

Sec. 2. **EXPIRATION DATE.** The provisions of this act shall expire on January 1, 1976.

Approved March 21, 1974.

CHAPTER 179—H.F.No.1795
[Coded in Part]

An act relating to the Hennepin county conciliation court; amending Minnesota Statutes 1971, Sections 488A.14, Subdivision 5, and by adding a subdivision; 488A.16, Subdivisions 6 and 8; and 488A.17, Subdivisions 2, 4 and 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 488A.14, Subdivision 5, is amended to read:

Subd. 5. **HENNEPIN COUNTY; CONCILIATION COURT; COUNTERCLAIM.** (a) The defendant may interpose as 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 or his attorney, and paying a filing fee of \$2 to the clerk. If the defendant is not represented by an attorney 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 or his attorney 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 \$25 by the defendant 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 arising out of the same transaction or occurrence which exceeds the jurisdiction of the court and the defendant files an affidavit by himself or his attorney 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

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competent jurisdiction a summons and 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 and so advise the plaintiff or his attorney by mail. If the plaintiff not less than 30 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.

Sec. 2. Minnesota Statutes 1971, Section 488A.14, is amended by adding a subdivision to read:

Subd. 7. THIRD PARTY COMPLAINTS. Third party complaints shall be governed by Municipal Court Rule 14 with the exception that such actions must be commenced within 20 days after service of summons or notice of counterclaim. The fee for the filing of a third party complaint shall be the same as for the filing of a complaint or counterclaim.

Sec. 3. Minnesota Statutes 1971, Section 488A.16, Subdivision 6, is amended to read:

Subd. 6. VACATION OF JUDGMENT AFTER TEN DAYS. When a defendant shows that he did not receive a summons before the hearing within sufficient time to permit a defense and that he did not receive notice of the order for default judgment within sufficient time to permit him to make application for relief within ten days or shows other good cause within six months from the date of entry of judgment, a judge may vacate a default judgment ~~after notice to the plaintiff and grant a new hearing on the merits~~ with or without payment of absolute or conditional costs. The clerk shall notify the parties by mail of the new hearing date.

Sec. 4. Minnesota Statutes 1971, Section 488A.16, Subdivision 8, is amended to read:

Subd. 8. DOCKETING AND ENFORCEMENT IN MUNICIPAL COURT. When a judgment has become finally effective under subdivision 2, the judgment creditor may obtain a transcript of the judgment from the clerk of conciliation court on payment of a fee of fifty cents therefor and file it with the clerk of the municipal court of the county of Hennepin. 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 un-~~

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~~til 20 days after default in the payment of an installment.~~ No writ of execution or garnishment summons may be issued out of conciliation court.

Sec. 5. Minnesota Statutes 1971, Section 488A.17, Subdivision 2, is amended to read:

Subd. 2. **PROCEDURE FOR REMOVAL OF CAUSE.** No cause shall be so removed unless all of 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 or his attorney a demand for removal of the cause to the municipal court for trial de novo stating whether trial by a jury of six ~~or 12~~ persons 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 or shall be made upon the party's attorney in accordance with the provisions for service of a notice of motion upon an attorney in the municipal court. The demand shall show the office address of the attorney for each party and the residence address of each party who does not have an attorney.

(b) File with the clerk of conciliation court the original demand for removal and proof of service thereof. If the opposing party or his attorney 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 or his attorney showing that due and diligent search has been made and that the opposing party or his attorney 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 or his attorney stating that the removal is made in good faith and not for the purpose of delay.

(d) Pay to the clerk of conciliation court \$2 when the demand is for trial by court, plus \$5 additional when the demand is for trial by a jury of six persons ~~or \$10 additional when the demand is for trial by a jury of 12 persons~~.

Sec. 6. Minnesota Statutes 1971, Section 488A.17, Subdivision 4, is amended to read:

Subd. 4. **DEMAND FOR TRIAL BY JURY.** If the opposing party desires trial by a jury of six ~~or twelve~~ persons when none ~~or a jury of only six persons~~ is demanded in the demand for removal, he shall: (a) serve a demand for trial by a jury of six ~~or twelve~~ persons on the ag-

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grieved 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 \$5 if he demands a jury of six persons, \$10 if he demands a jury of twelve persons or \$5 if he demands a jury of twelve persons instead of the six persons previously demanded by the aggrieved party .

Sec. 7. Minnesota Statutes 1971, Section 488A.17, Subdivision 5, is amended to read:

Subd. 5. **WAIVER OF TRIAL BY JURY.** If a jury of six or twelve persons is not demanded within the time limits and in the manner provided in this act, all parties waive trial by a jury of six or of twelve persons as the case may be .

Approved March 21, 1974.

CHAPTER 180—H.F.No.1952
[Not Coded]

An act relating to the construction, maintenance and repair of county ditches in Ramsey county; repealing Laws 1957, Chapter 682.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **RAMSEY COUNTY; DITCHES, CONSTRUCTION, MAINTENANCE, IMPROVEMENT, AND REPAIR.** One or more governmental subdivisions which contribute flow to a ditch located within Ramsey county may petition the board of county commissioners of Ramsey county for the repair, maintenance, or improvement of said ditch excluding any drainage ditch situated in whole or in part in any watershed district now or hereafter established in whole or in part in Ramsey county. The board of county commissioners shall also be empowered to initiate consideration of ditch construction, maintenance, or repair without petition from any governmental subdivision. If the board of county commissioners initiates consideration of a repair or maintenance project estimated to cost less than \$5,000, said board may proceed to facilitate the completion of said project without the formal hearing process set out hereafter. Upon receipt of such petition as mentioned above or upon initiation of consideration by the board of a project estimated to cost over \$5,000, the board shall fix a time and place for a public hearing, shall mail notice of such hearing to each governmental subdivision which contributes flow to the ditch, shall give posted notice thereof in each such governmental subdivision, and shall publish a notice of such hearing in a legal newspaper published in such county. All mailed, posted and published notices shall be given at least two weeks prior to the date of the hearing. At the conclusion of

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