



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 196 (as passed by the Senate)
 Sponsor: Senator Philip E. Hoffman
 Committee: Judiciary

Date Completed: 3-29-95

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 the law should allow nonlegal representation in small claims court if the party to an action were unable to appear in court and an uncompensated representative had knowledge of the facts at issue in the case.

CONTENT

The bill would amend the Revised Judicature Act to specify that an individual could request the court to allow another person to represent him or her in an action in the small claims division of district court if all of the following applied:

- The individual was unable to appear in court or provided evidence that his or her appearance would constitute an undue hardship.
- The representative had direct and personal knowledge of the facts of the action.
- The representative had not been and would not be compensated for the representation.
- The representative was not licensed to practice law in Michigan.

The court could grant a request to allow an individual to represent another individual upon the proper submission of the affidavits required under

the bill. The bill specifies that an individual who represented another in compliance with the bill would not be engaged in the unauthorized practice of law.

To request representation under the bill, an individual would have to provide the representative or the court with an affidavit containing a statement that he or she was unable to appear before the court or that appearing would constitute an undue hardship, and an explanation supporting that statement; a statement that he or she wished to be represented by the other individual; and a statement that he or she had not compensated and would not compensate the representative for those services.

The representative would have to provide the court with a copy of the individual's affidavit, unless a copy already had been provided to the court, and a copy of the representative's own affidavit that contained a statement that he or she had personal knowledge of the facts of the case at issue and an explanation supporting that statement; a statement that he or she wished to represent the other individual; a statement that he or she had not been and would not be compensated for his or her representation; and a statement that he or she was not licensed to practice law in Michigan.

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. By allowing a party to a small claims court action who was unable to appear in court to be represented by another individual, the bill would extend the same sort of convenience to rental property owners.

In addition, unlike a previous version of the bill, this provision would have broad application. Representation in small claims court would not be limited to representation of a landlord by a rental agent; instead, any party to a small claims court action could be represented by another.

Response: Although the representation provision would apply broadly, rather than only to certain professional business relationships, and would prohibit compensation for representation, in reality representation likely would be used only by business entities and those with ample financial resources. Furthermore, it is difficult to see how rental agents employed by landlords--whom the bill originally concerned--would not be compensated for their services in small claims court.

Opposing Argument

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 a person who was not a party to the suit to represent in small claims court a person who was a party. This arrangement not only would diverge from the current authorization, but also would sanction in statute what amounts to the unauthorized practice of law.

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.