

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2181

2005 SENATE JUDICIARY

SB 2181

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2181

Senate Judiciary Committee

Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		1260 - 2830
Committee Clerk Signature <i>Mara L Solberg</i>			

Minutes: Relating to instruments recorded without auditor's certificate.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Sen Holmberg** - Dist #17. Introduced the bill This bill is a result of the work of the real property division of the Bar Assoc. One of the segments <sup>of</sup> are the bar have been studying issues.

We are constantly making changes in the statute. We are "up dating" these bill.

**Malcolm Brown** - Probate Attorney in Bismarck. (meter 1376) and a member of the Titles Standards Committee. Today when an entity obtain a judgment against someone it automatically is a lien on real-estate in the county where the judgment is entered. The judgment is transcribed to another county where there may be a lien on it to. It lasts for 10 years and can be reapplied for another 10 years the problem is when it is re-transcribed it does not get transferred or renewed in

the additional county. We would like to put the burden on the judgment creditor that if they file a renewal then they need to file it in all counties involved. (meter 1539)

**Sen. Traynor** asked what the effectiveness of the last sentence "present law"? This is the present law that is not being currently filed by the clerk. We did not do anything with this. They are currently not doing it although we are assuming.

**Sen. Nelson** asked if we were leaving it up to the creditors to file liens in the multiple counties would we not want to take the clerks off of it? No

Senator gave an example of how a farm property and house could be on multiple counties or they could own a lake home. If some one slips up this give us more check points that it gets done.

**Sen. Traynor** stated that a judgment on real property is a good judgment due to the fact that sooner or later it will get sold and you will get paid

**Testimony in Opposition of the Bill:**

none

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

**Senator Triplett** move to do pass the amendments to delete last line **Sen. Nelson** seconded All in favor.

**Senator Triplett** move to do pass the bill as amended and seconded by **Sen. Trenbeath**. All were in favor, all present.

Carrier **Senator Syverson**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing



Date: 1/17/05  
 Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2181**

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 50404-0101

Action Taken Do Pass as Amended

Motion Made By Sen Triplett Seconded By Sen Trenbeath

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson			
Senator Syverson	✓		Senator Triplett			
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Syverson

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

**REPORT OF STANDING COMMITTEE**

**SB 2181: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "A copy of the affidavit of renewal and the docket entries thereon, certified"

Page 1, overstrike lines 15 and 16

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2181

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2181

House Judiciary Committee

Conference Committee

Hearing Date 3/1/05

Tape Number	Side A	Side B	Meter #
1	xx		26.8-34.7
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 14 members present.

**Chairman DeKrey:** We will open the hearing on SB 2181.

**Sen. Tom Trenbeath:** I bring to you, at the behest of the Real Property Section of the State Bar Association of ND, SB 2181. I am not only not the draftsman, I'm not even the primary sponsor, but here I am anyway. As you know, the primary sponsor, he is otherwise occupied this morning. It is a fairly simple bill and hopefully, I will defer most questions to Malcolm Brown, who is the expert in this area. It has to do with affidavits of renewal for money judgments. As some of you may know, money judgment gotten from a court can be transcribed and placed in the record in the county in which the judgment was gotten and thereafter, constitutes a lien against all the real property of the judgment debtor. It can also be transcribed and recorded in other counties in which the judgment debtor may have property. After 10 years, unless that judgment is renewed, it dies. So this has to do with renewal and obligates the person, in who's favor the money judgment operates, to make sure that the affidavit of renewal of the judgment is renewed

in the county of origin of the judgment, and in each county where the debtor has property, in which the judgment creditor wants to renew the lien. He's not obligated, of course, to renew it in every county if he doesn't choose to. That's basically the bill. I'll recommend it to you, as I say Mr. Brown is here close on my heels to explain it further, should it be required.

**Malcolm Brown, Real Property Section of the State Bar Association of ND:** As Sen.

Trenbeath said, SB 2181 and 2182 were drafted by the Real Property Section committee, and introduced at our request by Sens. Holmberg and Trenbeath. Sen. Trenbeath did a pretty good job explaining it. But I'll tell you a little bit more of the background. A judgment, is good for 10 years, and it can be renewed for another 10 years. The problems that arose, in many cases, is if you had a judgment in county Z, that had been transcribed from county A, and it was more than 10 years old, and in the current law it is uncertain as to who's obligation it was to make sure that if it were renewed in the county of its origin, county A, that in fact that the renewal is transcribed to county Z. So people were having to call around and check whether this judgment was renewed, was it not renewed. What this bill does is put the burden on the creditor, that if they want to renew their judgment, they can renew it, and if they want to renew in the county where it's transcribed, it is up to the judgment creditor to do it. It was our opinion, that that's where the burden should be and that statute, if amended, would make that very clear as to who's obligation it is and would also give a title examiner more certainty, that if it hadn't been renewed in county Z, where it had been transcribed to, that it no longer constituted the lien.

**Representative Koppelman:** Why would it not be just as easy to have the person responsible for the recording the judgment in county A, when it's renewed, simply look at the file, note that it was transcribed to another county and notify that county.

**Malcolm Brown:** You mean like the clerk. It would be the clerk of court. Well, it was unclear, 1) that they had the responsibility to do that; or 2) whether they would in fact do it, without specific direction. So what this does is make the specific direction on the creditor to have it done.

**Representative Koppelman:** I'm asking why you are shifting the burden to the creditor, rather than allowing the administrators of the county that are paid to keep those records, clarify the law, fine. But why not put in the law, that the clerk, upon renewal shall notify the county where it's transcribed. Wouldn't that simply it, isn't that their job.

**Malcolm Brown:** We did discuss that, and it was our thought that if we tried to impose a burden on the local officials, that we might get opposition; when we're really trying to clear it up. We thought we wouldn't go that route, we'll make the burden on the creditor. We did consider that.

**Chairman DeKrey:** I think the creditor would have a vested interest in wanting that too.

**Representative Klemin:** If we've got a judgment that's originally entered in one county, and was transcribed to another county, and it's time to renew that judgment, and the creditor does renew the judgment in the first county, but not in the second county, is it possible then later on, to renew that judgment in the second county if the creditor could find that the person does have property over there.

**Malcolm Brown:** Under our current law, I believe it would be. Because the 10 years to me, would seem to relate to the filing of the original judgment. And if the original judgment was renewed within the 10 years, or whatever the statute says, I think you could transcribe it again after that 10 years. I think that would make sense.

**Representative Klemin:** Of course, the reason that we had that judgment transcribed is because we wanted the judgment to be a lien on any property that person has over in that other county.

**Malcolm Brown:** That's right.

**Representative Klemin:** So, we've got the judgment in the original county and we renewed the judgment in the original county, we don't lose the ability to transcribe the judgment again to another county.

**Malcolm Brown:** That would be my opinion.

**Representative Klemin:** It would be just the same as if you had never transcribed it to that county to start with. You could do that with a third county, for example, if at anytime within the renewal period.

**Malcolm Brown:** I believe so.

**Chairman DeKrey:** Thank you. Further testimony in support of SB 2181. Testimony in opposition to SB 2181. We will close the hearing.

(Reopened later in the same session)

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2181.

**Representative Koppelman:** I am working on an amendment.

(Closed again)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2181

House Judiciary Committee

Conference Committee

Hearing Date 3/9/05

Tape Number	Side A	Side B	Meter #
2		xx	39-48.8
Committee Clerk Signature <i>Naura Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2181.

**Representative Koppelman:** Explained the amendments. All clerks around the state, with the exception of one county do this procedure now, of notifying other counties that the judgment was renewed for an additional ten years. The amendment basically says that the Clerk of Court is responsible for replicating what they did when the affidavit was originally filed. When a judgment is filed, whether it is filed in one county or three, when the person comes in to renew that judgment, the clerk will check to see what other counties it was registered in, and they would send out notice that it has been renewed. I move the amendments.

**Representative Delmore:** Seconded.

**Representative Kretschmar:** When you an original judgment is filed, then does the judgment creditor say to the clerk, to also file this will counties A, B and C or do the judgment creditors do that.

**Representative Koppelman:** I'm not sure, I didn't check on the filing question. I just asked about what the bill dealt with. The information that Vonette got, all the counties, except one, this is the way it is routinely handled, but some questions have come up and that's why the bill was brought forward.

**Representative Klemin:** I think that procedurally, you request that the clerk of court in the county in which the judgment is entered, to transcribe it to other counties that you want it transcribed to. She doesn't do it automatically because she doesn't know where to go, but on a renewal, she would know where to send it. The only downside to that is that, the reason that a judgment creditor might want it transcribed to another county 10 years ago, was because he thought the judgment debtor had some property there. He wanted the judgment to become a lien on that property and that may no longer apply.

**Representative Koppelman:** I think the bill with the amendment would address that, because if you look at the language, the bill would say, on line 11, "and the clerk of court shall file a copy of the affidavit for renewal in each county where the judgment was transcribed, in which the judgment creditor wishes to renew judgment." I suspect that what would happen is if you went in to renew the judgment, and the clerk would look at the file and say this was also filed with X counties, do you still want it there, the creditor would then say yes or no, or what counties he wanted it transcribed to.

**Representative Klemin:** Instead of making this a discussion between the clerk of court and the judgment creditor, when they renew that, would the words "wishes to renew" aren't really statutory language. I'm going to suggest something, instead of saying, "in which the judgment creditor wishes to renew the judgment", what if we said, "as requested by the judgment creditor".

**Representative Koppelman:** I wouldn't have a problem with that.

**Representative Klemin:** That way the burden is put on the judgment creditor to make that request to have it transcribed to these other counties and the clerk of court is not going to have to say, well you didn't say do it, I can't do it automatically because it's only those he wishes to renew it in, so now I've got to call him back and ask him which ones did he want it transcribed to.

**Representative Koppelman:** Of course, that's language in the bill, not in the amendment, but if you want to make that amendment to the amendment, I would consider it a friendly amendment.

**Representative Klemin:** I move the amendment, that on lines 8 and 9 to remove "in which the judgment creditor wishes to renew the judgment" and insert "as requested by the judgment creditor".

**Representative Koppelman:** Second.

**Chairman DeKrey:** We will take a voice vote on the amended amendment by Representative Klemin, and seconded by Representative Koppelman. Motion Carried. We now have the amendment as amended before us.

**Representative Klemin:** I guess we have to make that same change on lines 11 and 12.

**Representative Koppelman:** My motion covers that as well.

**Chairman DeKrey:** Motion carried. We now have the bill before us as amended.

**Representative Koppelman:** I move a Do Pass as amended.

**Representative Klemin:** Second.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Koppelman

Page 4

House Judiciary Committee

Bill/Resolution Number SB 2181

Hearing Date 3/9/05

**Chairman DeKrey:** Let the record reflect that Representative Charging still doesn't have her voice, but she nodded her head yes and was present.

Date: 3/9/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2181

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE**

SB 2181, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2181 was placed on the Sixth order on the calendar.

Page 1, line 8, after "and" insert "the clerk of court shall file a copy of the affidavit for renewal" and replace "in which" with "as requested by"

Page 1, line 9, remove "wishes to renew the judgment"

Page 1, line 11, after "and" insert "the clerk of court shall file a copy of the affidavit for renewal" and replace "in which" with "as requested by"

Page 1, line 12, remove "wishes to renew the judgment"

Renumber accordingly