

HOUSE BILL NO. 649  
INTRODUCED BY KOEHNKE

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
FEBRUARY 13, 1989	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1989	PRINTING REPORT.
FEBRUARY 20, 1989	SECOND READING, DO PASS.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 90; NOES, 9.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 21, 1989	SECOND READING, CONCURRED IN.
MARCH 23, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

MARCH 23, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 649  
2 INTRODUCED BY Kochinski  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM \$1,500  
5 TO \$2,500 THE MAXIMUM AMOUNT OF A CLAIM THAT CAN BE HEARD IN  
6 SMALL CLAIMS COURT; TO INCREASE FROM \$1,500 TO \$2,500 THE  
7 MAXIMUM AMOUNT OF A COUNTERCLAIM THAT CAN BE DETERMINED IN  
8 SMALL CLAIMS COURT; AND AMENDING SECTIONS 3-12-106,  
9 25-34-102, 25-34-103, 25-34-207, 25-35-502, 25-35-503, AND  
10 25-35-606, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 3-12-106, MCA, is amended to read:

14 "3-12-106. Jurisdiction -- removal from district court.

15 (1) The small claims court has original jurisdiction in all  
16 actions for the recovery of money or specific personal  
17 property when:

18 (a) such action arises out of a contract, express or  
19 implied;

20 (b) the amount of the claim, exclusive of costs, does  
21 not exceed ~~\$1,500~~ \$2,500; and

22 (c) the defendant can be served within the county or  
23 counties for which the small claims court has been created.

24 (2) More than one claim may be joined if all claims  
25 joined would separately meet the requirements for

1 jurisdiction in the small claims court and the total value  
2 of money claimed or property sought does not exceed ~~\$1,500~~  
3 \$2,500.

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

9 **Section 2.** Section 25-34-102, MCA, is amended to read:

10 "25-34-102. Jurisdiction -- joinder -- interpleader.

11 (1) The small claims court has original jurisdiction in all  
12 actions for the recovery of money or specific personal  
13 property when such action arises out of a contract, express  
14 or implied, the amount of the claim, exclusive of costs,  
15 does not exceed ~~\$1,500~~ \$2,500, and the defendant can be  
16 served within the county or counties for which the small  
17 claims court has been created.

18 (2) More than one claim may be joined if all claims  
19 joined would separately meet the requirements for  
20 jurisdiction in the small claims court and the total value  
21 of money claimed or property sought does not exceed ~~\$1,500~~  
22 \$2,500.

23 (3) The small claims court has jurisdiction over an  
24 interpleader under 25-34-106 in which the amount claimed  
25 does not exceed ~~\$1,500~~ \$2,500."

**Section 3.** Section 25-34-103, MCA, is amended to read:

"25-34-103. 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 controversy does not exceed \$1,500 \$2,500. The small claims court shall hear any action so removed from the district court."

**Section 4.** Section 25-34-207, MCA, is amended to read:

"25-34-207. Defendant's counterclaim. (1) If the defendant wishes to assert a counterclaim against the plaintiff, he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed \$1,500 \$2,500. If a counterclaim or setoff is asserted in excess of \$1,500 \$2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether plaintiff's claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action."

**Section 5.** Section 25-35-502, MCA, is amended to read:

"25-35-502. 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 \$1,500 \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced."

**Section 6.** Section 25-35-503, MCA, is amended to read:

"25-35-503. 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 controversy does not exceed \$1,500 \$2,500. The small claims court shall hear any action so removed from the district court."

**Section 7.** Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not

1 assert as a counterclaim any claim not arising out of the  
2 transaction or occurrence that is the subject matter of the  
3 plaintiff's claim.

4 (2) A counterclaim or setoff may not exceed \$17500  
5 \$2,500. If a counterclaim or setoff is asserted in excess of  
6 \$17500 \$2,500, the jurisdiction of the small claims court  
7 over the plaintiff's claim is not defeated, but the court  
8 shall limit its determination of the counterclaim or setoff  
9 to the question of whether the plaintiff's claim is  
10 discharged thereby, leaving the defendant to prosecute the  
11 balance of his claim in an appropriate justice or district  
12 court action.

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

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

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

9 Dated this ..... day of ....., 19....  
10 .....  
11 Defendant  
12 .....  
13 Defendant's address  
14 Subscribed and sworn to before me this ..... day of  
15 ....., 19....  
16 .....  
17 Justice of the peace  
18 By:.....  
19 Clerk, small claims division"

-End-

APPROVED BY COMM.  
ON LOCAL GOVERNMENT

HOUSE BILL NO. 649

INTRODUCED BY KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A CLAIM THAT CAN BE HEARD IN SMALL CLAIMS COURT; TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A COUNTERCLAIM THAT CAN BE DETERMINED IN SMALL CLAIMS COURT; AND AMENDING SECTIONS 3-10-1004, 3-12-106, 25-34-102, 25-34-103, 25-34-207, 25-35-502, 25-35-503, AND 25-35-606, MCA."

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

**SECTION 1.** SECTION 3-10-1004, MCA, IS AMENDED TO READ:

"3-10-1004. Jurisdiction -- removal from district court. (1) 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 \$1,500 \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

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

**Section 2.** Section 3-12-106, MCA, is amended to read:

"3-12-106. Jurisdiction -- removal from district court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed \$1,500 \$2,500; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed \$1,500 \$2,500.

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

**Section 3.** Section 25-34-102, MCA, is amended to read:

"25-34-102. Jurisdiction -- joinder -- interpleader. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express

or implied, the amount of the claim, exclusive of costs, does not exceed ~~\$1,500~~ \$2,500, and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~\$1,500~~ \$2,500.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed ~~\$1,500~~ \$2,500."

**Section 4.** Section 25-34-103, MCA, is amended to read:

"25-34-103. **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 controversy does not exceed ~~\$1,500~~ \$2,500. The small claims court shall hear any action so removed from the district court."

**Section 5.** Section 25-34-207, MCA, is amended to read:

"25-34-207. **Defendant's counterclaim.** (1) If the defendant wishes to assert a counterclaim against the plaintiff, he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than 72

hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed ~~\$1,500~~ \$2,500. If a counterclaim or setoff is asserted in excess of ~~\$1,500~~ \$2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether plaintiff's claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action."

**Section 6.** Section 25-35-502, MCA, is amended to read:

"25-35-502. **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 ~~\$1,500~~ \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced."

**Section 7.** Section 25-35-503, MCA, is amended to read:

"25-35-503. **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 controversy does not exceed ~~\$1,500~~ \$2,500. The small claims court shall hear any action so removed from the district court."

**Section 8.** Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed ~~\$1,500~~ \$2,500. If a counterclaim or setoff is asserted in excess of ~~\$1,500~~ \$2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank

substantially in the following form:

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

..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

Plaintiff

vs.

Counterclaim

Case No. ...

Defendant(s)

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

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

Defendant

Defendant's address



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1       Subscribed and sworn to before me this ..... day of  
2       ....., 19....  
3                               .....  
4                               Justice of the peace  
5                               By:.....  
6                               Clerk, small claims division"

-End-

## HOUSE BILL NO. 649

INTRODUCED BY KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A CLAIM THAT CAN BE HEARD IN SMALL CLAIMS COURT; TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A COUNTERCLAIM THAT CAN BE DETERMINED IN SMALL CLAIMS COURT; AND AMENDING SECTIONS 3-10-1004, 3-12-106, 25-34-102, 25-34-103, 25-34-207, 25-35-502, 25-35-503, AND 25-35-606, MCA."

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

**SECTION 1. SECTION 3-10-1004, MCA, IS AMENDED TO READ:**

"3-10-1004. Jurisdiction -- removal from district court. (1) 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 \$1,500 \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

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

**Section 2. Section 3-12-106, MCA, is amended to read:**

"3-12-106. Jurisdiction -- removal from district court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed \$1,500 \$2,500; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed \$1,500 \$2,500.

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

**Section 3. Section 25-34-102, MCA, is amended to read:****"25-34-102. Jurisdiction -- joinder -- interpleader.**

(1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express

1 or implied, the amount of the claim, exclusive of costs,  
2 does not exceed ~~\$1,500~~ \$2,500, and the defendant can be  
3 served within the county or counties for which the small  
4 claims court has been created.

5 (2) More than one claim may be joined if all claims  
6 joined would separately meet the requirements for  
7 jurisdiction in the small claims court and the total value  
8 of money claimed or property sought does not exceed ~~\$1,500~~  
9 \$2,500.

10 (3) The small claims court has jurisdiction over an  
11 interpleader under 25-34-106 in which the amount claimed  
12 does not exceed ~~\$1,500~~ \$2,500."

13 **Section 4.** Section 25-34-103, MCA, is amended to read:

14 "25-34-103. **Removal from district court.** A district  
15 court judge may require any action filed in district court  
16 to be removed to the small claims court if the amount in  
17 controversy does not exceed ~~\$1,500~~ \$2,500. The small claims  
18 court shall hear any action so removed from the district  
19 court."

20 **Section 5.** Section 25-34-207, MCA, is amended to read:

21 "25-34-207. **Defendant's counterclaim.** (1) If the  
22 defendant wishes to assert a counterclaim against the  
23 plaintiff, he shall file a written answer setting forth his  
24 counterclaim against the plaintiff and shall cause the  
25 answer to be served upon the plaintiff not less than 72

1 hours before the date set for the hearing. Service shall be  
2 made in the same manner in which service is made upon the  
3 defendant.

4 (2) A counterclaim or setoff may not exceed ~~\$1,500~~  
5 \$2,500. If a counterclaim or setoff is asserted in excess of  
6 ~~\$1,500~~ \$2,500, the jurisdiction of the small claims court  
7 over the plaintiff's claim is not defeated, but the court  
8 shall limit its determination of the counterclaim or setoff  
9 to the question of whether plaintiff's claim is discharged  
10 thereby, leaving defendant to prosecute the balance of his  
11 claim in appropriate district court action."

12 **Section 6.** Section 25-35-502, MCA, is amended to read:

13 "25-35-502. **Jurisdiction.** The small claims court has  
14 jurisdiction over all actions for the recovery of money or  
15 specific personal property when the amount claimed does not  
16 exceed ~~\$1,500~~ \$2,500, exclusive of costs, and the defendant  
17 can be served within the county where the action is  
18 commenced."

19 **Section 7.** Section 25-35-503, MCA, is amended to read:

20 "25-35-503. **Removal from district court.** A district  
21 court judge may require any action filed in district court  
22 to be removed to the small claims court if the amount in  
23 controversy does not exceed ~~\$1,500~~ \$2,500. The small claims  
24 court shall hear any action so removed from the district  
25 court."

**Section 8.** Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed \$17,500 \$2,500. If a counterclaim or setoff is asserted in excess of ~~\$17,500~~ \$2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank

substantially in the following form:

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

..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

Plaintiff

vs.

Counterclaim

Case No. ...

Defendant(s)

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

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

Defendant

Defendant's address

HB 0649/02

1       Subscribed and sworn to before me this ..... day of  
2       ....., 19....  
3                                       .....  
4                       Justice of the peace  
5                       By:.....  
6                       Clerk, small claims division"

-End-

## HOUSE BILL NO. 649

INTRODUCED BY KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A CLAIM THAT CAN BE HEARD IN SMALL CLAIMS COURT; TO INCREASE FROM \$1,500 TO \$2,500 THE MAXIMUM AMOUNT OF A COUNTERCLAIM THAT CAN BE DETERMINED IN SMALL CLAIMS COURT; AND AMENDING SECTIONS 3-10-1004, 3-12-106, 25-34-102, 25-34-103, 25-34-207, 25-35-502, 25-35-503, AND 25-35-606, MCA."

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

**SECTION 1. SECTION 3-10-1004, MCA, IS AMENDED TO READ:**

"3-10-1004. Jurisdiction -- removal from district court. (1) 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 \$1,500 \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

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

**Section 2. Section 3-12-106, MCA, is amended to read:**

**"3-12-106. Jurisdiction -- removal from district**

**court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:**

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed ~~\$1,500~~ \$2,500; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~\$1,500~~ \$2,500.

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

**Section 3. Section 25-34-102, MCA, is amended to read:**

**"25-34-102. Jurisdiction -- joinder -- interpleader.**

(1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express

1 or implied, the amount of the claim, exclusive of costs,  
2 does not exceed \$1,7500 \$2,500, and the defendant can be  
3 served within the county or counties for which the small  
4 claims court has been created.

5 (2) More than one claim may be joined if all claims  
6 joined would separately meet the requirements for  
7 jurisdiction in the small claims court and the total value  
8 of money claimed or property sought does not exceed \$1,7500  
9 \$2,500.

10 (3) The small claims court has jurisdiction over an  
11 interpleader under 25-34-106 in which the amount claimed  
12 does not exceed \$1,7500 \$2,500."

13 **Section 4.** Section 25-34-103, MCA, is amended to read:

14 "25-34-103. Removal from district court. A district  
15 court judge may require any action filed in district court  
16 to be removed to the small claims court if the amount in  
17 controversy does not exceed \$1,7500 \$2,500. The small claims  
18 court shall hear any action so removed from the district  
19 court."

20 **Section 5.** Section 25-34-207, MCA, is amended to read:

21 "25-34-207. Defendant's counterclaim. (1) If the  
22 defendant wishes to assert a counterclaim against the  
23 plaintiff, he shall file a written answer setting forth his  
24 counterclaim against the plaintiff and shall cause the  
25 answer to be served upon the plaintiff not less than 72

1 hours before the date set for the hearing. Service shall be  
2 made in the same manner in which service is made upon the  
3 defendant.

4 (2) A counterclaim or setoff may not exceed \$1,7500  
5 \$2,500. If a counterclaim or setoff is asserted in excess of  
6 \$1,7500 \$2,500, the jurisdiction of the small claims court  
7 over the plaintiff's claim is not defeated, but the court  
8 shall limit its determination of the counterclaim or setoff  
9 to the question of whether plaintiff's claim is discharged  
10 thereby, leaving defendant to prosecute the balance of his  
11 claim in appropriate district court action."

12 **Section 6.** Section 25-35-502, MCA, is amended to read:

13 "25-35-502. Jurisdiction. The small claims court has  
14 jurisdiction over all actions for the recovery of money or  
15 specific personal property when the amount claimed does not  
16 exceed \$1,7500 \$2,500, exclusive of costs, and the defendant  
17 can be served within the county where the action is  
18 commenced."

19 **Section 7.** Section 25-35-503, MCA, is amended to read:

20 "25-35-503. Removal from district court. A district  
21 court judge may require any action filed in district court  
22 to be removed to the small claims court if the amount in  
23 controversy does not exceed \$1,7500 \$2,500. The small claims  
24 court shall hear any action so removed from the district  
25 court."

**Section 8.** Section 25-35-606, MCA, is amended to read:

**"25-35-606. Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed \$17500 \$2,500. If a counterclaim or setoff is asserted in excess of ~~\$17500~~ \$2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank

substantially in the following form:

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

..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

Plaintiff

vs.

Counterclaim

Case No. ...

Defendant(s)

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

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

Defendant

Defendant's address



**HB 0649/02**

Subscribed and sworn to before me this ..... day of  
....., 19....  
  
Justice of the peace  
By:.....  
Clerk, small claims division"

**-End-**