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Donna Shultz
Operator's Signature

1013103
Date

2003 HOUSE JUDICIARY

HB 1329

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Dawn M. Hallworth 10/3/03
Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1329

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
1	xx		0-30
3	xx		28.7-34.5
Committee Clerk Signature <i>dRenase</i>			

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

Vice Chair Maragos: We will open the hearing on HB 1329.

Rep. Klemin: Introduced the bill.

Vice Chair Maragos: Thank you.

Todd Kranda, ND Collectors Association: Support. The real focus is on page 2, lines 14, 15 & 16. We're dealing with the Small Claims court process that originated in 1971. They started out at \$200, without the need of council, to pursue a small matter. Attempted to relieve the district court of little matters, but allow recourse for matters in a less costly, less complicated fashion. Now the limit if \$5,000. We want an assignee to be able to file a claim in Small Claims Court and combine more than one action against a defendant. We think this is a benefit.

Rep. Wrangham: You mentioned that you currently use the Small Claims court, I assume you are saying as an attorney you use them on behalf of a client. What prevents a collection agency from doing that same thing today under federal law.

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Douglas Hall Smith *10/3/03*
Operator's Signature Date

Page 2

House Judiciary Committee
Bill/Resolution Number HB 1329
Hearing Date 2-11-03

Mr. Kranda: That's correct. As an attorney I do it for both. My understanding is that they (collection agency) as an assignee of the claim would not be able to because there is a sentence is here that says a claim may not be filed by an assignee of that claim. So if they are assigned the claim to pursue collection by a business or a multiple number of businesses against a single defendant, this language in here from 1971, we believe would prohibit us from doing that, and that is why we are looking for this change at this time.

Rep. Kretschmar: Under your amendment, if there was a defendant that owed 2 or 3 places and they were combined or assigned, still the total could not exceed the \$5,000 limit.

Mr. Kranda: That is correct. We have not changed the rest of the concept of the Small Claims Court.

Rep. Kretschmar: The new language you say a business, if there a definition of that, would that include an individual, maybe a better word is plaintiff.

Mr. Kranda: I don't know that I have thought about that, and I appreciate your pointing that out. It seems to me that it has been used for whoever the plaintiff is, whether it is a business or individual. The business would need to have legal counsel. I don't know if a modification of that would be necessary or not.

Rep. Kretschmar: Maybe it would narrow the list of people who could do it.

Mr. Kranda: It is not our intention by the term business, to narrow it other than what is done now.

Vice Chair Maragos: Thank you. Any further testimony in favor of HB 1329.

Rusty Stephen, ND Collectors Association: (see attached testimony) Support.

Rep. Delmore: Walk us through a scenario.

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Page 3
House Judiciary Committee
Bill/Resolution Number HB 1329
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Mr. Stephen: If an individual wrote NSF checks for under \$50 at several locations, those creditors could assign the cases to a collection agency as the assignee and they could bring one action instead of several against the same defendant.

Rep. Kretschmar: If we can find another word instead of business, would that be okay.

Mr. Steffan: Yes, no problem.

Vice Chair Maragos: Thank you. Any further testimony in favor of HB 1329? Testimony in opposition to HB 1329.

Judge Bennie Graff, presiding judge of South Central District: Opposed, this will create more work on the courts, clerks and will lose fees. This is for small business owners to try and recover their losses, or for an individual vs. individual.

Rep. Boehning: How many cases are currently handled?

Judge Graff: We have heard that there might be around 300-400 filings each month.

Rep. Boehning: Wouldn't it lower the workload?

Judge Graff: We already have collection agency actions, this would just move them from district court to small claims court. Will just reduce the filing fees for them.

Rep. Klemin: An assignee of a business, collection agency, that actually have the claim, why wouldn't they be able to bring that case directly in their own name against somebody in small claims court just like the lumberyards.

Judge Graff: Because they are an assignee of the claim. That's prohibited under the statute.

Rep. Klemin: Once they are an assignee, they would not be engaging in the unauthorized practice of law if they did it in their own name for themselves.

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Page 4

House Judiciary Committee
Bill/Resolution Number HB 1329
Hearing Date 2-11-03

Judge Graff: I think they would be an assignee of the claim, that is prohibited under the small claims court.

Rep. Klemin: I understand, but if this bill passes, it wouldn't be prohibited.

Judge Graff: I agree, it wouldn't be prohibited.

Rep. Klemin: So let's assume the bill does pass, it is not prohibited and they are an assignee and bringing action in small claims court in their own name, not in the name of some other parties, so they are representing themselves, would they need an attorney to do that.

Judge Graff: I don't see why they would be, but if something goes wrong, there is no recourse in small claims court.

Rep. Klemin: It wouldn't be an unauthorized practice of law because they would be representing themselves.

Judge Graff: They would still be the assignee, they are not representing their own client.

Vice Chair Maragos: Thank you.

Rep. Onstad: Putting fees aside, you don't think it is right or appropriate.

Judge Graff: I think small claims court are designed for small people. I don't think they were designed for big business. Collection agencies already appear in district court, they lump claims against a common debtor, you can't name defendant who are unrelated and bring claims against more than one debtor, a number of claims are lumped together all part of the same case, but you do have to use a lawyer in district court.

Rep. Delmore: What about the cost is pursuing more than one claim at a time in district court.

Judge Graff: The businesses who have already assigned their claim to collection bureaus, allow the collection bureau to determine how the claim will be pursued. Many of them I know are

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10/3/03
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Page 5

House Judiciary Committee
Bill/Resolution Number HB 1329
Hearing Date 2-11-03

settled long before they get into the courtroom structure. You get a letter from the collection agency, we have this claim what are you going to do about it. You pay per month. We know that lawsuits are being started in the district court and never filed and collection are made and never see the light of day in the courtroom. This is done within the framework of a trial, of a lawsuit.

Vice Chair Maragos: Thank you. Any testimony in opposition.

Christine Hogan, Exec. Dir. State Bar Association of ND: Opposed (see attached testimony).

Rep. Onstad: You stated in your testimony that there will be a burden on the court. Can you give an example how this would be a burden on the court.

Ms. Hogan: There will be an overload.

Rep. Onstad: You're saying the burden would be overloaded.

Ms. Hogan: Yes.

Rcp. Delmore: Currently, especially at the small collection agencies, are you telling me that they can't file in small claims court on one single collection.

Ms. Hogan: There might be circumstances.

Rep. Klemin: The number of cases - aren't we talking about a shift of burden from district court to the small claims court, what is the impact.

Ms. Hogan: The impact would be on distribution and fiscal impact.

Vice Chair Maragos: Thank you. Further testimony in opposition?

Ted Gladden, State Court Administrator: Neutral (see attached testimony).

Rep. Klemin: In district court, you can actually do this right now, where one collection agency could bring an action on behalf of a number of business against a single defendant. Is that correct?

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Page 6
House Judiciary Committee
Bill/Resolution Number HB 1329
Hearing Date 2-11-03

Mr. Gladden: That is correct.

Rep. Klemin: So this is shifting it from district court to small claims court.

Mr. Gladden: That is correct.

Rep. Klemin: The filing fee is usually assessed against the defendant.

Mr. Gladden: That is correct.

Rep. Klemin: So really by bringing the action in small claims court, we will be saving the people that owe the money \$70.

Mr. Gladden: Yes.

Rep. Grande: We might save them \$70 in filing fees, but won't the cost increase if they need an attorney.

Mr. Gladden: There would be no requirement to have an attorney.

Rep. Grande: But if the assignee is a large group - I don't want to represent myself against a group. It's not the same as I am coming against another individual. This will change the dynamic of the small claims court.

Mr. Gladden: That is right, it changes the complexion of small claims court dramatically. They are not required to have an attorney, but it changes the complexion of the laws.

Rep. Klemin: The party still would not have to be in small claims court if they wanted to switch to district court, unless they wanted to.

Mr. Gladden: That is correct.

Vice Chair Maragos: Thank you. Any further testimony? We will close the hearing.

(Reopened later in the afternoon session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1329.

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Page 7
House Judiciary Committee
Bill/Resolution Number HB 1329
Hearing Date 2-11-03

Rep. Klemin: I make a motion to amend HB 1329 by deleting the word not (the crossed out word), and remove underlined new language.

Rep. Wrangham: Seconded.

Voice vote: Carried.

Rep. Grande: Make a motion to Do Not Pass as amended.

Rep. Eckre: Seconded.

8 YES 5 NO 0 ABSENT DO NOT PASS AS AMENDED CARRIER: Rep. Grande

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FISCAL NOTE
Requested by Legislative Council
02/13/2003

Amendment to: HB 1329

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$698,180)		(\$699,000)
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

HB 1329 would allow a business or third party to whom a claim is assigned to bring an action on behalf of one or more businesses and against one or more defendants in the same action for a \$10 filing fee. Currently these cases are heard on an individual basis in district court for an \$80 filing fee.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

An estimate of the cost of this bill was derived at by getting information from the clerk of court in Burleigh County relating to the total number of collection cases filed in district court in two separate months (she used July, 2002 and January 2003). She then went through these to find out how many had been filed by collection agencies that were for amounts under \$5,000 (the total amount that can be filed in small claims court). Based on her analysis, 60% of collection cases filed would qualify for small claims court.

We pulled the total collection cases statewide from our Unified Case Management System and applied the 60% estimate. The details follow:

8,311 Total Collections Cases filed in District Court in 2002
x 60% Estimate of collection agencies with claims less than \$5,000
4,987 Estimate of total cases

x \$80 Current civil filing fee in District Court
398,960 Total collected in one year

4,987 Estimate of total cases

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x \$10 Fee for small claims court
49,870 Total that would be collected for these cases in small claims

349,090 Estimate of reduction in general fund revenue for one year
698,180 Estimate of reduction in general fund revenue for biennium

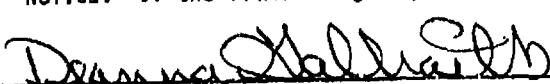
Due to time constraints we were only able to gather information for this analysis from one county.

This analysis does not consider the number of cases that are not filed in district court currently, due to the \$80 filing fee. These cases will probably be filed if the filing fee were only \$10. There is no way to estimate this number of additional cases.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Ted Gladden	Agency:	Supreme Court
Phone Number:	3284216	Date Prepared:	02/13/2003

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Requested by Legislative Council
02/13/2003

REVISION

Bill/Resolution No.: HB 1329

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Expenditures						
Appropriations						

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Name:	Ted C. Gladden	Agency:	Supreme Court
Phone Number:	328-4216	Date Prepared:	02/12/2003

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Dorraine Hallsworth
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Date

FISCAL NOTE
Requested by Legislative Council
02/11/2003

Bill/Resolution No.: HB 1329

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Revenues						
Expenditures			\$698,180		\$699,000	
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
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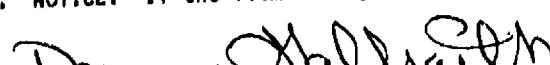
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Phone Number:	328-4216	Date Prepared:	02/12/2003

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38278.0101
Title.0200

Adopted by the Judiciary Committee
February 11, 2003

VR
2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1329 JUD 2-12-03

Page 2, line 14, remove "A business or"

Page 2, remove line 15

Page 2, line 16, remove "against a defendant or defendants in the same action."

Renumber accordingly

Page No. 1

38278.0101

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Dawn M. Hallworth 10/3/03
Operator's Signature Date

Date: 2/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 38278.0101, 0200

Action Taken Do Not Pass As Amended

Motion Made By Rep. Grande Seconded By Rep. Eckert

Total (Yes) 8 No 5

Absent

Floor Assignment Rep. Grande

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

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REPORT OF STANDING COMMITTEE (410)
February 12, 2003 2:41 p.m.

Module No: HR-27-2454

Carrier: Grande

Insert LC: 38278.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1329: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1329 was placed on the Sixth order on the calendar.

Page 2, line 14, remove "A business or"

Page 2, remove line 15

Page 2, line 16, remove "against a defendant or defendants in the same action."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-27-2454

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2003 TESTIMONY

HB 1329

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Donna Hallworth 10/3/03
Operator's Signature Date

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

IN FAVOR OF HOUSE BILL 1329

FEBRUARY 11, 2003

Chairman DeKrey, members of the House Judiciary committee, I am Rusty Steffan with the North Dakota Collectors Association. I appear before you this morning with testimony in support of House Bill 1329.

The inception and purpose of this bill came about because a number of our smaller (Mom and Pop) business associates were asking for a means of action on smaller dollar amount claims against consumers who owe them money.

House Bill 1329 would allow for the assignment of claims and the filing of multiple claims by two or more creditors on the same consumer or debtor, in one small claims court complaint. This action benefits not only the business community by making it easier for a creditor to pursue the small balance accounts but also benefits the consumer or debtor by reducing the number of creditors filing separate claims against them.

In no way does the ability to assign and group the smaller dollar amount accounts together in a single small claims court action impede a consumer's right to due process, answer and defend against the debt, proper service of the claim, the filing of cross petitions and counterclaims, or confronting the original creditor face-to-face at a hearing or trial.

I would ask for your help in passage of this bill. I urge a favorable Do Pass recommendation from this committee. If there are any questions I would be happy to try to answer them.

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Operator's Signature Date

Testimony Regarding HB 1329

Chairman DeKrey and members of the House Judiciary Committee, I am appearing today on HB 1329, neither in favor of nor in opposition to the bill. The decision of whether small claims court actions should be expanded to allow plaintiffs to assign cases to a third party is a public policy issue that the Legislative Assembly must address.

My comments concern the language contained on page 2, line 14-16. This language would allow a business or third party to whom the claim is assigned to bring an action on behalf of one or more businesses and against one or more defendants in the same action. As it is written, it would mean that for one \$10 filing fee, multiple actions could be brought against one or more defendants. This has the potential for significantly changing the nature of small claims court, which was intended to provide a fast, inexpensive, and informal way to resolve minor disputes. You conclude that the simple right of assignment should be available in small claims court. That can be accomplished by deleting the underscored language. Taking out "not" on line 14 would allow a claim to be assigned. Multiple actions, however, would require multiple filings and separate filing fees. This is the standard that is currently in place, and one that should continue. With over 7,000 small claims cases being filed annually, there will be a potential negative fiscal impact allowing multiple plaintiffs in one action.

Ted Gladden
State Court Administrator

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Operator's Signature

10/3/03

Date

Testimony on HB 1329

House Judiciary Committee

Christine Hogan
Executive Director
State Bar Association of North Dakota

The State Bar Association of North Dakota represents the 1800 attorneys who are licensed to practice in North Dakota. The Association opposes House Bill 1329 at this time in the absence of a study of the fiscal impact of the bill. The Legislative Committee and the Board of Governors of the Association believe the bill would impose new burdens on the courts and have a significant negative fiscal impact on the legal system.

The apparent purpose of this bill is to allow collections actions to be filed in small claims court, which has a filing fee of \$10. Currently collections actions must be filed in district court, which has a filing fee of \$80. It has been estimated that perhaps 25,000 collections actions are filed per year in this state. There is no fiscal note on this bill, although the fiscal impact on the court system would be huge.

Moving collection cases to small claims court would defeat the purpose of this court. Small claims court was conceived as a way to provide an inexpensive, efficient forum for individuals to resolve their disputes, without the need of hiring an attorney, in cases under the jurisdictional dollar limits of the court. Small claims court was never intended as a forum for collection agencies to bring their actions.

We urge you to defeat this bill.

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Dorraine Hallworth 10/3/03
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