

HOUSE BILL NO. 507
INTRODUCED BY HANNAH, FAGG

IN THE HOUSE

| | |
|-------------------|---|
| January 26, 1983 | Introduced and referred to Committee on Judiciary. |
| February 9, 1983 | Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks. |
| February 11, 1983 | Second reading, do pass. |
| February 12, 1983 | Considered correctly engrossed. |
| February 14, 1983 | Third reading, passed. Transmitted to Senate. |

IN THE SENATE

| | |
|-------------------|---|
| February 15, 1983 | Introduced and referred to Committee on Judiciary. |
| March 11, 1983 | Committee recommend bill be concurrent in as amended. Report adopted. |
| March 15, 1983 | Second reading, concurred in. |
| March 17, 1983 | Third reading, concurred in. Ayes, 48; Noes, 0. |

IN THE HOUSE

March 17, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 507
 2 INTRODUCED BY Harold - FAGE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
 5 RELATING TO THE OFFICE HOURS AND FEES OF JUSTICES' COURTS
 6 AND TO THE COMMENCEMENT OF ACTIONS IN AND REMOVAL OF ACTIONS
 7 FROM JUSTICES' COURTS; AMENDING SECTIONS 3-10-208,
 8 25-31-112, 25-35-601, AND 25-35-605, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 3-10-208, MCA, is amended to read:
 12 "3-10-208. Office hours. In the resolution providing
 13 for the salary, the county commissioners shall designate the
 14 office hours for each ~~justice~~ justice's court. Office hours
 15 shall be commensurate with the salary provided."
 16 Section 2. Section 25-31-112, MCA, is amended to read:
 17 "25-31-112. Fees. The following is the schedule of
 18 fees which, except as provided in 25-35-605, shall be paid
 19 in every civil action in a justice's court:
 20 (1) \$5 \$10 when complaint is filed, to be paid by the
 21 plaintiff;
 22 (2) \$5 \$10 when the defendant appears, to be paid by
 23 the defendant;
 24 (3) \$5 \$10 to be paid by the prevailing party when
 25 judgment is rendered. In cases where judgment is entered by

1 default, no charge except the \$5 for the filing of the
 2 complaint shall be made for any services, including issuing
 3 and return of execution.
 4 (4) \$5 \$10 for all services in an action where
 5 judgment is rendered by confession;
 6 (5) \$5 \$10 for filing notice of appeal and transcript
 7 on appeal, justifying and approving undertaking on appeal,
 8 and transmitting papers to the district court with
 9 certificate;
 10 ~~(6) \$1 for filing each writ of execution or~~
 11 ~~attachment."~~
 12 Section 3. Section 25-35-601, MCA, is amended to read:
 13 "25-35-601. Commencement of action -- assistance to
 14 claimant. (1) A small claims action is commenced whenever
 15 any person appears before a justice of the peace or his
 16 clerk and executes a sworn small claims complaint in
 17 substantially the same form as set forth in 25-35-602.
 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
 23 copies of the pamphlet to each small claims court. The
 24 justice or his clerk shall give the plaintiff a copy when
 25 the plaintiff appears to execute his complaint, and a copy

1 must be attached to the order of the court/notice to
2 defendant."

3 Section 4. Section 25-35-605, MCA, is amended to read:

4 "25-35-605. Removal to justice's court -- effect of
5 failure to remove. (1) Any action commenced in small claims
6 court may be removed to justice's court by a defendant upon
7 the filing of a notice of removal with the justice within 40
8 10 days of the service of the complaint and order. From the
9 time of filing of the notice of removal, the court to which
10 the action is removed has and exercises the same
11 jurisdiction over it as though the action had been
12 originally commenced in such court.

13 (2) Upon the filing of a notice of removal, the court
14 shall give notice of that fact to all other parties to the
15 action. All rules and statutes governing proceedings
16 originally commenced in justice's court, except rules of
17 pleading but including rules and statutes governing appeals
18 from justice's court, are applicable to proceedings removed
19 to justice's court, except that a plaintiff is not required
20 to replead unless the court so orders, and no fee shall be
21 required of a plaintiff for the filing of a complaint if a
22 fee for filing was paid in small claims court.

23 (3) Failure to request removal within the time
24 provided in subsection (1) constitutes a waiver by the
25 defendant of his right to a trial by jury and representation

1 by an attorney, and the justice shall inform the defendant
2 of such fact prior to commencement of the hearing."

-End-

Approved by Committee
on Judiciary

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18 fees which, except as provided in 25-35-605, shall be paid
19 in every civil action in a justice's court:
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21 plaintiff;
22 (2) \$5 \$10 when the defendant appears, to be paid by
23 the defendant;
24 (3) \$5 \$10 to be paid by the prevailing party when
25 judgment is rendered. In cases where judgment is entered by

1 default, no charge except the \$5 for the filing of the
2 complaint shall be made for any services, including issuing
3 and return of execution.
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5 judgment is rendered by confession;
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7 on appeal, justifying and approving undertaking on appeal,
8 and transmitting papers to the district court with
9 certificate;
10 (6) \$1 for filing each writ of execution or
11 attachment."
12 Section 3. Section 25-35-601, MCA, is amended to read:
13 "25-35-601. Commencement of action — assistance to
14 claimant. (1) A small claims action is commenced whenever
15 any person appears before a justice of the peace or his
16 clerk and executes a sworn small claims complaint in
17 substantially the same form as set forth in 25-35-602.
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
23 copies of the pamphlet to each small claims court. The
24 justice or his clerk shall give the plaintiff a copy when
25 the plaintiff appears to execute his complaint, and a copy

1 must be attached to the order of the court/notice to
2 defendant."

3 Section 4. Section 25-35-605, MCA, is amended to read:

4 "25-35-605. Removal to justice's court -- effect of
5 failure to remove. (1) Any action commenced in small claims
6 court may be removed to justice's court by a defendant upon
7 the filing of a notice of removal with the justice within 40
8 10 days of the service of the complaint and order. From the
9 time of filing of the notice of removal, the court to which
10 the action is removed has and exercises the same
11 jurisdiction over it as though the action had been
12 originally commenced in such court.

13 (2) Upon the filing of a notice of removal, the court
14 shall give notice of that fact to all other parties to the
15 action. All rules and statutes governing proceedings
16 originally commenced in justice's court, except rules of
17 pleading but including rules and statutes governing appeals
18 from justice's court, are applicable to proceedings removed
19 to justice's court, except that a plaintiff is not required
20 to replead unless the court so orders, and no fee shall be
21 required of a plaintiff for the filing of a complaint if a
22 fee for filing was paid in small claims court.

23 (3) Failure to request removal within the time
24 provided in subsection (1) constitutes a waiver by the
25 defendant of his right to a trial by jury and representation

1 by an attorney, and the justice shall inform the defendant
2 of such fact prior to commencement of the hearing."

-End-

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2 complaint shall be made for any services, including issuing
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9 certificate;
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11 attachment."
12 Section 3. Section 25-35-601, MCA, is amended to read:
13 "25-35-601. Commencement of action -- assistance to
14 claimant. (1) A small claims action is commenced whenever
15 any person appears before a justice of the peace or his
16 clerk and executes a sworn small claims complaint in
17 substantially the same form as set forth in 25-35-602.
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
23 copies of the pamphlet to each small claims court. The
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25 the plaintiff appears to execute his complaint, and a copy

1 must be attached to the order of the court/notice to
2 defendant."

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9 time of filing of the notice of removal, the court to which
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20 to replead unless the court so orders, and no fee shall be
21 required of a plaintiff for the filing of a complaint if a
22 fee for filing was paid in small claims court.

23 (3) Failure to request removal within the time
24 provided in subsection (1) constitutes a waiver by the
25 defendant of his right to a trial by jury and representation

1 by an attorney, and the justice shall inform the defendant
2 of such fact prior to commencement of the hearing."

-End-

March 11, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 507 be amended as follows:

1. Page 1, line 20.

Strike: "\$10"

Insert: "\$7.50"

2. Page 1, Line 22.

Strike: "\$10"

Insert: "\$7.50"

3. Page 1, Line 24.

Strike: "\$10"

Insert: "\$7.50"

4. Page 2, Line 1.

Strike: "\$5"

Insert: "\$7.50"

5. Page 2, Line 6.

Strike: "\$10"

Insert: "\$7.50"

6. Page 2, Line 10.

Following: "for"

Strike: "filing"

Insert: "issuing"

March 16, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 507 be amended as follows:

1. Page 1, line 20.

Strike: "\$10"

Insert: "\$7.50"

2. Page 1, line 22.

Strike: "\$10"

Insert: "\$7.50"

3. Page 1, line 24.

Strike: "\$10"

Insert: "\$7.50"

4. Page 2, line 1.

Strike: "\$5"

Insert: "\$7.50"

5. CLERICAL CORRECTION

Page 2, line 4

Strike: "\$10"

Insert: "\$7.50"

6. Page 2, line 6.

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7. Page 2, line 10.

Following: "for"

Strike: "filling"

Insert: "issuing"

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23 paid by the defendant;

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25 when judgment is rendered. In cases where judgment is

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7 the filing of a notice of removal with the justice within 48
8 10 days of the service of the complaint and order. From the
9 time of filing of the notice of removal, the court to which
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12 originally commenced in such court.

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