

SENATE BILL 9

Introduced by Towe

12/23	Introduced
12/23	Referred to Judiciary
1/04	First Reading
1/04	Fiscal Note Requested
1/11	Fiscal Note Received
1/12	Fiscal Note Printed
1/14	Hearing
1/28	Tabled in Committee
2/12	Committee Report--Bill Passed as Amended
2/13	2nd Reading Passed
2/15	3rd Reading Passed
	Transmitted to House
2/23	Referred to Judiciary
2/23	First Reading
3/12	Hearing
3/26	Tabled in Committee

## 1 SENATE BILL NO. 9

2 INTRODUCED BY TOWE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND  
5 REFORMING PROCEDURES IN SMALL CLAIMS COURTS AND JUSTICES'  
6 COURTS; PROVIDING THAT IF A DEFENDANT IN SMALL CLAIMS COURT  
7 APPEALS TO DISTRICT COURT AND LOSES, THE PLAINTIFF MAY BE  
8 AWARDED ATTORNEY FEES; PROVIDING THAT JURISDICTION IN SMALL  
9 CLAIMS COURTS IS NOT LIMITED TO A COUNTY IN WHICH A  
10 DEFENDANT CAN BE SERVED; PROVIDING THAT SERVICE OF PROCESS  
11 IN SMALL CLAIMS COURTS IS THE SAME AS IN JUSTICES' COURTS;  
12 MAKING CONSISTENT THE DOLLAR LIMITATIONS FOR JURISDICTION IN  
13 SMALL CLAIMS COURTS; PROVIDING THAT COUNTY COMMISSIONERS MAY  
14 EITHER APPOINT OR AUTHORIZE NONATTORNEY COURT ASSISTANTS TO  
15 ASSIST CIVIL LITIGANTS IN CERTAIN COURTS OF LIMITED  
16 JURISDICTION; AMENDING SECTIONS 3-10-1004, 3-12-106,  
17 25-31-601, 25-34-102, 25-35-502, 25-35-503, 25-35-604, AND  
18 25-35-806, MCA; AND PROVIDING AN EFFECTIVE DATE."

19

20 WHEREAS, the purpose of [sections 1 through 11] is to  
21 make Small Claims Courts and Justices' Courts more  
22 accessible and functional for persons without legal training  
23 or adequate funds to hire a lawyer; and

24 WHEREAS, it is the Legislature's intent to keep Small  
25 Claims Courts functioning well as a forum by enhancing their

1 ability to handle small claims quickly and informally in a  
2 manner that is not intimidating to claimants, thereby  
3 reducing the burden of claims on the other courts and  
4 reducing costs; and

5 WHEREAS, it is the intent of the Legislature to reduce  
6 the cost deterrent in litigation over small claims and to  
7 minimize inequities between business and individual  
8 litigants by emphasizing the plaintiff's perspective rather  
9 than the defendant's perspective; and

10 WHEREAS, in addition, it is the intent of the  
11 Legislature to provide an effective means of assistance for  
12 litigants in courts of limited jurisdiction who may not have  
13 the means to hire an attorney. The Legislature finds that  
14 fewer and fewer attorneys are willing to represent clients  
15 in courts of limited jurisdiction because of the limited  
16 dollar amount involved or for other reasons. Often citizens  
17 find themselves involved in litigation without benefit of  
18 counsel in cases in which the expense of hiring legal  
19 counsel in relation to the dollar amount of the claim is a  
20 deterrent to bringing the claim. The Legislature further  
21 finds that as a matter of public policy, it is desirable  
22 that litigants have the benefit of advice from a person  
23 knowledgeable in procedures in the courts of limited  
24 jurisdiction pursuant to the limitations set forth in  
25 [sections 1 through 11].

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 \$3,000, 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 \$3,000. 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 the action arises out of a contract, express or implied; and

(b) the amount of the claim, exclusive of costs, does not exceed \$2,500; and \$3,000

~~(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 \$2,500 \$3,000.

(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 \$2,500 \$3,000. The small claims court shall hear any action so removed from the district court."

**Section 3.** Section 25-31-601, MCA, is amended to read:

"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney, and. As provided in {section 9}, any person, except the constable by whom the summons or jury process was served, may act as attorney."

**Section 4.** 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 the action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed \$2,500 \$3,000, ~~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 \$2,500 \$3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed \$2,500 \$3,000."

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

"25-35-502. Jurisdiction. (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 \$2,500 \$3,000, exclusive of costs, ~~and the defendant can be served within the county where the action is commenced.~~

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed \$2,500 \$3,000."

**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 \$2,500 \$3,000. The small claims court shall hear any action so removed from the district court."

**Section 7.** Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant ~~return.~~ (1) The original of the order and notice ~~shall~~ must be shown to the defendant, ~~and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server~~ in the same manner provided by law for service of process in civil actions commenced in justice's court. ~~The provisions of law relating to sheriff's fees are applicable to this section.~~

(2) ~~The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or his clerk.~~

**Section 8.** Section 25-35-806, MCA, is amended to read:

"25-35-806. Attorney's Attorney fees upon appeal or removal. (1) If the parties are represented by counsel on appeal a defendant appeals a matter to district court under the provisions of 25-35-803 but does not prevail in district court, the court may grant the prevailing party his plaintiff reasonable attorney's attorney fees, in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff his reasonable attorney's attorney fees, if any."

NEW SECTION. **Section 9.** Court assistants --

1 appointment or authorization by county commissioners --  
 2 qualifications. The county commissioners may, after  
 3 consultation with the justices of the peace within the  
 4 county, appoint one or more court assistants to provide  
 5 litigants in civil cases in the justice's court, at the  
 6 county's expense, with advice on filing and litigating  
 7 claims in the justice's court. In the alternative, the  
 8 county commissioners may, after consultation with the  
 9 justices of the peace within the county, authorize  
 10 individuals to act as court assistants and to charge fees.  
 11 Providing litigants assistance under this section in  
 12 bringing a case before the justice's court in the county  
 13 does not constitute the practice of law, and a court  
 14 assistant appointed or authorized under this section is not  
 15 required to be a licensed attorney. The county commissioners  
 16 shall consult with the justices of the peace within the  
 17 county to determine the qualifications and criteria used in  
 18 making the appointments or authorizations. A court assistant  
 19 may not represent a client in court and may only advise a  
 20 client in the areas of court procedures, drafting pleadings,  
 21 conducting discovery, and presentation of the case in  
 22 justice's court.

23 NEW SECTION. Section 10. Court assistants --  
 24 appointment or authorization by county commissioners --  
 25 qualifications. The county commissioners may, after

1 consultation with the justices of the peace within the  
 2 county, appoint one or more court assistants to provide  
 3 litigants in civil cases in the small claims court, at the  
 4 county's expense, with advice on filing and litigating  
 5 claims in the small claims court. In the alternative, the  
 6 county commissioners may, after consultation with the  
 7 justices of the peace within the county, authorize  
 8 individuals to act as court assistants and to charge fees.  
 9 Providing litigants assistance under this section in  
 10 prosecuting a case before the small claims court in the  
 11 county does not constitute the practice of law, and a court  
 12 assistant appointed or authorized under this section is not  
 13 required to be a licensed attorney. The county commissioners  
 14 shall consult with the justices of the peace within the  
 15 county to determine the qualifications and criteria used in  
 16 making the appointments or authorizations. A court assistant  
 17 may not represent a client in court and may only advise a  
 18 client in the areas of court procedures, drafting pleadings,  
 19 conducting discovery, and presentation of the case in small  
 20 claims court.

21 NEW SECTION. Section 11. Court assistants --  
 22 appointment or authorization by county commissioners --  
 23 qualifications. The county commissioners may, after  
 24 consultation with the small claims court judges of the  
 25 district courts within the county, appoint one or more court

1 assistants to provide litigants in civil cases in the small  
 2 claims court, at the court's expense, advice on filing and  
 3 litigating claims in the small claims court. In the  
 4 alternative, the county commissioners may, after  
 5 consultation with the small claims court judges of the  
 6 district courts within the county, authorize individuals to  
 7 act as court assistants and to charge fees. Providing  
 8 litigants assistance under this section in prosecuting a  
 9 case before the small claims court in the county does not  
 10 constitute the practice of law, and a court assistant  
 11 appointed or authorized under this section is not required  
 12 to be a licensed attorney. The county commissioners shall  
 13 consult with the small claims court judges of the district  
 14 courts within the county to determine the qualifications and  
 15 criteria used in making the appointments or authorizations.  
 16 A court assistant may not represent a client in court and  
 17 may only advise a client in the areas of court procedures,  
 18 drafting pleadings, conducting discovery, and presentation  
 19 of the case in small claims court.

20 NEW SECTION. Section 12. Codification instruction. (1)  
 21 [Section 9] is intended to be codified as an integral part  
 22 of Title 25, chapter 31, part 6, and the provisions of Title  
 23 25, chapter 31, part 6, apply to [section 9].

24 (2) [Section 10] is intended to be codified as an  
 25 integral part of Title 25, chapter 35, part 5, and the

1 provisions of Title 25, chapter 35, part 5, apply to  
 2 [section 10].

3 (3) [Section 11] is intended to be codified as an  
 4 integral part of Title 25, chapter 34, part 1, and the  
 5 provisions of Title 25, chapter 34, part 1, apply to  
 6 [section 11].

7 NEW SECTION. Section 13. Severability. If a part of  
 8 [this act] is invalid, all valid parts that are severable  
 9 from the invalid part remain in effect. If a part of [this  
 10 act] is invalid in one or more of its applications, the part  
 11 remains in effect in all valid applications that are  
 12 severable from the invalid applications.

13 NEW SECTION. Section 14. Effective date. [This act] is  
 14 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0009, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising and reforming procedures in small claims courts and justice courts.

ASSUMPTIONS:

1. The bill will have no identifiable fiscal impact on the state funded judiciary.
2. The increase in the dollar limitation for small claims court from \$2,500 to \$3,000 may increase claims in these courts. The potential impact on claims and fiscal impact is unknown.
3. Appointment of court assistants at the discretion of county commissioners may increase the number of claims filed in justice and small claims courts. The appointment of court assistants at county expense may increase costs for county government. The potential impact on claims and fiscal impact is unknown.

FISCAL IMPACT:

Unknown.

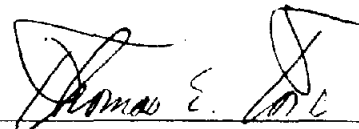
EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: The appointment of court assistants at county expense may increase county costs, but the impact is unknown.



DAVE LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning

1-9-93

DATE



TOM TOWE, PRIMARY SPONSOR

4/12/93

DATE

Fiscal Note for SB0009, as introduced

5B9

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 9

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING--AND  
REPORTING--PROCEDURES--IN--SMALL-CLAIMS-COURTS-AND-JUSTICES'  
COURTS; PROVIDING THAT IF A DEFENDANT IN SMALL CLAIMS COURT  
APPEALS--TO--DISTRICT--COURT-AND-LOSES, THE PLAINTIFF MAY BE  
AWARDED ATTORNEY FEES; PROVIDING THAT JURISDICTION IN SMALL  
CLAIMS COURTS IS NOT LIMITED TO A COUNTY IN WHICH A  
DEFENDANT CAN BE SERVED; PROVIDING THAT SERVICE OF PROCESS  
IN SMALL CLAIMS COURTS IS THE SAME AS IN JUSTICES' COURTS;  
MAKING CONSISTENT THE DOLLAR LIMITATIONS FOR JURISDICTION IN  
SMALL CLAIMS COURTS; PROVIDING THAT COUNTY COMMISSIONERS MAY  
EITHER APPOINT OR AUTHORIZE NONATTORNEY COURT ASSISTANTS TO  
ASSIST--CIVIL--LITIGANTS--IN--CERTAIN--COURTS--OF--LIMITED  
JURISDICTION; AND AMENDING SECTIONS 3-10-1004, 3-12-106,  
25-31-601, 25-34-102, 25-35-502, 25-35-503, AND 25-35-604,  
AND 25-35-006, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the purpose of {sections 1 through 11} is to  
make--small--claims--courts--and--justices'--courts--more  
accessible and functional for persons without legal training  
or adequate funds to hire a lawyer; and

WHEREAS, it is the legislature's intent to keep small  
claims courts functioning well as a forum by enhancing their

ability to handle small claims quickly and informally in a  
manner that is not intimidating to claimants, thereby  
reducing the burden of claims on the other courts and  
reducing costs; and

WHEREAS, it is the intent of the legislature to reduce  
the cost deterrent in litigation over small claims and to  
minimize inequities between business and individual  
litigants by emphasizing the plaintiff's perspective rather  
than the defendant's perspective; and

WHEREAS, in addition, it is the intent of the  
legislature to provide an effective means of assistance for  
litigants in courts of limited jurisdiction who may not have  
the means to hire an attorney. The legislature finds that  
fewer and fewer attorneys are willing to represent clients  
in courts of limited jurisdiction because of the limited  
dollar amount involved or for other reasons. Often citizens  
find themselves involved in litigation without benefit of  
counsel in cases in which the expense of hiring legal  
counsel in relation to the dollar amount of the claim is a  
deterrent to bringing the claim. The legislature further  
finds that as a matter of public policy, it is desirable  
that litigants have the benefit of advice from a person  
knowledgeable in procedures in the courts of limited  
jurisdiction pursuant to the limitations set forth in  
{sections 1 through 11}.



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 \$3,000, 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 \$3,000. 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 the action arises out of a contract, express or implied; and

(b) the amount of the claim, exclusive of costs, does not exceed \$2,500 ~~and \$3,000~~

~~(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 \$2,500 \$3,000.

(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 \$2,500 \$3,000. The small claims court shall hear any action so removed from the district court."

~~Section 3. Section 25-31-601, MCA, is amended to read:~~

~~"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney, and, as provided in section 9, any person, except the constable by whom the summons or jury process was served, may act as attorney."~~

**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 the action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed \$2,500 \$3,000 ~~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 \$2,500 \$3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed \$2,500 \$3,000."

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

"25-35-502--Jurisdiction--(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--\$2,500 \$3,000--exclusive--of--costs--and-the defendant-can-be-served-within-the-county-where--the--action is-commenced--

(2)--The--small--claims--court--has-jurisdiction-over-an interpleader-under-25-35-508-in-which--the--amount--claimed does-not-exceed--\$2,500 \$3,000--"

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--\$2,500 \$3,000--The-small--claims court--shall--hear--any--action-so-removed-from-the-district court--"

**Section 4.** Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant ----return. (1) The original of the order and notice shall must be shown-to-the defendant--and-a-copy-of-it-along-with-a-copy-of--the--sworn complaint-shall-be served upon the defendant by-the-sheriff, constable,--or--other--process--server in the same manner provided by law for service of process in civil actions commenced in justice's court. The-provisions-of-law-relating to-sheriff's-fees-are-applicable-to-this-section--

(2)--The--sheriff,--constable,--or--other-process-server shall--after-effecting-service,--return-the-original-order-to the-justice-of-the-peace-or-his-clerk--"

Section 8--Section 25-35-806, MCA, is amended to read:

"25-35-806--Attorney's Attorney fees--upon--appeal--or removal--(1)--If--the-parties-are-represented-by-counsel-on appeal a-defendant-appeals-a-matter-to-district-court--under the-provisions-of-25-35-803-but-does-not-prevail-in-district court--the-court--may--grant--the-prevailing--party--his plaintiff reasonable-attorney's attorney fees,--in--addition to-costs--

(2)--If--a-defendant-removes-a-matter-to-justice's-court under-the-provisions-of-25-35-605(1)--but-does-not-prevail-in justice's-court,--the-court--may--grant--the--plaintiff--his reasonable-attorney's attorney fees,--if-any--"

NEW-SECTION--Section 9--Court--assistants--appointment

or authorization by county commissioners----qualifications.  
 The--county--commissioners--may,--after--consultation--with--the  
 justices--of--the--peace--within--the--county,--appoint--one--or--more  
 court--assistants--to--provide--litigants--in--civil--cases--in--the  
 justice's--court,--at--the--county's--expense,--with--advice--on  
 filing--and--litigating--claims--in--the--justice's--court,--in--the  
 alternative,---the---county---commissioners---may,---after  
 consultation--with--the--justices--of--the--peace--within--the  
 county,--authorize--individuals--to--act--as--court--assistants--and  
 to--charge--fees,--Providing--litigants--assistance--under--this  
 section--in--bringing--a--case--before--the--justice's--court--in--the  
 county--does--not--constitute--the--practice--of--law,--and--a--court  
 assistant--appointed--or--authorized--under--this--section--is--not  
 required--to--be--a--licensed--attorney,--The--county--commissioners  
 shall--consult--with--the--justices--of--the--peace--within--the  
 county--to--determine--the--qualifications--and--criteria--used--in  
 making--the--appointments--or--authorizations,--A--court--assistant  
 may--not--represent--a--client--in--court--and--may--only--advise--a  
 client--in--the--areas--of--court--procedures,--drafting--pleadings,  
 conducting--discovery,--and--presentation--of--the--case--in  
 justice's--court.

NEW-SECTION,--Section-10,--Court-----assistants-----  
 appointment--or--authorization--by--county--commissioners---  
 qualifications,--The---county---commissioners---may,---after  
 consultation--with--the--justices--of--the--peace--within--the

county,--appoint--one--or--more--court--assistants--to--provide  
 litigants--in--civil--cases--in--the--small--claims--court,--at--the  
 county's--expense,--with--advice--on--filing--and--litigating  
 claims--in--the--small--claims--court,--in--the--alternative,--the  
 county--commissioners--may,--after--consultation--with--the  
 justices---of---the---peace--within--the--county,--authorize  
 individuals--to--act--as--court--assistants--and--to--charge--fees,  
 Providing---litigants---assistance--under--this--section--in  
 prosecuting--a--case--before--the--small--claims--court--in--the  
 county--does--not--constitute--the--practice--of--law,--and--a--court  
 assistant--appointed--or--authorized--under--this--section--is--not  
 required--to--be--a--licensed--attorney,--The--county--commissioners  
 shall--consult--with--the--justices--of--the--peace--within--the  
 county--to--determine--the--qualifications--and--criteria--used--in  
 making--the--appointments--or--authorizations,--A--court--assistant  
 may--not--represent--a--client--in--court--and--may--only--advise--a  
 client--in--the--areas--of--court--procedures,--drafting--pleadings,  
 conducting--discovery,--and--presentation--of--the--case--in--small  
 claims--court.

NEW-SECTION,--Section-11,--Court-----assistants-----  
 appointment--or--authorization--by--county--commissioners---  
 qualifications,--The---county---commissioners---may,---after  
 consultation--with--the--small--claims--court--judges--of--the  
 district--courts--within--the--county,--appoint--one--or--more--court  
 assistants--to--provide--litigants--in--civil--cases--in--the--small

1 claims--court,--at-the-court's-expense,--advice-on-filing-and  
 2 litigating--claims--in--the--small--claims--court,--in--the  
 3 alternative,---the---county---commissioners---may,---after  
 4 consultation-with-the--small--claims--court--judges--of--the  
 5 district--courts-within-the-county,--authorize-individuals-to  
 6 act-as--court--assistants--and--to--charge--fees,--Providing  
 7 litigants--assistance--under--this--section-in-prosecuting-a  
 8 case-before-the-small-claims-court-in-the-county--does--not  
 9 constitute--the--practice--of--law,--and--a--court-assistant  
 10 appointed-or-authorized-under-this-section-is--not--required  
 11 to--be--a--licensed-attorney,--The-county-commissioners-shall  
 12 consult-with-the-small-claims-court-judges-of--the--district  
 13 courts-within-the-county-to-determine-the-qualifications-and  
 14 criteria--used-in-making-the-appointments-or-authorizations;  
 15 A-court-assistant-may-not-represent-a-client--in--court--and  
 16 may--only--advise-a-client-in-the-areas-of-court-procedures,  
 17 drafting-pleadings,--conducting-discovery,--and--presentation  
 18 of-the-case-in-small-claims-court;

19 NEW-SECTION,--Section-12,--Codification-instruction,--(1)  
 20 {Section--9}--is-intended-to-be-codified-as-an-integral-part  
 21 of-Title-25,--chapter-31,--part-6,--and-the-provisions-of-Title  
 22 25,--chapter-31,--part-6,--apply-to-{section-9};

23 {2}--{Section-10}-is--intended--to--be--codified--as--an  
 24 integral-part--of--Title--25,--chapter--35,--part-5,--and-the  
 25 provisions-of--Title--25,--chapter--35,--part--5,--apply--to

1 {section-10};

2 {3}--{Section--11}--is--intended--to--be--codified-as-an  
 3 integral-part-of-Title-25,--chapter--34,--part--1,--and--the  
 4 provisions--of--Title--25,--chapter--34,--part--1,--apply-to  
 5 {section-11};

6 NEW-SECTION,--Section-13,--Severability,--if--a--part--of  
 7 {this--act}--is--invalid,--all-valid-parts-that-are-severable  
 8 from-the-invalid-part-remain-in-effect,--if-a-part--of--{this  
 9 act}--is--invalid-in-one-or-more-of-its-applications,--the-part  
 10 remains--in--effect--in--all--valid--applications--that--are  
 11 severable-from-the-invalid-applications;

12 NEW-SECTION,--Section-14,--Effective-date,--{This-act}-is  
 13 effective-July-17-1993;

--End--

## SENATE BILL NO. 9

INTRODUCED BY TOME

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING--AND REFORMING--PROCEDURES--IN--SMALL-CLAIMS-COURTS-AND-JUSTICES' COURTS, PROVIDING THAT IF A DEFENDANT IN SMALL CLAIMS COURT APPEALS TO DISTRICT COURT AND LOSES, THE PLAINTIFF MAY BE AWARDED ATTORNEY FEES; PROVIDING THAT JURISDICTION IN SMALL CLAIMS COURTS IS NOT LIMITED TO A COUNTY IN WHICH A DEFENDANT CAN BE SERVED; PROVIDING THAT SERVICE OF PROCESS IN SMALL CLAIMS COURTS IS THE SAME AS IN JUSTICES' COURTS; MAKING CONSISTENT THE DOLLAR LIMITATIONS FOR JURISDICTION IN SMALL CLAIMS COURTS; PROVIDING THAT COUNTY COMMISSIONERS MAY EITHER APPOINT OR AUTHORIZE NONATTORNEY COURT ASSISTANTS TO ASSIST CIVIL LITIGANTS IN CERTAIN COURTS OF LIMITED JURISDICTION; AND AMENDING SECTIONS 3-10-1004, 3-12-106, 25-31-601, 25-34-102, 25-35-502, 25-35-503, AND 25-35-604, AND 25-35-806, MCA, AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the purpose of {sections 1 through 11} is to make small claims courts and justices' courts more accessible and functional for persons without legal training or adequate funds to hire a lawyer; and

WHEREAS, it is the legislature's intent to keep small claims courts functioning well as a forum by enhancing their

ability to handle small claims quickly and informally in a manner that is not intimidating to claimants, thereby reducing the burden of claims on the other courts and reducing costs; and

WHEREAS, it is the intent of the legislature to reduce the cost deterrent in litigation over small claims and to minimize inequities between business and individual litigants by emphasizing the plaintiff's perspective rather than the defendant's perspective; and

WHEREAS, in addition, it is the intent of the legislature to provide an effective means of assistance for litigants in courts of limited jurisdiction who may not have the means to hire an attorney. The legislature finds that fewer and fewer attorneys are willing to represent clients in courts of limited jurisdiction because of the limited dollar amount involved or for other reasons. Often citizens find themselves involved in litigation without benefit of counsel in cases in which the expense of hiring legal counsel in relation to the dollar amount of the claim is a deterrent to bringing the claim. The legislature further finds that as a matter of public policy, it is desirable that litigants have the benefit of advice from a person knowledgeable in procedures in the courts of limited jurisdiction pursuant to the limitations set forth in {sections 1 through 11};

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 \$3,000, 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 \$3,000. 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 the action arises out of a contract, express or implied; and

(b) the amount of the claim, exclusive of costs, does not exceed \$2,500; and \$3,000

(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 \$2,500 \$3,000.

(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 \$2,500 \$3,000. The small claims court shall hear any action so removed from the district court."

~~Section 3. Section 25-31-601, MCA, is amended to read:~~

~~"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney; and, as provided in section 9, any person, except the constable by whom the summons or jury process was served, may act as attorney."~~

**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 the action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed \$2,500 \$3,000; ~~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 \$2,500 \$3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed \$2,500 \$3,000."

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

"25-35-502.--Jurisdiction.--(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 \$2,500 \$3,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-500 in which the amount claimed does not exceed \$2,500 \$3,000."

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 \$2,500 \$3,000. The small claims court shall hear any action so removed from the district court."

Section 4. Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant ----return. (1) The original of the order and notice shall must be shown to the defendant, and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions commenced in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or his clerk."

Section 8,--Section 25-35-806, MCA, is amended to read:

"25-35-806.--Attorney's Attorney fees--upon--appeal--or removal.--(1) If the parties are represented by counsel on appeal a defendant appeals a matter to district court under the provisions of 25-35-803 but does not prevail in district court, the court may grant the prevailing party his plaintiff reasonable attorney's attorney fees, in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff his reasonable attorney's attorney fees, if any."

NEW SECTION.--Section 9. Court assistants--appointment

1 or-authorization-by-county-commissioners-----qualifications,  
 2 The--county--commissioners--may,--after--consultation-with-the  
 3 justices-of-the-peace-within-the-county,--appoint-one-or-more  
 4 court-assistants-to-provide-litigants-in-civil-cases-in--the  
 5 justice's--court--at--the--county's-expense,--with-advice-on  
 6 filing-and-litigating-claims-in-the-justice's-court,--in--the  
 7 alternative,---the---county---commissioners---may,---after  
 8 consultation-with-the-justices--of--the--peace--within--the  
 9 county,--authorize-individuals-to-act-as-court-assistants-and  
 10 to--charge--fees,--Providing-litigants-assistance-under-this  
 11 section-in-bringing-a-case-before-the-justice's-court-in-the  
 12 county-does-not-constitute-the-practice-of-law,--and-a--court  
 13 assistant--appointed-or-authorized-under-this-section-is-not  
 14 required-to-be-a-licensed-attorney,--The-county-commissioners  
 15 shall-consult-with-the-justices--of--the--peace--within--the  
 16 county--to-determine-the-qualifications-and-criteria-used-in  
 17 making-the-appointments-or-authorizations,--A-court-assistant  
 18 may-not-represent-a-client-in-court-and-may--only--advise--a  
 19 client-in-the-areas-of-court-procedures,--drafting-pleadings,  
 20 conducting--discovery,--and--presentation--of--the--case--in  
 21 justice's-court,

22 NEW-SECTION:--Section-10,--Court-----assistants-----  
 23 appointment--or--authorization--by--county-commissioners---  
 24 qualifications,--The---county---commissioners---may,---after  
 25 consultation--with--the--justices--of--the--peace-within-the

1 county,--appoint-one-or--more--court--assistants--to--provide  
 2 litigants--in--civil-cases-in-the-small-claims-court,--at-the  
 3 county's-expense,--with--advice--on--filing--and--litigating  
 4 claims--in--the--small-claims-court,--in-the-alternative,--the  
 5 county--commissioners--may,--after--consultation--with--the  
 6 justices---of---the---peace--within--the--county,--authorize  
 7 individuals-to-act-as-court-assistants-and-to--charge--fees,  
 8 Providing---litigants---assistance--under--this--section--in  
 9 prosecuting-a-case-before-the--small--claims--court--in--the  
 10 county--does-not-constitute-the-practice-of-law,--and-a-court  
 11 assistant-appointed-or-authorized-under-this-section-is--not  
 12 required-to-be-a-licensed-attorney,--The-county-commissioners  
 13 shall--consult--with--the--justices--of-the-peace-within-the  
 14 county-to-determine-the-qualifications-and-criteria-used--in  
 15 making-the-appointments-or-authorizations,--A-court-assistant  
 16 may--not--represent--a-client-in-court-and-may-only-advise-a  
 17 client-in-the-areas-of-court-procedures,--drafting-pleadings,  
 18 conducting-discovery,--and--presentation-of-the-case-in--small  
 19 claims-court,

20 NEW-SECTION:--Section-11,--Court-----assistants-----  
 21 appointment--or--authorization--by--county-commissioners---  
 22 qualifications,--The---county---commissioners---may,---after  
 23 consultation--with--the--small--claims--court--judges-of-the  
 24 district-courts-within-the-county,--appoint-one-or-more-court  
 25 assistants-to-provide-litigants-in-civil-cases-in-the--small



1 claims--court,--at-the-court's-expense,--advice-on-filing-and  
 2 litigating--claims--in--the--small--claims--court,--in--the  
 3 alternative,--the--county--commissioners--may,--after  
 4 consultation-with-the--small--claims--court--judges--of--the  
 5 district--courts-within-the-county,--authorize-individuals-to  
 6 act-as--court--assistants--and--to--charge--fees,--Providing  
 7 litigants--assistance--under--this--section-in-prosecuting-a  
 8 case-before-the-small-claims-court-in-the-county--does--not  
 9 constitute--the--practice--of--law--and--a--court-assistant  
 10 appointed-or-authorized-under-this-section-is--not--required  
 11 to--be--a--licensed-attorney,--The-county-commissioners-shall  
 12 consult-with-the-small-claims-court-judges-of--the--district  
 13 courts-within-the-county-to-determine-the-qualifications-and  
 14 criteria--used-in-making-the-appointments-or-authorizations,  
 15 A-court-assistant-may-not-represent-a-client--in-court--and  
 16 may--only--advise-a-client-in-the-areas-of-court-procedures,  
 17 drafting-pleadings,--conducting-discovery,--and--presentation  
 18 of-the-case-in-small-claims-court;

19 NEW-SECTION,--Section-12,--Codification-instruction,--(1)  
 20 {Section--9}--is-intended-to-be-codified-as-an-integral-part  
 21 of-Title-25,--chapter-31,--part-6,--and-the-provisions-of-Title  
 22 25,--chapter-31,--part-6,--apply-to-{section-9};

23 {2}--{Section-10}--is--intended--to--be--codified--as--an  
 24 integral--part--of--Title--25,--chapter--35,--part-5,--and-the  
 25 provisions-of--Title--25,--chapter--35,--part--5,--apply--to

1 {section-10};

2 {3}--{Section-11}--is--intended--to--be--codified--as--an  
 3 integral-part-of-Title-25,--chapter--34,--part--1,--and--the  
 4 provisions--of--Title--25,--chapter--34,--part--1,--apply-to  
 5 {section-11};

6 NEW-SECTION,--Section-13,--Severability,--If--a--part--of  
 7 {this--act}--is--invalid,--all-valid-parts-that-are-severable  
 8 from-the-invalid-part-remain-in-effect,--If-a-part-of--{this  
 9 act}--is--invalid--in--one--or--more--of--its--applications,--the-part  
 10 remains--in--effect--in--all--valid--applications--that--are  
 11 severable-from-the-invalid-applications;

12 NEW-SECTION,--Section-14,--Effective-date,--{This-act}-is  
 13 effective-July-17-1993;

-End-