

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2221

2007 SENATE JUDICIARY

SB 2221

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2221**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1554 & 1558

Committee Clerk Signature *Maria L. Solberg*

Minutes: Relating to cancellation of judgment against bankrupts, service in bankruptcy proceedings.

Senator Lyson, Vice-Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Holberg – Introduced the bill

Mr. Malcolm Brown, Real Property Probate and Trust Section of the State Bar Assoc. (meter :35) Gave Testimony – Att. #1 and reviewed the bill.

Sen. Fiebiger questioned why the group did not include any bankruptcy attorneys? No we are mostly real estate lawyers. Sen. Fiebiger stated his concerns (meter 4:42) of there already being a process for "expungement". Debtors lawyers aren't necessary providing the information to there debtors to follow the "expungement statute" process. Have you heard of there this? Yes Discussion of the unfairness Sen. Fiebiger sees of the statute (meter 5:01) and the pre petition lien and how current system works.

Sheila Dalen, Ward Co. Recorder, Gave Testimony (meter 8:48) with proposed amendments Att. #2.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator Lyson, Vice Chairman closed the hearing.

Recorder Job Number: 1558

Senator Nething, opened the hearing.

General discussion of the amendment (Att. #2).

Sen. Fiebiger stated that he has concerns about this bill and would have liked to have had the bankruptcy attorneys input in this. I would like to bring the three groups together to make sure that if we clean this up and all groups are in the same page. **Sen. Lyson** stated that the bankruptcy attorneys should have been there. The bar association does not have a division. **Sen. Nething** put **Sen. Fiebiger** in charge of a committee of one.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2221**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 3048

Committee Clerk Signature

Minutes: Relating to cancellation of judgment against bankrupts, service in bankruptcy proceedings.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Fiebiger presented the committee with an amendment – Att #1 and reviewed the amendment with the committee.

Sen. Nelson referred to Sheila's' amendment on legal descriptions'

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger made the motion to Do Pass Amendment – Att. #1 from today and Amendment Att. #2 2/22 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger made the motion to Do Pass SB 2221 as amended and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

AH #1
2-7-07

Senate Bill 2221- Proposed Amendments

Page 1, line 23, after the period insert "This section does not apply to debts automatically excepted from discharge under section 523 of the United States Bankruptcy Code [11 U.S.C. 523]."

REPORT OF STANDING COMMITTEE

SB 2221: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2221 was placed on the Sixth order on the calendar.

Page 1, line 23, after the underscored period insert "This section does not apply to debts automatically excepted from discharge under section 523 of the United States Bankruptcy Code [11 U.S.C. 523]."

Page 2, line 15, remove the overstrike over "eertified" and after "copy" insert "with the legal description"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2221

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2221

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4510

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2221.

Malcolm Brown, Real Property, Probate and Trust Section of State Bar Association:

(see attached testimony).

Rep. Klemin: Looking at the declaration of homestead, on lines 11-15, what is it that is being repealed in section 3.

Malcolm Brown: Those sections in the century code relating to how you try to avoid a bankruptcy judgment, among other things, it directs the clerk of district court to expunge a record. I think the Supreme Court recently had a case indicating that you can't expunge things, so we're getting rid of that kind of language.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2221

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/14/07

Recorder Job Number: 5019

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2221. What are the committee's wishes in regard to SB 2221.

Rep. Delmore: I move a Do Pass.

Rep. Dahl: Second.

Rep. Koppelman: Can you summarize what this bill does.

Rep. Klemin: When there is a judgment that is recorded on real property in a county, it's a lien on all property that that person owns in the county, except that somebody can file bankruptcy and has that judgment voided as a result of the bankruptcy, however, that doesn't automatically take the lien off in the county records. So this is thought to be a better procedure for canceling that judgment once the person has gone through bankruptcy to get it off the record as far as the lien on the real property.

Chairman DeKrey: The clerk will call the roll.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Kretschmar

Date: 3/14/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2221

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 10:42 a.m.

Module No: HR-48-5263
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2221, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2221 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2221

Att #1

1-22-07

Senate Judiciary Committee
January 22, 2007

Senate Bill 2221

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Senate Bill 2221 proposes to add a new section to Century Code Chapter 28-20, Judgments. Currently three sections in Chapter 28-20 relate to judgments and bankruptcies, 28-20-30, 31 and 32. Section 1 of SB 2221 will govern that topic as it relates to judgments against individuals that have filed bankruptcy.

Current law (28-20-30) uses the word "expunge" to direct the Clerk of District court as to how to handle a judgment against a bankrupt. There is a bill that will come before you that covers the use of that word. Once something exists in a court office, it cannot be "expunged", but it can be sealed as I understand the new bill.

Section 1 also protects a creditor that may have litigated its judgment in the bankruptcy court by permitting the filing of an order declaring the debt nondischargeable.

Section 2 of SB 2221 proposes to amend Sec. 48-18-18 N.D.C.C. relating to homestead declarations. However I believe that the word "certified" at the beginning of Line 15 should not be stricken as virtually all documents filed with the Recorder are certified.

Att #2
1-22-07

Testimony to the Senate Judiciary Committee
Regarding Senate Bill No. 2221
Sheila Dalen, Ward County Recorder
January 22, 2007

Chairman Nething and members of the Senate Judiciary Committee, as a member of the County Recorders legislative committee, I am here, not in opposition to SB2221, but to raise concerns with the removal of one word from current law.

The Recorders statewide are extremely concerned with the quite significant deviation from past practice that section 2 of this bill proposes. As you will see on line 15, the requirement to record "certified" copies is being removed.

If any copy is permitted to be recorded, the Recorders have no authority to question the documents validity and anyone could type up a "discharge" and have it filed - seriously eroding the accuracy of the land records. This appears to be a shortcut that will, in the long-term, be very detrimental to ownership records statewide.

To address this, the Recorders wish to offer amendments to restore the recording requirement of "certified" copies, as well as add the clarification that the recording must include a legal description so that it may be properly indexed."

PROPOSED AMENDMENTS TO SENATE BILL NO. 2221

Page 1, line 15, remove the overstrike over "~~certified~~" and after "copy" insert "with legal description"

Renumber accordingly

House Judiciary Committee
March 7, 2007

Senate Bill 2221

Testimony of Malcolm H. Brown on behalf of the Real Property, Probate and Trust Section of the State Bar Association.

Senate Bill 2221 proposes to add a new section to Century Code Chapter 28-20, Judgments. Currently three sections in Chapter 28-20 relate to judgments and bankruptcies, 28-20-30, 31 and 32. Section 1 of SB 2221 will govern that topic as it relates to judgments against individuals that have filed bankruptcy. This section provides for situations in which the debtor avoids a pre-bankruptcy debt; for situations where a debtor acquires property post judgment filing and post bankruptcy; and for situations where the creditor has proceeded in the bankruptcy court to have its lien declared nondischargable.

The language at the top of page 2 of the bill was added at the request of the tax department and the office that collects child support payments. Those obligations are "automatically excepted from discharge" as stated.

Section 1 also protects a creditor that may have litigated its judgment in the bankruptcy court by permitting the filing of an order declaring the debt nondischargable.

Section 2 of SB 2221 proposes to amend Sec. 48-18-18 N.D.C.C. relating to homestead declarations. This section proposes

to strike the current language describing the Bankruptcy Code as being redundant to the actual act of a homestead declaration. This section goes on to clarify that in order to be recorded the discharge must contain the legal description of the homestead property.