

Subd. 3. Prospective operation. This act does not affect the validity of any judgment or order made or any other action taken prior to the effective date of this act under any repealed acts and does not affect the pendency of any action or proceeding instituted before the effective date of this act.

Subd. 4. Application. The provisions of this act govern all actions and proceedings brought after it takes effect and also all further proceedings in actions then pending except to the extent that in the opinion of the judge their application in a particular pending action would not be feasible, or would work injustice in which event the provisions existing at the time the action was brought govern.

Approved April 17, 1961.

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CHAPTER 437—S. F. No. 1194

[Not Coded]

*An act relating to the conciliation court of the city of Saint Paul; repealing: Laws of 1921, Chapter 525; Laws of 1929, Chapter 346; Laws of 1953, Chapter 60; Laws of 1955, Chapter 732; Laws of 1957, Chapters 782 and 927; Laws of 1959, Chapter 668.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **St. Paul conciliation court.** Establish-  
ment; jurisdiction; powers; computation of time.

Subdivision 1. Established court continued. The establishment of the existing conciliation court of the city of Saint Paul is confirmed and said court is continued with the jurisdiction and powers hereinafter stated.

Subd. 2. Court of record; seal; separate court. The conciliation court is a court of record with its own seal. It is separate from the municipal court of the city of Saint Paul.

Subd. 3. Jurisdiction. Excepting actions involving title to real estate, the court has jurisdiction to hear, conciliate, try and determine civil actions at law where the amount in controversy does not exceed the sum of \$150. The territorial jurisdiction of the court is coextensive with the geographic boundaries of the county of Ramsey.

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Subd. 4. Powers, issuance of process. The court has all powers, and may issue such process, as is necessary or proper to carry out the purposes of this act.

Subd. 5. Terms of court. The judges shall hold terms of court from time to time as necessary to hear and dispose of all claims as promptly as feasible after filing.

Subd. 6. Rules of pleading, practice and procedure. A majority of the judges may promulgate rules governing pleading, practice and procedure consistent with the provisions of this act.

Subd. 7. Computation of time. In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

## Sec. 2. Judges; clerk; salaries; quarters

Subdivision 1. Judges. (a) The judges of the municipal court of the city of Saint Paul shall serve as judges of the conciliation court for such periods and in such rotation as the judges may determine. While so serving they shall act and be known as conciliation judges.

(b) The municipal judge who conducts the conciliation court hearing shall act upon any applications to vacate a judgment or an order for judgment whatever the grounds may be and shall sign the certificate upon a removed cause, but any other municipal judge may act upon such an application or sign such a certificate in the event that the judge who conducted the hearing has not previously denied the application and cannot act upon the application promptly or sign the certificate due to expiration of his term, death, disability, absence from the court house or any other cause.

Subd. 2. Clerk, duties. The clerk of the municipal court shall serve as the clerk of the conciliation court. He shall delegate deputy clerks, assistant clerks and bailiffs of the municipal court to assist him in performing his duties under this act. The clerk shall keep such records and accounts and perform such duties as may be prescribed by the

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judges. He shall account for and pay over to the city of Saint Paul all fees received by him in the same fashion as required in his capacity as clerk of municipal court.

Subd. 3. Salaries; oaths; bonds. The judges, clerk, deputy clerks, assistant clerks and bailiffs shall receive only their salaries payable for serving as officers of municipal court while serving in conciliation court. All oaths taken and bonds given by the judges, clerk, deputy clerks, assistant clerks and bailiffs for their respective offices in municipal court include their acts as officers of conciliation court, whether or not so expressed therein.

Subd. 4. Quarters for court, supplies. The city of Saint Paul shall provide suitable quarters for the court within the city hall and court house, and court shall be held at that place. The clerk shall procure and furnish all necessary blanks, stationery, books, furniture, furnishings and other supplies for the use of the court and the officers thereof at the expense of the city, with the consent of the city council and under the supervision and approval of a majority of the judges.

Sec. 3. Commencement of action; filing fee; requisites of claim; summons; counterclaim; replevin

Subdivision 1. Commencement of action. An action is commenced against each defendant when the complaint is filed with the clerk of conciliation court and a filing fee of one dollar is paid to the clerk or the prescribed affidavit in lieu of filing fee is filed.

Subd. 2. Filing fee, affidavit of inability to pay. If the plaintiff or the defendant signs and files with the clerk an affidavit that he has no money or property and is unable to pay a filing fee, no fee shall be required for the filing of his claim or counterclaim. If the affiant prevails on his claim or counterclaim, the amount of the filing fee which would have been payable by him shall be included in the order for judgment and paid to the clerk of conciliation court by the affiant out of any money recovered by him on the judgment.

Subd. 3. Claim, verification, contents. The claim must be verified by the plaintiff and shall contain a brief statement of the amount, date of accrual, and nature of the claim and the name and address of the plaintiff and the defendant. The clerk shall draw up the claim on request.

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Subd. 4. Hearing, date; summons. When an action has been commenced, the clerk shall set a date for court hearing and advise the plaintiff of the date set. The clerk shall promptly summon the defendant by mail. The summons shall state the amount and nature of the claim; shall require the defendant to appear at the hearing; shall specify that if he does not appear judgment by default will be entered against him for the relief demanded and shall summarize the requirements for filing a counterclaim. Unless otherwise ordered by a judge, the hearing date shall be not less than ten days from the date of mailing or service of the summons.

Subd. 5. Counterclaim. (a) The defendant may interpose as a counterclaim any claim within the jurisdiction of the court which he has against the plaintiff whether or not arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

(b) The counterclaim shall be interposed by filing with the clerk a brief statement of the amount, date of accrual and nature of the counterclaim, verified by the defendant, and paying a filing fee of one dollar to the clerk. The clerk shall draw up the counterclaim on request.

(c) The clerk shall note the filing of the counterclaim on the original claim, promptly notify the plaintiff by mail of the filing and set the counterclaim for hearing on the same date as the original claim.

(d) The counterclaim shall be filed not less than five days before the date set for court hearing. The judge, in his discretion, may thereafter allow the filing of a written or oral counterclaim before or after hearing the merits of the claim and counterclaim. The judge, in his discretion, may require the payment of absolute or conditional costs up to twenty-five dollars by the defendant to the plaintiff as a condition of allowing late filing in the event that a continuance is requested by the plaintiff and is granted because of such late filing.

(e) If the defendant has a counterclaim which exceeds the jurisdiction of the court and the defendant files an affidavit by himself with the clerk not less than five days before the date set for court hearing showing that he has filed with the clerk of a specified other court of competent jurisdiction a complaint seeking recovery from the plaintiff on the counterclaim and stating the nature and amount thereof, the clerk shall strike the action from the calendar

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and so advise the plaintiff by mail. If the plaintiff not less than thirty days nor more than three years after the filing of such an affidavit shall file an affidavit showing that he has not been served with a summons in the other action or that the other action has been finally determined, the clerk shall again set the cause for court hearing and summon the defendant in the same manner as for the initial hearing and the court shall proceed to hear and determine plaintiff's claim. If no such counter-affidavit is filed by plaintiff within three years, his original claim is dismissed without prejudice without any further action by the clerk or any judge. Prior to the expiration of this three year period the plaintiff's original claim may be dismissed by plaintiff or by court order at a hearing upon motion of the defendant.

Subd. 6. Replevin. If the controversy concerns the ownership or possession, or both, of personal property the value of which does not exceed the sum of \$150, the judge, in his discretion, may direct an officer of the court to take possession of the property immediately and hold it subject to the further order of the court, without the giving of any bond whatever.

Sec. 4. Hearing; evidence; conciliation; determination; default; dismissal; continuance

Subdivision 1. Testimony, exhibits. At the hearing a conciliation judge shall hear the testimony of the respective parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 2. Appearance of parties. Any party may appear in his own behalf *without-an attorney*.

Subd. 3. Evidence admissible. At the hearing the judge normally shall receive only evidence admissible under the rules of evidence, but in the interests of justice and the summary determination of causes before him he may receive evidence *not so admissible*.

Subd. 4. Conciliation. The judge may attempt to conciliate the parties. If the parties agree on a settlement, the judge shall order judgment in accordance with that settlement.

Subd. 5. Determination, order for judgment. If the parties do not agree upon a settlement, the judge shall summarily hear and determine the cause and order judgment.

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Subd. 6. Satisfaction of judgment by installment payments. Any judgment order may provide for satisfaction by payments in installments in such amounts and at such times, not exceeding one year for the last installment, as the judge determines to be just and reasonable. If any installment is not paid when due the entire balance of the judgment order becomes immediately due and payable.

Subd. 7. Defendant, failure to appear. If the defendant, after being summoned as provided by this act, fails to appear at the time set for hearing, the judge may hear the plaintiff and order judgment by default or he may fix a later date for hearing in accordance with what appears just and reasonable. If a later date be set for hearing, the clerk shall notify the defendant by mail.

Subd. 8. Plaintiff failing to appear, defendant appearing. (a) If the plaintiff fails to appear at the time set for hearing and the defendant does appear, the judge may hear the defendant and order judgment of dismissal on the merits, order the cause dismissed without prejudice, fix a later date for hearing or make such other disposition as is just and reasonable.

(b) If the plaintiff fails to appear at the time set for hearing and the defendant does appear and the defendant has filed a counterclaim, the judge may hear the defendant and order judgment on the counterclaim by default or he may fix a later date for hearing in accordance with what appears just and reasonable.

(c) If both parties are present at the hearing, the judge, in his discretion, on motion of the plaintiff, may grant dismissal without prejudice either before or after hearing evidence.

(d) If a later date be set for hearing, the clerk shall notify by mail any party not present at the hearing.

Subd. 9. Continuance, further hearing, re-setting. On proper showing of good cause, a continuance, further hearing or re-setting may be ordered on motion of either party. The court may require payment of costs, conditional or absolute, not to exceed \$25 to the other party as a condition of such an order. The clerk shall give notice of any continuance, further hearing or re-setting to any party who does not have other notice thereof.

Sec. 5. Notice of order for judgment; entry of judg-

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ment; costs and disbursements; payment; vacating; docketing

Subdivision 1. Notice of order. The clerk shall promptly mail to each party a notice of the order for judgment which the judge enters. The notice shall state the last day for removing the cause to municipal court.

Subd. 2. Entry of judgment. The clerk shall enter judgment forthwith as ordered by the court, dating the judgment entry the same date as notice is mailed to the parties. Unless: (1) otherwise ordered by a judge, (2) payment has been made in full, (3) removal to municipal court has been perfected or (4) an order vacating the prior order has been filed, the judgment so entered by the clerk becomes final ten days after the mailing of notice.

Subd. 3. Costs and disbursements. The judge, in his order for judgment, shall include any filing fee paid by the prevailing party, may include any disbursements incurred by the prevailing party covering items taxable in civil actions in the municipal court, and may include or adjust for any sum which he deems proper to cover all or part of conditional costs previously ordered to be paid by either party. No other costs shall be allowed to a prevailing party.

Subd. 4. Payment of judgment, record. The losing party may pay all or any part of the judgment to the clerk for the benefit of the prevailing party or may pay the prevailing party directly and so advise the clerk. The clerk shall make an appropriate entry on his records when any payment has been made to him or when satisfied that any payment to the prevailing party has been made.

Subd. 5. Vacation of order for judgment within ten days. When a default judgment or a judgment of dismissal on the merits has been ordered for failure to appear, the judge, within ten days after notice thereof was mailed, may vacate the order for judgment *ex parte* and grant a new hearing, if the defaulting party shows lack of notice, mistake, inadvertence, or excusable neglect as the cause of his failure to appear. Absolute or conditional costs not exceeding \$25 to the other party may be ordered as a prerequisite to that relief. The clerk shall notify the other party by mail of the new hearing date.

Subd. 6. Absolute or conditional costs; filing of orders. When a judge orders payment of absolute or condi-

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tional costs as a condition of an order under any provision of this act, the amount shall be paid to the clerk before the order becomes effective or is filed. Every such order is invalid unless filed with the clerk within five days after its date. Conditional costs shall be held by the clerk to abide the final order entered in the cause. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 7. Docketing and enforcement in municipal court. When a judgment has become final under Subdivision 2 of this section, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court and file it with the clerk of the municipal court of the city of Saint Paul upon payment of the filing fees as prescribed for the municipal court. After filing of the transcript, the judgment becomes, and is enforceable as, a judgment of the municipal court. A transcript of a judgment payable in installments may not be so obtained and filed until twenty days after default in the payment of an installment. No writ of execution nor garnishment summons may be issued out of conciliation court.

#### Sec. 6. Removal of cause to municipal court

Subdivision 1. Trial de novo. Any person aggrieved by an order for judgment entered by a conciliation judge may remove the cause to the municipal court of the city of Saint Paul for trial de novo.

Subd. 2. Procedure for removal of cause. No cause shall be so removed unless all the following acts are performed by the aggrieved party within ten days after the date the clerk mailed to him notice of the order for judgment.

(a) Serve on the opposing party a demand for removal of the cause to the municipal court for trial de novo stating whether trial by a jury of six or twelve or by the court without a jury is demanded. Service shall be made upon a party in accordance with the provisions for personal service of a summons in the municipal court.

(b) File with the clerk of conciliation court the original demand for removal and proof of service thereof. If the opposing party cannot be found and service of the demand be made within the ten day period, the aggrieved party may file with the clerk within the ten day period the original and a copy of the demand, together with an affidavit by himself

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showing that due and diligent search has been made and that the opposing party cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address.

(c) File with the clerk of conciliation court an affidavit by the aggrieved party stating that the removal is made in good faith and not for the purpose of delay.

(d) Pay to the clerk of conciliation court three dollars when the demand is for trial by court, plus three dollars additional when the demand is for trial by a jury of six or five dollars additional when the demand is for trial by a jury of twelve.

Subd. 3. Demand for trial by jury. If the opposing party desires trial by jury when trial by court has been demanded in the removal, or trial by jury of twelve when trial by jury of six has been demanded in the removal, he shall: (a) serve a demand for trial by jury of six or twelve on the aggrieved party, (b) file the demand with proof of service with the clerk of conciliation court within ten days after the demand for removal was served upon him, and (c) pay to the clerk of conciliation court at the time of such filing a fee of three dollars if he demands a jury of six, five dollars if he demands a jury of twelve or two dollars if he demands a jury of twelve instead of six previously demanded by the aggrieved party.

Subd. 4. Waiver of trial by jury. If a jury of six or twelve is not demanded within the time limits and in the manner provided in this act, all parties waive trial by jury.

Subd. 5. Removal, when perfected; vacation of order for judgment; certificate by judge. When all removal papers have been properly filed and all requisite fees have been paid by the aggrieved party as herein provided, the removal is perfected. Thereupon the conciliation judge shall make and file an order vacating the order for judgment in conciliation court.

Subd. 6. Clerk's duties upon removal. After the judge's order has been filed, the clerk of conciliation court shall pay over to the municipal court the removal and jury fees paid to him hereunder and shall file in municipal court all claims, orders and other papers filed in conciliation court

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in connection with the cause and its removal to municipal court.

Subd. 7. Pleadings. No note of issue for trial in municipal court need be filed. The removed cause shall be brought on for trial in the same manner and substantially the same order as though a note of issue had been filed in municipal court on the date the claim was filed in conciliation court. Pleadings conforming to the Municipal Court Rules of Civil Procedure shall be served and filed. If any party fails to serve and file written pleadings within 30 days after removal has been perfected the municipal court shall order a dismissal of the action or a default therein as the case may be, or such other relief as the court deems proper.

Subd. 8. Issues for trial, amendments. The issues for trial in municipal court shall be those in conciliation court, but a party may be allowed to amend the issues in municipal court on motion following the same procedure and subject to the same limitations as would apply if the motion were for amendment of the pleadings after a responsive pleading had been served in an action originally brought in municipal court. The court may grant an amendment which increases the amount claimed by either party to an amount in excess of the jurisdiction of conciliation court but not in excess of the jurisdiction of municipal court. The court may allow pleadings to be amended to add a new cause of action by way of counterclaim or otherwise.

Subd. 9. Costs and disbursements for prevailing party.

(a) The prevailing party in a removed cause may tax and recover from the other party five dollars as costs together with his disbursements incurred in conciliation and municipal court.

(b) For the purpose of this subdivision, an "aggrieved party" means the party who demands removal to municipal court and means the first party who serves, or files in lieu of serving, a demand for removal if another party also demands removal and an "opposing party" means any party as to whom the aggrieved party seeks a reversal in whole or in part by removal of the cause to municipal court.

(c) The aggrieved party is the prevailing party in municipal court:

(1) If the aggrieved party recovers any amount or any property in municipal court when the aggrieved party had

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been denied recovery of any amount or any property by the conciliation judge,

(2) If the opposing party does not recover any amount or any property from the aggrieved party in municipal court when the opposing party had recovered some amount or some property by the order of the conciliation judge,

(3) If the aggrieved party recovers an amount or value of property in municipal court which is at least \$25.00 in excess of the amount or value of property which the aggrieved party recovered by the order of the conciliation judge or

(4) If the opposing party recovers from the aggrieved party an amount or value of property in municipal court which is at least \$25.00 less than the amount or value of property which the opposing party recovered by the order of the conciliation judge.

(d) In all other situations the opposing party shall be deemed to be the prevailing party in municipal court.

(e) Costs or disbursements in the conciliation or municipal court shall not be considered in determining whether there was a recovery by either party in either court or in determining the difference in recovery under this subdivision.

Subd. 10. Pleading, practice, and procedure. Except as otherwise expressly provided in this act, pleading, practice and procedure in a removed cause are the same as in an action originally brought in municipal court.

Subd. 11. Appeal to supreme court. Causes removed to municipal court from conciliation court may be removed from municipal court to the Supreme Court of Minnesota in the same manner, upon like proceedings and with the same effect as causes originally brought in the municipal court.

Sec. 7. Effective date; repeals; application of act

Subdivision 1. Effective date. This act takes effect on July 1, 1961.

Subd. 2. Repeals. The following acts and sections of acts are hereby repealed:

Laws of 1921, Chapter 525

Laws of 1929, Chapter 346

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Laws of 1953, Chapter 60

Laws of 1955, Chapter 732

Laws of 1957, Chapters 782 and 927

Laws of 1959, Chapter 668

Subd. 3. Exemptions. This act does not affect the validity of any judgment or order made or any other action taken prior to the effective date of this act under any repealed acts and does not affect the pendency of any action or proceeding instituted before the effective date of this act.

Subd. 4. Application. This act governs all actions brought after it takes effect and also all further proceedings in actions then pending in conciliation court or in municipal court upon removal except to the extent that in the opinion of the judge their application in a particular action pending when this act takes effect would not be feasible, or would work injustice, in which event the provisions existing at the time the action was brought shall govern.

Subd. 5. Laws excepted. Minnesota Statutes, Sections 480.051—480.058 are not modified by this act. Upon the adoption of any rule by the supreme court on the same subject, the provisions of this act, insofar as they are in conflict therewith, shall be of no further force or effect.

Approved April 17, 1961.

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#### CHAPTER 438—S. F. No. 1344

*An act relating to installment sales of motor vehicles; amending Minnesota Statutes 1957, Section 168.66, Subdivision 5, as amended.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, Section 168.66, Subdivision 5, as amended by Laws 1959, Chapter 54, Section 1, is amended to read:

Subd. 5. "Motor vehicle" means any device propelled or drawn by any power other than muscular power, in, upon, or by which any person or property is, or may be transported or drawn upon a highway, excepting *building and road construction equipment not subject to motor vehicle registration*

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