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Salvatore Riccardi  
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10/16/03  
Date

2003 HOUSE JUDICIARY

HCR 3059

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10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3059

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-26-03

Tape Number	Side A	Side B	Meter #
1	xx		0-5
2	xx		0-3.6
Committee Clerk Signature <i>A. Penrose</i>			

**Minutes:** 12 members present, 1 member absent (Rep. Onstad).

**Chairman DeKrey:** We will open the hearing on HCR 3059.

**Rep. Kim Koppelman:** Introduced bill (see attached testimony by Monty Mertz, submitted by Rep. Koppelman). The other two bills dealt with Small Claims Court issues and were defeated. On the statistical sheet, you will notice that Cass County has more than twice as many small claims court cases than any other county in the state. A lot of cases are involved and a lot of dollars are involved in small claims court. Given some of the information you heard earlier that we should ask one of our Interim Committees to take a look at this and research it more fully than we have the luxury of doing here in this legislative session.

**Rep. Delmore:** You want to see more claims in small claims court. I understand that some times the other side wants the case moved to district court instead of small claims court. I am leaning towards where you are going, but wouldn't this put a really high burden on the small claims court.

Page 2  
House Judiciary Committee  
Bill/Resolution Number HCR 3059  
Hearing Date 2-26-03

**Rep. Koppelman:** I think that is a good question. It's hard to say exactly what the outcome would be, plus this will be a study resolution, so the committee during the interim would consider that. I'm not for or against more cases. The reason for the statistical sheet was that it was interesting to me to see how many cases really do go to small claims court; and if something is wrong, it will be found and can be addressed.

**Rep. Klemin:** This resolution in line 10-12 makes a statement that I'm not entirely sure is accurate, about the "uncertainty of a fair trial". If we endorse this resolution, I don't want to endorse that statement because I don't think it is accurate. I haven't heard people complain about not getting fair treatment, fair judgments in small claims court. I think it is probably just as true that you might not like the judgment in any court you may be in.

**Rep. Koppelman:** I guess as I read the statement, it says "because of the restrictions on the right to appeal, many residents are bypassing small claims court". I think that is a defensible statement. I think if you will read the testimony submitted by the attorney in Fargo, you will discover that many of his clients have made that exact assertion and if you want to delete the word "many", I don't know what the number is, but I have heard from constituents and others from our area, business people as well as attorneys. Maybe it is just in our area, and not happening statewide. I do know that this is a problem.

**Rep. Klemin:** I disagree with the language that says "because of the uncertainty of a fair judgment". I don't know that that statement is true.

**Rep. Koppelman:** I am repeating what I have been told.

**Chairman DeKrey:** Thank you for appearing. Further testimony in support? Opposition to HCR 3059? We will close the hearing on HCR 3059.

Yolanda Rickford  
Operator's Signature

10/16/03  
Date

Page 3

House Judiciary Committee

Bill/Resolution Number HCR 3059

Hearing Date 2-26-03

(Reopened later in the same day)

**Chairman DeKrey:** What are the committee's wishes in regard to HCR 3059?

**Rep. Klemin:** I move to amend HCR 3059 to read as follows: on line 11, after the first of, delete "the uncertainty of a fair judgment and".

**Rep. Delmore:** Seconded.

Voice vote: Carried.

**Rep. Delmore:** I move a Do Pass as Amended.

**Rep. Eckre:** Seconded.

11 YES 1 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Grande

33104.0101  
Title.0200

Adopted by the Judiciary Committee  
February 26, 2003

VR  
2/26/03

HOUSE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3059

JUD 2/27/03

Page 1, line 11, remove "the uncertainty of a fair judgment and"  
Renumber accordingly

Page No. 1

33104.0101

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Yolanda Rickford  
Operator's Signature

10/16/03  
Date

Date: 2/26/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3059

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 33104.0101 . 0200

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Eckre

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham		✓			

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Grande

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

**REPORT OF STANDING COMMITTEE (410)**  
February 27, 2003 8:44 a.m.

Module No: HR-35-3546  
Carrier: Grande  
Insert LC: 33104.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HCR 3059: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HCR 3059 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "the uncertainty of a fair judgment and"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-35-3546

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Yolanda Richey  
Operator's Signature

10/6/03  
Date



2003 SENATE JUDICIARY

HCR 3059

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Salvatore Riccardi  
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10/16/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3059

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/26/03

Tape Number	Side A	Side B	Meter #
1	X		44 - End
1		X	0.0 - 5.5
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

**Testimony in Support of HCR 3059**

Rep. Kim Koppelman - Dist #13 Introduced Bill (meter 32) This is the first House Concurrent Resolution I have sponsored in my ten years as a representative. Read Testimony - Attachment #1

Sen. Traynor asked how many small claims cases there are a year? I do not have it with me but Cass County has overwhelmingly the most-much more then the population of that county should-maybe this is why this is a particular problem in our area.

Sen. Trenbeath discussed with him where he though the appeal would go to/ Not to the Supreme Court it would go to district court only. This is not a study of where it would go.

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*Jo Costa Richardson*  
Operator's Signature

*10/16/03*  
Date

Page 2

Senate Judiciary Committee

Bill/Resolution Number HCR 3059

Hearing Date 03/26/03

Sen. Trenbeath and Rep Koppelman discussed that if we have raised it to \$5,000 this is a lot of money to most people. Not all Judges are law trained. This process is a "crap shoot". We have not promoted this as that but-it is low cost, you do not have to hire an attorney and you go through the procedures. They do not understand the process and sometimes they do not feel that the law and the facts were presented to them-discussion (meter 52)

Sometimes it's a matter of not who is right or how is wrong but they "divide the baby" and you get half of what you asked for. Discussion of current process. How the average citizen does not understand how the law works. An attorney may say "for two-thousand dollars you could not afford to hire me". Perhaps you should take the chance in small claims court. We funnel them into a system that these minor matters can be decided. If the decisions made in small claims court occasionally, if not frequently are not made on the bases of law and the facts as they would be on another judication. That party could be very injured. If they had know after the fact "if this is what small claims court is like, I would have never done it! I have an attorney friend who has had a number of clients say "I will never set in small claims court again!" "If I ever have to initiate anything it will go right to district court-and if I am ever sued, I will remove it immediately," do to the experiences they have had.

Sen. Trenbeath questioned how many cases have been removed to district court? We do not know and I am not sure if you can access this information. These are the kinds of questions that would come up with the resolution.

John Risch - ND Legislative Director of ND legislative bord for United Transportation Union

(meter 55) Read Testimony Attachment #2. One of the issues that keep coming up is that people with more money will always win.

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HCR 3059  
Hearing Date 03/26/03

Ted Gladden - State Court Administrator (meter 0.0) Read Testimony - Attachment #3

Discussed changes he would like to see.

Sen. Dever stated how judgments seemed to be harder to collect in small claims court vs. district court? The collection process is the same.

Sen. Traynor asked if there is a appeal allowed wouldn't there be a dollar increase to incur. Sen.

Trenbeath stated that the district courts would be additionally burdened. Discussion on how the process would actually work. It would only be appealed to another district court judge.

Discussion of court fees, referees and a discussion of the "whereas's"

**Testimony in Opposition of HCR 3059**

None

**Motion Made to DO PASS HCR 3059 by Sen. Trenbeath and seconded by Senator**

**Carolyn Nelson**

**Roll Call Vote: 5 Yes. 0 No. 1 Absent**

**Motion Passed**

**Floor Assignment: Sen. Traynor**

**Senator John T. Traynor, Chairman closed the hearing.**

Date: March 26, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HCR 3059**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

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

Action Taken DO PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Traynor

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

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Richard Costa  
Operator's Signature

10/6/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 26, 2003 1:29 p.m.

Module No: SR-54-5817  
Carrier: Traynor  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HCR 3059, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends  
**DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HCR 3059  
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-54-5817

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10/6/03  
Date

2003 TESTIMONY

HCR 3059

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La Costa Richard  
Operator's Signature

10/16/03  
Date



Representative Kim Koppelman  
District 13  
513 First Avenue NW  
West Fargo, ND 58078-1101  
kkoppelm@state.nd.us

## NORTH DAKOTA HOUSE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



COMMITTEES:  
Appropriations

### Testimony on HCR 3059

Good Morning, Mr. Chairman and Members of the Senate Judiciary Committee. For your record, I am Representative Kim Koppelman and I represent District 13.

I am not in the habit of introducing study resolutions. In fact, I believe this is the first one I have introduced in my tenure as a legislator, but I believe the subject is important. House Concurrent Resolution 3059 grew out of a bill which was defeated in the House, but which the House agreed represented a serious concern which deserves study. In fact, the chairman of the House Judiciary Committee cosponsored the resolution for that reason. It is about ensuring that the people of North Dakota receive the justice they deserve, in our Small Claims Court system.

I should note that I am a proponent of Small Claims Court. I believe that it was designed as a system for addressing, as the name implies, "small claims." In fact, a few years ago, I was the sponsor of the bill which raised the dollar limit in Small Claims Court to \$5,000. I introduced that bill to ease the overcrowding of District Courts with claims in the \$3,000-\$5,000 range and to encourage people to use Small Claims Court as a venue to address these types of grievances.

Having said that, I am hearing from constituents and others, with unsettling frequency, that there are significant problems with the North Dakota Small Claims Court system, at least in certain areas of our state. This seems to be particularly true in areas of the state, like mine, where referees--and not judges--hear Small Claims Court cases. Frequently, the quality, logic, and basis in law of decisions made there are questioned. This is partially because the same rules of evidence, which are required in other courts, do not apply in Small Claims Court. These are also informal proceedings, with no attorneys present and no record kept.

All of that may be fine, except for one salient fact: Small Claims Court decisions are *final*. That means someone could unjustly lose \$5,000, by order of a North Dakota court, with no opportunity to redress that grievance.

This is in striking contrast to other judicial processes in our state. Even a \$30 traffic ticket, for example, can be appealed to District Court, ensuring every North Dakotan his or her "day in court" and the right to appeal what they believe to be a poor decision. Something is wrong with a system that allows the appeal of a \$30 fine, but not a \$5,000 judgment.

The answer may or may not lie in appealability or other restructuring of the Small Claims Court system. That's why it's important for the legislature to study it during the interim.

Mr. Chairman and members of the Committee, HCR 3059 and the resulting study can ensure that Small Claims Court continues as a legitimate venue for minor grievances to be resolved. I would urge your endorsement of it and its subsequent passage.



# united transportation union

Att #2



750 Augsburg Avenue  
Bismarck, ND 58504  
Office: 701-223-0061  
Fax: 701-223-0061  
utu@bis.mldco.net

JOHN RISCH  
Legislative Director  
NORTH DAKOTA LEGISLATIVE BOARD

I am writing to encourage you to support HB 1472. Here's why: In July 2001 my family and I had a personal experience relating to the ease in which a small claims matter can be moved to district court, very effectively putting legal recourse out of the hands of the average citizen.

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

We had been on a family vacation in Minnesota, and as we traveled home in our mini-van, we lost our right front wheel at a speed of over 60 mph. Driving on the brake rotor, we were able to pull the vehicle over to the shoulder without further incident other than damage to the van's right side. The people at the service station we were towed to said the accident was undoubtedly related to the fact that we had had our front brakes worked on before leaving on our trip. All five lug nuts holding the wheel on had been sheared in half.

The service department where we had the work done in Bismarck initially accepted responsibility and assured us they would make things right with us. Well, to make a long and painful story short, the company did not follow through with their offer, putting us in the position of trying to

get reimbursement for the damages. And unfortunately, our insurance company did little to help us at the time. They are still trying to follow up on this claim more than 1-1/2 years after it happened and even tried to raise rates at renewal time because of this accident, which they were supposedly investigating!

My husband and I met with two different attorneys who each said we had a clear case against the company. However, because the damage amount was small (under \$2000), they cautioned us about filing a claim unless we were willing to accept some hefty legal costs, as the company would more than likely move the claim to district court so they could have their own attorney represent them. We felt our family had been through enough trauma, especially our two sons, ages 8 and 11, so we did not proceed with legal action.

We were outraged that our family could have been killed due to this company's negligence, yet we were forced to throw in the towel. Sadly, because no one was physically injured or killed, there was no legal avenue available to us that we felt we could afford.

I still feel afraid sometimes when I'm driving at highway speed and remember that day. And I still feel angry that we had no option other than to accept what had happened or be willing to pay dearly to have our case heard.

*Valerie Richardson*  
Operator's Signature

12/16/03  
Date

Att #3

**House Concurrent Resolution 3059**  
**Senate Judiciary Committee**  
**by Ted Gladden, State Court Administrator**

Senator Traynor and members of the Senate Judiciary Committee, I am appearing today in support of House Concurrent Resolution 3059.

Our small claims court dates back to its creation in 1971. In the nearly 32 years of its existence, the court has served the needs of our citizens well. While I do not agree with the wording in the resolution, the judiciary is supportive of a study as there has been no comprehensive review of the small claims court since its inception.

This court was established to serve as an inexpensive alternative to allow citizens to resolve smaller, less complicated disputes in a cost-effective and timely manner. To that end, it has succeeded.

The judiciary looks forward to working with the Legislative Assembly during the interim on this study to provide recommendations for improving the operations of small claims court to the 59<sup>th</sup> Legislative Assembly.

Thank you.

Salvatore Riccio  
Operator's Signature

10/16/03  
Date

Small Claims Cases By County  
Calendar Year 2002

22-Jan-02

| County        | Cases | County |
|---------------|-------|--------|
| Adams         | 26    | 26     |
| Barnes        | 126   | 126    |
| Benson        | 43    | 43     |
| Billings      | 2     | 2      |
| Bottineau     | 174   | 174    |
| Bowman        | 28    | 28     |
| Burke         | 19    | 19     |
| Burleigh      | 588   | 588    |
| Cass          | 1,835 | 1,835  |
| Cavalier      | 51    | 51     |
| Dickey        | 76    | 76     |
| Divide        | 7     | 7      |
| Dunn          | 6     | 6      |
| Eddy          | 21    | 21     |
| Emmons        | 54    | 54     |
| Foster        | 32    | 32     |
| Golden Valley | 9     | 9      |
| Grand Forks   | 717   | 717    |
| Grant         | 8     | 8      |
| Griggs        | 37    | 37     |
| Hettinger     | 11    | 11     |
| Kidder        | 37    | 37     |
| Lamoure       | 37    | 37     |
| Logan         | 22    | 22     |
| McHenry       | 23    | 23     |
| McIntosh      | 31    | 31     |
| McKenzie      | 23    | 23     |
| McLean        | 43    | 43     |
| Mercer        | 55    | 55     |
| Monrath       | 52    | 52     |
| Morton        | 343   | 343    |
| Nelson        | 32    | 32     |
| Oliver        | 9     | 9      |
| Pembina       | 122   | 122    |
| Pierce        | 135   | 135    |
| Ramsey        | 211   | 211    |
| Ransom        | 61    | 61     |
| Renville      | 51    | 51     |
| Richland      | 207   | 207    |
| Rollette      | 222   | 222    |
| Sargent       | 58    | 58     |
| Sheridan      | 5     | 5      |
| Stout         | 2     | 2      |
| Slope         | 0     | 0      |
| Stark         | 154   | 154    |
| Steele        | 4     | 4      |
| Stutsman      | 257   | 257    |
| Towner        | 46    | 46     |
| Trail         | 54    | 54     |
| Walsh         | 122   | 122    |
| Ward          | 582   | 582    |
| Wells         | 52    | 52     |
| Williams      | 155   | 155    |
| Total         | 7073  | 7073   |

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*La Costa Rickford*  
Operator's Signature

*10/6/03*  
Date

## Testimony of Monty G. Mertz, Attorney at law

In support of the passage of House Bill 1472

1. I urge the passage of House Bill which will allow a review of decisions in small claims court.

2. I wish I could be there in person to testify in support of this bill. Given my schedule in Court during the week of the hearing, there are simply too many court hearings that I would have to re-schedule to be able to travel to Bismarck.

3. I have talked to numerous people over the years who have been extremely upset about the result of a small claims case. These have included businessmen and individuals who have stated that they will *never* proceed in Small Claims Court again.

4. I have been in private practice in Fargo for over seventeen years. My practice consists of mainly trial work. I routinely handle what I call "business" or "contract" litigation. These are cases which involve disputes over a wide variety of subject matter. Many of these cases are the sort that would be appropriate for small claims court, if the sum in dispute is small enough.

5. I am actually a big fan of Small Claims Court. I have advised people to use Small Claims Court many, many, times. I admit that I have been frustrated because a person comes into my office for a consultation, and after talking about their problem, and feeling that they have a meritorious claim, I tell them that it would not be economically feasible to hire me to handle the matter. I have tried so many cases, that I have learned that for an attorney to handle any case all the way through a contested trial, would cost \$1,000 minimum and way up, at my hourly rate of \$120 per hour, for even a "simple" bench trial. Many attorneys in Fargo have a significantly higher hourly rate.

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

6. For a modest consultation fee, I have often "coached" people on how to present their case to the Small Claims Referee. I tell them to have pictures and diagrams, exhibits, such as receipts, cancelled checks, invoices, and a brief summary of their claims, which they can simply hand to the hearing officer. It is a summary version of how you try any case to the Court.

7. Herein lies the problem. I have gotten pretty angry phone calls from these people several times after their Small Claims Hearing. I have been told the Hearing Officer "didn't even look at my papers" and/or "didn't listen to me," and the like. Several have said, that they would *never* have a case in small claims court.

8. A good friend, and client, named Jerome Hehn, has been in the car repair business for over thirty years. He has been my mechanic for the last seventeen years. I have advised him on a few disputes he has had with customers. Last year, he had the exact experience I described. He came in with a Small Claims case, and we talked about removing the case to District Court, but I felt that the claim against him was so frivolous, and given the documentation and testimony Jerome would present, that I told him he should have nothing to fear by presenting the case to the Small Claims Court. Well, he did, and called me afterward, and the outcome was ludicrous. He told me he did not care what it would cost him, he would never subject himself to that procedure again, where the facts are ignored. He wanted to appeal, and, of course, I told him he could not.

9. Shortly thereafter, Mr. Hehn was served with another Small Claims case. True to form, he hired me to remove the case to District Court. The claim against him was equally frivolous. I did some basic discovery, and got additional information from the claimant. The trial was very short, and her case was thrown out by the Judge. The Claimant was an attractive, articulate, self-assured young woman. However, her claim was baseless. But, if Jerome had

gone to Small Claims against her, I can easily imagine that she could have finessed her way to a money award.

10. One reality is that, when our Small Claims jurisdiction was only about \$1,200, these bad decisions did not ruin anyone's life. But now the jurisdiction is \$5,000, and some want to increase that. \$5,000 is enough to really hurt a lot of people.

11. The crux of the matter is that there just has to be a review of Small Claims Court decisions. North Dakota law has long provided for a de novo review of even the most minor traffic ticket. If you have a hearing on a speeding ticket in Municipal Court, you can appeal for another hearing in District Court. If you can do that for a \$50.00 traffic ticket, does it make sense that you can't for a \$5,000 claim?

12. The main argument against this change may be that, "you can always remove the case or start the case in District Court if you want to." That isn't a fair argument. To start a case in District Court, you almost have to have a lawyer. North Dakota Courts are notoriously unhelpful to pro se litigants. To remove a case to District Court, you really need to have an attorney. It is not fair to force people to hire an attorney for these small disputes, but have to accept an arbitrary decision of a hearing officer.

13. I would be happy to provide any other information or answer any questions the committee may have about this subject.

I swear that the above testimony is true to the best of my knowledge, information and belief.

Dated this 8<sup>th</sup> day of February, 2003.

\_\_\_\_\_  
Monty G. Mertz  
Attorney at law

1308 23rd Street South  
P.O. Box 10396  
Fargo, ND 58106-0396  
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701-237-0360

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Yolanda Richardson  
Operator's Signature

10/16/03  
Date