

CHAPTER 331

COURTS

SENATE BILL 01-140

BY SENATOR(S) Matsunaka, Dyer (Arapahoe), Hernandez, and Lamborn;
also REPRESENTATIVE(S) Johnson, Boyd, Jahn, Madden, Smith, Weddig, and Williams S..

AN ACT

CONCERNING SMALL CLAIMS COURT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-6-401, Colorado Revised Statutes, is amended to read:

13-6-401. Legislative declaration. The general assembly hereby finds and declares that individuals, partnerships, corporations, and associations frequently do not pursue meritorious small civil claims because of the disproportion between the expense and time of counsel and litigation and the amount of money or property involved; that the law and procedures of civil litigation are technical and frequently unknown to ~~a person attempting to represent himself~~ PERSONS WHO ARE REPRESENTING THEMSELVES; that procedures for the inexpensive, speedy, and informal resolution of small claims in a forum where the rules of substantive law apply, but the rules of procedure and pleading and the technical rules of evidence do not apply, are desirable; that such procedures should be conducted at times convenient to the persons using them, including evening and Saturday sessions; that the personnel implementing and conducting such procedures should be trained and equipped to assist anyone with a small claim in a friendly, efficient, and courteous manner; and that, therefore, the establishment of a small claims division of the county court as provided in this part 4 is in the public interest.

SECTION 2. 13-6-403, Colorado Revised Statutes, is amended to read:

13-6-403. Jurisdiction of small claims court - limitations. (1) On and after January 1, 1996, the small claims court shall have concurrent original jurisdiction with the county and district courts in all civil actions in which the debt, damage, or value of the personal property claimed by either the plaintiff or the defendant, exclusive of interest and cost, does not exceed ~~five thousand~~ SEVEN THOUSAND FIVE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

HUNDRED dollars, including SUCH CIVIL PENALTIES AS MAY BE PROVIDED BY LAW. By way of further example, and not limitation, THE SMALL CLAIMS COURT SHALL HAVE jurisdiction to hear and determine actions in tort and assess damages therein not to exceed ~~five thousand~~ SEVEN THOUSAND FIVE HUNDRED dollars. The small claims court division shall also have concurrent original jurisdiction with the county and district courts in actions where a party seeks to enforce a restrictive covenant on residential property and the amount required to comply with the covenant does not exceed ~~five thousand~~ SEVEN THOUSAND FIVE HUNDRED dollars, exclusive of interest and costs, ~~and~~ in actions where a party seeks REPLEVIN IF THE VALUE OF THE PROPERTY SOUGHT DOES NOT EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS, AND IN ACTIONS WHERE A PARTY SEEKS TO ENFORCE A CONTRACT BY SPECIFIC PERFORMANCE OR to disaffirm, avoid, or rescind a contract and the amount at issue does not exceed ~~five thousand~~ SEVEN THOUSAND FIVE HUNDRED dollars.

(2) The small claims court shall have no jurisdiction except that specifically conferred upon it by law. In particular, it shall have no jurisdiction over the following matters:

(a) Those matters excluded from county court jurisdiction under section 13-6-105 (1);

(b) Actions involving claims of defamation by libel or slander;

(c) Actions of forcible entry, forcible detainer, or unlawful detainer;

(d) ~~Actions in replevin;~~

(e) ~~Actions for specific performance, except as required to enforce restrictive covenants on residential property;~~

(f) Actions brought or defended on behalf of a class;

(g) Actions requesting or involving prejudgment remedies;

(h) Actions involving injunctive relief, except as required to:

(I) Enforce restrictive covenants on residential property; ~~and to~~

(II) Enforce the provisions of article 2.5 of title 6, C.R.S.;

(III) ACCOMPLISH REPLEVIN; AND

(IV) ENTER JUDGMENTS IN ACTIONS WHERE A PARTY SEEKS TO ENFORCE A CONTRACT BY SPECIFIC PERFORMANCE OR TO DISAFFIRM, AVOID, OR RESCIND A CONTRACT;

(i) Traffic violations and other criminal matters;

(j) Awards of body executions.

SECTION 3. 13-6-405 (2) and (4), Colorado Revised Statutes, are amended to

read:

13-6-405. Magistrate in small claims court. (2) A magistrate shall be a qualified attorney-at-law admitted to practice in the state of Colorado or a nonattorney if ~~he~~ THE NONATTORNEY is serving as a county judge pursuant to section 13-6-203.

(4) If any party ~~objects to~~ FILES A TIMELY WRITTEN OBJECTION, PURSUANT TO RULE OF THE SUPREME COURT, WITH the magistrate CONDUCTING THE HEARING, that party's case shall be rereferred to a judge.

SECTION 4. 13-6-407, Colorado Revised Statutes, is amended to read:

13-6-407. Parties - representation. (1) Any natural person, corporation, partnership, association, or other organization may commence or defend an action in the small claims court, but no assignee or other person not a real party to the transaction which is the subject of the action may commence an action therein, except as a COURT-APPOINTED personal representative, CONSERVATOR, OR GUARDIAN OF THE REAL PARTY IN INTEREST.

(2) (a) (I) Notwithstanding the provisions of article 5 of title 12, C.R.S., in the small claims court, an individual shall represent himself OR HERSELF; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(II) It ~~being~~ IS the intent of this section that no attorney, except pro se or as an authorized full-time employee or active general partner of a partnership, an authorized active member or full-time employee of a union, a full-time officer or full-time employee of a for-profit corporation, or a full-time employee or active member of an association, which partnership, union, corporation, or association is a party, shall appear or take any part in the filing or prosecution or defense of any matter in the small claims court, EXCEPT AS PERMITTED BY SUPREME COURT RULE.

(b) IN ACTIONS ARISING UNDER PART 1 OF ARTICLE 12 OF TITLE 38, C.R.S., INCLUDING, BUT NOT LIMITED TO, ACTIONS INVOLVING CLAIMS FOR THE RECOVERY OF A SECURITY DEPOSIT OR FOR DAMAGE TO PROPERTY ARISING FROM A LANDLORD-TENANT RELATIONSHIP, A PROPERTY MANAGER WHO HAS RECEIVED SECURITY DEPOSITS, RENTS, OR BOTH, OR WHO HAS SIGNED A LEASE AGREEMENT ON BEHALF OF THE OWNER OF THE REAL PROPERTY THAT IS THE SUBJECT OF THE SMALL CLAIMS ACTION, SHALL BE PERMITTED TO REPRESENT THE OWNER OF THE PROPERTY IN SUCH ACTION.

(3) IN ANY ACTION TO WHICH THE FEDERAL "SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940", 50 APP. U.S.C. SEC. 521, IS APPLICABLE, THE COURT MAY ENTER A DEFAULT AGAINST A DEFENDANT WHO IS IN THE MILITARY WITHOUT ENTERING

JUDGMENT, AND THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT THE INTERESTS OF THE DEFENDANT PRIOR TO THE ENTRY OF JUDGMENT AGAINST THE DEFENDANT.

~~(3)~~ (4) If an attorney appears, as permitted in subsection (2) OR (3) of this section, the ~~opposing~~ OTHER party OR PARTIES in the case may be represented by counsel, if ~~he~~ SUCH PARTY OR PARTIES so ~~chooses~~ CHOOSE.

~~(4)~~ (5) Nothing contained in this section is intended to limit or otherwise interfere with a party's right to assign, or to employ counsel to ~~pursue, his~~ PURSUE THAT PARTY'S rights and remedies subsequent to the entry of judgment by a small claims court.

(6) ANY SMALL CLAIMS COURT ACTION IN WHICH AN ATTORNEY APPEARS SHALL BE PROCESSED AND TRIED PURSUANT TO THE STATUTES AND COURT RULES GOVERNING SMALL CLAIMS COURT ACTIONS.

SECTION 5. 13-6-408, Colorado Revised Statutes, is amended to read:

13-6-408. Counterclaims exceeding jurisdiction of small claims court - procedures - sanctions for improper assertion. Counterclaims exceeding the jurisdiction of the small claims court shall be ~~transferred~~ REMOVED TO THE COUNTY OR DISTRICT COURT OF APPROPRIATE JURISDICTION pursuant to rule of the supreme court. If a county or district court determines that a plaintiff who originally filed ~~his~~ A claim in the small claims court is entitled to judgment and also that a counterclaim against the same plaintiff in the small claims action was filed solely to defeat the jurisdiction of the small claims court and was without merit, the county or district court may also award the plaintiff ~~his~~ costs, including reasonable attorney fees, incurred in prosecuting the action in the county or district court.

SECTION 6. 13-6-410, Colorado Revised Statutes, is amended to read:

13-6-410. Appeal of a claim. ~~If the plaintiff and defendant do not agree at or prior to trial that there shall be no appeal and that the decision of the magistrate or judge shall be final and binding on both parties;~~ A record shall be made OF ALL SMALL CLAIMS COURT PROCEEDINGS, and either the plaintiff or the defendant may appeal pursuant to county court rules. Upon appeal, all provisions of law and rules concerning appeals from the county court shall apply, including right to counsel. A tape recording of the trial proceedings shall satisfy any requirements of a transcript for appeal, upon the payment of a nominal fee by the appellant.

SECTION 7. 13-6-411 (1), Colorado Revised Statutes, is amended to read:

13-6-411. Limitation on number of claims filed. (1) No plaintiff may file more than two claims per month, eighteen claims per year, in the small claims court of any county. Each claim filed in any small claims court shall contain a certification by the plaintiff that ~~he~~ THE PLAINTIFF has not filed any more than two claims during that month and eighteen claims in that year in the small claims court of that county.

SECTION 8. 13-6-411.5, Colorado Revised Statutes, is amended to read:

13-6-411.5. Place of trial. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, all actions in the small claims court shall be brought in the county in which ~~the~~ ANY defendant at the time of filing of the claim resides, is regularly employed, is a student at an institution of higher education, or has an office for the transaction of business.

(2) ACTIONS TO ENFORCE RESTRICTIVE COVENANTS AND ACTIONS ARISING UNDER PART 1 OF ARTICLE 12 OF TITLE 38, C.R.S., INCLUDING, BUT NOT LIMITED TO, ACTIONS INVOLVING CLAIMS FOR THE RECOVERY OF A SECURITY DEPOSIT OR FOR DAMAGE TO PROPERTY ARISING FROM A LANDLORD-TENANT RELATIONSHIP, MAY BE BROUGHT IN THE COUNTY IN WHICH THE DEFENDANT'S PROPERTY THAT IS THE SUBJECT OF THE ACTION IS SITUATED.

(3) IF A DEFENDANT APPEARS AND DEFENDS A SMALL CLAIMS ACTION ON THE MERITS AT TRIAL, SUCH DEFENDANT SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION TO THE PLACE OF TRIAL PERMITTED UNDER THIS SECTION.

SECTION 9. 13-6-415, Colorado Revised Statutes, is amended to read:

13-6-415. Service of process. Every defendant shall be notified that an action has been filed against ~~him~~ THAT DEFENDANT in the small claims court either by certified mail, return receipt requested, or by personal service of process, as provided by the rules of procedure for the small claims court. The clerk of the small claims court shall collect, in advance, the fee provided for in section 13-32-104 (1) (i) for each service of process attempted by certified mail.

SECTION 10. 13-32-101 (1) (c) (II) and (1) (c) (III), Colorado Revised Statutes, are amended to read:

13-32-101. Docket fees in civil actions - support registry fund created - repeal. (1) At the time of first appearance in all civil actions and special proceedings in all courts of record, except in the supreme court and the court of appeals, and except in the probate proceedings in the district court or probate court of the city and county of Denver, and except as provided in subsection (2) of this section and in sections 13-32-103 and 13-32-104, there shall be paid in advance the total docket fees, as follows:

(c) (II) The general assembly hereby declares that docket fees for actions filed in the small claims division of the county court should reflect the range of the monetary jurisdictional limit established for such actions and that such fees should promote access to the courts and reflect appropriate contributions from litigants using the court system based on the money judgment sought in an action. The general assembly hereby declares that it is appropriate to establish docket fees for the small claims division of the county court as follows:

(A) When the money judgment sought BY THE PLAINTIFF in an action filed in the small claims division of the county court is five hundred dollars or less, a plaintiff ~~third-party plaintiff, or a party filing a cross claim or counterclaim~~ shall pay a fee of ~~eight~~ NINE dollars, and a defendant FILING AN ANSWER WITHOUT A COUNTERCLAIM in such an action shall pay a fee of ~~four~~ FIVE dollars.

(B) ~~When the money judgment sought in an action filed in the small claims division of the county court exceeds five hundred dollars and is no more than two thousand~~ SEVEN THOUSAND FIVE HUNDRED dollars, a plaintiff ~~third-party plaintiff, or party filing a cross claim or counterclaim~~ shall pay a fee of ~~sixteen~~ TWENTY-THREE dollars, and a defendant FILING AN ANSWER WITHOUT A COUNTERCLAIM in such an action shall pay a fee of ~~eleven~~ FIFTEEN dollars.

(C) ~~When the money judgment sought in an action filed in the small claims division of the county court exceeds two thousand dollars and is no more than three thousand five hundred dollars, a plaintiff, third-party plaintiff, or party filing a cross claim or counterclaim shall pay a fee of twenty-five dollars, and a defendant in such an action shall pay a fee of twenty-one dollars.~~

(D) ~~When the money judgment sought in an action filed in the small claims division of the county court exceeds three thousand five hundred dollars and is no more than five thousand dollars, a plaintiff, third-party plaintiff, or party filing a cross claim or counterclaim shall pay a fee of forty-two dollars, and a defendant in such an action shall pay a fee of thirty-eight dollars.~~

(III) ~~If any person~~ A DEFENDANT files AN ANSWER WITH a counterclaim in an action in the small claims division of the county court, the fee for such ANSWER AND counterclaim ~~under subparagraph (H) of this paragraph (c) is either the fee for a counterclaim based upon~~ SHALL BE TEN DOLLARS UNLESS the amount of the money judgment sought in the action COMPLAINT or the ~~fee for a counterclaim based upon the amount of the counterclaim, whichever fee is greater~~ COUNTERCLAIM EXCEEDS FIVE HUNDRED DOLLARS AND IS NO MORE THAN SEVEN THOUSAND FIVE HUNDRED DOLLARS, IN WHICH CASE THE FEE FOR THE ANSWER AND COUNTERCLAIM SHALL BE TWENTY DOLLARS.

SECTION 11. 13-6-104 (1) and (2), Colorado Revised Statutes, are amended to read:

13-6-104. Original civil jurisdiction. (1) On and after January 1, 1991, the county court shall have concurrent original jurisdiction with the district court in civil actions, suits, and proceedings in which the debt, damage, or value of the personal property claimed does not exceed ~~ten~~ FIFTEEN thousand dollars, including by way of further example, and not limitation, jurisdiction to hear and determine actions in tort and assess damages therein not to exceed ~~ten~~ FIFTEEN thousand dollars. The county court shall also have jurisdiction of counterclaims in all such actions when the counterclaim does not exceed ~~ten~~ FIFTEEN thousand dollars.

(2) The county court shall have concurrent original jurisdiction with the district court in actions to foreclose liens pursuant to article 20 of title 38, C.R.S., and in cases of forcible entry, forcible detainer, or unlawful detainer, except when such cases involve the boundary or title to real property and except as provided in section 13-40-109. Judgment in the county court for rent, damages on account of unlawful detention, damages for injury to property, and damages incurred under article 20 of title 38, C.R.S., under this subsection (2) shall not exceed a total of ~~ten~~ FIFTEEN thousand dollars, exclusive of costs and attorney fees, nor shall the county court on and after January 1, 1991, have jurisdiction if the monthly rental value of the property exceeds ~~ten~~ FIFTEEN thousand dollars.

SECTION 12. 13-32-101 (1) (c) (I), Colorado Revised Statutes, is amended to read:

13-32-101. Docket fees in civil actions - support registry fund created - repeal. (1) At the time of first appearance in all civil actions and special proceedings in all courts of record, except in the supreme court and the court of appeals, and except in the probate proceedings in the district court or probate court of the city and county of Denver, and except as provided in subsection (2) of this section and in sections 13-32-103 and 13-32-104, there shall be paid in advance the total docket fees, as follows:

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), on and after July 1, 1992, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is ~~ten~~ FIFTEEN thousand dollars or less and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of thirty dollars and, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, a fee in the amount of twenty-six dollars.

SECTION 13. 13-40-109, Colorado Revised Statutes, is amended to read:

13-40-109. Jurisdiction of courts. The district courts in their respective districts and county courts in their respective counties have jurisdiction of all cases of forcible entry, forcible detainer, or unlawful detainer arising under this article, and the person entitled to the possession of any premises may recover possession thereof by action brought in any of said courts in the manner provided in this article. On and after January 1, 1991, in all actions brought before county courts under section 13-40-104 (1) (f) to (1) (i), where the allegations of the complaint are put in issue by a verified answer and in actions in which the verified answer alleges a monthly rental value of the property in excess of ~~ten~~ FIFTEEN thousand dollars, the county court, upon the filing of said answer, shall suspend all proceedings therein and certify said cause and transmit the papers therein to the district court of the same county. Causes so certified by the county court shall be proceeded within the courts to which they have been so certified in all respects as if originally begun in the court to which they have been certified. On and after January 1, 1991, the jurisdiction of the county court to enter judgment for rent, or damages, or both and to render judgment on a counterclaim in forcible entry and detainer shall be limited to a total of ~~ten~~ FIFTEEN thousand dollars in favor of either party, exclusive of costs and attorney fees.

SECTION 14. Effective date - applicability. This act shall take effect September 1, 2001, and shall apply to causes of action filed on or after said date.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 2001