CHAPTER NO. 409

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SENATE BILL NO. 491

INTRODUCED BY TURNAGE, BARDANOUVE

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.
I	N THE HOUSE
February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in.
I	N THE SENATE
March 24, 1979	Returned from second house. Concurred in. Sent to enrolling.

Reported correctly enrolled.

Gast BILL NON 4/ 1 INTRODUCED BY Turnere pl. 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT COURTS NOT OF RECORD DO NOT HAVE JURISDICTION OVER ACTIONS THAT 5 MIGHT RESULT IN A JUDGMENT AGAINST THE STATE FOR THE PAYMENT 6 OF MONEY; AMENDING SECTIONS 3-5-302, 3-10-301, 3-11-103, 7 8 25-30-101, 25-31-101, 25-31-102, 25-34-105, AND 25-35-105, 9 MCA.* 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 3-5-302, MCA, is amended to read: 12 #3-5-302. Original jurisdiction. (1) The district 13 court has original jurisdiction in: 14 (a) all criminal cases amounting to felony; 15 16 (b) all civil and probate matters; (c) all cases at law and in equity; 17 (d) all cases of misdemeanor not otherwise provided 18 19 for; and (e) all such special actions and proceedings as are 20 not otherwise provided for. 21 (2) The district court has exclusive original 22 23 jurisdiction in all civil actions that might result in a 24 judgment against the state for the payment of money. +2+(3) The district court has the of 25 Dover

naturalization and of issuing papers therefor in all cases 1 2 where it is authorized to do so by the laws of the United 3 States.

4 (3)(4) The district court and its judges have power to 5 issue, hear, and determine writs of mandamus, guo warranto, certiorari, prohibition, and injunction, other original 6 remedial writs, and all writs of habeas corpus on petition 7 by or on behalf of any person held in actual custody in A 9 their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on 10 11 legal holidays and nonjudicial days."

Section 2. Section 25-30-101, MCA, is amended to read: 12 13 #25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222. 14 15 3-10-231 through 3-10-234, 3-10-305, 3-10-306, 3-10-704 through 3-10-706, 25-31-102(21, 25-31-111, 25-31-114 through 16 17 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-701, 18 19 25-31-915, 25-31-1002, 25-31-1004, and 25-31-1005}, chapter 20 33 of this title, chapter 9, part 10 of chapter 16, and part 21 1 of chapter 17 of Title 27, 27-17-401, and part 15 of 22 chapter 18 of Title 27 are applicable to municipal courts 23 except when they are inconsistent with the provisions of 24 this chapter and chapter 6 of Title 3, the words "municipal court* being substituted for justice's court and *judge* for 25 56497 INTRODUCED BILL

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1 justice of the peace.

2 (2) Except as otherwise provided by this chapter and
3 chapter 6 of Title 3, the proceedings and practice in
4 municipal court shall be the same as in district court."
5 Section 3. Section 3-10-301, MCA, is amended to read:
6 "3-10-301. Civil jurisdiction. (1) The Except as
7 provided in subsection (2). the justices? courts have
8 jurisdiction:

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

12 vertb) in actions for damages not exceeding \$1.500. 13 exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no 14 issue is raised by the verified answer of the defendant 15 involving the title to or possession of the real property; 16 17 (3)(c) in actions for damages not exceeding \$1,500. exclusive of court costs, for injury to the person, except 18 19 that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, 20 21 determination of paternity, and abduction, the justice of 22 the peace does not have jurisdiction;

23 <u>tff(d)</u> in actions to recover the possession of 24 personal property if the value of the property does not 25 exceed \$1,500; (5)(a) in actions for a fine, penalty, or forfeiture
 not exceeding \$1,500, imposed by a statute or an ordinance
 of an incorporated city or town when no issue is raised by
 the answer involving the legality of any tax, impost,
 assessment, toll, or municipal fine;

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

10 (7)(g) 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 (2) Justices' courts do not have jurisdiction in civil 14 actions that might result in a judgment against the state

15 for the payment of money."

16 Section 4. Section 25-31-101. MCA. is amended to read: 17 *25-31-101. Issues which cannot be presented in 18 justice's court. [1] The parties to an action in a justice s court cannot give evidence upon any guestion which involves 19 the title or possession of real property or the legality of 20 any tax, impost, assessment, toll, or municipal fine, nor 21 can any issue presenting such question be tried by such 22 court; provided that, in cases of forcible entry and 23 24 unlawful detainer of which justices courts have 25 jurisdiction, any evidence otherwise competent may be given,

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and any question properly involved therein may be
 determined.

3 121 <u>A justice's court may not hear evidence on or try</u>
4 any issue involving the state's liability to make a payment
5 of money: regardless of the basis of the claim against the
b states*

7 Section 5. Section 25-31-102, MCA, is amended to read: #25-31-102. Transfer to district court _____dispissal. 8 [1] If it appear from the answer of the defendant, verified 9 ty his oath, that the determination of the action will 10 11 necessarily involve the question of title or possession to real property or the legality of any tax, impost, 12 13 assessment, toll, or municipal fine, the justice must suspend all further proceedings in the action and certify 14 the pleadings and, if any of the pleadings are oral, a 15 transcript of the same from his docket to the clerk of the 16 district court of the county; and from the time of filing 17 such pleadings or transcript with the clerk, the district 18 19 court shall have over the action the same jurisdiction as if it had been commenced therein. When the action is certified 20 21 to the district court, upon the answer of the defendant, he 22 must file an undertaking, to be approved by the justice, to 23 the effect that he will pay all costs that may be awarded 24 against him on the trial in the district court.

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(2) If it appears at any point in the proceedings in a

1 justice's court that the determination of the action will 2 involve the question of the state's liability to make a payment of money, the justice shall sever that issue and 3 4 dismiss the action as to it. If the issue is not, severables 5 the justice shall dismiss the entire actions" Section 6. Section 3-11-103, MCA, is amended to read: 6 7 #3-11-103. Exclusive jurisdiction. The Except as A provided in [section 7], the city court has exclusive 9 jurisdiction of: (1) proceedings for the violation of an ordinance of 10 11 the city or town, both civil and criminal; 12 (2) when the amount of the taxes or assessments sought 13 does not exceed \$300, actions for the collection of taxes or 14 assessments levied for any of the following purposes, except 15 that no lien on the property taxed or assessed for the

nonpayment of the taxes or assessment may be foreclosed in
any such action:
(a) city or town purposes;

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

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

22 (d) the acquisition or improvement of any public
23 grounds; and

24 (e) public improvements made or ordered by the city or25 town within its limits;

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1 (3) actions for the collection of money due to the 2 city or town or from the city or town to any person when the 3 amount sought, exclusive of interest and costs, does not 4 exceed \$300:

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

7 (a) the breach of an official bond given by a city or8 town officer;

9 (b) the breach of any contract;

10 (c) damages when the city or town is a party or is in11 any way interested;

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

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

18 (5) actions for the recovery of personal property 19 belonging to the city or town when the value of the 20 property, exclusive of the damages for the taking or 21 detention, does not exceed \$300; and

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

24 <u>NEW_SECTION</u> Section 7. Exceptions to civil 25 jurisdiction. City courts do not have jurisdiction in civil 1 actions that might result in a judgment against the state
2 for the payment of money.

3 Section 8. Section 25-34-105, MCA, is amended to read:
4 "25-34-105. Parties -- representation. (1) Parties in
5 the small claims court may be individuals, partnerships,
6 corporations, unions, associations, or any other kind of
7 organization or entity, except the state or any agency
8 thereof.

9 (2) A party may not be represented by an attorney 10 unless all parties are represented by an attorney in a small 11 claims court, except as set forth in subsection (3) herein. 12 (3) An individual shall represent himself in the small 13 claims court. A partnership shall be represented by a 14 partner or one of its employees. A union shall be 15 represented by a union member or union employee. A corporation shall be represented by one of its employees. 16 17 An association shall be represented by one of its members or by an employee of the association. Any other kind of 16 organization or entity shall be represented by one of its 19 20 members or employees.

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

25 (5) No party may file an assigned claim in the rmall

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1 claims court.

2 (6) Notwithstanding any other provision of this 3 section, an executor or administrator of a decedent's 4 estate, a guardian, or a conservator may be a party in the 5 small claims court."

Section 9. Section 25-35-105, MCA, is amended to read:
"25-35-105. Parties -- representation. (1) Parties in
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23 (4) Only a party, natural or otherwise, who has been a
24 party to the transaction with the defendant for which the
25 claim is brought may file and prosecute a claim in the small

1 claims court.

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

4 (6) No party may file more than three claims in any
5 calendar year.

6 (7) Notwithstanding any other provision of this
7 section, a personal representative of a decedent's estate, a
8 guardian, or a conservator may be a party in the small
9 'claims court."

10 Section 10. Codification. Section 7 is intended to be

11 codified as an integral part of Title 3. chapter 11. part 1.

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46th Legislature

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24 <u>NEW_SECTION</u> Section 7. Exceptions to civil 25 jurisdiction. City courts do not have jurisdiction in civil

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actions that might result in a judgment against the state
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3 Section 8. Section 25-34-105, MCA, is amended to read: 4 "25-34-105. Parties -- representation. (1) Parties in 5 the small claims court may be individuals, partnerships, 6 corporations, unions, associations, or any other kind of 7 organization or entity, except the state or any agency 8 thereof.

(2) A party may not be represented by an attorney 9 unless all parties are represented by an attorney in a small 10 claims court. except as set forth in subsection (3) herein. 11 (3) An individual shall represent himself in the small 12 13 claims court. A partnership shall be represented by a 14 partner or one of its employees. A union shall be 15 represented by a union member or union employee. A 16 corporation shall be represented by one of its employees. 17 An association shall be represented by one of its members or 18 by an employee of the association. Any other kind of organization or entity shall be represented by one of its 19 members or employees. 20

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 party to the transaction with the defendant for which the
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REFERENCE BILL

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and any question properly involved therein may 1 hp 2 determined.

3 (2) A justice's court may not hear evidence on or try any issue involving the state's liability to make a payment 4 5 of moneys regardless of the basis of the claim against the 6 state."

Section 5. Section 25-31-102, MCA, is amended to read: 7 #25-31-102. Transfer to district court <u>____dismissal</u>. я (1) If it appear from the answer of the defendant, verified q by his oath, that the determination of the action will 10 11 necessarily involve the question of title or possession to 12 real property or the legality of any tax, impost. assessment, toll, or municipal fine, the justice must 13 14 suspend all further proceedings in the action and certify 15 the pleadings and, if any of the pleadings are oral, a 16 transcript of the same from his docket to the clerk of the 17 district court of the county; and from the time of filing such pleadings or transcript with the clerk, the district 18 court shall have over the action the same jurisdiction as if 19 20 it had been commenced therein. When the action is certified to the district court, upon the answer of the defendant, he 21 22 must file an undertaking, to be approved by the justice, to 23 the effect that he will pay all costs that may be awarded 24 against him on the trial in the district court.

25 12) If it appears at any point in the proceedings in a

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21 street, sidewalk, alley, or bridge; 22 (d) the acquisition or improvement of any public

23 grounds; and

24 (e) public improvements made or ordered by the city or 25 town within its limits:

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2 involve the question of the state's liability to make a 3 payment_of_money+_the__justice_shall_sever_that_issue_and dismiss the action as to it. If the issue is not severables 4 5 the justice_shall_dismiss_the_entire_actions" Section 6. Section 3-11-103. MCA. is amended to read: 6 7 #3-11-103. Exclusive jurisdiction. The Except___as provided in fsection Ile the city court has exclusive 8 jurisdiction of: Q (1) proceedings for the violation of an ordinance of 10 the city or town, both civil and criminal; 11 (2) when the amount of the taxes or assessments sought 12 does not exceed \$300, actions for the collection of taxes or 13 14 assessments levied for any of the following purposes, except 15 that no lien on the property taxed or assessed for the nonpayment of the taxes or assessment may be foreclosed in any such action: (a) city or town purposes;

justice's_court_that_the_determination_of_the_action_will

16

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public

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1 (3) actions for the collection of money due to the 2 city or town or from the city or town to any person when the 3 amount sought, exclusive of interest and costs; does not 4 exceed \$300;

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

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

9 (b) the breach of any contract;

10 (c) damages when the city or town is a party or is in 11 any way interested;

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

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

18 (5) actions for the recovery of personal property 19 belonging to the city or town when the value of the 20 property, exclusive of the damages for the taking or 21 detention, does not exceed \$300; and

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

24 <u>NEW_SECTION</u> Section 7. Exceptions to civil 25 jurisdiction. City courts do not have jurisdiction in civil

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actions that might result in a judgment against the state
 for the payment of money.

3 Section 8. Section 25-34-105, MCA, is amended to read: 4 #25-34-105. Parties -- representation. (1) Parties in 5 the small claims court may be individuals, partnerships, 6 corporations, unions, associations, or any other kind of 7 organization or entity<u>e</u> except the state or any agency 8 thereof.

9 (2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small 10 claims court, except as set forth in subsection (3) herein. 11 12 (3) An individual shall represent himself in the small 13 claims court. A partnership shall be represented by a partner or one of its employees. A union shall be 14 15 represented by a union member or union employee. A 16 corporation shall be represented by one of its employees. 17 An association shall be represented by one of its members or by an employee of the association. Any other kind of 18 organization or entity shall be represented by one of its 19 ż0 members or employees.

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

25 (5) No party may file an assigned claim in the small

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1 claims court.

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

Section 9. Section 25-35-105. NCA, is amended to read:
"25-35-105. Parties -- representation. (1) Parties in
the small claims court may be individuals. partnerships.
corporations, unions, associations, or any other kind of
organization or entity.__except__the__state__or_any_agency
thereof.

12 (2) A party may not be represented by an attorney
13 unless all parties are represented by an attorney in a small
14 claims court.

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

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

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1 claims court+

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

4 (6) No party may file more than three claims in any
 5 calendar year.

- 6 (7) Notwithstanding any other provision of this
 7 section, a personal representative of a decedent's estate, a
 8 quardian, or a conservator may be a party in the small
- 9 claims court."
- 10 Section 10. Codification. Section 7 is intended to be
- 11 codified as an integral part of Title 3, chapter 11, part 1.

-End-