

Senate Bill 486

In The Senate

March 19, 1981	By motion and consent Senate Bill 486 allowed to be introduced and considered this session.
March 23, 1981	Introduced and referred to Committee on Judiciary.
April 23, 1981	Died in Committee.

Bob Bow *Mike Richardson*
 BILL NO. 486
 INTRODUCED BY *Mike Richardson*
 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, AND APPEALS TO DISTRICT COURT; 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 provisions 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 rights 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 defects in section 25-35-403, MCA.

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

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

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

Section 3. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in

1 controversy does not exceed \$500. The small claims court
2 shall hear any action so removed from the district court.

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

6 Section 5. Parties -- representation. (1) Parties in
7 the small claims court may be individuals, partnerships,
8 corporations, unions, associations, or any other kind of
9 organization or entity, except the state or any agency
10 thereof.

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

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

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

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

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

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

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

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

24 Section 7. Form of complaint and order of court/notice
25 to defendant. The sworn complaint and order of the court

1 shall be made on a blank substantially in the following
2 form:

3 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
4 COURT OF COUNTY, MONTANA
5 BEFORE JUSTICE OF THE PEACE

6
7

Plaintiff.

Defendant(s)

14 Comes now the plaintiff, being first duly sworn, upon
15 oath, and complains and alleges that defendant is indebted
16 to plaintiff in the sum of \$....., for.....
17
18
19 which sum is now due, owing, and unpaid despite demands for
20 the payment thereof, together with plaintiff's costs herein
21 expended.

22 Dated this day of 19....

23

24 Plaintiff

25

1 Plaintiff's address
2 Subscribed and sworn to before me this day of
3 19....
4
5 Justice of the peace
6 By:.....
7 Clerk, small claims
8 division

9 ORDER OF COURT/
10 NOTICE TO DEFENDANT
11 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):
12 You are hereby directed to appear and answer the within
13 and foregoing complaint at:
14 * * * * *
15 * * * * *
16 one * * * * * at * * * * *
17 Reset for * * * * * at * * * * *
18 Reset for * * * * * at * * * * *
19 Reset for * * * * * at * * * * *
20 and to have with you, then and there, all books, papers, and
21 witnesses needed by you to establish your defense to the
22 claim; and you are further notified that in case you do not
23 appear, judgment will be taken against you by default for
24 the relief demanded in the complaint and for costs of this
25 action, including costs of service of the complaint and

1 order of the court/notice to defendant.
 2 To the Sheriff, Constable, or Server of process of said
 3 county, greetings:
 4 Make legal service and due return thereof on the
 5 defendant at
 6 Dated this day of, 19....
 7
 8 Justice of the peace
 9 By:
 10 Clerk of small claims
 11 division
 12 Section 8. Hearing date. The date for the appearance
 13 of the defendant to be set forth in the order shall be
 14 determined by the justice of the peace or by his clerk in
 15 accordance with rules adopted by the justice of the peace
 16 and may not be more than 40 or less than 10 days from the
 17 date of the order. Service of the order and a copy of the
 18 sworn complaint shall be made upon the defendant not less
 19 than 5 days prior to the date set for his appearance by the
 20 order. If the order is not timely served, the plaintiff may
 21 have a new appearance date set by the justice of the peace
 22 or his clerk and a new order issued and delivered to the
 23 sheriff, constable, or other process server. If necessary,
 24 repeated orders may be issued at any time within 1 year
 25 after the commencement of the action.

1 Section 9. Service on defendant. The original of the
 2 order and notice shall be shown to the defendant, and a copy
 3 of it along with a copy of the sworn complaint shall be
 4 served upon the defendant by the sheriff, constable, or
 5 other process server in the same manner provided by law for
 6 service of process in civil actions in justice's court. The
 7 provisions of law relating to sheriff's fees are applicable
 8 to this section.
 9 Section 10. Return of service. The sheriff, constable,
 10 or other process server shall, after affecting service,
 11 return the original order to the justice of the peace or his
 12 clerk.
 13 Section 11. Defendant's counterclaim. (1) The
 14 defendant may assert a counterclaim against the plaintiff
 15 arising out of the same transaction or occurrence that is
 16 the subject matter of the plaintiff's claim by appearing
 17 before the justice of the peace and executing a sworn small
 18 claims counterclaim in substantially the same form as set
 19 forth in subsection (3). The defendant shall cause the
 20 counterclaim to be served on the plaintiff not less than 72
 21 hours before the date set for the hearing. Service shall be
 22 made in the same manner in which service of the order of
 23 court/notice to defendant is made on the defendant. A
 24 defendant may not assert as a counterclaim any claim not
 25 arising out of the transaction or occurrence that is the

1 subject matter of the plaintiff's claim.

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

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

12 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF

13 COUNTY, MONTANA

14 BEFORE JUSTICE OF THE PEACE

15

16

17 Plaintiff

18 vs. Counterclaim

19 Case No. ...

20

21 Defendant(s)

22

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

1 the sum of \$....., for

2

3

4 which sum is now due, together with defendant's costs herein
 5 expended.

6 Dated this ... day of, 19...
 7

8 Defendant

9

10 Defendant's address

11 Subscribed and sworn to before me this day of
 12 19...
 13

14 Justice of the peace

15 By:

16 Clerk, small claims division

17 Section 12. No further pleadings. No form of pleading
 18 other than the complaint, the order of the court/notice to
 19 defendant, and the counterclaim of the defendant, if there
 20 is one, is allowed.

21 Section 13. Fees. (1) The clerk of the justice's court
 22 shall collect a fee of \$5:

23 (a) from the plaintiff upon the filing of the sworn
 24 complaint; and

25 (b) from the defendant upon his appearance and

1 contesting of the complaint or execution of a counterclaim.
2 (2) The laws relating to paupers' affidavits apply to
3 actions before the small claims court.

4 Section 14. Proceedings to be informal. The hearing
5 and disposition of small claims actions shall be informal.

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

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

17 Section 17. Costs. The prevailing party in an action
18 before the small claims court is entitled to his costs.

19 Section 18. Appeal to district court -- commencement
20 and scope of. (1) If either party is dissatisfied with the
21 judgment of the small claims court, he may appeal to the
22 district court of the county where the judgment was
23 rendered. An appeal shall be a trial de novo and shall be
24 taken in the same fashion as appeals to district court from
25 justices' courts under the provisions of Title 25, chapter

1 33.
2 (2) If the parties are represented by counsel on
3 appeal, the court may grant the prevailing party his
4 reasonable attorney's fees, in addition to costs.

5 Section 19. Execution of judgment. Proceedings to
6 enforce or collect a judgment are governed by the laws
7 relating to execution upon justice's court judgments.

8 Section 20. Repealer. Title 25, chapter 35, MCA, is
9 repealed.

10 Section 21. Effective date. This act is effective on
11 passage and approval.

-End-