

SENATE BILL NO. 485

INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPEN, REGAN,
OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN

INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

March 19, 1981	By motion and consent, Senate Bill No. 485 allowed to be introduced and con- sidered this session.
March 23, 1981	Introduced and referred to Committee on Judiciary.
March 26, 1981	Committee recommend bill do pass as amended. Report adopted.
March 27, 1981	Bill printed and placed on members' desks.
March 28, 1981	Second reading, do pass. Correctly engrossed.
March 30, 1981	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

April 9, 1981	Introduced and referred to Committee on Judiciary.
April 13, 1981	Committee recommend bill be concurrred in as amended. Report adopted.
April 17, 1981	Second reading, concurrred in as amended.

April 17, 1981

On motion rules suspended and bill placed on third reading this day.

Third reading, concurred in as amended. Ayes, 96; Noes, 0.

IN THE SENATE

April 21, 1981

Returned from House with amendments.

By motion and consent, House amendments allowed to be received and considered this session. Motion adopted.

April 22, 1981

Second reading, amendments not concurred in.

On motion Free Conference Committee requested and appointed.

Free Conference Committee reported.

April 23, 1981

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted. Ayes, 47; Noes, 1. Transmitted to House.

IN THE HOUSE

April 23, 1981

Free Conference Committee report adopted.

IN THE SENATE

April 23, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

1 *Memph* *Rob Brown* *Mike Anderson*
 2 ~~INTRODUCED BY~~ *Senators* BILL NO. *485* *Steve Brown*
 3 ~~INTRODUCED BY REQUEST~~ *Rep Berg, Holligan, J. O'Brien, Crippen*
 4 *Blum* OF THE SENATE JUDICIARY COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
 6 CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
 7 FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
 8 COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
 9 POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
 10 COURT; AMENDING SECTION 25-31-112, MCA; REPEALING TITLE 25,
 11 CHAPTER 35, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12 WHEREAS, in 1977 the Montana Legislature enacted the
 13 provisions of Chapter 572, Laws of 1977, creating a small
 14 claims court within justices' courts in Montana, which
 15 provisions are codified as Title 25, chapter 35, MCA; and

16 WHEREAS, the small claims procedure makes no provision
 17 for a jury trial, provides that one party may not be
 18 represented by an attorney if the other party is not so
 19 represented, and provides that an appeal from the small
 20 claims court is to be tried on the record of the case and is
 21 not to be tried as a trial de novo; and

22 WHEREAS, the Montana Supreme Court has held in the case
 23 of North Central Services, Inc. v. Hafdahl, Mont.,
 24 __P2d__, (Civil No. 80-228, decided March 11, 1981), that
 25 the cumulative effect of these provisions is to deny the

1 right to a jury trial and the right to counsel at every
 2 stage of the factual determination of a case in small claims
 3 court; and

4 WHEREAS, the Supreme Court therefore held section
 5 25-35-403(2), MCA, to be unconstitutional and also held the
 6 remainder of Title 25, chapter 35, unconstitutional and void
 7 for the reason that it could not be severed from section
 8 25-35-403(2), MCA.

9 THEREFORE, it is the intent of the Legislature to cure
 10 the unconstitutionality of Title 25, chapter 35, by
 11 repealing and reenacting those provisions with such changes
 12 as to cure the unconstitutionality of those provisions.

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

19 NEW SECTION. Section 2. Jurisdiction. The small
 20 claims court has jurisdiction over all actions for the
 21 recovery of money or specific personal property when the
 22 amount claimed does not exceed \$750, exclusive of costs, and
 23 the defendant can be served within the county where the
 24 action is commenced.

25 NEW SECTION. Section 3. Removal from district court.

1 A district court judge may require any action filed in
 2 district court to be removed to the small claims court if
 3 the amount in controversy does not exceed \$500. The small
 4 claims court shall hear any action so removed from the
 5 district court.

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

10 NEW SECTION. Section 5. Parties -- representation.
 11 (1) Parties in the small claims court may be individuals,
 12 partnerships, corporations, unions, associations, or any
 13 other kind of organization or entity, except the state or
 14 any agency thereof.

15 (2) A party may not be represented by an attorney
 16 unless all parties are represented by an attorney in a small
 17 claims court.

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

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

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

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

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

13 NEW SECTION. Section 6. Commencement of action --
 14 assistance to claimant. (1) A small claims action is
 15 commenced whenever any person appears before a justice of
 16 the peace and executes a sworn small claims complaint in
 17 substantially the same form as set forth in [section 7].

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

1 complaint, and a copy must be attached to the order of the
2 court/notice to defendant.

3 NEW SECTION. Section 7. Form of complaint and order
4 of court/notice to defendant. The sworn complaint and order
5 of the court shall be made on a blank substantially in the
6 following form:

7 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
8 COURT OF COUNTY, MONTANA
9 BEFORE, JUSTICE OF THE PEACE

10
11

12 Plaintiff,

13 vs. Complaint

14 Case No.

15

16 Defendant(s)

17

18 Comes now the plaintiff, being first duly sworn, upon
19 oath, and complains and alleges that defendant is indebted
20 to plaintiff in the sum of \$....., for.....

21

22

23 which sum is now due, owing, and unpaid despite demands for
24 the payment thereof, together with plaintiff's costs herein
25 expended.

1 Dated this day of, 19....

2

3 Plaintiff

4

5 Plaintiff's address

6 Subscribed and sworn to before me this day of

7 19....

8

9 Justice of the peace

10 By:.....

11 Clerk, small claims
12 division

13 ORDER OF COURT/

14 NOTICE TO DEFENDANT

15 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

16 You are hereby directed to appear and answer the within
17 and foregoing complaint at:

18

19

20 on..... at

21 Reset for at

22 Reset for at

23 Reset for at

24 and to have with you, then and there, all books, papers, and
25 witnesses needed by you to establish your defense to the

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1 claim; and you are further notified that in case you do not
2 appear, judgment will be taken against you by default for
3 the relief demanded in the complaint and for costs of this
4 action, including costs of service of the complaint and
5 order of the court/notice to defendant.

6 To the Sheriff, Constable, or Server of process of said
7 county, greetings:

8 Make legal service and due return thereof on the
9 defendant at

10 Dated this day of, 19....

11

12 Justice of the peace

13 By:.....

14 Clerk of small claims
15 division

16 NEW SECTION. Section 8. Hearing date. The date for
17 the appearance of the defendant to be set forth in the order
18 shall be determined by the justice of the peace or by his
19 clerk in accordance with rules adopted by the justice of the
20 peace and may not be more than 40 or less than 10 days from
21 the date of the order. Service of the order and a copy of
22 the sworn complaint shall be made upon the defendant not
23 less than 5 days prior to the date set for his appearance by
24 the order. If the order is not timely served, the plaintiff
25 may have a new appearance date set by the justice of the

1 peace or his clerk and a new order issued and delivered to
2 the sheriff, constable, or other process server. If
3 necessary, repeated orders may be issued at any time within
4 1 year after the commencement of the action.

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

13 NEW SECTION. Section 10. Return of service. The
14 sheriff, constable, or other process server shall, after
15 affecting service, return the original order to the justice
16 of the peace or his clerk.

17 NEW SECTION. Section 11. Defendant's counterclaim.
18 (1) The defendant may assert a counterclaim against the
19 plaintiff arising out of the same transaction or occurrence
20 that is the subject matter of the plaintiff's claim by
21 appearing before the justice of the peace and executing a
22 sworn small claims counterclaim in substantially the same
23 form as set forth in subsection (3). The defendant shall
24 cause the counterclaim to be served on the plaintiff not
25 less than 72 hours before the date set for the hearing.

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

6 (2) A counterclaim or setoff may not exceed \$750. If a
7 counterclaim or setoff is asserted in excess of \$750, the
8 jurisdiction of the small claims court over the plaintiff's
9 claim is not defeated, but the court shall limit its
10 determination of the counterclaim or setoff to the question
11 of whether the plaintiff's claim is discharged thereby,
12 leaving the defendant to prosecute the balance of his claim
13 in an appropriate district court action.

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

16 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
17 COUNTY, MONTANA
18 BEFORE, JUSTICE OF THE PEACE
19
20
21 Plaintiff
22 vs. Counterclaim
23 Case No. ...
24
25 Defendant(s)

1
2 Comes now the defendant, being first duly sworn, upon
3 oath, and alleges that defendant is entitled to counterclaim
4 against the plaintiff in the plaintiff's pending action in
5 the sum of \$....., for
6
7
8 which sum is now due, together with defendant's costs herein
9 expended.

10 Dated this ... day of, 19...

11
12 Defendant

13
14 Defendant's address

15 Subscribed and sworn to before me this day of
16, 19...

17
18 Justice of the peace

19 By:
20 Clerk, small claims division

21 NEW SECTION. Section 12. No further pleadings. No
22 form of pleading other than the complaint, the order of the
23 court/notice to defendant, and the counterclaim of the
24 defendant, if there is one, is allowed.

25 NEW SECTION. Section 13. Fees. (1) The clerk of the

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1 justice's court shall collect a fee of \$5:

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

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

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

8 NEW SECTION. Section 14. Proceedings to be informal.
9 The hearing and disposition of small claims actions shall be
10 informal.

11 NEW SECTION. Section 15. Witnesses -- evidence --
12 subpoena power. The plaintiff and the defendant may offer
13 evidence in their behalf by witnesses appearing at such
14 hearing in the same manner as in other cases arising in
15 justice's court or by written evidence, and the judge may
16 direct the production of evidence as he considers
17 appropriate. The small claims court has the subpoena power
18 granted to justices' courts in all civil cases.

19 NEW SECTION. Section 16. Record of proceedings. All
20 civil actions tried in a small claims court shall be
21 recorded either electronically or stenographically.

22 NEW SECTION. Section 17. Removal to justice's court.
23 Any action commenced in small claims court may be removed to
24 justice's court by a defendant upon the filing of a notice
25 of removal with the justice within 30 days of the service of

1 the complaint and order. From the time of filing of the
2 notice of removal, the court to which the action is removed
3 has and exercises the same jurisdiction over it as though
4 the action had been originally commenced in such court.

5 NEW SECTION. Section 18. Procedure following notice
6 of removal. Upon the filing of a notice of removal, the
7 court shall give notice of that fact to all other parties
8 to the action. All rules and statutes governing proceedings
9 originally commenced in justice's court are applicable to
10 proceedings removed to justice's court, except that a
11 plaintiff is not required to replead unless the court so
12 orders and no fee shall be required of a plaintiff for the
13 filing of a complaint if a fee for filing was paid in small
14 claims court.

15 NEW SECTION. Section 19. Entry of judgment. Upon the
16 conclusion of the case tried to the court, the justice shall
17 make his findings and enter judgment.

18 NEW SECTION. Section 20. Costs. The prevailing
19 party in an action before the small claims court is entitled
20 to his costs.

21 NEW SECTION. Section 21. Appeal to district court --
22 commencement and scope of. (1) If either party is
23 dissatisfied with the judgment of the small claims court, he
24 may appeal to the district court of the county where the
25 judgment was rendered. An appeal shall be commenced by

1 giving written notice to the small claims court and serving
2 a copy of the notice of appeal on the adverse party within
3 10 days after entry of judgment.

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

6 NEW SECTION. Section 22. Record on appeal. (1) within
7 30 days of the notice, the entire record of the small claims
8 court proceedings shall be transmitted to the district court
9 or the appeal shall be dismissed. It is the duty of the
10 appealing party to perfect the appeal.

11 (2) When notice of appeal is filed, the justice shall
12 forward the electronic recording or transcript of the
13 stenographic record of the proceedings to the district
14 court, together with the original papers filed, certified by
15 him to be accurate and complete. When the record is
16 transferred to the clerk of the district court, the justice
17 shall notify the parties in writing.

18 NEW SECTION. Section 23. Use of transcripts or tapes
19 by district court. The district court may hear the recording
20 of the proceedings of the justice's court, but in its
21 discretion it may have parts or all of the recordings
22 transcribed at the cost of the district court. If the
23 proceedings are stenographically taken, the notes will be
24 transcribed in full or in designated parts as stipulated by
25 the parties. The cost of such transcription shall be

1 computed as prescribed by law.

2 NEW SECTION. Section 24. Execution of judgment.
3 Proceedings to enforce or collect a judgment are governed by
4 the laws relating to execution upon justice's court
5 judgments.

6 Section 25. Section 25-31-112, MCA, is amended to
7 read:

8 "25-31-112. Fees. The following is the schedule of
9 fees which, except as provided in [section 18], shall be
10 paid in every civil action in a justice's court:

11 (1) \$5 when complaint is filed, to be paid by the
12 plaintiff;

13 (2) \$5 when the defendant appears, to be paid by the
14 defendant;

15 (3) \$5 to be paid by the prevailing party when
16 judgment is rendered. In cases where judgment is entered by
17 default, no charge except the \$5 for the filing of the
18 complaint shall be made for any services, including issuing
19 and return of execution.

20 (4) \$5 for all services in an action where judgment is
21 rendered by confession;

22 (5) \$5 for filing notice of appeal and transcript on
23 appeal, justifying and approving undertaking on appeal, and
24 transmitting papers to the district court with certificate."

25 Section 26. Repealer. Title 25, chapter 35, MCA, is

LC 1524/01

- 1 repealed.
- 2 Section 27. Effective date. This act is effective on
- 3 passage and approval.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 485

INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPEN, REGAN,
OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN
INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
COURT; AMENDING SECTION ~~SECTIONS 3-10-1001~~ AND 25-31-112,
MCA; REPEALING TITLE 25, CHAPTER 35, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

WHEREAS, in 1977 the Montana Legislature enacted the
provisions of Chapter 572, Laws of 1977, creating a small
claims court within justices' courts in Montana, which
provisions are codified as Title 25, chapter 35, MCA; and

WHEREAS, the small claims procedure makes no provision
for a jury trial, provides that one party may not be
represented by an attorney if the other party is not so
represented, and provides that an appeal from the small
claims court is to be tried on the record of the case and is
not to be tried as a trial de novo; and

WHEREAS, the Montana Supreme Court has held in the case

of North Central Services, Inc. v. Hafdahl, Mont.,
__P2d__, (Civil No. 80-228, decided March 11, 1981), that
the cumulative effect of these provisions is to deny the
right to a jury trial and the right to counsel at every
stage of the factual determination of a case in small claims
court; and

WHEREAS, the Supreme Court therefore held section
25-35-403(2), MCA, to be unconstitutional and also held the
remainder of Title 25, chapter 35, unconstitutional and void
for the reason that it could not be severed from section
25-35-403(2), MCA.

THEREFORE, it is the intent of the Legislature to cure
the unconstitutionality of Title 25, chapter 35, by
repealing and reenacting those provisions with such changes
as to cure the unconstitutionality of those provisions.

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

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

NEW SECTION. Section 2. Jurisdiction. The small
claims court has jurisdiction over all actions for the
recovery of money or specific personal property when the
amount claimed does not exceed \$750, exclusive of costs, and

1 the defendant can be served within the county where the
2 action is commenced.

3 NEW SECTION. Section 3. Removal from district court.
4 A district court judge may require any action filed in
5 district court to be removed to the small claims court if
6 the amount in controversy does not exceed \$500. The small
7 claims court shall hear any action so removed from the
8 district court.

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

13 NEW SECTION. Section 5. Parties -- representation.
14 (1) Parties in the small claims court may be individuals,
15 partnerships, corporations, unions, associations, or any
16 other kind of organization or entity, except the state or
17 any agency thereof.

18 (2) A party may not be represented by an attorney
19 unless all parties are represented by an attorney in a small
20 claims court.

21 (3) An individual may represent himself in a small
22 claims court. A partnership may be represented by a partner
23 or one of its employees. A union may be represented by a
24 union member or union employee. A corporation may be
25 represented by one of its employees. An association may be

1 represented by one of its members or by an employee of the
2 association. Any other kind of organization or entity may be
3 represented by one of its members or employees.

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

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

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

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

16 NEW SECTION. Section 6. Commencement of action --
17 assistance to claimant. (1) A small claims action is
18 commenced whenever any person appears before a justice of
19 the peace and executes a sworn small claims complaint in
20 substantially the same form as set forth in [section 7].

21 (2) The justice shall assist any claimant in preparing
22 his complaint or instruct his clerk to provide such
23 assistance. The attorney general shall prepare a pamphlet
24 explaining in plain language the procedures for prosecuting
25 and defending a claim in small claims court and distribute e

1 sufficient--number--of copies of the pamphlet to each small
2 claims court. The justice or his clerk shall give the
3 plaintiff a copy when the plaintiff appears to execute his
4 complaint, and a copy must be attached to the order of the
5 court/notice to defendant.

6 NEW SECTION. Section 7. Form of complaint and order
7 of court/notice to defendant. The sworn complaint and order
8 of the court shall be made on a blank substantially in the
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
11 COURT OF COUNTY, MONTANA
12 BEFORE, JUSTICE OF THE PEACE
13

14
15 Plaintiff,

16 vs. Complaint
17 Case No.

18
19 Defendant(s)
20

21 Comes now the plaintiff, being first duly sworn, upon
22 oath, and complains and alleges that defendant is indebted
23 to plaintiff in the sum of \$..... for.....
24
25

1 which sum is now due, owing, and unpaid despite demands for
2 the payment thereof, together with plaintiff's costs herein
3 expended.

4 Dated this day of, 19....
5
6 Plaintiff
7
8 Plaintiff's address

9 Subscribed and sworn to before me this day of
10, 19....

11
12 Justice of the peace
13 By:.....
14 Clerk, small claims
15 division

16 ORDER OF COURT/
17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):
19 You are hereby directed to appear and answer the within
20 and foregoing complaint at:

21
22
23 on..... at
24 Reset for at
25 Reset for at

1 Reset for at
 2 and to have with you, then and there, all books, papers, and
 3 witnesses needed by you to establish your defense to the
 4 claim; and you are further notified that in case you do not
 5 appear, judgment will be taken against you by default for
 6 the relief demanded in the complaint and for costs of this
 7 action, including costs of service of the complaint and
 8 order of the court/notice to defendant.

9 To the Sheriff, Constable, or Server of process of said
 10 county, greetings:

11 Make legal service and due return thereof on the
 12 defendant at

13 Dated this day of, 19....

14
 15 Justice of the peace
 16 By:.....
 17 Clerk of small claims
 18 division

19 NEW SECTION. Section 8. Hearing date. The date for
 20 the appearance of the defendant to be set forth in the order
 21 shall be determined by the justice of the peace or by his
 22 clerk ~~in accordance with rules adopted by the justice of the~~
 23 ~~peace~~ and may not be more than 40 or less than 10 days from
 24 the date of the order. Service of the order and a copy of
 25 the sworn complaint shall be made upon the defendant not

1 less than 5 days prior to the date set for his appearance by
 2 the order. If the order is not timely served, the plaintiff
 3 may have a new appearance date set by the justice of the
 4 peace or his clerk and a new order issued and delivered to
 5 the sheriff, constable, or other process server. If
 6 necessary, repeated orders may be issued at any time within
 7 1 year after the commencement of the action.

8 NEW SECTION. Section 9. Service on defendant. The
 9 original of the order and notice shall be shown to the
 10 defendant, and a copy of it along with a copy of the sworn
 11 complaint shall be served upon the defendant by the sheriff,
 12 constable, or other process server in the same manner
 13 provided by law for service of process in civil actions in
 14 justice's court. The provisions of law relating to sheriff's
 15 fees are applicable to this section.

16 NEW SECTION. Section 10. Return of service. The
 17 sheriff, constable, or other process server shall, after
 18 affecting service, return the original order to the justice
 19 of the peace or his clerk.

20 NEW SECTION. Section 11. Defendant's counterclaim.
 21 (1) The defendant may assert a counterclaim against the
 22 plaintiff arising out of the same transaction or occurrence
 23 that is the subject matter of the plaintiff's claim by
 24 appearing before the justice of the peace and executing a
 25 sworn small claims counterclaim in substantially the same

1 form as set forth in subsection (3). The defendant shall
 2 cause the counterclaim to be served on the plaintiff not
 3 less than 72 hours before the date set for the hearing.
 4 Service shall be made in the same manner in which service of
 5 the order of court/notice to defendant is made on the
 6 defendant. A defendant may not assert as a counterclaim any
 7 claim not arising out of the transaction or occurrence that
 8 is the subject matter of the plaintiff's claim.

9 (2) A counterclaim or setoff may not exceed \$750. If a
 10 counterclaim or setoff is asserted in excess of \$750, the
 11 jurisdiction of the small claims court over the plaintiff's
 12 claim is not defeated, but the court shall limit its
 13 determination of the counterclaim or setoff to the question
 14 of whether the plaintiff's claim is discharged thereby,
 15 leaving the defendant to prosecute the balance of his claim
 16 in an appropriate JUSTICE OR district court action.

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

19 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
 20 COUNTY, MONTANA
 21 BEFORE, JUSTICE OF THE PEACE
 22
 23
 24 Plaintiff
 25 vs. Counterclaim

1 Case No. ...

2

3 Defendant(s)

4

5 Comes now the defendant, being first duly sworn, upon
 6 oath, and alleges that defendant is entitled to counterclaim
 7 against the plaintiff in the plaintiff's pending action in
 8 the sum of \$....., for

9

10

11 which sum is now due, together with defendant's costs herein
 12 expended.

13 Dated this ... day of, 19...

14

15 Defendant

16

17 Defendant's address

18 Subscribed and sworn to before me this day of

19, 19...

20

21 Justice of the peace

22 By:

23 Clerk, small claims division

24 NEW SECTION. Section 12. No further pleadings. No

25 form of pleading other than the complaint, the order of the

1 court/notice to defendant, and the counterclaim of the
2 defendant, if there is one, is allowed.

3 NEW SECTION. Section 13. Fees. (1) The clerk of the
4 justice's court shall collect a fee of \$5:

5 (a) from the plaintiff upon the filing of the sworn
6 complaint; and

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

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

11 NEW SECTION. Section 14. Proceedings to be informal.
12 The hearing and disposition of small claims actions shall be
13 informal.

14 NEW SECTION. Section 15. Witnesses -- evidence --
15 subpoena power. The plaintiff and the defendant may offer
16 evidence in their behalf by witnesses appearing at such
17 hearing in the same manner as in other cases arising in
18 justice's court or by written evidence, and the judge may
19 direct the production of evidence as he considers
20 appropriate. The small claims court has the subpoena power
21 granted to justices' courts in all civil cases.

22 NEW SECTION. Section 16. Record of proceedings. All
23 civil actions tried in a small claims court shall be
24 recorded either electronically or stenographically.

25 NEW SECTION. Section 17. Removal to justice's court.

1 Any action commenced in small claims court may be removed to
2 justice's court by a defendant upon the filing of a notice
3 of removal with the justice within 30 days of the service of
4 the complaint and order. From the time of filing of the
5 notice of removal, the court to which the action is removed
6 has and exercises the same jurisdiction over it as though
7 the action had been originally commenced in such court.

8 NEW SECTION. Section 18. Procedure following notice
9 of removal -- EFFECT OF FAILURE TO REMOVE. (1) Upon the
10 filing of a notice of removal, the court shall give notice
11 of that fact to all other parties to the action. All rules
12 and statutes governing proceedings originally commenced in
13 justice's court, INCLUDING RULES AND STATUTES GOVERNING
14 APPEALS FROM JUSTICE'S COURT, are applicable to proceedings
15 removed to justice's court, except that a plaintiff is not
16 required to replead unless the court so orders and no fee
17 shall be required of a plaintiff for the filing of a
18 complaint if a fee for filing was paid in small claims
19 court.

20 (2) FAILURE TO REQUEST REMOVAL WITHIN THE TIME
21 PROVIDED IN [SECTION 17] CONSTITUTES A WAIVER BY THE
22 DEFENDANT OF HIS RIGHT TO A TRIAL BY JURY AND REPRESENTATION
23 BY AN ATTORNEY, AND THE JUSTICE SHALL INFORM THE DEFENDANT
24 OF SUCH FACT PRIOR TO COMMENCEMENT OF THE HEARING.

25 NEW SECTION. Section 19. Entry of judgment. Upon the

1 conclusion of the case tried to the court, the justice shall
2 make his findings and enter judgment.

3 NEW SECTION. Section 20. Costs. The prevailing
4 party in an action before the small claims court is entitled
5 to his costs.

6 NEW SECTION. Section 21. Appeal to district court --
7 commencement and scope of. (1) If either party is
8 dissatisfied with the judgment of the small claims court, he
9 may appeal to the district court of the county where the
10 judgment was rendered. An appeal shall be commenced by
11 giving written notice to the small claims court and serving
12 a copy of the notice of appeal on the adverse party within
13 10 days after entry of judgment.

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

16 NEW SECTION. Section 22. Record on appeal. (1) Within
17 30 days of the notice, the entire record of the small claims
18 court proceedings shall be transmitted to the district court
19 or the appeal shall be dismissed. It is the duty of the
20 appealing party to perfect the appeal.

21 (2) When notice of appeal is filed, the justice shall
22 forward the electronic recording or transcript of the
23 stenographic record of the proceedings to the district
24 court, together with the original papers filed, certified by
25 him to be accurate and complete. When the record is

1 transferred to the clerk of the district court, the justice
2 shall notify the parties in writing.

3 NEW SECTION. Section 23. Use of transcripts or tapes
4 by district court. The district court may hear the recording
5 of the proceedings of the justice's court, but in its
6 discretion it may have parts or all of the recordings
7 transcribed at the cost of the district court. If the
8 proceedings are stenographically taken, the notes will be
9 transcribed in full or in designated parts as stipulated by
10 the parties. The cost of such transcription shall be
11 computed as prescribed by law.

12 NEW SECTION. Section 24. Execution of judgment.
13 Proceedings to enforce or collect a judgment are governed by
14 the laws relating to execution upon justice's court
15 judgments.

16 NEW SECTION. SECTION 25. ATTORNEY'S FEES UPON REMOVAL
17 OR APPEAL. (1) IF A DEFENDANT REMOVES A MATTER TO JUSTICE'S
18 COURT UNDER THE PROVISIONS OF [SECTION 17] BUT DOES NOT
19 PREVAIL IN JUSTICE'S COURT, THE COURT MAY GRANT THE
20 PALINTIFF HIS REASONABLE ATTORNEY'S FEES, IF ANY.

21 (2) IF THE PARTIES ARE REPRESENTED BY COUNSEL ON
22 APPEAL, THE COURT MAY GRANT THE PREVAILING PARTY HIS
23 REASONABLE ATTORNEY'S FEES, IN ADDITION TO COSTS.

24 SECTION 26. SECTION 3-10-1001, MCA, IS AMENDED TO
25 READ:

1 "3-10-1001. Purpose. It is the purpose of this part
 2 and ~~chapter 35 of Title 25~~ [sections 1 through 24] to
 3 provide a speedy remedy for small claims and to promote a
 4 forum in which such claims may be heard and disposed of
 5 without the necessity of a formal trial."

6 Section 27. Section 25-31-112, MCA, is amended to
 7 read:

8 "25-31-112. Fees. The following is the schedule of
 9 fees which, except as provided in [section 18], shall be
 10 paid in every civil action in a justice's court:

11 (1) \$5 when complaint is filed, to be paid by the
 12 plaintiff;

13 (2) \$5 when the defendant appears, to be paid by the
 14 defendant;

15 (3) \$5 to be paid by the prevailing party when
 16 judgment is rendered. In cases where judgment is entered by
 17 default, no charge except the \$5 for the filing of the
 18 complaint shall be made for any services, including issuing
 19 and return of execution.

20 (4) \$5 for all services in an action where judgment is
 21 rendered by confession;

22 (5) \$5 for filing notice of appeal and transcript on
 23 appeal, justifying and approving undertaking on appeal, and
 24 transmitting papers to the district court with certificate."

25 Section 28. Repealer. Title 25, chapter 35, MCA, is

1 repealed.

2 Section 29. Effective date. This act is effective on
 3 passage and approval.

-End-

1 SENATE BILL NO. 485

2 INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPEN, REGAN,

3 OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN

4 INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
7 CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
8 FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
9 COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
10 POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
11 COURT; AMENDING SECTION ~~SECTION~~ SECTIONS 3-10-1001 AND 25-31-112,
12 MCA; REPEALING TITLE 25, CHAPTER 35, MCA; AND PROVIDING AN
13 IMMEDIATE EFFECTIVE DATE."

14

15 WHEREAS, in 1977 the Montana Legislature enacted the
16 provisions of Chapter 572, Laws of 1977, creating a small
17 claims court within justices' courts in Montana, which
18 provisions are codified as Title 25, chapter 35, MCA; and

19 WHEREAS, the small claims procedure makes no provision
20 for a jury trial, provides that one party may not be
21 represented by an attorney if the other party is not so
22 represented, and provides that an appeal from the small
23 claims court is to be tried on the record of the case and is
24 not to be tried as a trial de novo; and

25 WHEREAS, the Montana Supreme Court has held in the case

1 of North Central Services, Inc. v. Hafdahl, Mont.,
2 __P2d__, (Civil No. 80-228, decided March 11, 1981), that
3 the cumulative effect of these provisions is to deny the
4 right to a jury trial and the right to counsel at every
5 stage of the factual determination of a case in small claims
6 court; and

7 WHEREAS, the Supreme Court therefore held section
8 25-35-403(2), MCA, to be unconstitutional and also held the
9 remainder of Title 25, chapter 35, unconstitutional and void
10 for the reason that it could not be severed from section
11 25-35-403(2), MCA.

12 THEREFORE, it is the intent of the Legislature to cure
13 the unconstitutionality of Title 25, chapter 35, by
14 repealing and reenacting those provisions with such changes
15 as to cure the unconstitutionality of those provisions.

16

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

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

22 NEW SECTION. Section 2. Jurisdiction. The small
23 claims court has jurisdiction over all actions for the
24 recovery of money or specific personal property when the
25 amount claimed does not exceed \$750, exclusive of costs, and

1 the defendant can be served within the county where the
2 action is commenced.

3 NEW SECTION. Section 3. Removal from district court.

4 A district court judge may require any action filed in
5 district court to be removed to the small claims court if
6 the amount in controversy does not exceed \$500. The small
7 claims court shall hear any action so removed from the
8 district court.

9 NEW SECTION. Section 4. Venue. Proper venue for

10 actions commenced in the small claims court is the same as
11 that provided by law for civil actions commenced in
12 justice's court.

13 NEW SECTION. Section 5. Parties -- representation.

14 (1) Parties in the small claims court may be individuals,
15 partnerships, corporations, unions, associations, or any
16 other kind of organization or entity, except the state or
17 any agency thereof.

18 (2) A party may not be represented by an attorney
19 unless all parties are represented by an attorney in a small
20 claims court.

21 (3) An individual may represent himself in a small
22 claims court. A partnership may be represented by a partner
23 or one of its employees. A union may be represented by a
24 union member or union employee. A corporation may be
25 represented by one of its employees. An association may be

1 represented by one of its members or by an employee of the
2 association. Any other kind of organization or entity may be
3 represented by one of its members or employees.

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

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

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

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

16 NEW SECTION. Section 6. Commencement of action --

17 assistance to claimant. (1) A small claims action is
18 commenced whenever any person appears before a justice of
19 the peace and executes a sworn small claims complaint in
20 substantially the same form as set forth in [section 7].

21 (2) The justice shall assist any claimant in preparing
22 his complaint or instruct his clerk to provide such
23 assistance. The attorney general shall prepare a pamphlet
24 explaining in plain language the procedures for prosecuting
25 and defending a claim in small claims court and distribute a

1 sufficient--number--of copies of the pamphlet to each small
2 claims court. The justice or his clerk shall give the
3 plaintiff a copy when the plaintiff appears to execute his
4 complaint, and a copy must be attached to the order of the
5 court/notice to defendant.

6 NEW SECTION. Section 7. Form of complaint and order
7 of court/notice to defendant. The sworn complaint and order
8 of the court shall be made on a blank substantially in the
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
11 COURT OF COUNTY, MONTANA
12 BEFORE, JUSTICE OF THE PEACE

13
14
15 Plaintiff,

16 vs. Complaint

17 Case No.

18
19 Defendant(s)

20

21 Comes now the plaintiff, being first duly sworn, upon
22 oath, and complains and alleges that defendant is indebted
23 to plaintiff in the sum of \$....., for.....
24
25

1 which sum is now due, owing, and unpaid despite demands for
2 the payment thereof, together with plaintiff's costs herein
3 expended.

4 Dated this day of 19....

5
6 Plaintiff

7
8 Plaintiff's address

9 Subscribed and sworn to before me this day of
10 19....

11
12 Justice of the peace

13 By:.....
14 Clerk, small claims
15 division

16 ORDER OF COURT/
17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):
19 You are hereby directed to appear and answer the within
20 and foregoing complaint at:

21
22
23 on..... at
24 Reset for at
25 Reset for at

1 form as set forth in subsection (3). The defendant shall
 2 cause the counterclaim to be served on the plaintiff not
 3 less than 72 hours before the date set for the hearing.
 4 Service shall be made in the same manner in which service of
 5 the order of court/notice to defendant is made on the
 6 defendant. A defendant may not assert as a counterclaim any
 7 claim not arising out of the transaction or occurrence that
 8 is the subject matter of the plaintiff's claim.

9 (2) A counterclaim or setoff may not exceed \$750. If a
 10 counterclaim or setoff is asserted in excess of \$750, the
 11 jurisdiction of the small claims court over the plaintiff's
 12 claim is not defeated, but the court shall limit its
 13 determination of the counterclaim or setoff to the question
 14 of whether the plaintiff's claim is discharged thereby,
 15 leaving the defendant to prosecute the balance of his claim
 16 in an appropriate JUSTICE OR district court action.

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

19 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
 20 COUNTY, MONTANA
 21 BEFORE, JUSTICE OF THE PEACE
 22
 23
 24 Plaintiff
 25 vs. Counterclaim

1 Case No. ...
 2
 3 Defendant(s)
 4
 5 Comes now the defendant, being first duly sworn, upon
 6 oath, and alleges that defendant is entitled to counterclaim
 7 against the plaintiff in the plaintiff's pending action in
 8 the sum of \$..... for
 9
 10
 11 which sum is now due, together with defendant's costs herein
 12 expended.
 13 Dated this ... day of, 19...
 14
 15 Defendant
 16
 17 Defendant's address
 18 Subscribed and sworn to before me this day of
 19, 19...
 20
 21 Justice of the peace
 22 By:
 23 Clerk, small claims division
 24 NEW SECTION. Section 12. No further pleadings. No
 25 form of pleading other than the complaint, the order of the

1 court/notice to defendant, and the counterclaim of the
2 defendant, if there is one, is allowed.

3 NEW SECTION. Section 13. Fees. (1) The clerk of the
4 justice's court shall collect a fee of \$5:

5 (a) from the plaintiff upon the filing of the sworn
6 complaint; and

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

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

11 NEW SECTION. Section 14. Proceedings to be informal.
12 The hearing and disposition of small claims actions shall be
13 informal.

14 NEW SECTION. Section 15. Witnesses -- evidence --
15 subpoena power. The plaintiff and the defendant may offer
16 evidence in their behalf by witnesses appearing at such
17 hearing in the same manner as in other cases arising in
18 justice's court or by written evidence, and the judge may
19 direct the production of evidence as he considers
20 appropriate. The small claims court has the subpoena power
21 granted to justices' courts in all civil cases.

22 NEW SECTION. Section 16. Record of proceedings. All
23 civil actions tried in a small claims court shall be
24 recorded either electronically or stenographically.

25 NEW SECTION. Section 17. Removal to justice's court.

1 Any action commenced in small claims court may be removed to
2 justice's court by a defendant upon the filing of a notice
3 of removal with the justice within 30 days of the service of
4 the complaint and order. From the time of filing of the
5 notice of removal, the court to which the action is removed
6 has and exercises the same jurisdiction over it as though
7 the action had been originally commenced in such court.

8 NEW SECTION. Section 18. Procedure following notice
9 of removal -- EFFECT OF FAILURE TO REMOVE. (1) Upon the
10 filing of a notice of removal, the court shall give notice
11 of that fact to all other parties to the action. All rules
12 and statutes governing proceedings originally commenced in
13 justice's court, INCLUDING RULES AND STATUTES GOVERNING
14 APPEALS FROM JUSTICE'S COURT, are applicable to proceedings
15 removed to justice's court, except that a plaintiff is not
16 required to replead unless the court so orders and no fee
17 shall be required of a plaintiff for the filing of a
18 complaint if a fee for filing was paid in small claims
19 court.

20 (2) FAILURE TO REQUEST REMOVAL WITHIN THE TIME
21 PROVIDED IN [SECTION 17] CONSTITUTES A WAIVER BY THE
22 DEFENDANT OF HIS RIGHT TO A TRIAL BY JURY AND REPRESENTATION
23 BY AN ATTORNEY, AND THE JUSTICE SHALL INFORM THE DEFENDANT
24 OF SUCH FACT PRIOR TO COMMENCEMENT OF THE HEARING.

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2 make his findings and enter judgment.

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4 party in an action before the small claims court is entitled
5 to his costs.

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8 dissatisfied with the judgment of the small claims court, he
9 may appeal to the district court of the county where the
10 judgment was rendered. An appeal shall be commenced by
11 giving written notice to the small claims court and serving
12 a copy of the notice of appeal on the adverse party within
13 10 days after entry of judgment.

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15 court. The appeal shall be limited to questions of law.

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17 30 days of the notice, the entire record of the small claims
18 court proceedings shall be transmitted to the district court
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20 appealing party to perfect the appeal.

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22 forward the electronic recording or transcript of the
23 stenographic record of the proceedings to the district
24 court, together with the original papers filed, certified by
25 him to be accurate and complete. When the record is

1 transferred to the clerk of the district court, the justice
2 shall notify the parties in writing.

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4 by district court. The district court may hear the recording
5 of the proceedings of the justice's court, but in its
6 discretion it may have parts or all of the recordings
7 transcribed at the cost of the district court. If the
8 proceedings are stenographically taken, the notes will be
9 transcribed in full or in designated parts as stipulated by
10 the parties. The cost of such transcription shall be
11 computed as prescribed by law.

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13 Proceedings to enforce or collect a judgment are governed by
14 the laws relating to execution upon justice's court
15 judgments.

16 NEW SECTION. SECTION 25. ATTORNEY'S FEES UPON REMOVAL
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18 COURT UNDER THE PROVISIONS OF [SECTION 17] BUT DOES NOT
19 PREVAIL IN JUSTICE'S COURT, THE COURT MAY GRANT THE
20 PALINTIFF HIS REASONABLE ATTORNEY'S FEES, IF ANY.

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22 APPEAL, THE COURT MAY GRANT THE PREVAILING PARTY HIS
23 REASONABLE ATTORNEY'S FEES, IN ADDITION TO COSTS.

24 SECTION 26. SECTION 3-10-1001, MCA, IS AMENDED TO
25 READ:

1 "3-10-1001. Purpose. It is the purpose of this part
 2 and ~~chapter 35 of Title 25~~ [sections 1 through 24] to
 3 provide a speedy remedy for small claims and to promote a
 4 forum in which such claims may be heard and disposed of
 5 without the necessity of a formal trial."

6 Section 27. Section 25-31-112, MCA, is amended to
 7 read:

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 9 fees which, except as provided in [section 18], shall be
 10 paid in every civil action in a justice's court:

11 (1) \$5 when complaint is filed, to be paid by the
 12 plaintiff;

13 (2) \$5 when the defendant appears, to be paid by the
 14 defendant;

15 (3) \$5 to be paid by the prevailing party when
 16 judgment is rendered. In cases where judgment is entered by
 17 default, no charge except the \$5 for the filing of the
 18 complaint shall be made for any services, including issuing
 19 and return of execution.

20 (4) \$5 for all services in an action where judgment is
 21 rendered by confession;

22 (5) \$5 for filing notice of appeal and transcript on
 23 appeal, justifying and approving undertaking on appeal, and
 24 transmitting papers to the district court with certificate."

25 Section 28. Repealer. Title 25, chapter 35, MCA, is

1 repealed.

2 Section 29. Effective date. This act is effective on
 3 passage and approval.

-End-

1 SENATE BILL NO. 485

2 INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPEN, REGAN,

3 OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN

4 INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
7 CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
8 FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
9 COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
10 POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
11 COURT; AMENDING ~~SECTION~~ SECTIONS 3-10-1001, 3-10-1004, AND
12 25-31-112, MCA; REPEALING TITLE 25, CHAPTER 35, MCA; AND
13 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14
15 WHEREAS, in 1977 the Montana Legislature enacted the
16 provisions of Chapter 572, Laws of 1977, creating a small
17 claims court within justices' courts in Montana, which
18 provisions are codified as Title 25, chapter 35, MCA; and

19 WHEREAS, the small claims procedure makes no provision
20 for a jury trial, provides that one party may not be
21 represented by an attorney if the other party is not so
22 represented, and provides that an appeal from the small
23 claims court is to be tried on the record of the case and is
24 not to be tried as a trial de novo; and

25 WHEREAS, the Montana Supreme Court has held in the case

1 of North Central Services, Inc. v. Hafdahl, ___Mont.__,

2 __P2d__, (Civil No. 80-228, decided March 11, 1981), that

3 the cumulative effect of these provisions is to deny the
4 right to a jury trial and the right to counsel at every
5 stage of the factual determination of a case in small claims
6 court; and

7 WHEREAS, the Supreme Court therefore held section
8 25-35-403(2), MCA, to be unconstitutional and also held the
9 remainder of Title 25, chapter 35, unconstitutional and void
10 for the reason that it could not be severed from section
11 25-35-403(2), MCA.

12 THEREFORE, it is the intent of the Legislature to cure
13 the unconstitutionality of Title 25, chapter 35, by
14 repealing and reenacting those provisions with such changes
15 as to cure the unconstitutionality of those provisions.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

22 NEW SECTION. Section 2. Jurisdiction. The small
23 claims court has jurisdiction over all actions for the
24 recovery of money or specific personal property when the
25 amount claimed does not exceed \$750 \$1,500, exclusive of

1 costs, and the defendant can be served within the county
2 where the action is commenced.

3 NEW SECTION. Section 3. Removal from district court.
4 A district court judge may require any action filed in
5 district court to be removed to the small claims court if
6 the amount in controversy does not exceed \$500 \$1,500. The
7 small claims court shall hear any action so removed from the
8 district court.

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

13 NEW SECTION. Section 5. Parties -- representation.
14 (1) Parties in the small claims court may be individuals,
15 partnerships, corporations, unions, associations, or any
16 other kind of organization or entity, except the state or
17 any agency thereof.

18 (2) A party may not be represented by an attorney
19 unless all parties are represented by an attorney in a small
20 claims court.

21 (3) An individual may represent himself in a small
22 claims court. A partnership may be represented by a partner
23 or one of its employees. A union may be represented by a
24 union member or union employee. A corporation may be
25 represented by one of its employees. An association may be

1 represented by one of its members or by an employee of the
2 association. Any other kind of organization or entity may be
3 represented by one of its members or employees.

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

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

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

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

16 NEW SECTION. Section 6. Commencement of action --
17 assistance to claimant. (1) A small claims action is
18 commenced whenever any person appears before a justice of
19 the peace and executes a sworn small claims complaint in
20 substantially the same form as set forth in [section 7].

21 (2) The justice shall assist any claimant in preparing
22 his complaint or instruct his clerk to provide such
23 assistance. The attorney general shall prepare a pamphlet
24 explaining in plain language the procedures for prosecuting
25 and defending a claim in small claims court and distribute a

1 sufficient--number--of copies of the pamphlet to each small
2 claims court. The justice or his clerk shall give the
3 plaintiff a copy when the plaintiff appears to execute his
4 complaint, and a copy must be attached to the order of the
5 court/notice to defendant.

6 NEW SECTION. Section 7. Form of complaint and order
7 of court/notice to defendant. The sworn complaint and order
8 of the court shall be made on a blank substantially in the
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
11 COURT OF COUNTY, MONTANA
12 BEFORE, JUSTICE OF THE PEACE

13
14

15 Plaintiff,

16 vs. Complaint

17 Case No.

18

19 Defendant(s)

20

21 Comes now the plaintiff, being first duly sworn, upon
22 oath, and complains and alleges that defendant is indebted
23 to plaintiff in the sum of \$..... for.....
24
25

1 which sum is now due, owing, and unpaid despite demands for
2 the payment thereof, together with plaintiff's costs herein
3 expended.

4 Dated this day of, 19....

5

6 Plaintiff

7

8 Plaintiff's address

9 Subscribed and sworn to before me this day of

10 19....

11

12 Justice of the peace

13 By:.....

14 Clerk, small claims

15 division

16 ORDER OF COURT/

17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within
20 and foregoing complaint at:

21

22

23 on..... at

24 Reset for at

25 Reset for at

1 NEW SECTION. Section 11. Defendant's counterclaim.

2 (1) The defendant may assert a counterclaim against the
3 plaintiff arising out of the same transaction or occurrence
4 that is the subject matter of the plaintiff's claim by
5 appearing before the justice of the peace and executing a
6 sworn small claims counterclaim in substantially the same
7 form as set forth in subsection (3). The defendant shall
8 cause the counterclaim to be served on the plaintiff not
9 less than 72 hours before the date set for the hearing.
10 Service shall be made in the same manner in which service of
11 the order of court/notice to defendant is made on the
12 defendant. A defendant may not assert as a counterclaim any
13 claim not arising out of the transaction or occurrence that
14 is the subject matter of the plaintiff's claim.

15 (2) A counterclaim or setoff may not exceed \$750
16 \$1,500. If a counterclaim or setoff is asserted in excess of
17 \$750 \$1,500, the jurisdiction of the small claims court over
18 the plaintiff's claim is not defeated, but the court shall
19 limit its determination of the counterclaim or setoff to the
20 question of whether the plaintiff's claim is discharged
21 thereby, leaving the defendant to prosecute the balance of
22 his claim in an appropriate JUSTICE OR district court
23 action.

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

1 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
2 COUNTY, MONTANA
3 BEFORE, JUSTICE OF THE PEACE
4
5
6 Plaintiff
7 vs. Counterclaim
8 Case No. ...
9
10 Defendant(s)
11
12 Comes now the defendant, being first duly sworn, upon
13 oath, and alleges that defendant is entitled to counterclaim
14 against the plaintiff in the plaintiff's pending action in
15 the sum of \$..... for
16
17
18 which sum is now due, together with defendant's costs herein
19 expended.
20 Dated this ... day of, 19...
21
22 Defendant
23
24 Defendant's address
25 Subscribed and sworn to before me this day of

1 19...

2

3 Justice of the peace

4 By:

5 Clerk, small claims division

6 NEW SECTION. Section 12. No further pleadings. No
7 form of pleading other than the complaint, the order of the
8 court/notice to defendant, and the counterclaim of the
9 defendant, if there is one, is allowed.

10 NEW SECTION. Section 13. Fees. (1) The clerk of the
11 justice's court shall collect a fee of \$5:

12 (a) from the plaintiff upon the filing of the sworn
13 complaint; and

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

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

18 NEW SECTION. Section 14. Proceedings to be informal.
19 The hearing and disposition of small claims actions shall be
20 informal.

21 NEW SECTION. Section 15. Witnesses -- evidence --
22 subpoena power. The plaintiff and the defendant may offer
23 evidence in their behalf by witnesses appearing at such
24 hearing in the same manner as in other cases arising in
25 justice's court or by written evidence, and the judge may

1 direct the production of evidence as he considers
2 appropriate. The small claims court has the subpoena power
3 granted to justices' courts in all civil cases.

4 NEW SECTION. Section 16. Record of proceedings. All
5 civil actions tried in a small claims court shall be
6 recorded either electronically or stenographically.

7 NEW SECTION. Section 17. Removal to justice's court.
8 Any action commenced in small claims court may be removed to
9 justice's court by a defendant upon the filing of a notice
10 of removal with the justice within ~~30~~ 40 days of the service
11 of the complaint and order. From the time of filing of the
12 notice of removal, the court to which the action is removed
13 has and exercises the same jurisdiction over it as though
14 the action had been originally commenced in such court.

15 NEW SECTION. Section 18. Procedure following notice
16 of removal -- EFFECT OF FAILURE TO REMOVE. (1) Upon the
17 filing of a notice of removal, the court shall give notice
18 of that fact to all other parties to the action. All rules
19 and statutes governing proceedings originally commenced in
20 justice's court, INCLUDING RULES AND STATUTES GOVERNING
21 APPEALS FROM JUSTICE'S COURT, are applicable to proceedings
22 removed to justice's court, except that a plaintiff is not
23 required to replead unless the court so orders and no fee
24 shall be required of a plaintiff for the filing of a
25 complaint if a fee for filing was paid in small claims

1 court.

2 (2) FAILURE TO REQUEST REMOVAL WITHIN THE TIME
 3 PROVIDED IN [SECTION 17] CONSTITUTES A WAIVER BY THE
 4 DEFENDANT OF HIS RIGHT TO A TRIAL BY JURY AND REPRESENTATION
 5 BY AN ATTORNEY, AND THE JUSTICE SHALL INFORM THE DEFENDANT
 6 OF SUCH FACT PRIOR TO COMMENCEMENT OF THE HEARING.

7 NEW SECTION. Section 19. Entry of judgment. Upon the
 8 conclusion of the case tried to the court, the justice shall
 9 make his findings and enter judgment.

10 NEW SECTION. Section 20. Costs. The prevailing
 11 party in an action before the small claims court is entitled
 12 to his costs.

13 NEW SECTION. Section 21. Appeal to district court --
 14 commencement and scope of. (1) If either party is
 15 dissatisfied with the judgment of the small claims court, he
 16 may appeal to the district court of the county where the
 17 judgment was rendered. An appeal shall be commenced by
 18 giving written notice to the small claims court and serving
 19 a copy of the notice of appeal on the adverse party within
 20 10 days after entry of judgment.

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

23 NEW SECTION. Section 22. Record on appeal. (1) Within
 24 30 days of the notice, the entire record of the small claims
 25 court proceedings shall be transmitted to the district court

1 or the appeal shall be dismissed. It is the duty of the
 2 appealing party to perfect the appeal.

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

10 NEW SECTION. Section 23. Use of transcripts or tapes
 11 by district court. The district court may hear the recording
 12 of the proceedings of the justice's court, but in its
 13 discretion it may have parts or all of the recordings
 14 transcribed at the cost of the district court. If the
 15 proceedings are stenographically taken, the notes will be
 16 transcribed in full or in designated parts as stipulated by
 17 the parties. The cost of such transcription shall be
 18 computed as prescribed by law.

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

23 NEW SECTION. SECTION 25. ATTORNEY'S FEES UPON REMOVAL
 24 OR APPEAL. (1) IF A DEFENDANT REMOVES A MATTER TO JUSTICE'S
 25 COURT UNDER THE PROVISIONS OF [SECTION 17] BUT DOES NOT

1 PREVAIL IN JUSTICE'S COURT, THE COURT MAY GRANT THE
2 PALINTIFF HIS REASONABLE ATTORNEY'S FEES, IF ANY.

3 (2) IF THE PARTIES ARE REPRESENTED BY COUNSEL ON
4 APPEAL, THE COURT MAY GRANT THE PREVAILING PARTY HIS
5 REASONABLE ATTORNEY'S FEES, IN ADDITION TO COSTS.

6 SECTION 26. SECTION 3-10-1001, MCA, IS AMENDED TO
7 READ:

8 "3-10-1001. Purpose. It is the purpose of this part
9 and ~~chapter 35 of title 25~~ [sections 1 through 24] to
10 provide a speedy remedy for small claims and to promote a
11 forum in which such claims may be heard and disposed of
12 without the necessity of a formal trial."

13 SECTION 27. SECTION 3-10-1004, MCA, IS AMENDED TO
14 READ:

15 "3-10-1004. Jurisdiction -- removal from district
16 court. (1) The small claims court has jurisdiction over all
17 actions for the recovery of money or specific personal
18 property when the amount claimed does not exceed \$750
19 \$1,500, exclusive of costs, and the defendant can be served
20 within the county where the action is commenced.

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

1 Section 28. Section 25-31-112, MCA, is amended to
2 read:

3 "25-31-112. Fees. The following is the schedule of
4 fees which, except as provided in [section 18], shall be
5 paid in every civil action in a justice's court:

6 (1) \$5 when complaint is filed, to be paid by the
7 plaintiff;

8 (2) \$5 when the defendant appears, to be paid by the
9 defendant;

10 (3) \$5 to be paid by the prevailing party when
11 judgment is rendered. In cases where judgment is entered by
12 default, no charge except the \$5 for the filing of the
13 complaint shall be made for any services, including issuing
14 and return of execution.

15 (4) \$5 for all services in an action where judgment is
16 rendered by confession;

17 (5) \$5 for filing notice of appeal and transcript on
18 appeal, justifying and approving undertaking on appeal, and
19 transmitting papers to the district court with certificate."

20 Section 29. Repealer. Title 25, chapter 35, MCA, is
21 repealed.

22 Section 30. Effective date. This act is effective on
23 passage and approval.

-End-

SENATE BILL NO. 485

INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPEN, REGAN,
OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN
INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
COURT; AMENDING SECTION ~~SECTION~~ SECTIONS 3-10-1001, 3-10-1004, AND
25-31-112, MCA; REPEALING TITLE 25, CHAPTER 35, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in 1977 the Montana Legislature enacted the
provisions of Chapter 572, Laws of 1977, creating a small
claims court within justices' courts in Montana, which
provisions are codified as Title 25, chapter 35, MCA; and

WHEREAS, the small claims procedure makes no provision
for a jury trial, provides that one party may not be
represented by an attorney if the other party is not so
represented, and provides that an appeal from the small
claims court is to be tried on the record of the case and is
not to be tried as a trial de novo; and

WHEREAS, the Montana Supreme Court has held in the case

of North Central Services, Inc. v. Hafdah, Mont.,
P2d, (Civil No. 80-228, decided March 11, 1981), that
the cumulative effect of these provisions is to deny the
right to a jury trial and the right to counsel at every
stage of the factual determination of a case in small claims
court; and

WHEREAS, the Supreme Court therefore held section
25-35-403(2), MCA, to be unconstitutional and also held the
remainder of Title 25, chapter 35, unconstitutional and void
for the reason that it could not be severed from section
25-35-403(2), MCA.

THEREFORE, it is the intent of the Legislature to cure
the unconstitutionality of Title 25, chapter 35, by
repealing and reenacting those provisions with such changes
as to cure the unconstitutionality of those provisions.

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

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

NEW SECTION. Section 2. Jurisdiction. The small
claims court has jurisdiction over all actions for the
recovery of money or specific personal property when the
amount claimed does not exceed \$750 \$1,500, exclusive of

1 costs, and the defendant can be served within the county
2 where the action is commenced.

3 NEW SECTION. Section 3. Removal from district court.
4 A district court judge may require any action filed in
5 district court to be removed to the small claims court if
6 the amount in controversy does not exceed \$500 \$1,500. The
7 small claims court shall hear any action so removed from the
8 district court.

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

13 NEW SECTION. Section 5. Parties -- representation.
14 (1) Parties in the small claims court may be individuals,
15 partnerships, corporations, unions, associations, or any
16 other kind of organization or entity, except the state or
17 any agency thereof.

18 (2) A party may not be represented by an attorney
19 unless all parties are represented by an attorney in a small
20 claims court.

21 (3) An individual may represent himself in a small
22 claims court. A partnership may be represented by a partner
23 or one of its employees. A union may be represented by a
24 union member or union employee. A corporation may be
25 represented by one of its employees. An association may be

1 represented by one of its members or by an employee of the
2 association. Any other kind of organization or entity may be
3 represented by one of its members or employees.

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

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

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

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

16 NEW SECTION. Section 6. Commencement of action --
17 assistance to claimant. (1) A small claims action is
18 commenced whenever any person appears before a justice of
19 the peace and executes a sworn small claims complaint in
20 substantially the same form as set forth in [section 7].

21 (2) The justice shall assist any claimant in preparing
22 his complaint or instruct his clerk to provide such
23 assistance. The attorney general shall prepare a pamphlet
24 explaining in plain language the procedures for prosecuting
25 and defending a claim in small claims court and distribute e

1 sufficient--number--of copies of the pamphlet to each small
2 claims court. The justice or his clerk shall give the
3 plaintiff a copy when the plaintiff appears to execute his
4 complaint, and a copy must be attached to the order of the
5 court/notice to defendant.

6 NEW SECTION. Section 7. Form of complaint and order
7 of court/notice to defendant. The sworn complaint and order
8 of the court shall be made on a blank substantially in the
9 following form:

10 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
11 COURT OF COUNTY, MONTANA
12 BEFORE, JUSTICE OF THE PEACE

13
14

15 Plaintiff,

16 vs. Complaint

17 Case No.

18

19 Defendant(s)

20

21 Comes now the plaintiff, being first duly sworn, upon
22 oath, and complains and alleges that defendant is indebted
23 to plaintiff in the sum of \$..... for.....

24

25

1 which sum is now due, owing, and unpaid despite demands for
2 the payment thereof, together with plaintiff's costs herein
3 expended.

4 Dated this day of, 19....

5

6 Plaintiff

7

8 Plaintiff's address

9 Subscribed and sworn to before me this day of

10, 19....

11

12 Justice of the peace

13 By:.....

14 Clerk, small claims

15 division

16 ORDER OF COURT/

17 NOTICE TO DEFENDANT

18 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

19 You are hereby directed to appear and answer the within
20 and foregoing complaint at:

21

22

23 on..... at

24 Reset for at

25 Reset for at

1 Reset for at
 2 and to have with you, then and there, all books, papers, and
 3 witnesses needed by you to establish your defense to the
 4 claim; and you are further notified that in case you do not
 5 appear, judgment will be taken against you by default for
 6 the relief demanded in the complaint and for costs of this
 7 action, including costs of service of the complaint and
 8 order of the court/notice to defendant.

9 YOU ARE HEREBY FURTHER NOTIFIED THAT, WITHIN 40 DAYS OF
 10 SERVICE UPON YOU OF THIS COMPLAINT AND ORDER, YOU MAY REMOVE
 11 THIS ACTION FROM THE SMALL CLAIMS COURT TO JUSTICE'S COURT,
 12 AND THAT YOUR FAILURE TO REMOVE SHALL CONSTITUTE A WAIVER OF
 13 YOUR RIGHTS TO TRIAL BY JURY AND TO REPRESENTATION BY
 14 COUNSEL.

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

17 Make legal service and due return thereof on the
 18 defendant at

19 Dated this day of, 19....

20
 21 Justice of the peace
 22 By:.....
 23 Clerk of small claims
 24 division

25 NEW SECTION. Section 8. Hearing date. The date for

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

14 NEW SECTION. Section 9. Service on defendant. The
 15 original of the order and notice shall be shown to the
 16 defendant, and a copy of it along with a copy of the sworn
 17 complaint shall be served upon the defendant by the sheriff,
 18 constable, or other process server in the same manner
 19 provided by law for service of process in civil actions in
 20 justice's court. The provisions of law relating to sheriff's
 21 fees are applicable to this section.

22 NEW SECTION. Section 10. Return of service. The
 23 sheriff, constable, or other process server shall, after
 24 affecting EFFECTING service, return the original order to
 25 the justice of the peace or his clerk.

1 19...

2

3 Justice of the peace

4 By:

5 Clerk, small claims division

6 NEW SECTION. Section 12. No further pleadings. No
7 form of pleading other than the complaint, the order of the
8 court/notice to defendant, and the counterclaim of the
9 defendant, if there is one, is allowed.

10 NEW SECTION. Section 13. Fees. (1) The clerk of the
11 justice's court shall collect a fee of \$5:

12 (a) from the plaintiff upon the filing of the sworn
13 complaint; and

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

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

18 NEW SECTION. Section 14. Proceedings to be informal.
19 The hearing and disposition of small claims actions shall be
20 informal.

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6 recorded either electronically or stenographically.

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8 Any action commenced in small claims court may be removed to
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10 of removal with the justice within 30 40 days of the service
11 of the complaint and order. From the time of filing of the
12 notice of removal, the court to which the action is removed
13 has and exercises the same jurisdiction over it as though
14 the action had been originally commenced in such court.

15 NEW SECTION. Section 18. Procedure following notice
16 of removal -- EFFECT OF FAILURE TO REMOVE. (1) Upon the
17 filing of a notice of removal, the court shall give notice
18 of that fact to all other parties to the action. All rules
19 and statutes governing proceedings originally commenced in
20 justice's court, INCLUDING RULES AND STATUTES GOVERNING
21 APPEALS FROM JUSTICE'S COURT, are applicable to proceedings
22 removed to justice's court, except that a plaintiff is not
23 required to replead unless the court so orders and no fee
24 shall be required of a plaintiff for the filing of a
25 complaint if a fee for filing was paid in small claims

1 court.

2 (2) FAILURE TO REQUEST REMOVAL WITHIN THE TIME
3 PROVIDED IN [SECTION 17] CONSTITUTES A WAIVER BY THE
4 DEFENDANT OF HIS RIGHT TO A TRIAL BY JURY AND REPRESENTATION
5 BY AN ATTORNEY, AND THE JUSTICE SHALL INFORM THE DEFENDANT
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9 make his findings and enter judgment.

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11 party in an action before the small claims court is entitled
12 to his costs.

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14 commencement and scope of. (1) If either party is
15 dissatisfied with the judgment of the small claims court, he
16 may appeal to the district court of the county where the
17 judgment was rendered. An appeal shall be commenced by
18 giving written notice to the small claims court and serving
19 a copy of the notice of appeal on the adverse party within
20 10 days after entry of judgment.

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

23 NEW SECTION. Section 22. Record on appeal. (1) Within
24 30 days of the notice, the entire record of the small claims
25 court proceedings shall be transmitted to the district court

1 or the appeal shall be dismissed. It is the duty of the
2 appealing party to perfect the appeal.

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4 forward the electronic recording or transcript of the
5 stenographic record of the proceedings to the district
6 court, together with the original papers filed, certified by
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20 Proceedings to enforce or collect a judgment are governed by
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24 OR APPEAL. (1) IF A DEFENDANT REMOVES A MATTER TO JUSTICE'S
25 COURT UNDER THE PROVISIONS OF [SECTION 17] BUT DOES NOT

1 PREVAIL IN JUSTICE'S COURT, THE COURT MAY GRANT THE
2 PLAINTIFF HIS REASONABLE ATTORNEY'S FEES, IF ANY.

3 (2) IF THE PARTIES ARE REPRESENTED BY COUNSEL ON
4 APPEAL, THE COURT MAY GRANT THE PREVAILING PARTY HIS
5 REASONABLE ATTORNEY'S FEES, IN ADDITION TO COSTS.

6 SECTION 26. SECTION 3-10-1001, MCA, IS AMENDED TO
7 READ:

8 "3-10-1001. Purpose. It is the purpose of this part
9 and ~~chapter--35--of--title--25~~ [sections 1 through 24] to
10 provide a speedy remedy for small claims and to promote a
11 forum in which such claims may be heard and disposed of
12 without the necessity of a formal trial."

13 SECTION 27. SECTION 3-10-1004, MCA, IS AMENDED TO
14 READ:

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16 court. (1) The small claims court has jurisdiction over all
17 actions for the recovery of money or specific personal
18 property when the amount claimed does not exceed \$750
19 \$1,500, exclusive of costs, and the defendant can be served
20 within the county where the action is commenced.

21 (2) A district court judge may require any action
22 filed in district court to be removed to the small claims
23 court if the amount in controversy does not exceed \$500
24 \$1,500. The small claims court shall hear any action so
25 removed from the district court."

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7 plaintiff;

8 (2) \$5 when the defendant appears, to be paid by the
9 defendant;

10 (3) \$5 to be paid by the prevailing party when
11 judgment is rendered. In cases where judgment is entered by
12 default, no charge except the \$5 for the filing of the
13 complaint shall be made for any services, including issuing
14 and return of execution.

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16 rendered by confession;

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18 appeal, justifying and approving undertaking on appeal, and
19 transmitting papers to the district court with certificate."

20 Section 29. Repealer. Title 25, chapter 35, MCA, is
21 repealed.

22 Section 30. Effective date. This act is effective on
23 passage and approval.

-End-

April 22, 1981

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 485

(Report No. 1, April 22, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 485, met April 22, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated April 13, 1981; and

House Committee of the Whole Amendments to the third reading copy, dated April 17, 1981, and recommend as follows:

That the Senate accede to Standing Committee amendment nos. 1 through 3, dated April 13, 1981;

That the Senate accede to Committee of the Whole amendment nos. 1 through 6, dated April 17, 1981;

That Senate Bill No. 485 be further amended as specified in CLERICAL INSTRUCTION no. 1;

That the reference copy of Senate Bill No. 485 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report on Senate Bill No. 485 be adopted.

CLERICAL INSTRUCTION:

- 1. Page 15, line 23.
- Following: "exceed"
- Strike: "\$500"
- Insert: "\$1,500"

FOR THE SENATE:

Joseph P. O'Hara
O'Hara, Chairman

Harry K. Berg
Berg

B. Brown

FOR THE HOUSE:

R. L. Anderson
Anderson, Chairman

Glenn R. Conn
Conn

Michael H. Keedy
Keedy

Respectfully report as follows: That.....SENATE.....Bill No.485.....

BE AMENDED AS FOLLOWS:

1. Page 2, line 25.

Following: "exceed"

Strike: "\$750"

Insert: "\$1500"

2. Page 9, line 9.

Following: "exceed"

Strike: "\$750"

Insert: "\$1500"

3. Page 9, line 10.

Following: "of"

Strike: "\$750"

Insert: "\$1500"