

2019 SENATE JUDICIARY

SB 2068

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2068
1/7/2019
30450 (5:31)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-08 and section 29-26-22.1 of the North Dakota Century Code, relating to docketing of restitution judgments.

Minutes:

No Attachments

Chair Larson opened the hearing on SB 2068.

Sally Holewa, State Court Administrator, testifying in favor of the bill.

Holewa: This bill is to amend the several judgement statutes. When someone is sentenced to fines, fees and restitution right now the law says at some point the judge can decide to docket the fines and fees as a civil judgement; it's enforceable like a civil judgement. Therefore, you would still owe the money in the criminal case, but the court, state or the county attorney could try to enforce it through say a new money paycheck or ceasing your property.

Restitution is owed to an individual rather than to the state or government entity. If the court enters a civil judgement, the clerk can enter for the fines and fees and they then generate the paperwork for the victim. If you would also like a judgement in favor for restitution, you must fill out paperwork and send it back. This amendment will have us give the victim a 30-day notice that we retain to do this and then the court will go ahead and enter the judgement in favor of the victim against the defendant. We're simplifying it for the victim.

Senator Bakke: Instead of having to call court into session, you would automatically do this, but give them a 30-day notice so it would be done without them being in attendance?

Holewa: Partly right. At a regular hearing where the court is looking at why someone hasn't paid what they owe, the court would say I want to reduce this to a civil judgment. So instead of sending the paperwork to the victim and requiring them to proactively ask for this, it would just have the clerk give them the 30-day notice and if they don't object, they will go ahead and do it without any further action by both the victim or court.

Senate Judiciary Committee
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**Vice Chairman Dwyer: Moved a Do Pass.
Senator Luick: Seconded.**

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2068**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Vice Chairman Dwyer

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

REPORT OF STANDING COMMITTEE

SB 2068: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2068 was placed on the
Eleventh order on the calendar.

2019 HOUSE HUMAN SERVICES

SB 2068

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2068
3/5/2019
33198

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to docketing of restitution judgments.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2068.

Sara Behrens, Office of the State Court Administrator: (Attachment #1) Read testimony.

Rep. Rick Becker: The language currently in statute says within ten years. So anyone for the past ten years who have had a judgement, but restitution have not been made can now have this process be applied. Is that correct?

Sara Behrens: Yes, but that judgement has to have been entered to get it as a civil judgement.

Rep. Rick Becker: If the perpetrator went through criminal court and was found guilty and part of the sentencing was to make restitution, but that hasn't taken place, then the course of action by the victim is to go to civil court. If they have not done that then this would then allow the judge put in a sentence they effectively is making it easier for the victim to get restitution.

This applies to all judgement in the circumstance for the past ten years?

Sara Behrens: Yes we are just adding right now for fines and court costs and we are adding restitution and reparations to that so that the court can do that for the victims in that ten-year period and make it somewhat easier. A lot of victims do not know how to get that done and this would make it so the court can assist them in that process.

Chairman K. Koppelman: How would that interface with the statute of limitations and the judgements for fines that are currently issued by the court subject to those limitations?

Judge Hagerty: There is already an obligation to pay. The court can't always enforce that if it can't be proven that the defendant has an ability to pay. If they want to buy property or

have financial dealings later they would be required to pay because of the judgements. Judgements are good for ten years and then can be renewed for ten years.

Rep. Rick Becker: I will make it personal because in my own business dealings I was the victim and part of the criminal outcome was restitution. The judgement was the restitution be made over a specific period of time. That time came and went and the inquiries made by the victim was that they are making some restitution; however small it might be, which is more than a lot of people get so therefore you should be happy you are getting anything. Someone who is in my shoes can then, if this passes, go back and say full restitution was ordered and full restitution is not made and it was within ten years therefore we can then ask the judge to take the action as outlined in this bill. Is that correct and is the court prepared for a significant increase in the number of these requests?

Judge Hagerty: We would be prepared because it would just be a matter of signing an order. You could have gotten a civil judgement at any time. This just gives you what you would have been able to get at any time.

Chairman K. Koppelman: With Marcy's law the ability to pay is not a consideration and we have been asked this session to remove some sections of law that talk about the consideration ability to pay. What is the reality in practical world?

Judge Hagerty: The reality is we order the restitution; but how we enforce that if there isn't an ability to pay. If someone like Rep. Rick Becker has a judgement and if they can file that against real property, mineral interest, wages, that would be something they were able to do but the state couldn't be the advocate for the person in doing that.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. Satrom; Seconded by Rep. Paur

Roll Call Vote: 12 Yes 0 No 2 Absent Carrier: Rep. Satrom

Closed.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 SB 2068**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Satrom Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	----	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	----				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Satrom

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

REPORT OF STANDING COMMITTEE

SB 2068: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2068 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2068

#1
SB 2068
3-5-19
P.1

**Senate Bill 2068
House Judiciary Committee**

**Testimony Presented by Sara Behrens
Office of the State Court Administrator
March 5, 2019**

Good morning Chairman Koppelman and members of the House Judiciary Committee. For the record, my name is Sara Behrens. I am a staff attorney with the Office of the State Court Administrator.

SB 2068 was introduced at the request of the Supreme Court. Currently, the law allows judges to enter a civil judgment against a defendant who has failed to pay his or her fines and court fees. These judgments are entered in favor of the State of North Dakota because fines and court fees are deposited with the state when they are collected. However, the law does not allow a judge to enter a judgment for unpaid restitution. Instead, current law requires the person or entity that is owed restitution to file certain documents in order to obtain a civil judgment.

HB 2068 would amend the law to allow a judge to enter a civil judgment for unpaid restitution on behalf of the victim, if the court provides at least a 30-day notice of their intent to do so and the victim does not object. Once a judgment is entered, it becomes the responsibility of the victim to enforce the judgment through the normal means of executing on wages, bank account or property. The notice provision and right to object is important because the civil judgment is entered with the victim named as the plaintiff and creditor. There are some instances when a victim may not want to have his or her name and address revealed to the defendant or want any further contact or association with the defendant.

The other amendment included in HB 2068 is a clarification that there is no filing fee for initiating a civil judgment for unpaid restitution.

These amendments were reviewed by the Judicial Conference and received the unanimous support of that body. The Judicial Conference is a statutory body that consists of all current Supreme Court justices, District Court judges and surrogate judges, representatives of the municipal court judges and the state bar association, and the attorney general, clerk of the Supreme Court, and the Dean of the University of North Dakota Law School.