

HOUSE BILL NO. 521

INTRODUCED BY J. ESSMANN, J. POMNICHOWSKI

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING REPRESENTATION OF LIMITED LIABILITY COMPANIES; AUTHORIZING A MAJORITY MEMBER OF A LIMITED LIABILITY COMPANY TO REPRESENT THE LIMITED LIABILITY COMPANY IN JUSTICE'S COURT AND SMALL CLAIMS COURT; AMENDING SECTIONS 25-31-601, 25-35-505, AND 35-8-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 25-31-601, MCA, is amended to read:

**"25-31-601. Who may act as attorney.** (1) Parties in justice's court may appear and act in person or by attorney; and any.

(2) Any person, except the constable by whom the summons or jury process was served, may act as attorney for a party.

(3) Except as provided in 35-8-301, a member with a majority interest in a limited liability company as defined in 35-8-102 may act as attorney for the limited liability company."

**Section 2.** Section 25-35-505, MCA, is amended to read:

**"25-35-505. Parties -- representation.** (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency of the state.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) (a) Individuals may represent themselves in a small claims court.

(b) A partnership may be represented by a partner or one of its employees.

(c) A union may be represented by a union member or union employee.

(d) A corporation may be represented by one of its directors, officers, or employees.

(e) Except as provided in 35-8-301, a limited liability company as defined in 35-8-102 may be



1 represented by a member with a majority interest in the limited liability company.

2 (f) An association may be represented by one of its members or by an employee of the association.

3 (g) Any other kind of organization or entity may be represented by one of its members or employees.

4 (4) Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the  
5 transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims  
6 court.

7 (5) A party may not file an assigned claim in the small claims court unless it has been assigned pursuant  
8 to 27-1-718.

9 (6) Except for claims under 27-1-718, a party may not file more than 10 claims in any calendar year.

10 (7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate,  
11 a guardian, or a conservator may be a party in the small claims court."

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13 **Section 3.** Section 35-8-301, MCA, is amended to read:

14 **"35-8-301. Agency power of members and managers.** (1) Except as provided in subsection (2), a  
15 member is an agent of the limited liability company for the purpose of its business or affairs and the act of a  
16 member, including but not limited to the execution of any instrument in the name of the limited liability company  
17 for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited  
18 liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in  
19 the particular matter and the person with whom the member is dealing has knowledge of the fact that the member  
20 has no such authority.

21 (2) If the articles of organization provide that management of the limited liability company is vested in  
22 a manager or managers:

23 (a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability  
24 company; and

25 (b) a manager is an agent of the limited liability company for the purpose of its business or affairs and  
26 the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability  
27 company for apparently carrying on in the usual way the business or affairs of the limited liability company binds  
28 the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability  
29 company in the particular matter and the person with whom the manager is dealing has knowledge of the fact  
30 that the manager has no such authority.

1           (3) An act of a manager or a member that is not apparently for carrying on in the usual way the business  
2 of the limited liability company does not bind the limited liability company, unless authorized in accordance with  
3 the articles of organization or the operating agreement, at the time of the transaction or at any other time.

4           (4) An act of a manager or member in contravention of a restriction on authority may not bind the limited  
5 liability company to persons having knowledge of the restriction.

6           (5) Unless the articles of organization state otherwise, a member with a majority interest in the limited  
7 liability company may represent the limited liability company in justice's court as provided in 25-31-601 and small  
8 claims court pursuant to 25-35-505."

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10           NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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