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ROLL NUMBER

DESCRIPTION

2274

2007 SENATE JUDICIARY

SB 2274

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2274**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number:

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to garnishment summons, notice and disclosure.

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

Testimony In Support of Bill:

Sen. Wardner, Dist. #37 Introduced the bill (meter 2:04) This bill was brought to me from the Collector Assoc. The last time this fee was changed was 1980.

Todd Kranda, Attorney, Kelsh Law Firm and representing ND Collect Assoc. Reviewed process (meter 2:35) Reviewed process of the collection efforts.

Sen. Nelson asked if the \$150 dollars be charged on all garnishments even the smaller ones? Yes and he discussed different company policies. (meter 4:27) The \$150 judgment is used on the balance of the money owed.

Brian Dvirnak, President of Collection Center Inc. (meter 6:31) Gave Testimony – Att. # 1 Reviewed how the 110% was reviewed and changed to \$150. This would work until 2009.

Sen. Nething question that he could understand on the smaller collections, but what about the larger collections (meter 10:01) Discussion of the fee process.

Sen. Nelson asked how many members in the association? 23 members and we collect in ND, MN, SD and MT.

The committee discussed the "cap", fixed costs and the process of where the money collected goes and how the collection agencies get paid

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Marcellais**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
January 22, 2007 1:34 p.m.

Module No: SR-14-0968
Carrier: Marcellais
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2274: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2274 was placed on the
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2274

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2274

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4055

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2274.

Sen. Rich Wardner: Sponsor. Deals with garnishment and summons. It adds \$150. The thing is by increasing this, it actually helps everybody. The agencies that are doing the collection, it also helps the person that is being garnished.

Bryan Dvirnak, President of Collection Center Inc., Bismarck: (see attached testimony).

Rep. Delmore: What is the average size of account that you get.

Bryan Dvirnak: We get about 30,000-40,000 accounts a year, both large and small accounts. Usually the lowest amount we take to suit is \$500 or more; the average is around \$1,000-1500. There has to be quite a bit of justification for us to sue an account for less than \$500.00, we have gone as low as \$200.00. But economically speaking it isn't usually feasible.

Rep. Delmore: Will there be some people who will be jeopardized by the additional \$150.00.

Bryan Dvirnak: It's garnishing wages, I don't think it will be that great of an impact. All we're telling the employer is to set aside up to 110% plus \$150.00. The question that should be asked, what you will do with an overage. The law is already clear, that you are only entitled on a judgment to collect what is owed on the judgment, anything that is obtained in excess, you have to refund to the debtor. It's done as a matter of practice already.

Rep. Koppelman: I'm trying to read and reread this. I'm trying to understand it correctly, it basically is saying that in a garnishment the employer withholds 110% of the judgment and you're saying add \$150. What if they owe you \$200.

Bryan Dvirnak: Whether they owe \$150 or \$200 or \$20,000; when we ask the courts to have the sheriff to serve them, he charges the same amount for a \$200 bill or a \$20,000 bill. He doesn't differentiate between them.

Rep. Koppelman: So if that's true, if you have a \$200 claim, you might think twice whether it's worth garnishing right now because you can get 110% of that amount and your costs are sufficient in the garnishment, would this result in more garnishments because you're going to say I'm going to get my \$150.

Bryan Dvirnak: Absolutely not. Because that \$150 is just to recover the costs that we've already expended.

Rep. Koppelman: You're saying that it will cost you \$150 to garnish.

Bryan Dvirnak: It will cost on average, by the time you get the judgment and go to garnishment, you will spend between \$175 and \$180 minimum.

Rep. Koppelman: So if you had a \$200 claim, you probably would not garnish, it's not worth it.

Bryan Dvirnak: Exactly.

Rep. Koppelman: But if you had that \$200 claim, and you could withhold the \$220 plus \$150 which would probably cover your costs, plus the 10% off the cost, obviously it's worth it then because you can take the entire amount. I'm not saying that's wrong, I'm saying it might entice you to garnish them.

Bryan Dvirnak: We have two paralegals that push paper every day, 8 hours a day, they're not looking for more work. As I said earlier, we have a benchmark of \$500 in our office and I

would assume that other agencies have some sort of a similar benchmark. It gets down to an economic issue. I'm paying my staff X number of dollars an hour, and would I rather have them work on a \$1,000 bill, or a \$200 bill. I go where the money is at, with the \$1,000 bill. I don't see this changing the pattern of behavior at all, this is just quite frankly, is going to reduce the amount of our work because of instead of executing twice, we're executing once. What it does for the debtor, it's going to save them money in the long run.

Rep. Wolf: Current law, the employer withholds 110%, 100% for the judgment and 10% for your fee, is that correct.

Bryan Dvirnak: No.

Rep. Wolf: That's in your testimony, 10% to cover execution costs.

Bryan Dvirnak: Correct.

Rep. Wolf: So 100% for the judgment and 10% is for fees, execution costs. So actually you're getting an additional 10% to cover expenses and now you're getting another \$150 to cover expenses.

Bryan Dvirnak: The 10% has nothing to do with what we get paid for our services.

Rep. Wolf: I know that. It's for fees.

Bryan Dvirnak: For the reimbursement of the execution costs.

Rep. Wolf: It's \$150, plus the 10% of the garnishment is to cover costs.

Bryan Dvirnak: Correct.

Rep. Klemin: I noted that you said that you didn't want to simply increase the percentage from 110% to 125%. I'm wondering if rather than the 110% + \$150, there might be a third alternative, and that would be to, using this formula, you would enter the plaintiff's judgment, which is the 100%, rather than 110%, plus an additional 25% for costs, disbursements, not to

exceed \$150.00. That way, you wouldn't be collecting \$150 on every case, be you would get an additional 15% on a sliding scale.

Bryan Dvirnak: Then we've got a problem. Because right now, the 110%, we're not covering all of our costs to begin with. If you drop it back to 100% of the judgment amount and leave it at \$150, we're still going to come up short.

Rep. Klemin: Well, I guess I'm looking at, you are saying that costs and disbursements for levying and this judgment are going to exceed \$150.

Bryan Dvirnak: Yes.

Rep. Klemin: Of course, the suit costs are already included in the judgment, which is in the 100%, so the extra 10% you're saying is not sufficient.

Bryan Dvirnak: It's not, the 110% goes to cover the service fees by the sheriff; the mileage and the remaining court costs.

Rep. Klemin: So we're only talking about court costs incurred after the entry of the judgment. Court costs incurred before entry of judgment are included in the judgment.

Bryan Dvirnak: Correct.

Rep. Klemin: As I understood some of the questions, their concern was that you are going to be collecting \$150 and in some cases, it may even be more than some people owes to start with. I understand that there are going to be situations where it's not going to be enough. I was looking at trying to come up with some type of sliding scale as opposed to just tacking on \$150 every time; \$150 plus the additional suit costs, the sheriff service fees, part of which is covered by the 110%, that is why you have the 110%. I'm trying to think of a situation where the sheriff would be charging \$150 plus 10% of the judgment sounds like a lot of money for a service.

Bryan Dvirnak: I can tell you that Sen. Lyson talked about in the Senate side, about having to travel from Williston to Tioga to execute on a garnishment, and the travel costs associated with that. All we're trying to say is that the law has not been changed since it was enacted in 1981. The costs have gotten out of whack in the last three or four years as a result of the rise in costs in sheriff's fees, mileage, etc. We are trying to recover our costs one time, instead of having to execute twice. By executing twice, it's tacked on at least \$100 bill onto the debtor's bill. As a matter of practice, and the law is very clear that you are only entitled to collect the amount of judgment. As a matter of practice, if and when we get to the point where the account is paid, we always call the employer, even if the garnishment is still in effect, and we tell them to stop the garnishment. So it isn't like you are going out and collecting \$150 up front. All we're saying to the employer is to build into the formula the additional \$150 to cover the execution costs and if you get to the point where you are paid off, we always call the employer. It's a matter of practice that you call and stop the garnishment, we're done. So the debtor is not being overcharged, they are only being charged what the costs were that were incurred.

Rep. Koppelman: I understand that in one county, there were a lot of police departments and now there aren't, so the county sheriff's department has to cover the whole county. The example I am familiar with is that the deputy lived in the town, but if a document had to be served, they charge you mileage from the county seat to that house, even though the deputy lives in that town. I think what you are saying in your testimony was that you could approach this from a % standpoint, but it would require 25% and you didn't want to do that, so you went with \$150. So in essence, what's wrong with his idea, if he says you can go up to 100%, you can get a 25% additional garnishment to cover your fees up to \$150.00. You're saying in some cases that it's going to be more than \$150.00.

Bryan Dvirnak: On average, we will spend in excess of \$175-180. So if we have to re-execute again, we're going to be behind the 8 ball before we even get to the batter's box. The reason that we went with \$150, instead of a percentage, we felt that it would be more palatable, more acceptable.

Rep. Koppelman: What if it said 25% up to \$175 or \$180. I think the point he is trying to make, if it only ends up costing you \$100, then you have to charge that \$150 plus 10% and then worry about how to get the overage back to the debtor.

Bryan Dvirnak: I don't know if we would be opposed if you said 125% up to \$180.00.

Chairman DeKrey: Thank you. Further testimony in support.

Kim Granfor, ND Collectors Association: One of the things that was missed is, yes it's 110%, plus \$150 to cover costs, but included in that additional 10% is the interest that accumulates on the judgment during that entire garnishment period which is 270 days. By law, we get garnishment interest and last year it was 10%, this year it's 11.5%, prior to it being 12% before that. So that has to be accounted for too.

Rep. Wolf: Just a couple of scenarios, what if you had somebody who had a \$20,000 judgment against them. You are going to take \$2,000 (10%) and \$150. It's not going to cost \$2150 to collect on this judgment. You are going to be very much in the black on that particular situation. Do you give a refund.

Kim Granfor: Absolutely, we do not take more than we have coming to us. My guess is that if someone who is \$20,000 in debt is probably talking to an attorney about filing bankruptcy. We always give a refund; however, before we even get to that point, once we are getting close to the judgment being paid off, we will call the employer and tell them the balance that is owing, not the extra \$2000. We have them stop the garnishment.

Rep. Wolf: So we do the 110% plus the \$150 and it only costs you \$25 to have them served. Do you give a refund back, even if we pass the bill as it sits, and it costs \$25 in expenses, will you still give them a refund.

Kim Granfor: Absolutely.

Rep. Onstad: Prior to going to garnishment as a collection agency, you have tried to work with them to work this out in other ways.

Kim Granfor: Absolutely. We do not want to take legal action. We don't want to go to the garnishment process. Employers don't like having to garnish wages. We have done everything, phone calls, letters, set them up on payment plans. We have a financial form that we have them fill out, unless they can pay it back in a reasonable amount of time. If they need 12 months to pay it back, we want them to fill out a financial form.

Rep. Onstad: So before the garnishment process, 50% of the collection goes to the client.

Kim Granfor: I say probably about 70% collections are not legal. You have the rest that are legal. Of that remaining 30% of debtors, 25% pay when they receive the attorney letter, 25% pay when they receive the Summons and Complaint, 25% respond from the judgment and then garnishment and execution are on the remaining 25%.

Rep. Onstad: Are there amounts of collections that you turn down because you know it's not going to be collectible.

Kim Granfor: We don't. We turn down zero, but we do return accounts as uncollectible. We even get accounts as small as \$3 which is the Medicaid co-pay. Whatever office policy is, if they turn them over, we take them.

Chairman DeKrey: So if I understand this right, if the debtor gets a judgment against him for whatever amount, that is going to be the total amount that is going to be paid. If he gets a judgment for \$1000, it doesn't matter what it costs you to collect that, you can charge what

expenses you have and for the sheriff to deliver the paperwork, but that's all you are covering is expenses right.

Kim Granfor: Yes.

Chairman DeKrey: You don't get more than the \$1,000, other than what is in law to pay for expenses.

Kim Granfor: That's correct, we do get the interest.

Chairman DeKrey: So it really doesn't matter what the dollar figure is, because they are never going to pay anymore plus expense and interest than they are going to pay anyway.

Kim Granfor: Exactly.

Chairman DeKrey: So it wouldn't matter if it were \$25 or \$2000, they are still going to pay the same amount and the only way they are going to do that is if they pay it off faster, so they won't pay all the interest.

Kim Granfor: Absolutely, and so we don't have to do another set of garnishment papers to them, adding the sheriff fees, etc.

Chairman DeKrey: If they don't get it paid off in the 270 days, you start all over again and whack them for another 110%, so actually this benefits them.

Kim Granfor: We take the charges that we are charged, and put it on the account.

Chairman DeKrey: So basically, what your testimony is, if we go up to the \$150 additional dollars, it will probably avoid another garnishment after the 270 days and therefore you are benefited, they are benefited because they don't have to pay the additional costs.

Kim Granfor: Thank you. That is correct.

Rep. Meyer: There is a little inconsistency in the testimony. When the bill we had in earlier, when we were talking about exemptions in the execution, it was stated that the existing garnishment formula has not been changed since the bill became law in 1981, and it's

outdated. You stated that no, it's not outdated it's working fine. So now in this bill, you use the same exact language that they used saying it's outdated. You said before it was working fine.

Kim Granfor: The formula works, what doesn't work is the way that the costs that have come into play, with the sheriff's fees that are expended. If it stands as it is without the additional \$150 we can still continue going on, and it will still work. It is going to cost the debtor a little bit more money. However, a lot of our garnishments are taken care of within those 270 days. Sometimes we contact the employers and say if the debtor is short by \$80, we don't want to do this again, check with the debtor to see if this can continue until paid in full. A lot of times this will be agreed to. This is to avoid that.

Rep. Meyer: If you would have allowed their exemption level to creep up a little bit, that would have cost them a great deal of debt.

Kim Granfor: Except that it would take them longer to pay it off.

Rep. Koppelman: I think I understand. How you would apply this. I'm looking at the bill, and I don't see anything that talks about the \$150 is anything but a flat amount. I'm not seeing anything that says it's a \$150 against expenses you incur for the garnishment, etc. and any overages are refunded.

Kim Granfor: I believe that is under the actual judgment laws.

Rep. Koppelman: If we pop this into law, that says you can collect 110% plus \$150, that that isn't going to be interpreted as a fee that you are tacking on to the garnishment versus an expense reimbursement.

Kim Granfor: Perhaps to clarify it, we could add verbiage that states, as long as expenses are legitimate expenses.

Rep. Koppelman: That was part of what Rep. Klemin was talking about.

Kim Granfor: We have no problem with clarifying it in this section of law, if that would help. We don't keep anything extra anyway.

Rep. Koppelman: I believe you, but I'm just saying that you wouldn't be the only one that this affects, obviously, and we don't know what other people are going to do under this statute.

Kim Granfor: I would be happy to talk with our attorneys and find out if there is a section of law that I can get that to you.

Rep. Klemin: The interest issue, it's 12% on judgments.

Kim Granfor: No, the interest rate is tied to the prime rate, so in 2007 it's now 11.5%, last year it was 10%. So every January 1st it changes.

Rep. Klemin: If we clarify what the \$150 is for, those would be actual costs and disbursements.

Kim Granfor: Of the garnishment.

Rep. Klemin: So if we added that language, "plus an additional \$150 to apply towards the additional costs and disbursement of the garnishment."

Kim Granfor: Then the interest.

Rep. Klemin: We wouldn't need to add anything about that.

Kim Granfor: I will talk to Legislative Council about verbiage for the change.

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

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2274

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/5/07

Recorder Job Number: 4370

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2274.

Rep. Koppelman: Explained the amendments. I move the amendments.

Rep. Delmore: Second.

Chairman DeKrey: Further discussion.

Discussion was held on the various points of garnishment. More work will have to be done on the amendments.

Rep. Koppelman: I withdraw my motion to move the amendments.

Rep. Delmore: I withdraw my second.

Chairman DeKrey: We will take a look at this later.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2274

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4518

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2274.

Rep. Koppelman: Rep. Griffin and I worked on this bill together. This original bill called for the members to take back 10% or asked for another \$150. To me, I kind of struggled with that.

It was talked about to take a higher percentage or no percentage. In visiting with counsel about this, I struggled with the sentence about the additional \$150. I was told that it had been amended several times over the years, and it was from bills that were brought in and language used from other states and has muddied up the chapter. What you see before you is a hog house, but it really is not a substantive change. It just changes the statute back to Legislative council's form and style and basically put it in the shape that they thought it needed to be. I have given the proponents of the bill the opportunity to look at this over the past several days. Rep. Griffin and I met with them yesterday also. What we've come up is really a change on subsection b on page 1, what it calls for is the means. That the total amount of the judgment and interest over the life of the garnishment, which is a 9 month period, plus \$125, and we felt that was a better way to go because the 10% was sort of arbitrary. There is a fixed amount of interest that is due on the garnishment over the life of the judgment. So that can be calculated.

Rep. Griffin: That is in statute.

Rep. Koppelman: That is in statute, it does fluctuate, and it is a rate that changes. So we felt it made sense to just allow that to be specifically referenced in the garnishment and then people would know exactly what they are dealing with. The costs on the chart I passed out, was prepared by Kim Granfor, who does this kind of work, and she testified on the bill as well. Some of the members of the committee asked what is really involved in these charges, and you can see that it is a fee to the employer, sheriff's fees to deliver the papers to the debtor, sheriff's fee to delivery the papers to the employer, mileage and that's a guess, because it depends on how many miles they are going to be traveling, etc. As you can see, the total of those costs is really what's involved and the costs and interest allowed by law are included in the yellow line which you see going across. So the amendment before you, would essentially mean the line that says judgment interest for 9 months plus \$125 which is the green line. If you look at those numbers across and compare to the yellow line, it is pretty close. So we played with different formulas and came up with what we thought probably most closely mirrored what the actual costs were. For some, I think some missing sections on the committee and I think I shared them in the beginning, in terms of 1) is there anything in the law that says that they have to give this money back if we allow them to collect a certain amount of money, is that their money to keep or where does that go. The answer is yes, the law already states that they can only collect what is actually due on the judgment, which includes the judgment, interest and costs. Their fee for doing the work is a fee that is paid by the creditor, it's a percentage typically of what they collect. This has nothing to do with a fee that the debt collectors earn. In a garnishment, the employer typically collects the amount of money that is due, and then only turns it over to the creditor, when it is determined or demonstrated that here is how much is due. So if they've collected that amount plus \$50, that \$50 is returned to the debtor, it's not ever sent off to the creditor.

Rep. Griffin: If you look at the sheet, the green line is what we're going by.

Chairman DeKrey: It's been moved by Rep. Koppelman and seconded by Rep. Griffin for the Koppelman amendment.

Rep. Klemin: I have a question on, we're doing some other things in here obviously that weren't in the original bill. I'm not sure I have a concern about this precisely, but the concern would be that we don't want to make this too complicated for the employer who is retaining the earnings, so that they know what it is they have to retain and they know also how to fill out this garnishment disclosure form. When I get to page 4 in the new subsection 3, where you have modified as appropriate to reflect all these things. Who is doing the modification. The disclosure must be substantially in the following form, modified as appropriate, etc.

Rep. Koppelman: That is probably what Legislative Council added and I'm trying to figure out why specifically they referenced that chapter.

Rep. Klemin: Well it doesn't say who's to do the modification.

Rep. Griffin: That might actually have to do with the interest rate and modifying.

Rep. Klemin: Well, it says to reflect the appropriate earning worksheet for a judgment for support of an individual Chapter 13 bankruptcy or taxes owed. We have to keep this simple remember, on the form that the employer is filling out, and the statutory form said, substantially in the following form, now it could be modified for these reasons mentioned here, it doesn't say who is to do the modification, whether it's the judgment creditor that is sending the garnishment disclosure form to the employer to fill out or is the employer supposed to know this stuff, because they aren't going to know that.

Rep. Koppelman: Well it does say the garnishment disclosure form must be served on the garnishee, the disclosure must be substantially in the following form. I would assume that whoever is garnishing, would be the one to prepare that form.

Rep. Klemin: Well, I understand all that, and basically we do have that form now. That's what it says now in the law. But the new language says that the form is to be modified to reflect various things.

Rep. Koppelman: I can certainly ask Jennifer Clark about that. The only thing I am aware of that it might refer to is as Rep. Griffin said the interest, and also I don't think this would come into play, but as you can see on page 5, it talks about money and property, the reason that was included....

Chairman DeKrey: Todd, do you have a quick answer.

Todd Kranda: We asked Jennifer Clark, who assisted in drafting that, while we were having a hearing, because we both had questions, we stepped back just a few minutes ago, it is in statute, in that chapter already. So, Rep. Klemin, I looked at that too, and said what's new about this, it really isn't anything new. If you were to look at that chapter, and I just called Jennifer Clark, but she wasn't in the office, it's already in the law, she just carried that section over and cross-referenced it under here. I don't know that there's anything new or different about the form that would need to be done at this point, because that clause is already statutorily provided for elsewhere and just being repeated here. The other change was that it laid it out in an easier format, easier to follow. The employer will not be doing anything more in terms of filling out the chart. If you looked at the back page of the worksheet, the only change to the earnings worksheet, that is what the employer will get and asked to fill in the figures. The only one that has to do some different calculation as to this new retention amount, or the form itself, will be the lawyer garnishing, or the collector's agency that is sending out the garnishment form for the employer to fill out, with the \$25 fee to do so. So really the employer shouldn't be impacted whatsoever, because they are still filling out the same form. That's my understanding.

Rep. Klemin: On this modification, so we've got this form, statutory form for the disclosure statement here, and then it says modified as appropriate to reflect the appropriate earning worksheet. Who's doing the modification on this, is it when the judgment creditor sends this garnishment disclosure form, is the judgment creditor going to change this form to suit the situation if one of these other situations apply.

Todd Kranda: I don't think there is any modification that's going to take place on the form because the law hasn't changed.

Rep. Klemin: Well if the form is going to look exactly the same, then why do we say modified as appropriate, it is a little confusing.

Jennifer Clark, Legislative Council: What we're looking at is the provision in subsection 3 that talks about the form modified appropriately under section 32-09.1-03. The garnishment chapter has been changed in piecemeal over the years, and when Rep. Koppelman came to me and asked to put these together, one of the things he said was if you see something that you think we may have missed or unintentionally changed over the years, put it in there. So this is one of those. As I read through our statute, I saw that under 32-09.1-03 we have restrictions on garnishments; that is what that section says. That's where it lays out our 25% disposable earnings for that or the federal minimum wage. That's where we get the formula; however, in subsection 3 of that section, we see something that says, that formula up in sub 1 doesn't apply if this, for support of any person, chapter 13 bankruptcy, or state or federal tax. So it was intended to be a change, but when we do put our forms in code it really puts a burden on us to make sure that the forms are accurate. Because we told them that this is your form. I thought it might be helpful here to say, we recognize your form may be modified slightly from this and that would be because you might fall under one of these exceptions to the

