the judicial district.

11 (2) In such cases the salary of the small claims court  
 12 judge shall be prorated among the counties in which he  
 13 presides.

14 (3) The judge shall be entitled to collect ~~mileage for~~  
 15 ~~the distance actually traveled~~ actual and necessary  
 16 expenses, including mileage, when required to convene small  
 17 claims court in more than one county ~~pursuant to 2-18-503.~~"

18 Section 31. Section 3-15-403, MCA, is amended to read:

19 "3-15-403. Lists delivered to clerk. A list of the  
 20 names of the persons so selected, showing the place of  
 21 residence and other proper ~~addresses~~ ~~of~~ particulars  
 22 regarding each of them so far as these particulars can be  
 23 conveniently ascertained, must be ~~made out~~ and signed by the  
 24 officers or a majority of them within 5 days after the  
 25 meeting; the list must be delivered by those officers to the

1 clerk of the district court and filed by him in his office."

2 Section 32. Section 3-15-601, MCA, is amended to read:

3 "3-15-601. When and how drawn and summoned. (1)  
4 Whenever in the opinion of the district judge a grand jury  
5 is necessary, he must make an order directing a grand jury  
6 to be drawn and summoned to attend before the court. The  
7 order must specify the number of jurors to be drawn, which  
8 must may not be less than 15 or more than 20.

9 (2) The ~~names--of--the~~ jurors must be drawn from the  
10 jury box mentioned in 3-15-404. The list of names shall be  
11 certified and the jurors summoned in the same manner as for  
12 trial jurors. The ~~names~~ numbers of any persons drawn who are  
13 not impaneled on the grand jury must be ~~again--placed--in~~  
14 returned to the jury box."

15 Section 33. Section 3-15-704, MCA, is amended to read:

16 "3-15-704. Forming jury. At the time appointed for a  
17 jury trial in justices', city, or other inferior courts, the  
18 list of jurors summoned, ~~which shall be 12 or double the~~  
19 ~~number agreed upon before the trial by the parties,~~ must be  
20 called. The jurors summoned shall be 12 in number or double  
21 the number agreed upon by the parties before the trial. The  
22 names of those attending and not excused must be written  
23 upon separate slips of paper, which slips must be folded so  
24 as to conceal the names, and placed in a box from which the  
25 trial jury must be drawn."

-End-

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# Montana Legislative Council

State Capitol  
Helena, 59601

(406) 449-3064

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LC 0010

1979 Legislature  
Code Commissioner Bill - Summary

SENATE Bill No. 41

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND COURTS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 3-1-101. Added "(4) the municipal courts;" to correct oversight.

Section 2. 3-1-113. Grammatical changes. Deleted "this code or" and "other" -- redundant, obsolete reference to 1895 Code of Civil Procedure.

Section 3. 3-1-201. Added "(3) the municipal courts." because 3-1-205 provides that a municipal court shall have a seal.

Section 4. 3-1-601. Grammatical changes.

Section 5. 3-1-605. Changed "judge" to "judicial officer as defined in 1-1-202" to include justices of the peace as intended by the legislature.

Section 6. 3-1-1001. Changed "nomination" to "appointment" for uniform terminology.

Section 7. 3-1-1002. In (1)(b), changed "elected" to "appointed by the supreme court" in order to be compatible with 3-1-1001(2).

Sections 8 and 9. 3-1-1010 and 3-1-1011. Changed "persons" to "nominees for appointment" (3-1-1010) and "those names" to "the list of nominees" (3-1-1011) to clarify terminology.

Section 10. 3-1-1012. Changed "nominate" to "appoint" and "nomination" to "appointment" for uniform terminology.

Section 11. 3-1-1013. Changed "nomination" to "appointment" for uniform terminology. Added "of nominees" to clarify process and terminology.

Section 12. 3-1-1014. Changed "A nominee" to "An appointee" for uniform terminology.

Section 13. 3-2-205. Grammatical change.

Section 14. 3-2-402. Changed "judge" to "justice" for clarification and uniform terminology.

Section 15. 3-5-213. Added "hearing" for consistency of phrase within the section.

Section 16. 3-5-214. Added "or conference" for consistency of phrase within the section. Changed "traveling" to "travel" for consistent terminology.

Section 17. 3-5-407. Added "district" for clarification.

Section 18. 3-5-514. Grammatical changes.

Section 19. 3-6-204. Deleted subsection (1) because it conflicts with the supreme court rules on disqualification and substitution of judges (different rules apply to each court).

Section 20. 3-6-302. Added "mentioned in" because 3-11-103 is not the basis of causes of action but rather an enumeration of causes of action, etc. Reworded for clarity.

Section 21. 3-10-111. Deleted lengthy specific Title 27 sections cited as internal references in favor of retaining a shorter, broader reference to Title 27 because of the ease of location of the subject matter by utilization of title and chapter table of contents.

Section 22. 3-10-221. Same change as section 21.

Section 23. 3-10-301. Added "Except as provided in 3-11-103," because that section creates exceptions to the jurisdiction enumerated in 3-10-301.

Section 24. 3-10-304. Added "A summons of a justice's court may be served as provided in 25-31-407." because that section allows service beyond the county boundaries and, thus, is an exception to 3-10-304.

Section 25. 3-10-502. In subsection (1), deleted "in this chapter, chapter 31 of Title 25, or Title 27" as an unnecessary internal reference.

Section 26. 3-11-103. In (4)(b) added "when the city or town is a party or is in any way interested" to clarify interpretation of original R.C.M. 1947 section prior to amendment by Code Commissioner bill in 1977.

Section 27. 3-11-203. In (1)(c) added "the spouse of or" to clarify a relationship intended to be included in the remainder of the subsection. Added "(2) The city judge may call in a justice of the peace or some qualified resident of the city or town to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges." to distinguish between self-initiated replacement or replacement initiated by a mayor and the situation in which counsel initiates the replacement by a disqualifying affidavit.

Section 28. 3-11-205. Changed "per diem and mileage as provided in 2-18-503" to "actual and necessary expenses" to resolve a constitutional conflict with Article VII, Section 7, Constitution of 1972, as well as 3-10-209. Changed "a violation" to "violations" to clarify.

Section 29. 3-12-103. In (2) deleted "such order or" because of no previous mention of "order" within the section.

Section 30. 3-12-203. In (3) changed "mileage for the distance actually traveled" to "actual and necessary expenses" for the same reason given in section 28.

Section 31. 3-15-403. Changed "additions of" to "particulars regarding" for clarification.

Section 32. 3-15-601. In (2) deleted "names of the" and changed "names" to "numbers" because names of jurors do not appear in the jury box, but rather numbers.

Section 33. 3-15-704. Reworded for clarity.

Approved by Committee  
on Judiciary

SENATE BILL NO. 41

INTRODUCED BY S. BROWN

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND COURTS; AMENDING SECTIONS 3-1-101, 3-1-113, 3-1-201, 3-1-601, 3-1-605, 3-1-1001, 3-1-1002, ~~3-1-1003~~, 3-1-1010 THROUGH 3-1-1014, 3-2-205, 3-2-402, 3-5-213, 3-5-214, 3-5-407, 3-5-514, 3-6-204, 3-6-302, 3-10-111, 3-10-221, 3-10-301, 3-10-304, 3-10-502, 3-11-103, 3-11-203, 3-11-205, 3-12-103, 3-12-203, 3-15-403, 3-15-601, AND 3-15-704, MCA."

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

Section 1. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
- (2) the supreme court;
- (3) the district courts;

~~(4) the municipal courts;~~

~~(4)(5) the justices' courts;~~

~~(5)(6) the city courts and such other inferior courts~~

as the legislature may establish in any incorporated city or town."

Section 2. Section 3-1-113, MCA, is amended to read:

"3-1-113. Means to carry jurisdiction into effect.

When jurisdiction is, by the constitution or ~~this code or~~ any other statute, conferred on a court or judicial officer, all the means necessary to ~~carry into effect~~ for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding be is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

Section 3. Section 3-1-201, MCA, is amended to read:

"3-1-201. What courts have seals. Each of the following courts shall have a seal:

- (1) the supreme court;
- (2) the district courts;
- ~~(3) the municipal courts."~~

Section 4. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court shall ~~may~~ practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or courts ~~any~~ court of the United States during his continuance in office.

1 (2) Neither the court administrator nor any assistant  
2 may practice law in any of the courts of this state while  
3 holding his position.

4 (3) No justice or judge of a court of record ~~shall~~ may  
5 act as administrator or executor of any estate for  
6 compensation."

7 Section 5. Section 3-1-605, MCA, is amended to read:

8 "3-1-605. Restrictions on judges JUDICIAL OFFICERS  
9 after term has expired. A judge judicial officer as defined  
10 in 1-1-202, after the expiration of his term of office, must  
11 may not act as attorney or counsel in any action or special  
12 proceeding which has been before him in his official  
13 character."

14 Section 6. Section 3-1-1001, MCA, is amended to read:

15 "3-1-1001. Creation, composition, and function of  
16 commission. A judicial nomination commission for the state  
17 of-Montana is created. Its function is to provide the  
18 governor with a list of candidates for nomination  
19 appointment to fill any vacancy on the supreme court or any  
20 district court-of-the-state-of-Montana. The commission shall  
21 be composed of seven members as follows:

22 (1) four lay members who are neither judges nor  
23 attorneys, active or retired, who reside in different  
24 geographical areas of the state, and each of whom is  
25 representative of a different industry, business, or

1 profession, whether actively so engaged or retired, who  
2 shall be appointed by the governor;

3 (2) two attorneys actively engaged in the practice of  
4 law, one from each congressional district, who shall be  
5 appointed by the supreme court;

6 (3) one district judge elected by the district judges  
7 under an elective procedure initiated and conducted by the  
8 supreme court and certified to such election by the chief  
9 justice of the supreme court. The election shall be  
10 considered an appointment for the purposes of this part.

11 (4) APPOINTMENTS PROVIDED FOR IN THIS SECTION SHALL BE  
12 MADE WITHIN 30 DAYS OF THE COMPLETION OF THE PRECEDING  
13 TERMS."

14 Section 7. Section 3-1-1002, MCA, is amended to read:

15 "3-1-1002. Staggered terms of members. (1) All  
16 original members named to the commission shall serve until  
17 January 1, 1976. Their successors shall serve as follows:

18 (a) The members appointed by the governor shall serve  
19 for 4-year terms.

20 (b) The attorneys ~~elected~~ appointed by the supreme  
21 COURT shall serve 2-year terms.

22 (c) The judge elected shall serve a 2-year term.

23 (2) Thereafter all members shall serve terms of 4  
24 years."

25 SECTION 8. SECTION 3-1-1003, MCA, IS AMENDED TO READ:



1       "3-1-1003. Vacancies. (1) In the event a vacancy on  
2 the commission occurs, the governor shall appoint a  
3 replacement for the remainder of the term. Such replacement  
4 shall be a member of the same group as the member he  
5 replaces.

6       (2) Appointments provided for in this section shall be  
7 made ~~within 30 days of the completion of the preceding terms~~  
8 or within 30 days of the occurrence of any vacancy."

9       Section 9. Section 3-1-1010, MCA, is amended to read:

10       "3-1-1010. List submitted to governor. The commission  
11 shall meet forthwith after a vacancy occurs on the supreme  
12 court or district court and submit to the governor within 30  
13 days from the date of the vacancy a list of not less than  
14 three or more than five persons ~~nominees for appointment.~~"

15       Section 10. Section 3-1-1011, MCA, is amended to read:

16       "3-1-1011. Governor to appoint from list. The governor  
17 must make an appointment from ~~those names~~ the list of  
18 nominees submitted by the commission."

19       Section 11. Section 3-1-1012, MCA, is amended to read:

20       "3-1-1012. When governor fails to nominate ~~appoint~~. If  
21 the governor fails to ~~nominate~~ appoint within 30 days after  
22 receipt of the list, the chief justice or acting chief  
23 justice shall make the nomination appointment."

24       Section 12. Section 3-1-1013, MCA, is amended to read:

25       "3-1-1013. Senate confirmation -- appointment in the

1 interim. Each ~~nomination appointment~~ shall be confirmed by  
2 the senate, but ~~a nomination an appointment~~ made while the  
3 senate is not in session is effective ~~as an appointment~~  
4 until the end of the next session. If the ~~nomination~~  
5 ~~appointment~~ is not confirmed, the office shall be vacant and  
6 another selection of nominees and ~~nomination appointment~~  
7 shall be made."

8       Section 13. Section 3-1-1014, MCA, is amended to read:

9       "3-1-1014. Duration of appointment -- election for  
10 remainder of term. A ~~nominee~~ An appointee confirmed by the  
11 senate serves until the next succeeding general election.  
12 The candidate elected at that election holds the office for  
13 the remainder of the unexpired term."

14       Section 14. Section 3-2-205, MCA, is amended to read:

15       "3-2-205. Injunctions. (1) Upon such terms and under  
16 such rules as the supreme court may establish, the supreme  
17 court may continue in force an injunction order made by a  
18 district court or judge or grant an injunction order and  
19 writ pending an appeal to the supreme court from an order of  
20 a district court or judge refusing or dissolving an  
21 injunction.

22       (2) No action to obtain an injunction ~~must~~ may be  
23 commenced in the supreme court except in cases where the  
24 state is a party, the public is interested, or the rights of  
25 the public are involved. The proper district court has

1 jurisdiction of all injunctions and the commencement of all  
2 actions therefor, except as provided in this section.

3 (3) The supreme court may provide rules for the  
4 commencement and trial of actions for injunctions in that  
5 court."

6 Section 15. Section 3-2-402, MCA, is amended to read:

7 "3-2-402. Duties. It is the duty of the clerk to:

8 (1) keep the seal of the supreme court, its records  
9 and files, and the roll of attorneys and ~~counselors-at-law~~  
10 counselors at law;

11 (2) adjourn the court from day to day at the beginning  
12 of any term in the absence of any judge justice and until  
13 the arrival of a majority of their-number the justices;

14 (3) file all papers or transcripts required by law to  
15 be filed-by-law;

16 (4) issue writs and certificates and approve bonds or  
17 undertakings when so required;

18 (5) make out all transcripts to the supreme court of  
19 the United States;

20 (6) make copies of papers or records when demanded by  
21 law or the rules of the court; and

22 (7) perform such other duties as may be required of  
23 him by law and the rules and practice of the supreme court."

24 Section 16. Section 3-5-213, MCA, is amended to read:

25 "3-5-213. Expenses when out of district. A judge who

1 sits in the place of another judge in the trial or hearing  
2 of an action or proceeding in a district other than his own  
3 or in the supreme court or who attends a conference of  
4 judges in Helena called by the chief justice of the supreme  
5 court shall be paid his actual and necessary travel expenses  
6 while engaged in that service as follows:

7 (1) his travel expenses in going from the county seat  
8 which he makes his place of residence to the place of trial  
9 hearings or conference and return; and

10 (2) his board and lodging while engaged in the trial  
11 hearing, or conference."

12 Section 17. Section 3-5-214, MCA, is amended to read:

13 "3-5-214. Certification and filing of expense claim.  
14 As soon as his services in connection with the trial, or  
15 hearings, or conference are concluded, the judge shall  
16 certify in detail the amount of money necessarily and  
17 actually expended by him for his ~~travelling~~ travel expenses  
18 and board and lodging, as specified in 3-5-213, and shall  
19 file the claim with the state to be processed as provided by  
20 law."

21 Section 18. Section 3-5-407, MCA, is amended to read:

22 "3-5-407. Sheriff to act as crier. The sheriff in  
23 attendance upon district court must act as the crier  
24 thereof, call the parties and witnesses and all other  
25 persons bound to appear before the court, and make

1 proclamation of the opening and adjournment of the court and  
2 of any other matter under its direction."

3 Section 19. Section 3-5-514, MCA, is amended to read:

4 "3-5-514. Naturalization records. The clerk of the  
5 district court shall keep two books:

6 (1) The first book must be labeled "~~Declaration~~  
7 ~~Declarations~~ of Intention to Become Citizens a Citizen of  
8 the United States" and must have entered in it, in  
9 alphabetical order, the names ~~name~~ of ~~all~~--persons ~~each~~  
10 ~~person~~ who from the organization of the court have ~~has~~  
11 declared their ~~his~~ intention to become citizens a citizen of  
12 the United States, with the date of such declaration.

13 (2) The second book must be labeled  
14 "Naturalization--Final Papers" and must have entered in it,  
15 in alphabetical order, the names ~~name~~ of ~~all~~--persons ~~each~~  
16 ~~person~~ who have ~~has~~ been admitted as citizens a citizen of  
17 the United States by the court of which he is clerk and, in  
18 a separate column opposite each name, the country of which  
19 the person was formerly a citizen or subject, the date of  
20 his admission, and the page of the minute book or book of  
21 record containing the order admitting him as a citizen."

22 Section 20. Section 3-6-204, MCA, is amended to read:

23 "3-6-204. Disqualification -- judge pro tem. ~~It~~--The  
24 ~~provisions of law applicable to disqualification of judges~~  
25 ~~of district court shall apply to judges of municipal courts~~

1 ~~It~~--When a judge of a municipal court has been  
2 disqualified or is sick or unable to act, he shall call in  
3 some practicing attorney at-law of the county in which said  
4 ~~his~~ court is located, who shall be judge pro tem with the  
5 same powers for the purposes of such ~~the~~ cause as the judge  
6 of said ~~the~~ court."

7 Section 21. Section 3-6-302, MCA, is amended to read:

8 "3-6-302. Records. The records of such ~~the~~ court shall  
9 be kept by such ~~the~~ clerk. Such records in civil causes  
10 shall conform as nearly as possible to the records of  
11 district courts. In criminal causes, ~~and~~ in cases arising  
12 under city ordinances, ~~and in cases mentioned in~~ 3-11-103,  
13 the records shall be similar to the records now kept in  
14 ~~justice's court~~ justices' courts."

15 Section 22. Section 3-10-111, MCA, is amended to read:

16 "3-10-111. What provisions of code applicable to  
17 justices' courts. Because justices' courts are courts of  
18 peculiar and limited jurisdiction, only those provisions of  
19 this code which are, in their nature, applicable to the  
20 organization, powers, and course of proceedings in justices'  
21 courts or which have been made applicable by special  
22 provisions in this chapter, chapter 31 of Title 25,  
23 ~~27-9-101, 27-17-102, 27-17-401~~ and ~~part 10 of chapter 16~~  
24 ~~and part 15 of chapter 18 of~~ Title 27 are applicable to  
25 justices' courts and the proceedings therein."

1 Section 23. Section 3-10-221, MCA, is amended to read:

2 "3-10-221. Duties of justices. Justices of the peace  
3 must perform such duties as are prescribed in this chapter,  
4 chapter 31 of Title 25, ~~27-9-101, 27-17-101, 27-17-102,~~  
5 ~~27-17-401,~~ and ~~part 10 of chapter 16 and part 15 of~~ chapter  
6 ~~10 of~~ Title 27 and any other duties prescribed by law."

7 Section 24. Section 3-10-301, MCA, is amended to read:

8 "3-10-301. Civil jurisdiction. Except as provided in  
9 3-11-103, The the justices' courts have jurisdiction:

10 (1) in actions arising on contract for the recovery of  
11 money only if the sum claimed does not exceed \$1,500,  
12 exclusive of court costs;

13 (2) in actions for damages not exceeding \$1,500,  
14 exclusive of court costs, for taking, detaining, or injuring  
15 personal property or for injury to real property when no  
16 issue is raised by the verified answer of the defendant  
17 involving the title to or possession of the real property;

18 (3) in actions for damages not exceeding \$1,500,  
19 exclusive of court costs, for injury to the person, except  
20 that, in actions for false imprisonment, libel, slander,  
21 criminal conversation, seduction, malicious prosecution,  
22 determination of paternity, and abduction, the justice of  
23 the peace does not have jurisdiction;

24 (4) in actions to recover the possession of personal  
25 property if the value of the property does not exceed

1 \$1,500;

2 (5) in actions for a fine, penalty, or forfeiture not  
3 exceeding \$1,500, imposed by a statute or an ordinance of an  
4 incorporated city or town when no issue is raised by the  
5 answer involving the legality of any tax, impost,  
6 assessment, toll, or municipal fine;

7 (6) in actions upon bonds or undertakings conditioned  
8 for the payment of money when the sum claimed does not  
9 exceed \$1,500, though the penalty may exceed that sum;

10 (7) to take and enter judgment for the recovery of  
11 money on the confession of a defendant when the amount  
12 confessed does not exceed \$1,500, exclusive of court costs."

13 Section 25. Section 3-10-304, MCA, is amended to read:

14 "3-10-304. Territorial extent of civil jurisdiction.  
15 The civil jurisdiction of justices' courts a justice's court  
16 extends to the limits of the county in which they are it is  
17 held, and mesne and final process of any a justice's court  
18 in a county may be issued to and served in any part of the  
19 county. A summons of a justice's court may be served as  
20 provided in 25-31-401."

21 Section 26. Section 3-10-502, MCA, is amended to read:

22 "3-10-502. How entries made -- prima facie evidence.  
23 (1) The items listed in 3-10-501 must be entered in the  
24 docket under the title of the action to which they relate  
25 and, unless otherwise provided ~~in this chapter,~~ chapter 31

1 of ~~title 25~~ or ~~title 27~~, at the time when they occur.

2 (2) Such entries in a justice's docket or a transcript  
3 thereof certified by the justice or his successor in office  
4 are prima facie evidence of the facts so stated."

5 Section 27. Section 3-11-103, MCA, is amended to read:  
6 "3-11-103. Exclusive jurisdiction. The city court has  
7 exclusive jurisdiction of:

8 (1) proceedings for the violation of an ordinance of  
9 the city or town, both civil and criminal;

10 (2) when the amount of the taxes or assessments sought  
11 does not exceed \$300, actions for the collection of taxes or  
12 assessments levied for any of the following purposes, except  
13 that no lien on the property taxed or assessed for the  
14 nonpayment of the taxes or ~~assessment~~ ~~assessments~~ may be  
15 foreclosed in any such action:

16 (a) city or town purposes;

17 (b) the erection or improvement of public buildings;

18 (c) the laying out, opening, or improving of a public  
19 street, sidewalk, alley, or bridge;

20 (d) the acquisition or improvement of any public  
21 grounds; and

22 (e) public improvements made or ordered by the city or  
23 town within its limits;

24 (3) actions for the collection of money due to the  
25 city or town or from the city or town to any person when the

1 amount sought, exclusive of interest and costs, does not  
2 exceed \$300;

3 (4) when the amount claimed, exclusive of costs, does  
4 not exceed \$300, actions for:

5 (a) the breach of an official bond given by a city or  
6 town officer;

7 (b) the breach of any contract when the city or town  
8 is a party or is in any way interested;

9 (c) damages when the city or town is a party or is in  
10 any way interested;

11 (d) the enforcement of forfeited recognizances given  
12 to, for the benefit of, or on behalf of the city or town;  
13 and

14 (e) collection on bonds given upon an appeal taken  
15 from the judgment of the court in any action mentioned in  
16 subsections (4)(a) through (4)(d);

17 (5) actions for the recovery of personal property  
18 belonging to the city or town when the value of the  
19 property, exclusive of the damages for the taking or  
20 detention, does not exceed \$300; and

21 (6) actions for the collection of a license fee  
22 required by an ordinance of the city or town."

23 Section 28. Section 3-11-203, MCA, is amended to read:

24 "3-11-203. When substitute for judge called in. ~~11~~  
25 The city judge or mayor may call in a justice of the peace

1 or some qualified resident of the city or town to act in the  
2 judge's place whenever the judge is:

3 (1)(a) a party in a case;

4 (2)(b) interested in a case;

5 (3)(c) ~~the spouse of or~~ related to either party in a  
6 case by consanguinity or affinity within the sixth degree;  
7 or

8 (4)(d) sick, absent, or unable to act.

9 (2) The city judge may call in a justice of the peace  
10 or some qualified resident of the city or town to act in his  
11 stead when a disqualifying affidavit is filed against him  
12 pursuant to the supreme court's rules on disqualification  
13 and substitution of judges."

14 Section 29. Section 3-11-205, MCA, is amended to read:

15 "3-11-205. Justice of the peace acting as city judge.

16 In ~~towns a town~~, the council may designate a justice of the  
17 peace of the county in which the town is situated to act as  
18 city judge and may by ordinance fix his ~~the~~ compensation for  
19 his services, ~~and the~~ ~~the~~ justice of the peace so  
20 designated may act as a city judge in all cases arising out  
21 of ~~a--violation~~ ~~violations~~ of ordinances where ~~in which~~ the  
22 town is a party. Where ~~If~~ the justice of the peace must  
23 travel from his town place of residence to hold court, he  
24 shall be paid ~~per diem and mileage as provided in 2-18-503~~  
25 actual and necessary expenses, including mileage, by the

1 town in which ~~the~~ court is held."

2 Section 30. Section 3-12-103, MCA, is amended to read:

3 "3-12-103. Creation of court. (1) A small claims court  
4 may be created by a resolution passed by the board of county  
5 commissioners after consultation with the district court  
6 judges of the judicial district in which ~~such the~~ county is  
7 located or by county initiative as provided in Title 7,  
8 chapter 5, part 22.

9 (2) Upon ~~such--order--or~~ passage of the resolution or  
10 initiative, the judge of the appropriate judicial district  
11 shall, by court order, establish a small claims court under  
12 the provisions of this chapter.

13 (3) When the order is filed with the clerk of the  
14 district court of the appropriate county, the clerk of the  
15 district court becomes the clerk of the small claims court."

16 Section 31. Section 3-12-203, MCA, is amended to read:

17 "3-12-203. Judge in multicounty district. (1) Where  
18 ~~whenever~~ there is more than one county in the judicial  
19 district and the county commissioners of more than one  
20 county in that district create small claims courts, the  
21 district judges may provide that the same judge of small  
22 claims court may preside over more than one of the small  
23 claims courts in the judicial district.

24 (2) In such cases the salary of the small claims court  
25 judge shall be prorated among the counties in which he

1 presides.

2 (3) The judge shall be entitled to collect ~~mitteege-for~~  
3 ~~the---distance---actually---traveled~~ actual and necessary  
4 expenses, including mileage, when required to convene small  
5 claims court in more than one county ~~peruwent-to-2-18-503.~~"

6 Section 32. Section 3-15-403, MCA, is amended to read:

7 "3-15-403. Lists delivered to clerk. A list of the  
8 names of the persons so selected, showing the place of  
9 residence and other proper ~~editions--of~~ particulars  
10 regarding each of them, so far as those particulars can be  
11 conveniently ascertained, must be made out and signed by the  
12 officers or a majority of them. Within 5 days after the  
13 meeting, the list must be delivered by those officers to the  
14 clerk of the district court and filed by him in his office."

15 Section 33. Section 3-15-601, MCA, is amended to read:

16 "3-15-601. When and how drawn and summoned. (1)  
17 Whenever in the opinion of the district judge a grand jury  
18 is necessary, he must make an order directing a grand jury  
19 to be drawn and summoned to attend before the court. The  
20 order must specify the number of jurors to be drawn, which  
21 ~~must~~ may not be less than 15 or more than 20.

22 (2) The ~~names--of--the~~ jurors must be drawn from the  
23 jury box mentioned in 3-15-404. The list of names shall be  
24 certified and the jurors summoned in the same manner as for  
25 trial jurors. The ~~names~~ numbers of any persons drawn who are

1 not impaneled on the grand jury must be ~~again--placed--in~~  
2 returned to the jury box."

3 Section 34. Section 3-15-704, MCA, is amended to read:

4 "3-15-704. Forming jury. At the time appointed for a  
5 jury trial in justices', city, or other inferior courts, the  
6 list of jurors summoned ~~which shall be--12--or--double--the~~  
7 ~~number--agreed-upon-before-the-trial--by-the-parties~~ must be  
8 called. The jurors summoned shall be 12 in number or double  
9 the number agreed upon by the parties before the trial. The  
10 names of those attending and not excused must be written  
11 upon separate slips of paper, which slips must be folded so  
12 as to conceal the names, and placed in a box from which the  
13 trial jury must be drawn."

-End-





1 (2) Neither the court administrator nor any assistant  
2 may practice law in any of the courts of this state while  
3 holding his position.

4 (3) No justice or judge of a court of record shall ~~may~~  
5 act as administrator or executor of any estate for  
6 compensation."

7 Section 5. Section 3-1-605, MCA, is amended to read:

8 "3-1-605. Restrictions on judges JUDICIAL OFFICERS  
9 after term has expired. A judge judicial officer as defined  
10 in 1-1-202, after the expiration of his term of office, must  
11 ~~may~~ not act as attorney or counsel in any action or special  
12 proceeding which has been before him in his official  
13 character."

14 Section 6. Section 3-1-1001, MCA, is amended to read:

15 "3-1-1001. Creation, composition, and function of  
16 commission. A judicial nomination commission for the state  
17 of-Montana is created. Its function is to provide the  
18 governor with a list of candidates for nomination  
19 ~~appointment~~ to fill any vacancy on the supreme court or any  
20 district court-of-the-state-of-Montana. The commission shall  
21 be composed of seven members as follows:

22 (1) four lay members who are neither judges nor  
23 attorneys, active or retired, who reside in different  
24 geographical areas of the state, and each of whom is  
25 representative of a different industry, business, or

1 profession, whether actively so engaged or retired, who  
2 shall be appointed by the governor;

3 (2) two attorneys actively engaged in the practice of  
4 law, one from each congressional district, who shall be  
5 appointed by the supreme court;

6 (3) one district judge elected by the district judges  
7 under an elective procedure initiated and conducted by the  
8 supreme court and certified to such election by the chief  
9 justice of the supreme court. The election shall be  
10 considered an appointment for the purposes of this part.

11 (4) APPOINTMENTS PROVIDED FOR IN THIS SECTION SHALL BE  
12 MADE WITHIN 30 DAYS OF THE COMPLETION OF THE PRECEDING  
13 TERMS."

14 Section 7. Section 3-1-1002, MCA, is amended to read:

15 "3-1-1002. Staggered terms of members. (1) All  
16 original members named to the commission shall serve until  
17 January 1, 1976. Their successors shall serve as follows:

18 (a) The members appointed by the governor shall serve  
19 for 4-year terms.

20 (b) The attorneys elected appointed by the supreme  
21 court shall serve 2-year terms.

22 (c) The judge elected shall serve a 2-year term.

23 (2) Thereafter all members shall serve terms of 4  
24 years."

25 SECTION 8. SECTION 3-1-1003, MCA, IS AMENDED TO READ:

1       "3-1-1003. Vacancies. (1) In the event a vacancy on  
2 the commission occurs, the governor shall appoint a  
3 replacement for the remainder of the term. Such replacement  
4 shall be a member of the same group as the member he  
5 replaces.

6       (2) Appointments provided for in this section shall be  
7 made ~~within 30 days of the completion of the preceding term~~  
8 or within 30 days of the occurrence of any vacancy."

9       Section 9. Section 3-1-1010, MCA, is amended to read:

10       "3-1-1010. List submitted to governor. The commission  
11 shall meet forthwith after a vacancy occurs on the supreme  
12 court or district court and submit to the governor within 30  
13 days from the date of the vacancy a list of not less than  
14 three or more than five persons nominees for appointment."

15       Section 10. Section 3-1-1011, MCA, is amended to read:

16       "3-1-1011. Governor to appoint from list. The governor  
17 must make an appointment from these--names the list of  
18 nominees submitted by the commission."

19       Section 11. Section 3-1-1012, MCA, is amended to read:

20       "3-1-1012. When governor fails to nominate appoint. If  
21 the governor fails to nominate appoint within 30 days after  
22 receipt of the list, the chief justice or acting chief  
23 justice shall make the nomination appointment."

24       Section 12. Section 3-1-1013, MCA, is amended to read:

25       "3-1-1013. Senate confirmation -- appointment in the

1       interim. Each nomination appointment shall be confirmed by  
2 the senate, but a nomination an appointment made while the  
3 senate is not in session is effective as an appointment  
4 until the end of the next session. If the nomination  
5 appointment is not confirmed, the office shall be vacant and  
6 another selection of nominees and nomination appointment  
7 shall be made."

8       Section 13. Section 3-1-1014, MCA, is amended to read:

9       "3-1-1014. Duration of appointment -- election for  
10 remainder of term. A nominee An appointee confirmed by the  
11 senate serves until the next succeeding general election.  
12 The candidate elected at that election holds the office for  
13 the remainder of the unexpired term."

14       Section 14. Section 3-2-205, MCA, is amended to read:

15       "3-2-205. Injunctions. (1) Upon such terms and under  
16 such rules as the supreme court may establish, the supreme  
17 court may continue in force an injunction order made by a  
18 district court or judge or grant an injunction order and  
19 writ pending an appeal to the supreme court from an order of  
20 a district court or judge refusing or dissolving an  
21 injunction.

22       (2) No action to obtain an injunction must may be  
23 commenced in the supreme court except in cases where the  
24 state is a party, the public is interested, or the rights of  
25 the public are involved. The proper district court has

1 jurisdiction of all injunctions and the commencement of all  
2 actions therefor, except as provided in this section.

3 (3) The supreme court may provide rules for the  
4 commencement and trial of actions for injunctions in that  
5 court."

6 Section 15. Section 3-2-402, MCA, is amended to read:

7 "3-2-402. Duties. It is the duty of the clerk to:

8 (1) keep the seal of the supreme court, its records  
9 and files, and the roll of attorneys and ~~counselors-at-law~~  
10 counselors at law;

11 (2) adjourn the court from day to day at the beginning  
12 of any term in the absence of any judge ~~justice~~ and until  
13 the arrival of a majority of ~~their~~-number the justices;

14 (3) file all papers or transcripts required by law to  
15 be filed-~~by-law~~;

16 (4) issue writs and certificates and approve bonds or  
17 undertakings when so required;

18 (5) make out all transcripts to the supreme court of  
19 the United States;

20 (6) make copies of papers or records when demanded by  
21 law or the rules of the court; and

22 (7) perform such other duties as may be required of  
23 him by law and the rules and practice of the supreme court."

24 Section 16. Section 3-5-213, MCA, is amended to read:

25 "3-5-213. Expenses when out of district. A judge who

1 sits in the place of another judge in the trial or hearing  
2 of an action or proceeding in a district other than his own  
3 or in the supreme court or who attends a conference of  
4 judges in Helena called by the chief justice of the supreme  
5 court shall be paid his actual and necessary travel expenses  
6 while engaged in that service as follows:

7 (1) his travel expenses in going from the county seat  
8 which he makes his place of residence to the place of trial,  
9 hearings or conference and return; and

10 (2) his board and lodging while engaged in the trial,  
11 hearing, or conference."

12 Section 17. Section 3-5-214, MCA, is amended to read:

13 "3-5-214. Certification and filing of expense claim.  
14 As soon as his services in connection with the trial, or  
15 hearings, or conference are concluded, the judge shall  
16 certify in detail the amount of money necessarily and  
17 actually expended by him for his traveling travel expenses  
18 and board and lodging, as specified in 3-5-213, and shall  
19 file the claim with the state to be processed as provided by  
20 law."

21 Section 18. Section 3-5-407, MCA, is amended to read:

22 "3-5-407. Sheriff to act as crier. The sheriff in  
23 attendance upon district court must act as the crier  
24 thereof, call the parties and witnesses and all other  
25 persons bound to appear before the court, and make

1 proclamation of the opening and adjournment of the court and  
2 of any other matter under its direction."

3 Section 19. Section 3-5-514, MCA, is amended to read:

4 "3-5-514. Naturalization records. The clerk of the  
5 district court shall keep two books:

6 (1) The first book must be labeled "Declaration  
7 Declarations of Intention to Become Citizens a Citizen of  
8 the United States" and must have entered in it, in  
9 alphabetical order, the names ~~name~~ of ~~all~~ persons ~~each~~  
10 person who from the organization of the court have ~~has~~  
11 declared their ~~his~~ intention to become citizens a citizen of  
12 the United States, with the date of such declaration.

13 (2) The second book must be labeled  
14 "Naturalization--Final Papers" and must have entered in it,  
15 in alphabetical order, the names ~~name~~ of ~~all~~ persons ~~each~~  
16 person who have ~~has~~ been admitted as citizens a citizen of  
17 the United States by the court of which he is clerk and, in  
18 a separate column opposite each name, the country of which  
19 the person was formerly a citizen or subject, the date of  
20 his admission, and the page of the minute book or book of  
21 record containing the order admitting him as a citizen."

22 Section 20. Section 3-6-204, MCA, is amended to read:

23 "3-6-204. Disqualification -- judge pro tem. ~~It~~ The  
24 provisions of ~~law~~ applicable to disqualification of ~~judges~~  
25 of ~~district court~~ shall apply to judges of municipal courts

1 ~~It~~ When a judge of a municipal court has been  
2 disqualified or is sick or unable to act, he shall call in  
3 some practicing attorney ~~et-tem~~ of the county in which ~~said~~  
4 ~~his~~ court is located, who shall be judge pro tem with the  
5 same powers for the purposes of such ~~the~~ cause as the judge  
6 of ~~said~~ ~~the~~ court."

7 Section 21. Section 3-6-302, MCA, is amended to read:

8 "3-6-302. Records. The records of such ~~the~~ court shall  
9 be kept by such ~~the~~ clerk. Such records in civil causes  
10 shall conform as nearly as possible to the records of  
11 district courts. In criminal causes, and in cases arising  
12 under city ordinances, and ~~in cases mentioned in~~ 3-11-103,  
13 the records shall be similar to the records now kept in  
14 ~~justice's court~~ justices' courts."

15 Section 22. Section 3-10-111, MCA, is amended to read:

16 "3-10-111. What provisions of code applicable to  
17 justices' courts. Because justices' courts are courts of  
18 peculiar and limited jurisdiction, only those provisions of  
19 this code which are, in their nature, applicable to the  
20 organization, powers, and course of proceedings in justices'  
21 courts or which have been made applicable by special  
22 provisions in this chapter, chapter 31 of Title 25,  
23 ~~27-9-101, 27-17-102, 27-17-401~~ and part ~~10~~ of chapter ~~16~~  
24 and part ~~15~~ of chapter ~~10~~ of Title 27 are applicable to  
25 justices' courts and the proceedings therein."

1 Section 23. Section 3-10-221, MCA, is amended to read:

2 "3-10-221. Duties of Justices. Justices of the peace  
3 must perform such duties as are prescribed in this chapter,  
4 chapter 31 of Title 25, ~~27-9-101, 27-17-101, 27-17-102,~~  
5 ~~27-17-401,~~ and ~~part 10 of chapter 16 and part 15 of chapter~~  
6 ~~10 of Title 27~~ and any other duties prescribed by law."

7 Section 24. Section 3-10-301, MCA, is amended to read:

8 "3-10-301. Civil jurisdiction. Except as provided in  
9 3-11-101, ~~the~~ the justices' courts have jurisdiction:

10 (1) in actions arising on contract for the recovery of  
11 money only if the sum claimed does not exceed \$1,500,  
12 exclusive of court costs;

13 (2) in actions for damages not exceeding \$1,500,  
14 exclusive of court costs, for taking, detaining, or injuring  
15 personal property or for injury to real property when no  
16 issue is raised by the verified answer of the defendant  
17 involving the title to or possession of the real property;

18 (3) in actions for damages not exceeding \$1,500,  
19 exclusive of court costs, for injury to the person, except  
20 that, in actions for false imprisonment, libel, slander,  
21 criminal conversation, seduction, malicious prosecution,  
22 determination of paternity, and abduction, the justice of  
23 the peace does not have jurisdiction;

24 (4) in actions to recover the possession of personal  
25 property if the value of the property does not exceed

1 \$1,500;

2 (5) in actions for a fine, penalty, or forfeiture not  
3 exceeding \$1,500, imposed by a statute or an ordinance of an  
4 incorporated city or town when no issue is raised by the  
5 answer involving the legality of any tax, impost,  
6 assessment, toll, or municipal fine;

7 (6) in actions upon bonds or undertakings conditioned  
8 for the payment of money when the sum claimed does not  
9 exceed \$1,500, though the penalty may exceed that sum;

10 (7) to take and enter judgment for the recovery of  
11 money on the confession of a defendant when the amount  
12 confessed does not exceed \$1,500, exclusive of court costs."

13 Section 25. Section 3-10-304, MCA, is amended to read:

14 "3-10-304. Territorial extent of civil jurisdiction.  
15 The civil jurisdiction of justices' courts a justice's court  
16 extends to the limits of the county in which they are it is  
17 held, and mesne and final process of any a justice's court  
18 in a county may be issued to and served in any part of the  
19 county. A summons of a justice's court may be served as  
20 provided in 25-31-407."

21 Section 26. Section 3-10-502, MCA, is amended to read:

22 "3-10-502. How entries made -- prima facie evidence.  
23 (1) The items listed in 3-10-501 must be entered in the  
24 docket under the title of the action to which they relate  
25 and, unless otherwise provided ~~in this chapter,~~ ~~chapter 31~~

1 of ~~Title 25~~ or ~~Title 27~~, at the time when they occur.

2 (2) Such entries in a justice's docket or a transcript  
3 thereof certified by the justice or his successor in office  
4 are prima facie evidence of the facts so stated."

5 Section 27. Section 3-11-103, MCA, is amended to read:

6 "3-11-103. Exclusive jurisdiction. The city court has  
7 exclusive jurisdiction of:

8 (1) proceedings for the violation of an ordinance of  
9 the city or town, both civil and criminal;

10 (2) when the amount of the taxes or assessments sought  
11 does not exceed \$300, actions for the collection of taxes or  
12 assessments levied for any of the following purposes, except  
13 that no lien on the property taxed or assessed for the  
14 nonpayment of the taxes or ~~assessment~~ ~~assessments~~ may be  
15 foreclosed in any such action:

16 (a) city or town purposes;

17 (b) the erection or improvement of public buildings;

18 (c) the laying out, opening, or improving of a public  
19 street, sidewalk, alley, or bridge;

20 (d) the acquisition or improvement of any public  
21 grounds; and

22 (e) public improvements made or ordered by the city or  
23 town within its limits;

24 (3) actions for the collection of money due to the  
25 city or town or from the city or town to any person when the

1 amount sought, exclusive of interest and costs, does not  
2 exceed \$300;

3 (4) when the amount claimed, exclusive of costs, does  
4 not exceed \$300, actions for:

5 (a) the breach of an official bond given by a city or  
6 town officer;

7 (b) the breach of any contract when the city or town  
8 is a party or is in any way interested;

9 (c) damages when the city or town is a party or is in  
10 any way interested;

11 (d) the enforcement of forfeited recognizances given  
12 to, for the benefit of, or on behalf of the city or town;  
13 and

14 (e) collection on bonds given upon an appeal taken  
15 from the judgment of the court in any action mentioned in  
16 subsections (4)(a) through (4)(d);

17 (5) actions for the recovery of personal property  
18 belonging to the city or town when the value of the  
19 property, exclusive of the damages for the taking or  
20 detention, does not exceed \$300; and

21 (6) actions for the collection of a license fee  
22 required by an ordinance of the city or town."

23 Section 28. Section 3-11-203, MCA, is amended to read:

24 "3-11-203. When substitute for judge called in. 11  
25 The city judge or mayor may call in a justice of the peace

1 or some qualified resident of the city or town to act in the  
2 judge's place whenever the judge is:

- 3 (1)(a) a party in a case;
- 4 (2)(b) interested in a case;
- 5 (3)(c) ~~the spouse of or~~ related to either party in a  
6 case by consanguinity or affinity within the sixth degree;
- 7 or
- 8 (4)(d) sick, absent, or unable to act.

9 ~~(2) The city judge may call in a justice of the peace  
10 or some qualified resident of the city or town to act in his  
11 stead when a disqualifying affidavit is filed against him  
12 pursuant to the supreme court's rules on disqualification  
13 and substitution of judges."~~

14 Section 29. Section 3-11-205, MCA, is amended to read:  
15 "3-11-205. Justice of the peace acting as city judge.  
16 In towns ~~a town~~, the council may designate a justice of the  
17 peace of the county in which the town is situated to act as  
18 city judge and may by ordinance fix his ~~the~~ compensation for  
19 his services, ~~and the~~ ~~the~~ justice of the peace so  
20 designated may act as a city judge in all cases arising out  
21 of ~~a~~ ~~violation~~ ~~violations~~ of ordinances where ~~in which~~ the  
22 town is a party. Where ~~if~~ the justice of the peace must  
23 travel from his town place of residence to hold court, he  
24 shall be paid per diem and mileage as provided ~~in 2-10-503~~  
25 ~~actual and necessary expenses including mileage PER DIEM~~

1 ~~AND MILEAGE AS PROVIDED IN 2-10-501 THROUGH 2-10-503~~ by the  
2 town in which ~~the~~ court is held."

3 Section 30. Section 3-12-103, MCA, is amended to read:  
4 "3-12-103. Creation of court. (1) A small claims court  
5 may be created by a resolution passed by the board of county  
6 commissioners after consultation with the district court  
7 judges of the judicial district in which ~~such the~~ county is  
8 located or by county initiative as provided in Title 7,  
9 chapter 5, part 22.

10 (2) Upon ~~such order or~~ passage of the resolution or  
11 initiative, the judge of the appropriate judicial district  
12 shall, by court order, establish a small claims court under  
13 the provisions of this chapter.

14 (3) When the order is filed with the clerk of the  
15 district court of the appropriate county, the clerk of the  
16 district court becomes the clerk of the small claims court."

17 ~~Section 31. Section 3-12-203, MCA, is amended to read:~~  
18 ~~"3-12-203. Judge in multicounty districts. (1) Where~~  
19 ~~whenever there is more than one county in the judicial~~  
20 ~~district and the county commissioners of more than one~~  
21 ~~county in that district create small claims courts, the~~  
22 ~~district judges may provide that the same judge of small~~  
23 ~~claims court may preside over more than one of the small~~  
24 ~~claims courts in the judicial district.~~

25 (2) ~~in such cases the sole judge of the small claims court~~

1 judge shall be prorated among the counties in which he  
2 presides.

3 (3) The judge shall be entitled to collect mileage for  
4 the distance actually traveled ~~actual and necessary~~  
5 ~~expenses including mileage~~ when required to convene ~~small~~  
6 ~~claims court in more than one county pursuant to 2-10-503.~~

7 Section 31. Section 3-15-403, MCA, is amended to read:

8 "3-15-403. Lists delivered to clerk. A list of the  
9 names of the persons so selected, showing the place of  
10 residence and other proper ~~additions~~ ~~of particulars~~  
11 ~~regarding~~ each of them, so far as those particulars can be  
12 conveniently ascertained, must be made out and signed by the  
13 officers or a majority of them. Within 5 days after the  
14 meeting, the list must be delivered by those officers to the  
15 clerk of the district court and filed by him in his office."

16 Section 32. Section 3-15-601, MCA, is amended to read:

17 "3-15-601. When and how drawn and summoned. (1)  
18 Whenever in the opinion of the district judge a grand jury  
19 is necessary, he must make an order directing a grand jury  
20 to be drawn and summoned to attend before the court. The  
21 order must specify the number of jurors to be drawn, which  
22 must ~~may~~ not be less than 15 or more than 20.

23 (2) The ~~names~~ ~~of~~ ~~the~~ jurors must be drawn from the  
24 jury box mentioned in 3-15-404. The list of names shall be  
25 certified and the jurors summoned in the same manner as for

1 trial jurors. The names numbers of any persons drawn who are  
2 not impaneled on the grand jury must be ~~again~~ ~~placed~~ ~~in~~  
3 ~~returned to~~ the jury box."

4 Section 33. Section 3-15-704, MCA, is amended to read:

5 "3-15-704. Forming jury. At the time appointed for a  
6 jury trial in justices' city, or other inferior courts, the  
7 list of jurors summoned ~~which shall be 12 or double the~~  
8 ~~number agreed upon before the trial by the parties~~, must be  
9 called. The jurors summoned shall be 12 in number or double  
10 the number agreed upon by the parties before the trial. The  
11 names of those attending and not excused must be written  
12 upon separate slips of paper, which slips must be folded so  
13 as to conceal the names, and placed in a box from which the  
14 trial jury must be drawn."

-End-



SENATE BILL NO. 41

INTRODUCED BY S. BROWN

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND COURTS; AMENDING SECTIONS 3-1-101, 3-1-113, 3-1-201, 3-1-601, 3-1-605, 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1010 THROUGH 3-1-1014, 3-2-205, 3-2-402, 3-5-213, 3-5-214, 3-5-407, 3-5-514, 3-6-204, 3-6-302, 3-10-111, 3-10-221, 3-10-301, 3-10-304, 3-10-502, 3-11-103, 3-11-203, 3-11-205, 3-12-103, 3-12-203, 3-15-403, 3-15-601, AND 3-15-704, MCA."

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

Section 1. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
(2) the supreme court;
(3) the district courts;
(4) the municipal courts;
(5) the justices' courts;
(6) the city courts and such other inferior courts

as the legislature may establish in any incorporated city or town."

Section 2. Section 3-1-113, MCA, is amended to read:

"3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or this code or any other statute, conferred on a court or judicial officer, all the means necessary to carry into effect for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding be is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

Section 3. Section 3-1-201, MCA, is amended to read:

"3-1-201. What courts have seals. Each of the following courts shall have a seal:

- (1) the supreme court;
(2) the district courts;
(3) the municipal courts."

Section 4. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court shall may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or courts any court of the United States during his continuance in office."

1 (2) Neither the court administrator nor any assistant  
2 may practice law in any of the courts of this state while  
3 holding his position.

4 (3) No justice or judge of a court of record shall may  
5 act as administrator or executor of any estate for  
6 compensation."

7 Section 5. Section 3-1-605, MCA, is amended to read:

8 "3-1-605. Restrictions on judges JUDICIAL OFFICERS  
9 after term has expired. A judge judicial officer as defined  
10 in 1-1-202, after the expiration of his term of office, must  
11 may not act as attorney or counsel in any action or special  
12 proceeding which has been before him in his official  
13 character."

14 Section 6. Section 3-1-1001, MCA, is amended to read:

15 "3-1-1001. Creation, composition, and function of  
16 commission. A judicial nomination commission for the state  
17 of-Montana is created. Its function is to provide the  
18 governor with a list of candidates for nomination  
19 appointment to fill any vacancy on the supreme court or any  
20 district court-of-the-state-of-Montana. The commission shall  
21 be composed of seven members as follows:

22 (1) four lay members who are neither judges nor  
23 attorneys, active or retired, who reside in different  
24 geographical areas of the state, and each of whom is  
25 representative of a different industry, business, or

1 profession, whether actively so engaged or retired, who  
2 shall be appointed by the governor;

3 (2) two attorneys actively engaged in the practice of  
4 law, one from each congressional district, who shall be  
5 appointed by the supreme court;

6 (3) one district judge elected by the district judges  
7 under an elective procedure initiated and conducted by the  
8 supreme court and certified to such election by the chief  
9 justice of the supreme court. The election shall be  
10 considered an appointment for the purposes of this part.

11 (4) APPOINTMENTS PROVIDED FOR IN THIS SECTION SHALL BE  
12 MADE WITHIN 30 DAYS OF THE COMPLETION OF THE PRECEDING  
13 TERMS."

14 Section 7. Section 3-1-1002, MCA, is amended to read:

15 "3-1-1002. Staggered terms of members. (1) All  
16 original members named to the commission shall serve until  
17 January 1, 1976. Their successors shall serve as follows:

18 (a) The members appointed by the governor shall serve  
19 for 4-year terms.

20 (b) The attorneys elected appointed by the supreme  
21 court shall serve 2-year terms.

22 (c) The judge elected shall serve a 2-year term.

23 (2) Thereafter all members shall serve terms of 4  
24 years."

25 SECTION 8. SECTION 3-1-1003, MCA, IS AMENDED TO READ:

1       "3-1-1003. Vacancies. (1) In the event a vacancy on  
2 the commission occurs, the governor shall appoint a  
3 replacement for the remainder of the term. Such replacement  
4 shall be a member of the same group as the member he  
5 replaces.

6       (2) Appointments provided for in this section shall be  
7 made ~~within 30 days of the completion of the preceding terms~~  
8 or within 30 days of the occurrence of any vacancy."

9       Section 9. Section 3-1-1010, MCA, is amended to read:

10       "3-1-1010. List submitted to governor. The commission  
11 shall meet forthwith after a vacancy occurs on the supreme  
12 court or district court and submit to the governor within 30  
13 days from the date of the vacancy a list of not less than  
14 three or more than five persons nominees for appointment."

15       Section 10. Section 3-1-1011, MCA, is amended to read:

16       "3-1-1011. Governor to appoint from list. The governor  
17 must make an appointment from those ~~names~~ the list of  
18 nominees submitted by the commission."

19       Section 11. Section 3-1-1012, MCA, is amended to read:

20       "3-1-1012. When governor fails to ~~nominate~~ appoint. If  
21 the governor fails to ~~nominate~~ appoint within 30 days after  
22 receipt of the list, the chief justice or acting chief  
23 justice shall make the nomination appointment."

24       Section 12. Section 3-1-1013, MCA, is amended to read:

25       "3-1-1013. Senate confirmation -- appointment in the

1 interim. Each ~~nomination~~ appointment shall be confirmed by  
2 the senate, but ~~a nomination~~ an appointment made while the  
3 senate is not in session is effective ~~as an appointment~~  
4 until the end of the next session. If the nomination  
5 appointment is not confirmed, the office shall be vacant and  
6 another selection of nominees and nomination appointment  
7 shall be made."

8       Section 13. Section 3-1-1014, MCA, is amended to read:

9       "3-1-1014. Duration of appointment -- election for  
10 remainder of term. ~~A nominee~~ An appointee confirmed by the  
11 senate serves until the next succeeding general election.  
12 The candidate elected at that election holds the office for  
13 the remainder of the unexpired term."

14       Section 14. Section 3-2-205, MCA, is amended to read:

15       "3-2-205. Injunctions. (1) Upon such terms and under  
16 such rules as the supreme court may establish, the supreme  
17 court may continue in force an injunction order made by a  
18 district court or judge or grant an injunction order and  
19 writ pending an appeal to the supreme court from an order of  
20 a district court or judge refusing or dissolving an  
21 injunction.

22       (2) No action to obtain an injunction ~~must~~ may be  
23 commenced in the supreme court except in cases where the  
24 state is a party, the public is interested, or the rights of  
25 the public are involved. The proper district court has

1 jurisdiction of all injunctions and the commencement of all  
2 actions therefor, except as provided in this section.

3 (3) The supreme court may provide rules for the  
4 commencement and trial of actions for injunctions in that  
5 court."

6 Section 15. Section 3-2-402, MCA, is amended to read:

7 "3-2-402. Duties. It is the duty of the clerk to:

8 (1) keep the seal of the supreme court, its records  
9 and files, and the roll of attorneys and ~~counselors-at-law~~  
10 counselors at law;

11 (2) adjourn the court from day to day at the beginning  
12 of any term in the absence of any judge ~~justice~~ and until  
13 the arrival of a majority of their ~~number~~ the justices;

14 (3) file all papers or transcripts required by law to  
15 be filed ~~by law~~;

16 (4) issue writs and certificates and approve bonds or  
17 undertakings when so required;

18 (5) make out all transcripts to the supreme court of  
19 the United States;

20 (6) make copies of papers or records when demanded by  
21 law or the rules of the court; and

22 (7) perform such other duties as may be required of  
23 him by law and the rules and practice of the supreme court."

24 Section 16. Section 3-5-213, MCA, is amended to read:

25 "3-5-213. Expenses when out of district. A judge who

1 sits in the place of another judge in the trial or hearing  
2 of an action or proceeding in a district other than his own  
3 or in the supreme court or who attends a conference of  
4 judges in Helena called by the chief justice of the supreme  
5 court shall be paid his actual and necessary travel expenses  
6 while engaged in that service as follows:

7 (1) his travel expenses in going from the county seat  
8 which he makes his place of residence to the place of trial,  
9 hearing, or conference and return; and

10 (2) his board and lodging while engaged in the trial,  
11 hearing, or conference."

12 Section 17. Section 3-5-214, MCA, is amended to read:

13 "3-5-214. Certification and filing of expense claim.  
14 As soon as his services in connection with the trial, or  
15 hearing, or conference are concluded, the judge shall  
16 certify in detail the amount of money necessarily and  
17 actually expended by him for his traveling travel expense  
18 and board and lodging, as specified in 3-5-213, and shall  
19 file the claim with the state to be processed as provided by  
20 law."

21 Section 18. Section 3-5-407, MCA, is amended to read:

22 "3-5-407. Sheriff to act as crier. The sheriff in  
23 attendance upon district court must act as the crier  
24 thereof, call the parties and witnesses and all other  
25 persons bound to appear before the court, and make

1 proclamation of the opening and adjournment of the court and  
2 of any other matter under its direction."

3 Section 19. Section 3-5-514, MCA, is amended to read:

4 "3-5-514. Naturalization records. The clerk of the  
5 district court shall keep two books:

6 (1) The first book must be labeled "Declaration  
7 Declarations of Intention to Become Citizens a Citizen of  
8 the United States" and must have entered in it, in  
9 alphabetical order, the names name of ~~all~~ persons each  
10 person who from the organization of the court have has  
11 declared their his intention to become citizens a citizen of  
12 the United States, with the date of such declaration.

13 (2) The second book must be labeled  
14 "Naturalization--Final Papers" and must have entered in it,  
15 in alphabetical order, the names name of ~~all~~ persons each  
16 person who have has been admitted as citizens a citizen of  
17 the United States by the court of which he is clerk and, in  
18 a separate column opposite each name, the country of which  
19 the person was formerly a citizen or subject, the date of  
20 his admission, and the page of the minute book or book of  
21 record containing the order admitting him as a citizen."

22 Section 20. Section 3-6-204, MCA, is amended to read:

23 "3-6-204. Disqualification -- judge pro tem. ~~the~~  
24 ~~provisions of law applicable to disqualification of judges~~  
25 ~~of district court shall apply to judges of municipal courts~~

1 ~~the~~ When a judge of a municipal court has been  
2 disqualified or is sick or unable to act, he shall call in  
3 some practicing attorney ~~at law~~ of the county in which ~~said~~  
4 his court is located, who shall be judge pro tem with the  
5 same powers for the purposes of such the cause as the judge  
6 of ~~said~~ the court."

7 Section 21. Section 3-6-302, MCA, is amended to read:

8 "3-6-302. Records. The records of such the court shall  
9 be kept by such the clerk. Such records in civil causes  
10 shall conform as nearly as possible to the records of  
11 district courts. In criminal causes, ~~and~~ in cases arising  
12 under city ordinances, ~~and in cases mentioned in 3-11-103,~~  
13 the records shall be similar to the records now kept in  
14 ~~justice's court~~ justices' courts."

15 Section 22. Section 3-10-111, MCA, is amended to read:

16 "3-10-111. What provisions of code applicable to  
17 justices' courts. Because justices' courts are courts of  
18 peculiar and limited jurisdiction, only those provisions of  
19 this code which are, in their nature, applicable to the  
20 organization, powers, and course of proceedings in justices'  
21 courts or which have been made applicable by special  
22 provisions in this chapter, chapter 31 of Title 25,  
23 ~~27-9-101, 27-17-102, 27-17-401,~~ and ~~part 10 of chapter 16~~  
24 ~~and part 15 of chapter 18 of~~ Title 27 are applicable to  
25 justices' courts and the proceedings therein."

1 Section 23. Section 3-10-221, MCA, is amended to read:

2 "3-10-221. Duties of justices. Justices of the peace  
3 must perform such duties as are prescribed in this chapter,  
4 chapter 31 of Title 25, ~~27-9-101, 27-17-101, 27-17-102,~~  
5 ~~27-17-401,~~ and ~~part 10 of chapter 16 and part 15 of chapter~~  
6 ~~10 of Title 27~~ and any other duties prescribed by law."

7 Section 24. Section 3-10-301, MCA, is amended to read:

8 "3-10-301. Civil jurisdiction. Except as provided in  
9 3-11-103, ~~the~~ the justices' courts have jurisdiction:

10 (1) in actions arising on contract for the recovery of  
11 money only if the sum claimed does not exceed \$1,500,  
12 exclusive of court costs;

13 (2) in actions for damages not exceeding \$1,500,  
14 exclusive of court costs, for taking, detaining, or injuring  
15 personal property or for injury to real property when no  
16 issue is raised by the verified answer of the defendant  
17 involving the title to or possession of the real property;

18 (3) in actions for damages not exceeding \$1,500,  
19 exclusive of court costs, for injury to the person, except  
20 that, in actions for false imprisonment, libel, slander,  
21 criminal conversation, seduction, malicious prosecution,  
22 determination of paternity, and abduction, the justice of  
23 the peace does not have jurisdiction;

24 (4) in actions to recover the possession of personal  
25 property if the value of the property does not exceed

1 \$1,500;

2 (5) in actions for a fine, penalty, or forfeiture not  
3 exceeding \$1,500, imposed by a statute or an ordinance of an  
4 incorporated city or town when no issue is raised by the  
5 answer involving the legality of any tax, impost,  
6 assessment, toll, or municipal fine;

7 (6) in actions upon bonds or undertakings conditioned  
8 for the payment of money when the sum claimed does not  
9 exceed \$1,500, though the penalty may exceed that sum;

10 (7) to take and enter judgment for the recovery of  
11 money on the confession of a defendant when the amount  
12 confessed does not exceed \$1,500, exclusive of court costs."

13 Section 25. Section 3-10-304, MCA, is amended to read:

14 "3-10-304. Territorial extent of civil jurisdiction.  
15 The civil jurisdiction of justices' courts a justice's court  
16 extends to the limits of the county in which they are it is  
17 held, and mesne and final process of any a justice's cour  
18 in a county may be issued to and served in any part of the  
19 county. A summons of a justice's court may be served as  
20 provided in 25-31-407."

21 Section 26. Section 3-10-502, MCA, is amended to read:

22 "3-10-502. How entries made -- prima facie evidence.  
23 (1) The items listed in 3-10-501 must be entered in the  
24 docket under the title of the action to which they relate  
25 and, unless otherwise provided ~~in this chapter,~~ ~~chapter 31~~

1 of ~~title-25~~ or ~~title-27~~, at the time when they occur.

2 (2) Such entries in a justice's docket or a transcript  
3 thereof certified by the justice or his successor in office  
4 are prima facie evidence of the facts so stated."

5 Section 27. Section 3-11-103, MCA, is amended to read:

6 "3-11-103. Exclusive jurisdiction. The city court has  
7 exclusive jurisdiction of:

8 (1) proceedings for the violation of an ordinance of  
9 the city or town, both civil and criminal;

10 (2) when the amount of the taxes or assessments sought  
11 does not exceed \$300, actions for the collection of taxes or  
12 assessments levied for any of the following purposes, except  
13 that no lien on the property taxed or assessed for the  
14 nonpayment of the taxes or ~~assessment~~ assessments may be  
15 foreclosed in any such action:

16 (a) city or town purposes;

17 (b) the erection or improvement of public buildings;

18 (c) the laying out, opening, or improving of a public  
19 street, sidewalk, alley, or bridge;

20 (d) the acquisition or improvement of any public  
21 grounds; and

22 (e) public improvements made or ordered by the city or  
23 town within its limits;

24 (3) actions for the collection of money due to the  
25 city or town or from the city or town to any person when the

1 amount sought, exclusive of interest and costs, does not  
2 exceed \$300;

3 (4) when the amount claimed, exclusive of costs, does  
4 not exceed \$300, actions for:

5 (a) the breach of an official bond given by a city or  
6 town officer;

7 (b) the breach of any contract when the city or town  
8 is a party or is in any way interested;

9 (c) damages when the city or town is a party or is in  
10 any way interested;

11 (d) the enforcement of forfeited recognizances given  
12 to, for the benefit of, or on behalf of the city or town;  
13 and

14 (e) collection on bonds given upon an appeal taken  
15 from the judgment of the court in any action mentioned in  
16 subsections (4)(a) through (4)(d);

17 (5) actions for the recovery of personal property  
18 belonging to the city or town when the value of the  
19 property, exclusive of the damages for the taking or  
20 detention, does not exceed \$300; and

21 (6) actions for the collection of a license fee  
22 required by an ordinance of the city or town."

23 Section 28. Section 3-11-203, MCA, is amended to read:

24 "3-11-203. When substitute for judge called in. (1)  
25 The city judge or mayor may call in a justice of the peace

1 or some qualified resident of the city or town to act in the  
2 judge's place whenever the judge is:

- 3 (1)(a) a party in a case;
- 4 (2)(b) interested in a case;
- 5 (3)(c) ~~the spouse of or~~ related to either party in a  
6 case by consanguinity or affinity within the sixth degree;
- 7 or
- 8 (4)(d) sick, absent, or unable to act.

9 (2) The city judge may call in a justice of the peace  
10 or some qualified resident of the city or town to act in his  
11 stead when a disqualifying affidavit is filed against him  
12 pursuant to the supreme court's rules on disqualification  
13 and substitution of judges."

14 Section 29. Section 3-11-205, MCA, is amended to read:  
15 "3-11-205. Justice of the peace acting as city judge.  
16 In towns a town, the council may designate a justice of the  
17 peace of the county in which the town is situated to act as  
18 city judge and may by ordinance fix his ~~the~~ compensation for  
19 his services, ~~and the~~ The justice of the peace so  
20 designated may act as a city judge in all cases arising out  
21 of ~~a violation~~ violations of ordinances where in which the  
22 town is a party. Where If the justice of the peace must  
23 travel from his town place of residence to hold court, he  
24 shall be paid ~~per diem and mileage as provided in 2-10-503~~  
25 ~~actual and necessary expenses, including mileage~~ PER DIEM

1 AND MILEAGE AS PROVIDED IN 2-10-501 THROUGH 2-10-503 by the  
2 town in which ~~the~~ court is held."

3 Section 30. Section 3-12-103, MCA, is amended to read:  
4 "3-12-103. Creation of court. (1) A small claims court  
5 may be created by a resolution passed by the board of county  
6 commissioners after consultation with the district court  
7 judges of the judicial district in which ~~such the~~ county is  
8 located or by county initiative as provided in Title 7,  
9 chapter 5, part 22.

10 (2) Upon ~~such order or~~ passage of the resolution or  
11 initiative, the judge of the appropriate judicial district  
12 shall, by court order, establish a small claims court under  
13 the provisions of this chapter.

14 (3) When the order is filed with the clerk of the  
15 district court of the appropriate county, the clerk of the  
16 district court becomes the clerk of the small claims court."

17 ~~Section 31. Section 3-12-203, MCA, is amended to read:~~  
18 ~~"3-12-203. Judge in multicounty districts. (1) Where~~  
19 ~~Whenever there is more than one county in the judicial~~  
20 ~~district and the county commissioners of more than one~~  
21 ~~county in that district create small claims courts, the~~  
22 ~~district judges may provide that the same judge of small~~  
23 ~~claims court may preside over more than one of the small~~  
24 ~~claims courts in the judicial districts~~

25 (2) ~~In such cases the sole judge of the small claims court~~



1 judge shall be prorated among the counties in which he  
2 presides.

3 ~~(3) The judge shall be entitled to collect mileage for~~  
4 ~~the distance actually traveled actual and necessary~~  
5 ~~expenses including mileage when required to convene small~~  
6 ~~claims court in more than one county pursuant to 2-10-503.~~

7 Section 31. Section 3-15-403, MCA, is amended to read:

8 "3-15-403. Lists delivered to clerk. A list of the  
9 names of the persons so selected, showing the place of  
10 residence and other proper additions of particulars  
11 regarding each of them, so far as those particulars can be  
12 conveniently ascertained, must be made out and signed by the  
13 officers or a majority of them. Within 5 days after the  
14 meeting, the list must be delivered by those officers to the  
15 clerk of the district court and filed by him in his office."

16 Section 32. Section 3-15-601, MCA, is amended to read:

17 "3-15-601. When and how drawn and summoned. (1)  
18 Whenever in the opinion of the district judge a grand jury  
19 is necessary, he must make an order directing a grand jury  
20 to be drawn and summoned to attend before the court. The  
21 order must specify the number of jurors to be drawn, which  
22 must may not be less than 15 or more than 20.

23 (2) The names of the jurors must be drawn from the  
24 jury box mentioned in 3-15-404. The list of names shall be  
25 certified and the jurors summoned in the same manner as for

1 trial jurors. The names numbers of any persons drawn who are  
2 not impaneled on the grand jury must be again placed in  
3 returned to the jury box."

4 Section 33. Section 3-15-704, MCA, is amended to read:

5 "3-15-704. Forming jury. At the time appointed for a  
6 jury trial in justices', city, or other inferior courts, the  
7 list of jurors summoned, ~~which shall be 12 or double the~~  
8 ~~number agreed upon before the trial by the parties,~~ must be  
9 called. The jurors summoned shall be 12 in number or double  
10 the number agreed upon by the parties before the trial. The  
11 names of those attending and not excused must be written  
12 upon separate slips of paper, which slips must be folded so  
13 as to conceal the names, and placed in a box from which the  
14 trial jury must be drawn."

-End-

January 8, 1979

STANDING COMMITTEE REPORT

That Senate Bill No. 41 be amended as follows:

1. Title, line 8  
Following: "3-1-1002,"  
Insert: "3-1-1003,"
2. Page 3, line 8  
Strike: "judges"  
Insert: "judicial officers"
3. Page 4.  
Following: line 20  
Insert: "Section 8. Section 3-1-1003, MCA, is amended to read:  
'3-1-1003. Vacancies. (1) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. Such replacement shall be a member of the same group as the member he replaces.  
  
(2) Appointments provided for in this ~~section~~ part shall be made within 30 days of the completion of the preceding terms or within 30 days of the occurrence of any vacancy.'"