

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
109TH LEGISLATURE
SECOND REGULAR SESSION

(Filing No. S-470)

COMMITTEE AMENDMENT " A " to S.P. 684, L.D. 1807, Bill,
"AN ACT to Revise the Small Claims Law."

Amend the bill by striking out all of section 4 and
inserting in its place the following:

'Sec. 4. 14 MRSA c. 738 is enacted to read:

CHAPTER 738

SMALL CLAIMS

§7461. Purpose

It is the purpose of this chapter to provide a simple,
speedy and informal court procedure for citizens so they
may easily resolve small claims without undue procedural
burdens.

§7462. Definitions

As used in this chapter, unless the context
indicates otherwise, the following terms have the following
meanings:

1. Representative. "Representative" means the person
representing a corporation, partnership or governmental entity.

2. Small claim. "Small claim" means a right of action
cognizable by a court, if the debt or damage does not ex-

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eed \$800, exclusive of interest and costs. It shall not include an action involving the title to real estate.

§7463. Representation

1. Attorney. A party may be represented by an attorney in a small claim proceeding.

2. Corporation, partnership or governmental entity. A corporation, partnership or governmental entity may be represented by a person other than an attorney in a small claim proceeding, as provided under Title 4, section 807.

§7464. Bringing a claim

1. Venue. A small claim shall be brought in the division of the District Court where the right of action accrued, where the defendant resides, where the defendant has a place of business or, if the defendant is a business entity, where its registered agent resides.

2. Personal jurisdiction. The personal jurisdiction in a small claim action shall be coextensive with that of the District Court.

3. Not exclusive. The procedure of this chapter shall be an alternative and not exclusive.

4. Statement of claim. A plaintiff shall provide a brief statement of his claim to the clerk of the District Court. The clerk shall briefly record the notice of the claim.

5. Hearing. On receiving a claim, the clerk shall set a date for hearing. The date may not be less than 14 days from the date notice is mailed to the defendant.

6. Fee. At the entry of the statement, a fee of \$5 shall be paid. The clerk may pay the cost of notices from the fee and the remainder may be retained by the court as costs.

§7465. Filing without fee.

1. Filing. A person may, without fee, file an application in the District Court requesting permission to proceed without payment of a filing fee.

2. Contents. The application shall be on a form supplied by the clerk. It shall include:

A. The monthly income received and monthly expenses necessary for family support; and

B. A statement that the plaintiff has no other funds from which fees may reasonably be paid.

3. Procedure. The clerk shall present an application to the court as soon as is practicable. If the court finds that the plaintiff is without sufficient funds to pay the filing fee, it shall order waiver of the fee. The clerk shall promptly notify the plaintiff of the decision.

§7466. Notice

Notice

1. to plaintiff. The clerk shall cause notice of the

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hearing to be given to the plaintiff by ordinary mail,
addressed to the address given to the clerk by the plaintiff.
The clerk shall make an entry on the docket indicating the
date of the mailing, which shall be sufficient showing of
that notice.

2. ^{Notice} To defendant. The clerk shall cause notice and
a brief statement of the claim to be given to the defendant
by postpaid registered or certified mail, addressed to
_____ his last known postoffice address. That notice
shall direct the defendant to appear at ^{the time and place of} the hearing. If the
defendant does not receive the mailed notice at least 7 days
prior to the hearing, as evidenced by a signed receipt, ser-
vice shall be completed as in other actions at law at the
expense of the plaintiff. At the request of the plaintiff,
the clerk shall arrange for that service.

§7467. Continuances

While continuances are not favored, a continuance may be
granted for good cause. Continuances may be granted by the
clerk when service has not been completed.

§7468. Removal and transfer

Every cause begun under this chapter shall be decided
under this chapter.

A small claim may not be removed to the Superior Court.
The court may order transfer to another District Court

division for good cause.

§7469. Mediation

1. Preliminary inquiry. Prior to the hearing, the court shall determine what efforts the parties have made to settle their dispute.

2. Use of court. The court may require the parties to meet in the court room to attempt to settle their dispute. The meeting may be in private or before a mediator, as the parties elect.

3. Hearing. If settlement efforts have failed or are inappropriate, the court shall hold a hearing without delay.

4. Court approvals. Every settlement shall be submitted for court approval. The court shall approve every reasonable settlement. An approved settlement shall have the force and effect of a judgment. An approved settlement may not be appealed.

§7470. Evidence

At the hearing, the Rules of Evidence shall not apply. The court may admit any material and proper evidence. The court shall assist in developing all relevant facts.

§7471. Judgment

1. Judgment. A judgment may provide monetary or equitable relief. The court may order payment of a monetary

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judgment in installments.

2. Costs. If the plaintiff prevails, he shall be awarded costs in addition to his judgment.

3. Equitable relief. Equitable relief may be granted only as between the parties. It shall be limited to orders to repair, return, replace, reform, refund or rescind.

4. Failure to appear. If either party fails to appear for the hearing, the court may render judgment for the other party, including a dismissal. The court may continue the case if the failure is for good reason.

5. Judgment order. The court shall enter ~~the~~ the judgment order. It shall provide both parties with a copy, either personally or by certified mail. That order shall contain:

A. The name of the prevailing party;

B. The time allowed for appeal;

C. The amount of judgment and costs and method of payment;

D. Other court ordered action;

E. A statement of the duties and consequences relating to satisfaction and disclosure, including a statement that if the judgment is satisfied, no record of judgment will exist which might adversely affect his credit;
and

F. A disclosure hearing date.

§7472. Satisfaction and disclosure

1. Satisfaction. If the judgment, including costs, is satisfied prior to the disclosure hearing date, then:

A. The prevailing party shall notify the clerk of satisfaction; and

B. The clerk shall enter the disposition of the case as "no cause of action."

2. Disclosure. The court shall hold a disclosure hearing to determine the assets and income available to satisfy the judgment, if:

A. The clerk has not received notice of satisfaction from the prevailing party prior to the disclosure hearing date;

B. The time for appeal has passed without notice of appeal; and

C. The judgment does not order installment payments.

Disclosure proceedings shall comply with sections 3124 to 3137, except that the subpoena requirements of those sections shall be met by the court order and the (second) notice by the clerk.

§7473. Disclosure notice

If a disclosure hearing is required under section 7472, subsection 2, the clerk shall send by certified mail, to both parties, notice of the disclosure hearing.

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§7474. Appeal

1. Scope of appeal. A party may appeal an adverse decision to the Superior Court. An appeal may be only on questions of law.

2. Procedure. An appeal shall be filed within 10 days of entry of judgment. It shall be filed with the District Court that heard the case. The clerk shall transmit to the Superior Court all documents relating to the case and any recording of the hearing.

§7475. Effect of judgment

Any fact found or issue adjudicated in a proceeding under this chapter, may not be deemed found or adjudicated for the purpose of any other cause of action. While the doctrine of collateral estoppel may not apply to facts found or issues adjudicated, the judgment obtained shall be res judicata as to the amount in controversy. The only recourse to an adverse decision shall be appeal.

Statement of Fact

This amendment clarifies the language of the bill. It also deletes the provision allowing a new jury trial in the Superior Court to a defendant who has lost in a small claim action. It also allows venue for a small claim action where the action accrues.