

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2284

2007 SENATE JUDICIARY

SB 2284

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2147

Committee Clerk Signature

Maria L. Solbey

Minutes: Relating to exemption from process for proceeds of a personal bodily injury recovery.

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. Nick Hacker, Dist. #42 (meter 1:05) This bill is a response from a constituent who is a bankruptcy attorney in Fargo. The changes in the bill deal with personal bodily injury in a law suit. Discussed a situation if a person was in a car accident and in the time before an award of damages, the person accrues many bills and may file bankruptcy In a law suit the dollar amount was set in 1970. We are requesting the amount be changed from \$7,000 to \$20,000
Att. #1 **Sen. Nelson** asked how the amount was derived. It is only a number picked out of no were **Sen. Fiebiger** stated that perhaps the entire law should be reviewed and a study done on the whole exemption process then to pick apart the statute.

Testimony in Opposition of the Bill:

Mike Wagner, Bankruptcy Trustee and Lawyer (meter 00:25) Mr. Wagner came back (meter 5:10) I have been a bankruptcy attorney since 1995 and have done over 10,000 cases. Spoke of the confusion that attorneys and judges have in working with this statute. In October of 2005 the Federal law did an "over hall" of this statute. ND opted out of the "exemption" portion.

Federal personal injury is \$18,250 and this amendment would be close at \$20,000. Thousand of dollars are spent in the exception due to the lack of understanding of these laws. Reviewed his personal (meter 8:20) experiences with the current process.

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

The committee discussed a study of the exceptions. **Sen. Fiebiger** will make a further

Senator David Nething, Chairman closed the committee discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3051

Committee Clerk Signature

Mona L Solbey

Minutes: Relating to exemption from process for proceeds of a personal bodily injury recovery.

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

Sen. Fiebiger reviewed the amendment – Att. #1 with the committee, stating the bill is to make a study but not to mandate the study. Spoke of how the dollar amount was derived. Sen.

Fiebiger also spoke of the State bar study the bill with legislative council. The language was provided by Mr. Wagner. The amendment would be “fine tuned” by legislative council.

Sen. Lyson spoke of a study making a “sub group” to work with the bill.

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger made the motion to Do Pass Amendment – Att. #1 and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger made the motion to Do Pass SB 2284 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

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3358

Committee Clerk Signature

Minna L. Solberg

Minutes: Relating to exemption from process for proceeds of a personal bodily injury recovery.

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

Sen. Nething stated that the amendment that we passed on the bill would be in conflict with Federal law and if the committee would wish to recall the bill to further amend to be in compliance with Federal Law.

Sen. Fiebiger made the motion to Recall SB 2284 back into committee and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Sen. Nething handed out an amendment – Att. #1

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

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

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing

AH #1
1-29-07

January 17, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 2, after "a" insert "wrongful death or"

Page 1, line 8, remove the overstrike over "~~not to exceed~~", after "~~seven~~" insert "twenty-five",
remove the overstrike over "~~thousand~~", and remove the overstrike over "~~dollars~~,"

Page 1, line 12, remove the overstrike over "~~not to exceed~~", after "~~seven~~" insert "twenty-five",
remove the overstrike over "~~thousand~~", and remove the overstrike over "~~dollars~~,"

Renumber accordingly

AH #)
2-7-07

Amendments to Senate Bill 2284

Page 1, line 2, after "a" insert "wrongful death or"

Page 1, line 8, remove the overstrike over ", not to exceed", remove "seven" and insert "eighteen", remove the overstrike over "thousand" and remove the "five" and insert "two".

Add the following to effectuate a study: That the Legislative Council, in conjunction with the North Dakota State Bar, study the North Dakota exemption provisions found in chapter 28-22 of the North Dakota Century Code, including determining if the exemptions, in their current form, continue to serve the historical purposes of protecting a debtor from creditors, providing the debtor with the basic necessities of life so that even if creditors levy on all the debtor's property he or she will not be left destitute and a public charge. The Legislative Council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

JTB
2-12-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 2, after "a" insert "wrongful death or"

Page 1, line 3, after "recovery" insert "; and to provide for a legislative council study"

Page 1, line 12, remove the overstrike over "~~not to exceed~~", after "~~seven~~" insert "eighteen", remove the overstrike over "~~thousand~~", after "~~five~~" insert "four", remove the overstrike over "~~hundred~~" and insert immediately thereafter "fifty", and remove the overstrike over "~~dollars,~~"

Page 1, after line 20, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY-EXEMPTIONS FROM PROCESS. The legislative council shall consider studying during the 2007-08 interim the exemption provisions found in North Dakota Century Code chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2284: 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 2284 was placed on the Sixth order on the calendar.

Page 1, line 2, after "a" insert "wrongful death or"

Page 1, line 3, after "recovery" insert "; and to provide for a legislative council study"

Page 1, line 12, remove the overstrike over "~~not to exceed~~", after "~~seven~~" insert "eighteen", remove the overstrike over "~~thousand~~", after "~~five~~" insert "four", remove the overstrike over "~~hundred~~" and insert immediately thereafter "fifty", and remove the overstrike over "~~dollars~~,"

Page 1, after line 20, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY-EXEMPTIONS FROM PROCESS. The legislative council shall consider studying during the 2007-08 interim the exemption provisions found in North Dakota Century Code chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2284

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2284

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4516

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2284.

Sen. Nick Hacker: Sponsor, this bill is about bodily injury recovery relating to exemptions from bankruptcy. The original bill was just placed in subsection a and b, that the maximum was just \$25,000, an arbitrary number, something that they felt comfortable with. The Senate Judiciary committee amended the bill a little bit, to go to \$18,450, but I think there is a federal amount under subsection b, where they eliminated the cap when there is a wrongful death suit. They also added a study to study the exemption from process.

Rep. Klemin: Under the change in 4a, there would be no limit on the amount of payment, on the wrongful death by striking this language, but there would still be a requirement that it be to the extent reasonably necessary for the support of the debtor and any dependent. How would you see that proceeding if, since they are in the exemption statute, an exemption from process, and let's say the debtor has the right to receive whatever he has a right to receive, would the debtor have to establish somehow, that what he claiming as exempt the amount necessary for support. Or is he just going to claim that everything is exempt in all cases.

Sen. Nick Hacker: I would guess that they would claim that's all necessary, and it has to be kept in a separate account that is in current law.

Rep. Klemin: I guess the other part that I'm having a little trouble with is that if somebody has a judgment against somebody, this isn't only bankruptcy, this is exemptions from any claim against somebody. Let's say you've got a million dollars sitting in the bank from a wrongful death payment because someone in your family got killed, and you could still file bankruptcy and exempt that entire \$1 million dollars. That entire \$1 million dollars would not be subject to levy to pay a judgment. Is that reasonable.

Sen. Nick Hacker: Original bill had a cap in there. I don't know what the justification of the case was. The original cap was \$25,000.

Rep. Koppelman: In looking at this, it seems to me that if somebody is a debtor, whether they are having a garnishment or execution filed against them for the judgment, or they are going to bankruptcy, if we passed this bill in the current form, it basically says that if you are earning a living, or have some money that you got for some other reason, it is pretty much off limits. That's may be a pretty extreme summation, but if they've got money because of a wrongful death settlement, got money because of bodily injury claim, we are exempting pretty good chunks of those. Do you know how this relates to the exemptions for other assets.

Sen. Nick Hacker: You cannot place those other assets in dollars under this exemption clause. It has to come from that suit; you can have an exemption for your house, you can keep X amount of dollars, etc. Anything beyond a certain amount they will force you to get a second mortgage or re-mortgage your home. The exemptions are only for wrongful death and personal bodily injury. You can't really have any other resources, except those benefits that you received because of those two situations that occurred.

Rep. Koppelman: I guess I wasn't very clear, why should a wrongful death settlement be treated so uniquely compared to other kinds of assets. You're saying "hands off".

Sen. Nick Hacker: There are other exemptions in the law as well.

Rep. Koppelman: There are unlimited exemptions like this, in there.

Sen. Nick Hacker: I don't know, I'm not an attorney, even the two exemptions that these statutes put in place, and there's federal caps as well. I don't know what the federal guidelines are in their exemptions. I'm not sure if the Senate Judiciary Committee decided that the federal exemptions don't have a cap in a wrongful death and they just said let's just mirror the federal exemptions.

Rep. Koppelman: Can you tell us what the original bill asked for, what were the changes.

Sen. Nick Hacker: Simply \$25,000 for both exemptions as a maximum.

Rep. Charging: Isn't that kind of the point that you are bringing forth, that they have lost their income or support through the wrongful death and that's why they might be in bankruptcy trouble.

Sen. Nick Hacker: I totally agree. I put this bill in to put caps in to bring some relief to people who were suffering. It was amended out by the Senate Judiciary committee.

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 2284

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4581

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2284.

Rep. Klemin: Let me explain how this works. The federal bankruptcy law says these are the federal bankruptcy exemptions when you file bankruptcy, except if the state has adopted exemptions, you can choose the state exemptions instead. So if we make the state exemptions the same as the federal, what's the difference.

Chairman DeKrey: My thought was that we already looked at this section of the Code already once this session and the more we dug into the murkier it got, so we just passed it out as a study. This one already has a study on it. I wonder if we shouldn't just pass the study portion of it.

Rep. Kretschmar: I move that we amend the bill to delete section 1.

Rep. Wolf: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Klemin: I move a Do Pass as amended.

Rep. Kretschmar: Second.

12 YES 2 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Koppelman

Date: 3/7/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2284

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Klemin Seconded By Rep. Kretschmar

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) 12 No 2

Absent 0

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2284, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2284 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to amend and reenact subsection 4 of section 28-22-03.1 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "bodily injury recovery; and"

Page 1, remove lines 5 through 20

Renumber accordingly

2007 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2284

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 2, 2007

Recorder Job Number: 5669

Committee Clerk Signature *Maria L. Salvey*

Minutes: Relating to The exemption from process for proceeds of a wrongful death or personal bodily injury recovery; study.

Senator Nething, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen. Nething reviewed the amendment for the committee.

Rep. Koppelman said that the House committee believes that some of what section one called floor may not pass on the house floor, due to the questions raised. For that reason, while we realized this needs to be looked at, we were not sure that this solution was the right way. We had a concern with this is we would take a wrongfully death and treat it very different from other kinds of assists. Not only in cases of bankruptcy, but Rep. Klemin stated, in any kinds of judgment collection if after an accident, this would shield them from the treatment of those assets. **Rep. Koppelman** is a sponsor.

Sen. Fiebiger stated that with respect to the wrongful death and personal injury, the intent is to mirror Federal law and the language that states "to the extent reasonably necessary for the support of the debtor and the dependent of the debtor may address that. My interpretation of when the bill came back was why change this piece with the study out there is that we do not know if the study will happen. What if we place an effective date on the bill to take place at the next session.

Rep. Koppelman replied the concern of the house was the striking on line 8, any limits. You say that the courts would decide this. He referred the dollar amount and his concern to remove the cap and spoke more of what he already said. **Sen. Fiebiger** stated that the original dollar amount has been this amount for a very long time and how do you arbitrarily pick a dollar amount. **Sen. Nothing** confirmed it with the statement that the amount had not changed in so long that it was very low in today's standards. We need to have some dollar amount and the most appropriate amount was the Federal amount. They discussed the original bills request and the bills sponsor stating that this was fine.

Rep. Koppelman referred to our states law. The committee discussed the process of what law will take precedence and the process. They spoke of the low amount and how if there is a widow with children the amount would be too little. We could cap it but there are so many factors involved. We have had limits before.

Rep. Koppelman asked what the thinking that says a widow should get more then someone who has money in a savings account. **Sen. Nothing** stated that the money from a settlement is, I don't like to use the term but like a "windfall" not the same as money earned and that is different. They discussed different combinations of dollar amounts and the capping process and how the study is important due to our sketchy knowledge.

Sen. Fiebiger stated that we deal with a court and a jury to make the rulings verses a business of debtor to make there own determinations.

Rep. Koppelman stated that a scenario of a brother of a person who receives a windfall of a settlement. **Sen. Fiebiger** stated that the only way the money is passed it to a "dependent" of the person.

Sen. Nothing closed the hearing with the request of the intern to provide the committee with the request of the Federal language.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 4, 2007

Recorder Job Number: 5721

Committee Clerk Signature

Mona L. Solby

Minutes: Relating to the exemption from process for proceeds of a wrongful death or personal bodily injury recovery; to study.

Senator Nething, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen Nething requested the intern, Brad, a listing of exemptions that he handed out to the committee.

Rep. Koppelman reviewed his information on HB 1213 – Att. #1., pertaining to the exemptions with trusts and other areas. HB 1213 parallels this bill in my opinion. The State Bar Assoc. testified that the whole section of the law needs to be reviewed. This bill has been passed and signed by the Governor, enrolled.

Sen. Fiebiger stated that the way studies go, unless they are mandated, they may not be done. By including an effective date, for the next session it would force something to happen. The committee discussed different parts to section 28, two similar mandates would have a better chance and the house people stated that they were very positive that a study would be done. **Rep. Koppelman** discussed the delayed effective date again.

Sen. Olafson stated that if we do nothing, current law would leave the limit at \$7,500 and that is not acceptable given today's costs. **Sen. Nething** stated that these are two different studies on two different bills, compatible but different. The question is leaving the exemption status

and this is we are coming from; at least let us tie it to the Federal regulations. The discussed the in detail.

Sen. Fiebiger spoke to his correspondence with an attorney in Fargo (meter 12:27) as to why with so many variables you can not limit. Who pays for this at the end of the day? Does society because they are on social security disability or welfare? Or do we have attorneys to come in and decide what is the award and how is it broken down. ND has very few large trials and we have a history of being frugal. This would allow the ones who are a part of it to put the amount in. How can we make a set amount and he spoke of other areas of law that use exemptions' and different exceptions?

Rep. Koppelman (meter15:59) reiterated what he already said two times before. **Sen. Nothing** replied as he replied the previous two times and spoke of the severity of wrongful death and bodily injury. **Sen. Olafson** stated that his is most comfortable with the Federal language.

Rep. Koppelman repeated what other exemptions' in ND law are. **Sen. Nothing** asked what exemptions he would like to see in the amendment. **Rep. Koppelman** referred again to the study and the delayed effective date. **Sen. Nothing** stated that he was not interested in a delayed effective date. **Sen. Koppelman** requested time to think of a number.

Senator Nothing, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2284**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: April 6, 2007

Recorder Job Number: 5794

Committee Clerk Signature

Marion R. Solby

Minutes: Relating to The exemption from process for proceeds of a wrongful death or personal bodily injury recovery; study.

Senator Nething, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen. Nething stated that we have hashed, and rehashed and rehashed again does anyone have anything new before we entertain a motion.

Rep. Koppelman stated that he had the opportunity to visit several folks in the house about this issue and the point that keeps being made is the fact, that in other areas of exemptions, for example a \$1200 for a car. The point is some of the other areas are so low, frankly some in the house that have the attitude that if we can't pull what the house did, or something close, they just want to kill the bill and we already have the study and we could pull it that way. What I am trying to do is find a middle ground or a compromise that will pass in the house, because of the concerns that have been brought up here, and I respect those, and still pass the bill. With that I would like to the motion that the Senate accedes to the house amendment that that we, the committee further amends, that we double the current limits. We can keep the study intact.

Sen. Nething asked him what his rational for his figuring was? **Rep. Koppelman** replied that, we felt that doubling it would be a very substantial move. The Senate version was 18,400 and we are within a couple of thousands off of it but still moving far further from the houses

