

SENATE BILL NO. 238

INTRODUCED BY A. BLEWETT

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~\$7,000~~ \$12,000, exclusive of court costs;

(b) in actions for damages not exceeding ~~\$7,000~~ \$12,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~\$7,000~~ \$12,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~\$7,000~~ \$12,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ \$12,000 imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding ~~\$7,000~~ \$12,000 imposed by a statute or assessed by an order of a conservation district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~\$7,000~~ \$12,000, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the

1 amount confessed does not exceed ~~\$7,000~~ \$12,000, exclusive of court costs;

2 (i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided
3 in Title 40, chapter 15;

4 (j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual
5 cost for restoration of a stream if the restoration does not exceed ~~\$7,000~~ \$12,000.

6 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the
7 state for the payment of money."

8

9 **Section 2.** Section 3-10-1004, MCA, is amended to read:

10 **"3-10-1004. Jurisdiction -- removal from district court.** (1) The small claims court has jurisdiction over
11 all actions for the recovery of money or specific personal property when the amount claimed does not exceed
12 ~~\$3,000~~ \$7,000, exclusive of costs, and the defendant can be served within the county where the action is
13 commenced.

14 (2) A district court judge may require any action filed in district court to be removed to the small claims
15 court if the amount in controversy does not exceed ~~\$3,000~~ \$7,000. The small claims court shall hear any action
16 so removed from the district court."

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18 **Section 3.** Section 3-11-103, MCA, is amended to read:

19 **"3-11-103. Exclusive jurisdiction.** Except as provided in 3-11-104, the city court has exclusive
20 jurisdiction of:

21 (1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

22 (2) when the amount of the taxes or assessments sought does not exceed ~~\$5,000~~ \$9,500, actions for
23 the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property
24 taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

25 (a) city or town purposes;

26 (b) the erection or improvement of public buildings;

27 (c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

28 (d) the acquisition or improvement of any public grounds; and

29 (e) public improvements made or ordered by the city or town within its limits;

30 (3) actions for the collection of money due to the city or town or from the city or town to any person when

- 1 the amount sought, exclusive of interest and costs, does not exceed ~~\$5,000~~ \$9,500;
- 2 (4) when the amount claimed, exclusive of costs, does not exceed ~~\$5,000~~ \$9,500, actions for:
- 3 (a) the breach of an official bond given by a city or town officer;
- 4 (b) the breach of any contract when the city or town is a party or is in any way interested;
- 5 (c) damages when the city or town is a party or is in any way interested;
- 6 (d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town;
- 7 and
- 8 (e) collection on bonds given upon an appeal taken from the judgment of the court in any action
- 9 mentioned in subsections (4)(a) through (4)(d);
- 10 (5) actions for the recovery of personal property belonging to the city or town when the value of the
- 11 property, exclusive of the damages for the taking or detention, does not exceed ~~\$5,000~~ \$9,500; and
- 12 (6) actions for the collection of a license fee required by an ordinance of the city or town."

- 13
- 14 **Section 4.** Section 7-1-4151, MCA, is amended to read:
- 15 **"7-1-4151. Municipal infractions -- proceedings.** (1) In municipal infraction proceedings:
- 16 (a) the matter must be tried before a municipal court judge or city court judge in the same manner as a
- 17 small claim if the total amount of civil penalties does not exceed ~~\$3,000~~ \$7,000. The matter may only be tried
- 18 before a judge in district court if the total amount of civil penalties assessed exceeds ~~\$3,000~~ \$7,000.
- 19 (b) the city has the burden of proof that the municipal infraction occurred and that the defendant
- 20 committed the infraction. The proof must be by clear and convincing evidence.
- 21 (c) the court shall ensure that the defendant has received a copy of the charges and that the defendant
- 22 understands the charges. The defendant may question all witnesses who appear for the municipality and produce
- 23 evidence or witnesses on the defendant's behalf.
- 24 (d) the defendant may be represented by counsel of the defendant's own choosing and at the
- 25 defendant's own expense;
- 26 (e) the defendant may answer by admitting or denying the infraction;
- 27 (f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the
- 28 infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to
- 29 exist by the defendant constitutes a separate infraction.
- 30 (2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the

1 municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in
2 the citation is served as provided in 7-1-4150 and fails without good cause to appear in response to the civil
3 citation, judgment must be entered against the person.

4 (3) A person against whom judgment is entered shall pay court costs and fees as in small claims court
5 under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and
6 court fees.

7 (4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking
8 alternative relief from the court in the same action.

9 (5) When judgment has been entered against a defendant, the court may do any of the following:

10 (a) impose a civil penalty by entry of a judgment against the defendant;

11 (b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the
12 court;

13 (c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;

14 (d) authorize the municipality to abate or correct the violation;

15 (e) order that the municipality's costs for abatement or correction of the violation be entered as a
16 judgment against the defendant or assessed against the property where the violation occurred, or both.

17 (6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt."
18

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

20 "**25-35-502. Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery of
21 money or specific personal property when the amount claimed does not exceed ~~\$3,000~~ \$7,000, exclusive of
22 costs, and the defendant can be served within the county where the action is commenced.

23 (2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount
24 claimed does not exceed ~~\$3,000~~ \$7,000."
25

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

27 "**25-35-503. Removal from district court.** A district court judge may require any action filed in district
28 court to be removed to the small claims court if the amount in controversy does not exceed ~~\$3,000~~ \$7,000. The
29 small claims court shall hear any action so removed from the district court."
30

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

2 **"25-35-606. Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the
3 plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by
4 appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the
5 same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff
6 not less than 72 hours before the date set for the hearing. Service must be made in the same manner in which
7 service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a
8 counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's
9 claim.

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

15 (3) The counterclaim must be made in substantially the following form:

16 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
17 COURT OF..... COUNTY, MONTANA
18 BEFORE, JUSTICE OF THE PEACE

19

20 Plaintiff

21 vs.

Counterclaim

22

Case No.

23

24 Defendant(s)

25

26 Comes now the defendant, being first duly sworn, and alleges that the defendant is entitled to
27 counterclaim against the plaintiff in the plaintiff's pending action in the sum of \$....., for

28

29

30 which sum is now due, together with defendant's costs expended in this action.



1 Dated this day of, 20...

2

3 Defendant

4

5 Defendant's address

6 Subscribed and sworn to before me this..... day of....., 20...

7

8 Justice of the peace

9 By:

10 Clerk, small claims division"

11

12 **Section 8.** Section 75-7-123, MCA, is amended to read:

13 **"75-7-123. Penalties -- restoration.** (1) A person who initiates a project without written consent of the
14 supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency
15 procedures provided for in 75-7-113, or violates 75-7-106 is:

16 (a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

17 (b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

18 (2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the
19 jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to
20 a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to
21 collect a civil penalty.

22 (3) In addition to a fine or a civil penalty under subsection (1), the person:

23 (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors,
24 to as near its prior condition as possible; or

25 (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be
26 collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed ~~\$7,000~~ \$12,000.
27 If the amount of liability for restoration exceeds ~~\$7,000~~ \$12,000, then the action must be brought in district court.

28 (4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty,
29 must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's
30 court the money is directed to be deposited pursuant to 3-10-601."



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2 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2011.

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