

March 3, 1980

LB 892

SENATOR JOHNSON: The law presently reads if the defendant in any action desires to transfer the case to the regular docket, he or she shall give notice and it will be transferred. That is the way the law presently reads. Now it will read with my amendment, if the defendant in any action desires trial to a jury, he or she shall give notice to the court prior to the time and it shall be transferred. In other words, there is only one reason with my amendment for the transfer to take place, if the defendant wants a trial by jury. Now the reason I put that in there is because I am fearful if I don't put that in there I have a constitutional problem since the Constitution guarantees to everybody a trial by jury if they want to have it.

SENATOR VICKERS: But with the language that is in there now, they can have a trial by jury if they so desire so it seems to me we are spinning our wheels and coming up with basically the same thing but thank you for attempting to explain it to me. Maybe it is the difference between an attorney's background and a farmer's background, that we are looking at this from different angles perhaps.

SPEAKER MARVEL: Senator Murphy.

SENATOR MURPHY: And it is not going to improve a whole lot, Senator Johnson, because you now went from a farmer to a plumber, but I have a question in my mind why you would strike the provision that a cost shall be paid in order to transfer the case. I would assume that the actual cost of that transfer or probably the costs incurred prior to this transfer are probably a great deal in excess of \$8 but it also, the request for trial by jury as opposed to trial before a judge imposes a very large cost, increase in cost, in the manner in which this case is handled, does it not?

SENATOR JOHNSON: In the first place, Senator Murphy, there should be absolutely no cost in transferring the case from the small claims docket of a municipal or county court to the regular docket, I mean no cost, zero. Why we had \$8 in here at the outset is beyond me. But in the second place, if there is an ultimate jury trial in any case, there is a cost associated with a jury trial simply because you have got to pay the jurors their jury fee and there are just plain costs associated with it. Now if I had my druthers, I would probably eliminate any kind of jury trials in small civil cases but I don't have my druthers because the Constitution apparently guarantees jury trials in all cases where the amount at issue is in excess of \$25 and that is

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