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2003 HOUSE JUDICIARY

HB 1329

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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>D. Remose</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 is \$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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**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 you 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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**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 be 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. Klemm:** 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. Klemm:** 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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**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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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.

**Rep. 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 businesses against a single defendant. Is that correct?

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**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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**Rep. Klemm:** 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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