

# MICROFILM DIVIDER

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DESCRIPTION

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10/16/03  
Date

2003 HOUSE JUDICIARY

HB 1472

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1472

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
1		xx	30-end
2	xx		0-10
3	xx		35.1-36.9

Committee Clerk Signature *J. Penrose*

**Minutes:** 13 members present.

**Vice Chair Maragos:** We will open the hearing on HB 1472.

**Rep. Koppelman:** Introduced the bill, support. (see attached testimony)

**Rep. Delmore:** You said the rules of evidence don't apply in small claims court. You also address the idea of referees which is something the committee has endorsed before. Can you explain a little bit more about both of those.

**Rep. Koppelman:** I am not criticizing the fact that referees hear small claims court cases, nor am I criticizing the fact that the rules of evidence in any small claims court are different. I am just pointing that out. I think it has bearing on this idea. I think it is appropriate that small claims are heard in a less formal atmosphere and in a more conversational style. The concern is that because they are lacking all the normal safeguards that we have in court proceedings, and because the finality of small claim court decision, they really have nowhere to go for a bad decision.

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*10/16/03*  
Date

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**Rep. Delmore:** If get taken to district court - still paying the same \$80 fee as anybody else.

**Rep. Koppelman:** That is correct. The bill also indicates that the appealing party would have to pay the filing fees. That is to discourage frivolous appeals.

**Rep. Klemin:** Under our current procedures in small claims court, if the defendant doesn't want to be there, they have the right to remove the case to the district court.

**Rep. Koppelman:** Correct.

**Rep. Klemin:** Then in the district court, they would have all the rights as if it had been brought there originally, including the right to appeal to the ND Supreme Court and possibly even to the US Supreme Court in the appropriate case.

**Rep. Koppelman:** Right.

**Rep. Klemin:** As I read this bill, the defendant no longer has that alternative, he cannot elect to remove the case out of small claims court, he's stuck there, and the only remedy he has is to appeal it to the district court, beyond that it can't be appealed at all. Is that reading correct?

**Rep. Koppelman:** I think so. The right to removal right now, only allows the defendant to make a judgment in advance of the initiation of court proceedings, to say this is where I want the case tried.

**Rep. Klemin:** If it is in district court, if they appeal, they could have a jury trial, from which there is no appeal.

**Rep. Koppelman:** Technically you are correct. But again, the likelihood of a case under \$5,000 range, going beyond district court is probably pretty small.

**Rep. Klemin:** Why are we prohibiting a person from being able to appeal this to the supreme court.

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**Rep. Koppelman:** Because the Chief Justice was concerned about that feasibility. I have no inherent reason to not want it to be appealed, I was just trying to make this a reasonable bill, and the fact that it can't be appealed right now from a low level, and this would allow that to happen, I think is a better scenario than allowing it to be appealed infinitely, but not start where it really ought to.

**Rep. Klemin:** I think some of the biggest cases that have hit the US Supreme Court have been debtor/creditor rights and been small cases.

**Rep. Koppelman:** I would not necessarily be opposed to further appeals, but if one of those cases goes to small claims court right now, where someone has a very valid claim, that could feasibly be appealed to the Supreme Court, they can't even get beyond small claims court.

**Rep. Delmore:** Can we amend out that section.

**Rep. Koppelman:** I would be amendable to that.

**Chairman DeKrey:** Thank you. Any further testimony in support.

**John Risch, United Transportation Union:** Support. We want equal justice under the law (see attached testimony).

**Chairman DeKrey:** Thank you. Any testimony opposed to HB 1472.

**Judge Bennie Graff:** Opposed (tape 1, side b, #47-end, tape 2, side a, #0-1.6) The people who use Small Claims Court are individuals or small business people trying to get relief. This is a final outcome court. The claim is decided in small claims court and that decision is final. That is how we want it. The defendant, when sued in small claims court, can decide to change it to district court.

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**Rep. Klemin:** What would happen if the defendant had a counterclaim that exceeded the \$5,000 restriction.

**Judge Graff:** I know he can't bring it in small claims, he has to bring it on his own in district court, but he can't exceed the \$5,000 maximum.

**Rep. Klemin:** But under a compulsory claim under the rules, he would have to bring it or he would be barred.

**Judge Graff:** The statute speaks to it, I don't know exactly what it says.

**Rep. Klemin:** But under this bill...

**Judge Graff:** He couldn't.

**Chairman DeKrey:** Thank you. Any further testimony in opposition to HB 1472.

**Ted Gladden, State Court Administrator:** Opposed (see attached testimony).

**Rep. Delmore:** Do you really believe that referees and judges in small claims court are never wrong? That they may make a wrong decision?

**Mr. Gladden:** Yes, I'm sure some mistakes do occur.

**Rep. Klemin:** I don't recall exactly how it works, that even though you can't appeal a small claims court decision, is it hypothetically possible to do something like a writ of certario or writ of superintendent control, if some miscarriage of justice.

**Mr. Gladden:** I can't answer that.

**Chairman DeKrey:** Thank you. Any further testimony in opposition.

**Rep. Koppelman:** Since the plaintiff has made a conscious decision to proceed in small claims court vs. district court, they've forfeited their right to jury trial. Secondly, some say this will

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increase the work load and some say this will decrease the work load and have less than the \$80 filing fees, and seems to be a disagreement of opinion on how this will impact case levels.

**Rep. Klemin:** There might be another view on this jury trial issue. I had a case where the plaintiff brought a case in small claims court and it says the decision is irrevocable to do that. However, the defendant didn't want to be in small claims court so he came to me to remove the case to the district court, and the plaintiff in the district court made the request for a jury trial, even though he had supposedly made an irrevocable election not to have one, and the district court in Burleigh County held on constitutional grounds that you could not deny the plaintiff the right to the jury trial.

**Rep. Koppelman:** I encourage you to explore that point. What I hear from both sides, is that it is very common that someone will come to their attorney and say "I am being sued in small claims court, it's a \$2,000 case, but I'm not sure I want to do it there, will you take it to district court for me", and most good attorneys will say certainly if you want me to do that I will, however the cost of proceeding in district court over a \$2,000 or \$5,000 claim, after you hire me, pay the fees, you are going to be losing money. You are better off taking your chances in small claims.

**Chairman DeKrey:** Thank you. We will close the hearing.

(Reopened later in the afternoon session)

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1472.

**Rep. Grande:** I move a Do Not Pass.

**Rep. Kingsbury:** Seconded.

13 YES 0 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Grande

LR

Date: 2/11/02  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1472

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Grande Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Rep. Delmore	/	
Vice Chairman Maragos	/		Rep. Eckre	/	
Rep. Bernstein	/		Rep. Onstad	/	
Rep. Boehning	/				
Rep. Galvin	/				
Rep. Grande	/				
Rep. Kingsbury	/				
Rep. Klemin	/				
Rep. Kretschmar	/				
Rep. Wrantham	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Grande

If the vote is on an amendment, briefly indicate intent:

Yolanda Richardson 10/16/03  
Operator's Signature Date



REPORT OF STANDING COMMITTEE (410)  
February 12, 2003 1:18 p.m.

Module No: HR-27-2407  
Carrier: Grande  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HB 1472: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1472 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

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HR-27-2407

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*10/16/03*  
Date

2003 TESTIMONY

HB 1472

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