

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.

1 *Bob Bowd* *Mike Anderson*
 2 *Marquell Smith* BILL NO. *486*
 3 INTRODUCED BY *Borg, Holligan, J. Allen, Crippen*
 4 INTRODUCED BY REQUEST OF THE *Justice* SENATE JUDICIARY COMMITTEE

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

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

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

21 WHEREAS, the Montana Supreme Court has held in the case
 22 of North Central Services, Inc. v. Hafdah, Mont.,
 23 __P2d__, (Civil No. 80-228, decided March 11, 1981), that
 24 the cumulative effect of these provisions is to deny the
 25 rights to a jury trial and the right to counsel at every

1 stage of the factual determination of a case in small claims
 2 court; and

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

8 THEREFORE, it is the intent of the Legislature to cure
 9 the unconstitutionality of Title 25, chapter 35, by
 10 repealing and reenacting those provisions with such changes
 11 as to cure the defects in section 25-35-403, MCA.

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

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

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

23 Section 3. Removal from district court. A district
 24 court judge may require any action filed in district court
 25 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
8 Plaintiff,

9 vs. Complaint

10 Case No.

11
12 Defendant(s)

13

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 on..... 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

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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-