



**Senate Fiscal Agency**  
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BILL ANALYSIS



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Senate Bill 196 (as reported with amendment)  
 Sponsor: Senator Philip E. Hoffman  
 Committee: Judiciary

Date Completed: 2-15-95

### RATIONALE

The small claims division of district court (small claims court) offers a forum in which people may resolve relatively minor financial disputes without the usual expenses or formalities of litigation. The law prohibits attorneys (except on their own behalf) and collection agencies from taking part in small claims court litigation, and generally requires parties to represent themselves in small claims court. These restrictions apparently have created a problem for property managers or rental agents who represent landlords in small claims court. Reportedly, rental agents have been informed recently that this representation was prohibited and amounted to the unauthorized practice of law. To address this situation, some people believe that real estate agents should be statutorily permitted to represent landlords in small claims court.

### CONTENT

The bill would amend the Revised Judicature Act to specify that, in an action brought by a landlord to recover a money judgment or a security deposit or the balance of a security deposit under the landlord-tenant Act, the landlord could be represented by a licensed real estate broker, associate real estate broker, or real estate salesperson if both of the following applied:

- The broker, associate broker, or salesperson acted as the landlord's agent pursuant to a written agreement, or was employed by a corporation, partnership, or other legal entity that acted as the landlord's agent, in renting or managing the rental unit for which the contested security deposit was required.
- The broker, associate broker, or salesperson was active in the management of the property that was the subject of the

claim and had direct and personal knowledge of the facts in dispute.

MCL 600.8408

### ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### Supporting Argument

At times it is necessary for a property owner to sue a tenant to secure compensation for damage done to a rental unit. If the rental unit is managed by an agent or a property management company, the owner generally is absent from the day-to-day operations of the property, and may even be located outside of the community, state, or country, so it is appropriate for the agent to represent the landlord in small claims court. Although rental agents have done so for years, they apparently are now being told that this is prohibited. Under the law, a sole proprietorship, partnership, corporation, or local unit of government may be represented in small claims court by an officer or employee who has direct and personal knowledge of the facts in dispute. The bill simply would extend the same convenience to rental property owners. A landlord could be represented only by a licensed real estate broker or salesperson who was acting as the landlord's agent in renting or managing the rental unit and who had direct and personal knowledge of the facts in dispute.

**Response:** The bill would undermine the basic concept of small claims court as a people's forum for settling minor legal disputes. The current provision allowing representation in some circumstances pertains to an officer or employee of the legal entity that is actually a party to the suit.

The bill would differ from this practice by allowing an employee of one business entity (a property management company) to represent in small claims court another party (a property owner) with which it has a contractual relationship. This arrangement not only would diverge from the current authorization, but also would sanction in statute what amounts to an unauthorized practice of law by a real estate professional who may not be an attorney.

### **Opposing Argument**

The same sound policies that prohibit attorney participation in small claims court actions also should prohibit specialized representation by other occupational professionals, such as real estate brokers. Further, if a landlord's rental agent also were an attorney, allowing the agent to represent the landlord in small claims court would give unfair legal representation to one side. The tenant still would be prohibited from retaining an attorney unless he or she wanted to remove the case to district court.

**Response:** Any party to a small claims action might happen to be an attorney who is representing himself or herself. Further, an employee or officer representing a business entity or local unit, as currently permitted, also might be an attorney.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: L. Nacionales-Tafoya

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.