MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2302

2005 SENATE JUDICIARY

SB 2302

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 26, 2005

Tape Number	Side A	Side B	Meter #
1		x	960 - 5400
Committee Clerk Signature Moira L Sollberg			

Minutes: Relating to post judgment interest.

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. Trenbeath, Dist #10 - Introduced the bill (meter 993) You may remember in 1981, exempt for Senator Hacker. At that time interest rates were very high and 12% was very good. That was the year that the judgment default was set. That was a good rate for the time, today it is not. This is a clean up bill. Sited other legislation that that uses this new rate. Setting it at prime interest, set by the Wall Street Journal (for ease of locating) plus 2%, set yearly, non compounding.

Dave MacIver - Pres. Greater ND Chamber of Commerce. (meter 1260) Att. #1. and a copy of Wall Street Journal money rate sample Att. #2

Joel Gilbertson - Vogal Law Firm and Health Policy Consortion. (meter 1500) The 12% has been a very large percentage amount in an unfair way. Sometimes in judgments they like to use it as a hammer to settle a judgment. In a 2 year settlement, 12 percent accrues the amounts quickly. Other states tie it to some sort of index. Discussed index (meter 1650) we are using. We picked one that would be easy to calculate and very visible. We added the two points. Discussion of why 2% (meter 1828)

Senator Syverson did not like using the Wall Street Journal (meter 250)

Jim Fleming - Deputy Director and General Counsel of the State Child Support Enforcement Office. (meter) Gave Testimony - Att. #3. Presented amendment - att. #4

Testimony in Opposition of the Bill:

Paula J. Grosinger - ND Trial Lawyers Assoc. Gave Testimony - Att. #7.

Kim Rau, ND Collectors Assoc. (meter 4012) Gave Testimony - Att #5

Bryan Dvirnak - Pres. Collection Center Inc. (meter 4771) Gave Testimony - Att #6

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

Sen. Trenbeath made the motion to Amend Mr. Flemings Amendment and **Sen. Trenbeath** second the motion. All were in favor.

Senator Triplett made the motion to ad "state Bar Assoc" on line sixteen, **Sen. Trenbeath** seconded the motion. All were in favor.

Sen. Nelson made the motion to roundup the 2% instead of down **Senator Syverson** seconded the motion. All were in favor except for **Sen. Trenbeath** and **Senator Triplett**. Motion passes.

Senator Triplett made the motion to Do Pass as 3 times Amended SB 2302 and **Sen. Trenbeath** seconded the motion. All were in favor.

Carrier: **Senator Syverson**

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

Date: 1/26/05
Roll Call Vote #: (1)

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Amend Mr. Flemmings Amend

Motion Made By Sen. Trenbeath Seconded By Sen Triplett

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 1/26/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend to Add "+ State Bar Assoc" line 16

Motion Made By Sen Triplett Seconded By Sen Trenbeath

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 1/24/05
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken line 14 at "nearst" delete & add "round up To the next whole no.

Motion Made By Sen. Nelson Seconded By Sen. Syverson

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

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

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

Date: 1/24/05
Roll Call Vote #: 4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass a 3x Amended

Motion Made By Sen. Triplett Seconded By Sen Trenbeath

Senators	Yes	No	SenatorsSen. 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 2302: 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 2302 was placed on the Sixth order on the calendar.

Page 1, line 6, overstrike "recovered" and insert immediately thereafter "entered"

Page 1, line 14, after "rounded" insert "up" and replace "nearest" with "next"

Page 1, line 15, remove "On or before the twentieth day of December each year, the state court"

Page 1, remove lines 16 and 17

Page 1, line 18 remove "through the last day of December in each year.", overstrike "Interest" and insert immediately thereafter "On or before the twentieth day of December each year, the state court administrator shall determine the rate and shall transmit notice of that rate to all clerks of court and to the state bar association of North Dakota. As established, the rate shall be in effect beginning the first day of the following January through the last day of December in each year. Except as otherwise provided in this section, interest", and overstrike "recovered" and insert immediately thereafter "entered"

Page 1, line 21, after the period insert "Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid."

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2302

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2302

House Judiciary Committee

☐ Conference Committee

Hearing Date 3/15/05

Tape Number	Side A	Side B	Meter #
1	xx		16.5-end
1		xx	0-19.1
Committee Clerk Signature Dawn Penrose			

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

Chairman DeKrey: We will open the hearing on SB 2302.

Sen. Tom Trenbeath: Sponsor, explained the bill. Many of you, probably all of you, remember the wonderful '80s, when we were younger people and buying homes, and the interest rate was, I remember assuming a 12% rate and borrowing money at 18%, and considering myself fairly lucky. At that time, the judgment interest rate was 12%. Now if I went out and bought a new house, and got a variable mortgage, I would be somewhere under 6% and the judgment interest rate is still 12%. This bill is here for that purpose, to kind of bring us into the century that we're presently in, and allow this interest rate to float along with the cost of money in general society. That's basically what this does. It amends the interest rate every year, based on prime as published, plus 2% and rounded to the next highest number if you come up with a portion of a percent. It's reasonably straight forward in that regard. There are others that may

have a more in-depth view of what it does, both from the positive and negative side of the question. I stand here today as the primary sponsor and supporter of this bill.

Representative Klemin: It seems to me that the federal courts have something similar already, kind of like a variable rate on this.

Sen. Tom Trenbeath: I believe you're correct, but I wouldn't speak with any authority on that matter.

Chairman DeKrey: Thank you. Further testimony in support of SB 2302.

Joel Gilbertson, Health Policy Consortium: Support (see written testimony).

Representative Bernstein: If you go prime + 2, what happens if the prime happens to go up to 12, is it going to be 12 + 2 then, or is it going to be capped at 12%.

Joel Gilbertson: No, we have no cap on it. You will be getting together every two years, if something crazy happens, but frankly if the prime is at 12, maybe it should be 14%. I hope that won't happen, but if it does, that's only fair. Turnabout is fair play.

Representative Klemin: It seems to me that currently on the account receivable for medical bills, isn't there a lower interest rate, or did we change that recently.

Joel Gilbertson: It's interesting that you mention that. I was talking to Sen. Judy Lee this morning, on another matter, and she's been very involved in those, there are two bills floating around, I've not been involved in either one of those frankly, but there are two medical collection bills, now these are not judgment bills, these had to do with collection or interest on accounts and revolving accounts and that sort of thing. There are a couple floating around, but I've not been involved in them.

Representative Klemin: But right now, can't you have a late payment charge on accounts receivable up to 21%, I believe, and it seems to me that on medical bills, though, it's lower, like 6%.

Joel Gilbertson: Yes, there are some differing percentage rates.

Representative Klemin: This could, once you get a judgment then, it could be governed by this statute if it passes, rather than the 6%, which I think is the interest rate.

Joel Gilbertson: Yes, this would govern all judgments.

Representative Koppelman: It seems to me, I certainly support the intent here, it seems that what we need to do to strike some balance. I mean on one hand, as you've pointed out, it is rather punitive right now to charge people 12% on judgments, we don't want it to be punitive; on the other hand, we don't want it to be an incentive. We don't want somebody, who's a judgment debtor, to say gee I'm getting such a good rate here, I'm not going to pay this bill off real quick. I know from the business world, at many banks historically, I don't know what the market's like at the moment, but prime +1 or prime +2 is pretty attractive borrowing rates for a business. I don't mind tying it to prime, that's fine, but I'm wondering if +2 is enough, whether it should be +3 or something like that.

Joel Gilbertson: That is a decision that you all can make in the committee, to discuss that. I can tell you that prime +2, going up, which would now mean that it's 8%, it's 5.5 + 2 and go up to 8, as it's stated under this bill. It compares favorably to some of the surrounding states.

Representative Bernstein: You said that prime is 5.25% now, then you add 2, then you get 8, how did you get that, did you round it off or what.

Joel Gilbertson: The way the bill reads is, actually, first of all, what I handed you in the Wall Street Journal on January 11, it was 5.25% (prime). I just looked at the Wall Street Journal late last week, and it's now 5.5%, but then you take that and add 2, then you go up to the nearest percent.

Representative Bernstein: You round it off.

Joel Gilbertson: You round it off. That's another decision we made there, a lot of states that will have 5.03, 5.24 and we decided the nearest percent is fine. That's close enough.

Representative Onstad: Following along with that same question. If you're at 5.5 and you go to 7.5, and you round up to 8, that ½ percent. You may owe $1 million dollars, that $50,000 extra there. It seems that prime is at 5.5% , can't the interest rate be at 7.5% and just stay there.

Joel Gilbertson: You're absolutely right. If the committee wants to do it to the nearest ½ percent, that would be fine. I guess my thought is that we took the so-called conservative approach, because it's the first time with the bill, if we need to tweak it in a couple of years, we can; but certainly I would have no objection at all if the committee decided that they wanted to not necessarily round it up or for that matter, round it down, just go to the nearest ½ percent, or 10th of a percent.

Representative Onstad: Has there always been interest collected on child support, on unpaid child support in arrears, or is it when it goes to judgment.

Joel Gilbertson: Jim Fleming is here, he's going to address that. That was an amendment that was also put on in the Senate and we're fine with it, but Jim, who works in Child Support every day can address that.

Representative Klemin: I guess the motivation here is to make it more like bank rates apparently. But banks don't necessarily round up. So if you got prime +2 from the bank, you get 7.5%. So this bill talks about rounding up, do you have any problem if we just didn't round it up.

Joel Gilbertson: We'd have no problem at all. As I say, the first time out of the chute with this, to change it. My main concern is to make it fair, so it's tied to an index and if this committee would want to keep it at the nearest 1/10 or for that matter 1/100th, that would be just fine.

Chairman DeKrey: Thank you. Further testimony in support of SB 2302.

Dave MacIver, Greater ND Chamber of Commerce: Support (see written testimony).

Representative Klemin: This is a little off the subject, but we also charge 12% for unpaid taxes at the county level. Don't you think that's also punitive.

Dave MacIver: Absolutely. No question in my mind, it is punitive.

Chairman DeKrey: Thank you. Further testimony in support of SB 2302.

James Fleming, Deputy Directory & General Counsel of State Child Support Enforcement Office of Dept. of Human Services: Support (see written testimony). Unpaid child support has been a judgment by operation of law since about 1989. Currently we accrue 12% interest on our computer system, we record it, enforce it and collect it along with the principal of the debt. Set at the proper rate, we believe the accrual of judgment interest is an incentive for obligors to pay off that debt. If you set it too high, which was where we feel the 12% is right now, they just get deeper in the hole. They can't pay the interest much less the principal, and it's a pretty losing proposition for them. There is language unique to child support in the bill, unpaid child support is a little bit unique because it's made up of monthly mini-judgments. Every month that goes by

where child support is unpaid, it a separate judgment. It's not like you go to court you get one lump sum and that's it. We can have 12 judgments a year, for 12 months they go unpaid. Because they're mini-judgments, they're also paid off more rapidly; only to be replaced with a newer judgment. So for simplicity, the Senate adopted an amendment where we apply the same interest rates to all unpaid support regardless of when the debt first occurred, that avoided on our end a lot of programming costs to change our system to handle the multiple interest rates. We're not looking at a lot of interest that's lost, but we think the right way to go is to have the one rate. But overall, whatever the committee sets the rate to be, we strongly believe that 12% right now is punishing people and set at a rate that's indexed to market conditions is a fair way to go and still can retain the incentive to pay off child support debt.

Representative Delmore: Is there not a possibility with this though, that the interest rate could be well above 12%. We've seen another time when did in the '70s when markets and things kind of aligned.

James Fleming: That's certainly a possibility, as Mr. Gilbertson explained. I suspect there will be a real interest in amending the law to get it back down. At the same time, in terms of the incentive to pay off debt, if market rates are such that a new car loan is going to be 14% and child support is accruing at 12% or if a new car loan is 16% and child support judgments are 14%, if you don't have the child support interest rate being lower than the car interest, they're still going to pay off the car first. We want them to pay off the child support first. So it is a potential down the road, but right now we see the benefit of the variable rate.

Representative Meyer: The interest that's collected on the child support, does that go to the parent, where does the interest go.

James Fleming: Some child support is assigned to the state because it accrued during months when they were receiving public assistance, and some child support is owed to the family, because they were not on public assistance. Whatever the principal of the debt is, whoever that's owed to, the interest will follow the principal.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition.

Bryan Dvirnak, Collection Center Inc.: Opposed (see written testimony). The clients I represent deal with medical debt. I believe Mr. Gilbertson was dealing with malpractice issues. There's a huge difference in the balance involving malpractice versus medical collection debt. Our average judgment on a medical collection runs between $3-5,000, not a million dollars. There are a number of reasons why I'm opposed to SB 2302, the part I'm opposed to is not so much the fixed interest rate, but the rate proposed at prime +2. I believe it is an attractive rate and I have to question the reason why we're offering an attractive rate to a debtor who has failed to respond and we have had to resort to last efforts and get a judgment and execute on those judgments. In my testimony, I have outlined 5 reasons, I would like to focus on #1, 2 and 3 (see written testimony). We do not sue every debtor, we look at factors such as wages, dependents, vehicle information, etc. We only sue those who we feel have the ability to pay, but won't pay.

Representative Delmore: I'm just curious about some of the charges that you have for collecting these, and also what the policy is on the interest that's paid, does that go to you, does it go to ...

Bryan Dvirnak: The cost will vary depending on the state that you do business in. Each state is different. In ND you look, on average, between $150-175 to get a judgment and execute on it. Those costs are passed on to the borrower, if you get them to pay. There's a lot of them

that don't pay, so you get stuck with those costs. It's a cost that we eat. That's just another reason why we're held accountable on how do you sue, and who do you not sue on. With regards to your question on the interest, some of the clients - we share the interest with, so they have an interest also in, they share that interest that's been recovered. Twelve percent, you can argue, is it a punitive rate. I go back to why isn't the debt paid. Generally we do not go to a judgment unless we have no other alternative. We work and work, and try and try with these people, and they've refused to take and work with us. We resort to a judgment as a last effort to collect the money that's due our client. So today I find myself in an awkward position representing two of those four health care providers that were mentioned this morning. The issue that I have talked with them about is malpractice but on the flip side, the business office side, they have accounts receivable that we're collecting for them. I don't see how they can have their cake and eat it too. That's the dilemma there in, that's the dilemma I'm in.

Chairman DeKrey: You talked about people who refused to pay, you look at the assets. Do you ever look at their debts, because you get out in the country, where people are farming and ranching, most of their debt is on the land.

Bryan Dvirnak: Yes, and usually what ends up happening, is when they get a letter from our attorney, or get served with a Summons and Complaint by the sheriff, all of a sudden they want to take and apply for this. So we will send out a credit application to them and ask them to complete the application and provide us with three years worth of tax returns. And if it looks like, through further due diligence, it doesn't make sense, and they offer a proposal to stop the legal action, we will do it. We like to thing that we're reasonable people. It's not to our advantage to sue, because it costs us money, because there are some of those, that even after we

get a judgment and you go to execute, you find out that there's nothing there to execute on. Your due diligence has failed you and so you eat that cost. Plus we have people we pay overhead to, to shuffle paper to get these judgments.

Representative Klemin: One of the subjects in your testimony, and that you mentioned, was credit card debt. Do you do collections for credit card debt, too.

Bryan Dvirnak: We have in the past.

Representative Klemin: So, if under the scenario we've got here, you had mentioned that credit card rates could be between 14-21% on some credit cards, and so let's say it was 21% up to the time the judgment is entered on the unpaid credit card debt, there would be interest accruing at 21%, and then under existing law, the interest rate on that judgment then would be 12%. So it would drop from 21% to 12%.

Bryan Dvirnak: Not until you got your judgment.

Representative Klemin: Correct. Once you got your judgment. So we're already discounting it under current law, and what you're saying is that we shouldn't discount it any further, because under this bill, it could go down to 8%.

Bryan Dvirnak: What I'm saying is, provide for a rate in the bill that causes the debtor to have an incentive to pay and not to pay. In my mind, prime +2, prime +3, isn't sufficient. I went back and took a look at two of those four clients that we represent, and just on judgments, there was over $600,000 that we collected on just two of those four clients; just on accounts where we had judgments. People call in before it gets to a judgment and they'll say, how can I avoid this. We say fill out a credit application, send us your tax returns, and we'll sit down and visit.

Representative Klemin: On unpaid medical accounts, isn't the interest rate lower now than it is on regular accounts.

Bryan Dvirnak: I believe the rate on the Summons and Complaint is 6% in ND, when you get to a judgment it goes to 12%.

Representative Klemin: Even though on unpaid account receivables, a regular merchant can charge up to 21%, can't they.

Bryan Dvirnak: Yes.

Representative Klemin: So you don't know if it's 6%.

Bryan Dvirnak: You've got me in a position, I can't answer. I know that the way the law is, there are provisions in the law, and I think it was passed either in the last session or the previous one, that allowed for an interest rate on medical debt, but it was so unworkable, that I don't have a client that charges today.

Representative Klemin: We can look that up, but let's say it is 6% for the sake of discussion. Under this bill, the judgment rate would go up to 8%, so up until the time of the judgment, it would be accruing interest on this unpaid medical account at say 6%, and then once the judgment was entered, it would increase to 8%, rather than 12% under existing law. So the judgment rate is still going up from what it is under what it is accruing now, isn't it.

Bryan Dvirnak: If it is 6%, I couldn't answer that.

Chairman DeKrey: Would you say that most of the medical debts that you're collecting on, is refusal to pay or inability to pay.

Bryan Dvirnak: I can't answer that, it's all over the board. I can tell you this, we're a member of the American Collectors Association, and every two years they go through and do

surveys, and they survey medical providers on a clinical setting, a hospital setting, inpatient, outpatient, dentists, chiropractors, apartment dwellers, etc., all kinds. The average recovery rate on a medical debt is somewhere between 22 and 25%. But I'll also tell you, this last year I had a guy from Minot, we got a call from his attorney, this is a guy who said he would never pay his debt. You can collect it when I die. We got a call from his attorney, and we thought the attorney was calling to tell us that he died and that he wanted to talk discount. The guy had in excess of a million dollars in cash, plus he owned real estate. So he had the ability to pay but it was a stubbornness, I don't know what else to call it. The debt if he'd paid it off, was $5,000; with all the costs and interest that had accrued, it was over $15,000. He had the ability to pay, he just wouldn't pay.

Representative Klemin: Since we brought up the subject of medical bills, I just wanted to mention for the record, that currently under section 13.01-14 subsection 4, it has to do with late payment charges on unpaid medical and hospital bills, it says that a creditor may not charge, receive or collect a late payment charge on medical or hospital bills during the initial 90 days following services. So first of all, they can't charge at all for the first three months. Second, the late payment charge may be imposed at a rate that does not exceed 1% per month, but the charge cannot exceed $25/month. So you're allowed to charge 1% per month, which would be equal to 12% per year apparently, as long as the charge is not over $25/month, which would on a $3-5,000 medical bill, $25 a month would probably be a lot less than 12%.

Bryan Dvirnak: Also something sticks in my mind that if you read on further, it says that if they make a payment during that 90 days of even a penny, that the 90 days start all over again, where they can't charge an interest rate.

Representative Klemin: It doesn't say that in here that I can see.

Bryan Dvirnak: Maybe I am misstating myself.

Representative Klemin: But under this, it seems to me that, even under this bill, that this interest rate on the judgments, would that change then from what's... the late payment on accounts receivable is one thing, but once you have the judgment, rates are going to go up considerably, even under this bill, wouldn't it.

Bryan Dvirnak: I don't want to get caught up in what was and what is. I think you have to take a look at whether it's an incentive or not. If I have some other bill that's charging me 12-14-16% and I've got 8% on my judgment, which one are you going to pay.

Chairman DeKrey: Thank you. Further testimony in opposition to SB 2302.

Paula Grosinger, ND Trial Lawyers Association: Opposed (see written testimony). The question was asked whether prime +2 was enough, and I think that is basically the question that, the committee does need to determine. I just want to clear up a question that Representative Klemin brought up with regard to interest rates. If you look at your copy of the bill, it says that if there is an original instrument dictating an interest rate, that that original instrument interest rate prevails in these cases. So in other words, if you have a credit card debt, with a prevailing interest rate, that is the interest rate that will be applied, if I'm reading the bill correctly.

Representative Klemin: I believe an instrument means something like a promissory note.

Paula Grosinger: Couldn't it also mean an agreement or a contract. My understanding would be that if you have a contract, for instance with a bank or a loan with a bank, and you have an interest rate at say 6.875%, that that would be the interest rate that is applicable. I may be in error on that, but that is my understanding of the language in the bill, that if you already have a

contractual agreement to an interest rate, that that would be the prevailing interest rate. This bill is actually about basic judgment law and debtor/creditor relationships. In a conversation I had earlier with Mr. MacIver, he actually said that this bill was brought forward from the concern in the medical community about medical judgments in medical malpractice cases (see written testimony).

Representative Bernstein: Why 3.9, why don't you just make it 4.

Paula Grosinger: If this committee would determine that 4 would be less cumbersome, we'd have no argument with going with 4. My thought with 3.9 was that it's the cleanest way to amend the bill without having to change the rounding up language, because we wouldn't want it at 4 rounded up to 5. We don't want it to be punitive. But on the other hand, my concern is that if we have it too low, it's going to be an incentive for further litigation. You're going to have a certain number of judgment debtors, defendants, who are going to appeal those cases because they've actually got an incentive now with this low interest rate to go ahead and appeal and delay paying that judgment as long as possible. So we think 3.9, if you would end up in a situation where, say prime was 6.01 or 6.0125 and you added the 3.9 on, then you would be at 9.9125 and you just round up to a flat 10%. That wouldn't kick it up to the next one, which would be 11.

Representative Bernstein: But if we amended the bill to go to a half point interest, then it would be immaterial, the 3.9.

Paula Grosinger: The 3.9 would be, yes. The other solution would be to make it a flat 4 and strike the language for rounding up.

Representative Klemin: You were talking about the late payment charge in accounts receivable, and as I read the statute now, that sets a maximum rate of 1 ¾ % per month. And

then merchants can then charge anything below that too. That would be the maximum, which is equal to about 21% a year, so under this bill, if you're accruing the late payment charge on account receivable, they have the maximum of 21% per year. Once you get the judgment, it would drop down then to 8%, under the current prime rate, the way this bill reads now, it would be 5.5 plus 2 rounded up to 8. So you would have an automatic reduction in the rate you were charging on the 21% down to 8% versus currently it would be 21% down to 12%.

Paula Grosinger: At the risk of stating the obvious, I don't think late payment charges and interest rates are necessarily the same thing. I think you're comparing apples to oranges there; because the late payment charge is different than a finance charge and it would be different than an interest rate, and it's capped at $25.

Representative Klemin: Only for medical bills.

Paula Grosinger: So as I mentioned, in many of the cases with small primary sector businesses, you don't have finance charges that are set by contract because you're not afforded that luxury as a small business. The person that is distributing your product is the one that writes that contract, and they purposely leave that language out, because they are not going to give you the benefit of a finance charge. I may be mistaken on this, but I don't think late payment charges and finance charges are necessarily the same thing here, and the interest rate, once you have a judgment, the interest rate would be what would be set by this law. I should also add, that there is another bill, just to muddy the waters a little bit, SB 2047, which is the no-fault auto insurance bill, which is going to use whatever you decide as the legislature here, with this bill to set the rate for what they consider late payment charges by insurance companies, in cases where there have been medical injuries.

Representative Klemin: I guess I would disagree with you on late payment charge issue, whether it is denominated interest or whatever, it is a functional equivalent. The example you were giving of the merchant, who's not able to collect debt, that person is allowed to charge a late payment charge if you follow this particular statute, which could be up to 21% a year, and so my point was that under this bill, you'd be getting a considerable reduction, the debtor in this case, would have I think a considerable incentive to wait until after the judgment is entered before he decided to make any actual efforts to start to pay because his rate could go down from 21% to 8%.

Paula Grosinger: Thank you. I think I understand your rationale now. Yes I do see what you're saying as far as, if there is already an agreement or in the contract, a provision. As a small business person I can't use that statute to charge a late payment fee, regardless of what the statute says, my contract with my distributor, dictates what I can charge. That's what I could do, if I was allowed by contract to charge a late payment fee, but my contracts with book distributors are specifically written excluding them from any late payment charges. That doesn't say you have to charge it, it only says that you may charge it. If I have a contract that specifically says I can't charge a late payment charge, that does not apply.

Representative Klemin: Sure, but in a usual case of a small business that has account receivable with a customer...

Paula Grosinger: With a customer, yes.

Representative Klemin: And they can use that because it's not a financing arrangement...

Paula Grosinger: Yes, you are correct. Thank you for elaborating on that further.

Representative Bernstein: Along those same lines in that, you say that you can't charge a late payment fee, but in our business, our contract was always written up when the money was due. If the money was not paid on that day or before, we charged them 1.5% interest for any month or part thereof, we charged them for it, but seldom got it.

Paula Grosinger: Were you dealing directly with consumers or with individuals.

Representative Bernstein: Individuals.

Paula Grosinger: Right, certainly, I understand what you're saying there, but that is very different from the type of situation that many small primary sector businesses find themselves in today, because they are dealing with either local, regional or national distributors and again those individuals have the upper hand and are able to set the terms of the contract. If you want to distribute through them, and in my business that's the only way to get my books into the stores like Barnes & Noble, I have to accept their terms and I can't charge finance charges.

Chairman DeKrey: Thank you. Further testimony in opposition to SB 2302.

Mike Lefor, ND Collectors Association: Opposed (see written testimony). The only other point that I want to address was Chairman DeKrey's question of Bryan Dvirnak earlier, is that most people that are turned over for collections, because they refuse to pay or the inability to pay. When we take judgments, it's only on those that we believe have the ability to pay. If they don't have the ability to pay, we're forwarding dollars that we know will never come back to us and therefore, are a waste of time.

Representative Delmore: What do you charge for these, and what part of the interest do you see in your collections. Where does the interest go, does ½ go to you and ½ to the lender.

Mike Lefor: It depends upon the customer, but in many customers we share the interest with them.

Representative Delmore: They had debtor's prisons a long time ago in England, where nobody ever could end up paying, if we look at this, when do we set the rate so high, that even those who would like to make good on it, can't. Is that a possibility in setting this.

Mike Lefor: That is always a possibility. However, what I want to reiterate from what I've said earlier, is that this is our last enforcement power. If they work with us, we stop the process. If we send out a Summons and Complaint, and they want to work with us, even though they can't pay in full, but at least we're getting communication, we will not get a judgment; because our goal has been accomplished. We're setting up and making arrangements and using the judgment tool as enforcement power for somebody who absolutely refuses to pay, but does have the ability to pay.

Representative Delmore: After the judgment is issued, do you then make any allowances, if they say, I really am tapped out. I guess I just like to think that a lot of people do pay their bills on time, and if they fall behind in paying their bills, I think in those circumstances, most people really do want to make good on it. Maybe I'm naive about the customers out there, I just...

Mike Lefor: You're right. Because there are a lot of times where a judgment will be taken, interest accrued, and they'll say, wait a minute now, we have a $1,000, will you settle for that. We have to check with our clients on that, but typically they'll say, yes, we'll settle for that and take the money and satisfy the judgment.

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

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2302

House Judiciary Committee

❑ Conference Committee

Hearing Date 3/22/05

Tape Number	Side A	Side B	Meter #
1	xx		8.6-22.1

Committee Clerk Signature Dawn Penrose

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

Chairman DeKrey: We will take a look at SB 2302. This bill is on post judgment interest. The way it came over from the Senate it was prime +2, we had quite a bit of testimony from the collectors and some hospital organizations that they have a hard enough time collecting their bills when the interest rate is high, and it appears that if they lower the interest rate, that it would be such a good deal that they would pay their other debts first before they would pay their judgment debts.

Representative Klemin: I think there is a limit under our law now, as to what the health care providers can charge for interest, and it's less than this bill already, I think it's about $25/mo. So I think what the concern was, in looking at the testimony here on behalf of the health policy consortium, they're talking about if there is a big judgment against the hospital or doctor, they would get 12% interest on the judgment. That was their concern. I guess we've gotten some e-mails about that issue since then.

Chairman DeKrey: Representative Bernstein, do you want to explain your amendment.

Representative Bernstein: I changed from 2 to 4 over prime. The reason for that is, 2 is a very attractive rate over prime, for any loan or anybody for interest, so changing that from 2 to 4 would increase what the interest would be and then instead of having "whole" rounded off to the whole number, I went with "one-half". On page 1, line 15, after "interest" insert "The maximum interest rate payable is 12% per annum". Now since I had this amendment drawn up, I have gotten a lot of feedback on it, and I would like to strike that part out of the amendment, pg. 1 line 15, the cap.

Representative Meyer: What's the reasoning behind changing the whole number to a half. Why can't we just go with the straight four.

Chairman DeKrey: If prime is like 2.3 or something like that, it comes up with a 6.3 or whatever, so it would round up to 6.5%, to keep an even accounting.

Representative Meyer: Well, I mean it's just another, I mean it's not like anyone has trouble figuring interest rates, regardless of what they are. You don't really have to round them up to figure out what they are.

Representative Bernstein: The reason I did that, was to not make the 4 as onerous as if it were rounded up to the whole number, because we're jumping up 2 full points over what the bill proposes, this is why I went to a half a point. I'll be honest with you, I have no heartburn if you want to keep it at a whole point, as far as that goes. But that was the reason why I did it, was because of what we jumped up in the over prime.

Representative Klemin: I don't have any objection to Representative Bernstein's amendments here, I guess I would support them; that being said, I don't support this bill. Because even at

prime +4, we're talking about deadbeats, for the most part. They can't go into a bank and get prime +4, prime +2 would be absurd. It's really hard for some of the best borrowers even to get low interest rates. What are we trying to do a favor here for somebody, I guess, these are the people who don't pay their bills. Then when a business doesn't get paid, and has to get a judgment against somebody who hasn't paid their bills, then they have to go to the bank to borrow money to maintain their cash flow, they can't even get prime +2 a lot. True, if you're the biggest business in town, and the bank wants your business, they might give you prime, rather than going across the street to the next bank. But the average small businessman, you're not going to get, it's hard to get prime +2, it may be hard to get prime +4 sometimes. Why should we be giving any kind of break to the guy who's not paying the bill. The same applies to an individual, if you lend somebody some money and you don't have a promissory note, it's still a debt that you can collect interest on, but once you get that judgment, you have to go to the bank and borrow money to live on, because your cousin didn't pay you back. I guess I just don't like this bill, after looking at it some more.

Representative Onstad: I agree with Representative Klemin, as you look at it, a lot of times if you're dealing with a malpractice thing, the judge is going to rule that the interest is stayed or typical of some of those things when it deals with collections at that point. I just think it's adding a lot of confusion, just leave it at 12% and I'm going to oppose the amendment, and I'm probably going to oppose the bill for that.

Representative Bernstein: I can't argue with Representative Klemin, because I agree with him, the reason why I brought forth the amendments, was to try and make the bill a little more palatable to more people. If that's the consensus of the committee to kill the bill, that's fine.

Representative Meyer: There are cases where people just aren't deliberating not paying their bills. I mean you have cases where things, circumstances which you can't control, and I mean there's many people, I would like to see this bill passed, just because if there's someone who's down on their luck and you tried to come up with a reasonable payment schedule, maybe this gives them a vehicle. If you put it in, where they absolutely can't pay it, and they quit paying it, you've gained nothing.

Representative Klemin: I'll say one thing in response to that, any creditor can compromise a debt at any time. They can say, okay, just pay me the principal on it, and I'll take it, rather than, you can't get water out of a rock, it's true. Quite often, that's our compromise.

Representative Delmore: That can be done regularly now.

Chairman DeKrey: Do we have a second on the Bernstein amendment.

Representative Meyer: Seconded.

Chairman DeKrey: The amendment will be as printed .0201 dated 3/15/05, minus pg. 1, line 15.

Representative Koppelman: I want to propose an amendment to the amendment. On the first line, pg. 1, line 13, rather than "four", I would insert "three" and then strike the rest of the amendment. What that would do is, it would, instead of moving it, I don't know how much practical difference it makes, Representative Bernstein's amendment would take it to prime +4 and round up to ½, mine would take it to prime +3, and round up to the whole. What it would do, I just think it's easier to calculate, right now if prime is 5.5, is what we heard in committee, I think and I don't know if it has fluctuated since the hearing, if it's 5.5 it would bring it to 9%. So it would only be 3% less than what is currently in law. It's probably a reasonable compromise.

Representative Charging: Second the Koppelman amendment to the amendment.

Representative Bernstein: I'm going to oppose that amendment, my reasoning behind that is when people heard us doing 4, why didn't you do it 5, that would be more in line with where things are. So for that reason I'm going to oppose the amendment to the amendment.

Representative Klemin: As far as the argument that it makes anything, makes it easier to calculate, the reality is you can sit down with a calculator and under federal judgments, they go out to the .xxx. So if it were like .325, you put in your calculator and no matter what you're doing, nobody is sitting there trying to figure this stuff out in their head. So it really doesn't make any difference from the point of making it easier to calculate.

Representative Koppelman: I don't remember what the bill said about how it is adjusted, is it quarterly?

Representative Meyer: Yearly.

Representative Koppelman: So I guess Representative Klemin is right, in that respect. I just think, a lot of the discussion, I guess we're kind of by necessity discussing the bill as we discuss the proposed amendments here, I've owned a small business for 20 years, and to go into a bank and get, if you're a good credit risk to get a prime +1 or prim +2, that is a preferential rate, I agree with you. But it is not as uncommon as you have been led to believe. Prime +4, prime +3, seems to be, any of these seems to be a reasonable compromise unless we want to kill the bill and leave it at 12%.

Chairman DeKrey: We're going to try a voice vote on the Koppelman amendment. Motion failed. We're back to the original amendment, we'll take a voice vote on that one, the Bernstein amendment, Motion carries. It is now before us as amended with the Bernstein amendment.

Representative Klemin: I move a Do Not Pass as amended.

Representative Kingsbury: Seconded.

Representative Koppelman: As the bill stands before us now, with the amendment, 5.5, 9.5 it would take it to 10%, so we're looking at a difference in today's market of 12% interest vs. 10% interest on judgments, in today's market. Now a 10% rate, I don't think any of us believe it is attractive, so I don't think the question anymore is whether we're giving deadbeats an attractive rate, if you want to use that terminology. I would also submit that not everyone on the face of the earth that has a judgment against them, is a deadbeat. Some families might have a huge unexpected medical expense, that comes along and it's a huge bill to pay, more than they can afford, and the hospital takes a judgment against them, and it takes time to pay it off. As it has been pointed out, there are agreements that can be worked out, but I think we make a mistake if we assume that everyone who owes a judgment debt, is somehow an outlaw.

Representative Klemin: Certainly we can't say that everybody is that way, but I tell you, you go into any clerk of court's office, in any county in this state, and ask to see their judgment lists. There are a lot of them that never get paid, most of them don't.

Representative Delmore: I don't think any of us, it's unfortunate we have to have a bill like this before us, because of people who will not pay, not because they cannot pay. I guess I have enough confidence in our courts that if it is a situation as you've described, there will be a discretion there for those people who truly would pay if they could pay and they can't.

Representative Koppelman: Do the courts have discretion, short of bankruptcy, to violate the law, if we place a rate in the statute.

Representative Klemin: They can't change the judgment rate.

Chairman DeKrey: So it would be between the creditor and the debtor.

Representative Onstad: I move the question.

Chairman DeKrey: If you want a Do Not Pass you vote yes.

6 YES 7 NO 1 ABSENT DO NOT PASS AS AMENDED FAILS

Representative Maragos: I move a Do Pass as amended.

Representative Koppelman: Seconded.

8 YES 5 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Bernstein

Motion carried.

Date: 3/22/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as Amended

Motion Made By Rep. Klemin Seconded By Rep. Kingsbury

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

Total (Yes) 6 No 7

Absent 1

Floor Assignment Motion Fails

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

Date: 3/22/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

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

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Bernstein

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

REPORT OF STANDING COMMITTEE

SB 2302, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2302 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "two" with "four"

Page 1, line 14, replace "whole number" with "one-half"

Renumber accordingly

2005 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2302

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☑ X Conference Committee

Hearing Date April 4, 2005

Tape Number	Side A	Side B	Meter #
1	X		2,450-5325
Committee Clerk Signature			

Minutes:

Chairman Syverson called the conference committee on SB 2302 to order. All members were present: Representatives Bernstein, Delmore, & Maragos, and Senators Hacker & Triplett.

Chairman Syverson- The differences on opinion for this bill are over interest rates. Some of the discussion was over someone who owes child support and how you encourage them to meet the obligation.

Representative Maragos- Our committee in the House could not set up a situation where someone would not pay a deliquent bill, and divert it to a higher interest rate. We wanted to find the middle ground for those who have an interest rate.

Representative Bernstein- The reason we changed the interest rate is because even a person with a good credit rating can't get what they need to. It could be seen as a loan with a very cheap interest rate for some people.

Senator Hacker- The intent of the bill being put in was to get away from the 12% rate, and to make it more feasible. This bill reflects House Bill 1353 and SB 2204, similar to post judgements.

Representative Maragos- We don't want to make it so attractive that people don't pay this bill, and instead pay other bills. We thought we were able to reach a good balance.

Representative Bernstein- We had a suggestion that it should be 5%, but thought it was a little bit too much, so we settled on 4%.

Chairman Syverson- This legislation contains interest rates for child support obligors as well.

Representative Maragos- You mentioned that there is a cap rate of 5.5% over short term government bonds right now. Do you know what the current rate is? Wouldn't the law have been in violation?

Chairman Syverson- It wouldn't be in violation if you weren't charging more than that. There may be some consideration on raising the amount that was in the Senate bill.

Representative Bernstein- When we went to 4%, that was the nearest of a half percent.

Chairman Syverson- If it was a little bit over the half way point, and it was a lower percentage value, you would achieve the same thing.

Representative Delmore- The senate version as it currently stands would go up by 3%.

Representative Bernstein- What would the Senate be proposing?

Senator Triplett- The difference would be between 3% and 4.5% . You would not want to round it to ¾ %.

Action taken:

Maragos moved that the House recede from its amendments, and further amend, replacing "two" with "three" on page 1, line 13. Seconded by Representative Delmore. The motion failed with a vote of 4-2-0. Voting in favor was Senator Syverson, and Representatives Maragos, Bernstein, and Delmore. Voting in opposition were Senators Hacker and Triplett.

Senator Triplett moved to recede from the House Amendments, and further amend by changing the "two" on line 13 to a "three" and amending the "whole number" on line 14 to "1/2%"

Seconded by Senator Hacker. The vote was 3-3-0. Voting in favor were Senators Syverson & Triplett, and Representative Delmore. Voting in opposition was Senator Hacker, and Representatives Maragos and Bernstein. The motion failed.

Senator Hacker- This is just not a child support bill, it applies to other judgements and laws. Wages can still be garnished if there is a judgement.

Chairman Syverson- There are companies of means who give loans that are under prime. This allows them to make a loan at a low percentage rate, with the interest paid on the judgement.

Chairman Syverson closed the conference committee meeting on SB 2302. No futher action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2302

Senate Judiciary Committee

☑ X Conference Committee

Hearing Date April 8, 2005

Tape Number	Side A	Side B	Meter #
1	X		1-1780
Committee Clerk Signature			

Minutes: **Chairman Syverson called the conference committee to order to discuss SB 2302. All members were present.**

Chairman Syverson requested a short discussion on the interest rate on unpaid child support obligations.

Senator Hacker- Child support is just one item, they revert to many other things than just interest. They can take your tax refund, driving privileges, garnish your wages, the list goes on and on. The bill is not about child support, it is about judgement interest set by the court.

Chairman Syverson- I would like to suggest an increase in the interest rate for all the products that are discussed here concerning child support. Historically, the rate has been based on a 6 month short term federal paper. The rate has run 2% under the prime. When we change the basis for establishing interest rates, it has generally been around 2% . We are applying an interest rate increase to that child support payer that may come into arrears. The question is how do we define whether the arrearage was intentional or not?

Jim Fleming, Deputy Director of Child Support with the Department of Human Services, appeared before the committee. The judgement interest on all judgements in ND is 12%. Today we are accruing 12% interest on rears. Our request is to use one judgement interest rate for everything. The language grandfathers in other existing judgements. The bottom line is we like the legislation as it currently stands.

Action taken:

Rep Maragos moves that the House recede from its amendments and further amend replacing 2% with 3%, (p. 1, line 13) and replacing "whole number" with "one-half." (p. 1, line 14). See amendment (58308.0203) Seconded by Senator Triplett.

Discussion:

Senator Hacker- This is going to add up to a higher interest rate of 15-17% in the future. That would be too burdensome on businesses and individuals who owe the money on a judgement.

Senator Triplett- This motion is similar to the original draft that we came up with in the Senate, it approaches 3.5%.

Chairman Syverson- Is this going to be outside of the consideration of 5.5 % that is defined in our usery laws?

Joe Gilbertson of the Vogel Law firm appeared before the committee- There is no problem with the language in the bill, concerning the usery language. The prime is a 2% higher rate, based on things right now.

The vote was 5-1-0, the motion passed.

Chairman Syverson closed the conference committee on SB 2302.

Date: 4-4-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Conference Committee Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken recede from House Amendments

Motion Made By Maragos Seconded By Delmore

Senators	Yes	No	Representatives	Yes	No
Senator Syverson Chair	X		Rep. Maragos	X	
Senator Hacker		X	Rep. Bernstein	X	
Senator Triplett		X	Rep. Delmore	X	

Total (Yes) 4 No 2

Absent 0 0

Floor Assignment Senator Rep.

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

Failed

Date: 4-4-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Conference Committee Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken recede from House Amendments

Motion Made By Triplett Seconded By Hacker

Senators	Yes	No	Representatives	Yes	No
Senator Syverson Chair	X		Rep. Maragos		X
Senator Hacker		X	Rep. Bernstein		X
Senator Triplett	X		Rep. Delmore	X	

Total (Yes) 3 No 3 0

Absent 0 0

Floor Assignment Senator Rep.

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

Failed

Date: 4-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2302

Senate Judiciary Conference Committee Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken House recede from its amendments, further amend

Motion Made By Maragos Seconded By Hacker TO Lott

Senators	Yes	No	Representatives	Yes	No
Senator Syverson Chair	✓		Rep. Maragos	✓	
Senator Hacker		✓	Rep. Bernstein	✓	
Senator Triplett	✓		Rep. Delmore	✓	

Total (Yes) 5 No 1 0

Absent 0 0

Floor Assignment Senator Syverson Rep. _____

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

REPORT OF CONFERENCE COMMITTEE

SB 2302, as engrossed: Your conference committee (Sens. Syverson, Hacker, Triplett and Reps. Maragos, Bernstein, Delmore) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1089, adopt amendments as follows, and place SB 2302 on the Seventh order:

That the House recede from its amendments as printed on page 1089 of the Senate Journal and pages 1241 and 1242 of the House Journal and that Engrossed Senate Bill No. 2302 be amended as follows:

Page 1, line 13, replace "two" with "three"

Page 1, line 14, replace "whole number" with "one-half"

Renumber accordingly

Engrossed SB 2302 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2302

Att 1

GREATER NORTH DAKOTA CHAMBER of COMMERCE

Testimony of Dave MacIver
President, Greater North Dakota Chamber of Commerce
Presented to the
Senate Judiciary Committee
January 26, 2005

SB 2302

Mr. Chairman and members of the Senate Industry, Business and Labor Committee, my name is Dave MacIver. I am here today representing the Greater North Dakota Chamber of Commerce and urge you to **support** Senate Bill 2302.

This bill is an effort to correct an injustice with post-judgment interest. Currently there is a flat rate of 12 percent per year charged after the judgment is entered. We believe that interest on a judgment is meant to be fair, but is not meant to be punitive. There is a fairness factor here. If the prevailing interest rates are high, the interest on judgments should be high. If the prevailing interest rates are low, the interest on judgments should be low.

We believe that tying this to the Prime Rate, as published in the Wall Street Journal, is an easy and fair way to determine a rate. Also, it will be easy to compute the interest as it will only change once per year.

Thank you, Chairman Traynor and members of the Senate Judiciary Committee, for this opportunity to discuss the business community's position on SB 2302. We urge a **DO PASS** for SB 2302. Thank you and I would be happy to answer any questions at this time.

2000 Schafer Street PO Box 2639 Bismarck, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
Web site: www.ndchamber.com E-mail: ndchamber@ndchamber.com

Open Interest

3,529	Open Int:	0
2,295	Open Int:	0
ARD		
101,71[illegible]	Open Int:	23,493,245
[illegible]	Open Int:	22,391,166
ITI		
80,9[illegible]	Open Int:	20,539,473
69,259	Open Int:	19,784,885
23,535	Open Int:	22,093,800
31,388	Open Int:	20,966,712
209,726		
166,802		

*EST SPREAD	UST†	EST $ VOL (000's)
275	10	795,141
346	30	300,568
57	5	138,554
63	5	113,251
41	2	104,837
144	30	104,373
203	10	103,811
71	10	97,565
297	5	92,764
262	5	87,175
85	10	83,870
222	5	80,570
73	10	78,000
49	10	77,454
68	10	76,945
[illegible]	5	76,711
[illegible]	2	75,001
[illegible]	5	70,949
[illegible]	2	70,290
43	5	70,055
63	5	66,192
54	2	64,638
87	10	64,456
56	10	63,644
n.a.	n.a.	63,265
275	30	62,380
147	10	62,086
67	5	62,050
56	10	62,000
50	10	61,893
97	5	61,459
60	2	61,008
51	5	60,000
70	30	59,782
51	5	58,436
110	10	56,922
63	5	56,730
11	2	54,998
123	10	53,050
81	5	51,987
125	30	50,925

ated spreads, in basis points (100 2/06; 3-year: 3.000 11/07; 5-year:

Tenet Healthcare (THC)	6.375	Dec 01, 2011	92.000	7.902	420	5	45,200
CCH II LLC (CHTR)	10.250	Sep 15, 2010	104.500	9.040	533	5	37,900
Amkor Technology (AMKR)	7.125	Mar 15, 2011	90.125	9.258	555	5	35,000
Charter Communications Holdings (CHTR)	8.625	Apr 01, 2009	82.875	14.146	1043	5	34,774
Avecia Group PLC (AVECI)	11.000	Jul 01, 2009	103.375	9.429	571	5	33,656
Charter Communications Holdings (CHTR)	11.125	Jan 15, 2011	87.125	14.400	1069	5	32,000
AK Steel (AKS)	7.750	Jun 15, 2012	100.813	7.603	336	10	31,350
MCI Inc (MCIP)	8.735	May 01, 2014	105.500	7.732	349	10	31,047

Volume represents total volume for the market; price/yield data are for trades of $100,000 and greater. * Estimated spreads, in basis points (100 basis points is one percentage point), over the 2, 3, 5, 10 or 30-year hot run Treasury note/bond. 2-year: 3.000 12/06; 3-year: 3.000 11/07; 5-year: 3.500 12/09; 10-year: 4.250 11/14; 30-year: 5.375 02/31. †Comparable U.S. Treasury issue.

Source: MarketAxess Corporate BondTicker

#2

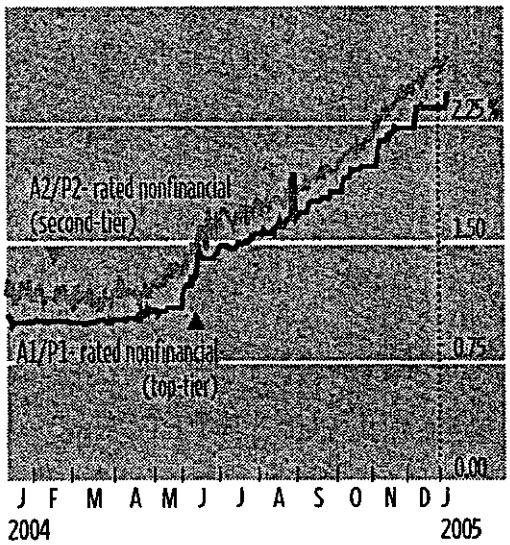
Money Rates

Tuesday, January 11, 2005

The key U. S. and foreign annual interest rates below are a guide to general levels but don't always represent actual transactions.

Commercial Paper

Yields paid by corporations for short-term financing, typically for daily operation



Source: Federal Reserve

Prime Rate: 5.25% (effective 12/14/04). The base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.

Discount Rate (Primary): 3.25% (effective 12/14/04).

Federal Funds: 2.281% high, 2.200% low, 2.250% near closing bid, 2.500% offered. Effective rate: 2.24%. Source: Prebon Yamane (USA) Inc. Federal-funds target rate: 2.250% (effective 12/14/04).

Call Money: 4.00% (effective 12/14/04).

Commercial Paper: Placed directly by General Electric Capital Corp.: 2.30% 31 to 43 days; 2.39% 44 to 59 days; 2.44% 60 to 89 days; 2.54% 90 to 119 days; 2.61% 120 to 149 days; 2.68% 150 to 179 days; 2.75% 180 to 209 days; 2.79% 210 to 239 days; 2.85% 240 to 260 days; 2.88% 261 to 270 days.

Euro Commercial Paper: Placed directly by General Electric Capital Corp.: 2.08% 30 days; 2.09% two months; 2.11% three months; 2.12% four months; 2.14% five months; 2.16% six months.

Dealer Commercial Paper: High-grade unsecured notes sold through dealers by major corporations: 2.37% 30 days; 2.45% 60 days; 2.55% 90 days.

Certificates of Deposit: 2.40% one month; 2.58% three months; 2.83% six months.

Bankers Acceptances: 2.38% 30 days; 2.46% 60 days; 2.56% 90 days; 2.64% 120 days; 2.73% 150 days; 2.82% 180 days. Source: Prebon Yamane (USA) Inc.

Eurodollars: 2.40% - 2.38% one month; 2.50% - 2.48% two months; 2.60% - 2.58% three months; 2.70% - 2.67% four months; 2.76% - 2.73% five months; 2.84% - 2.80% six months. Source: Prebon Yamane (USA) Inc.

London Interbank Offered Rates (Libor): 2.4425% one month; 2.6300% three months; 2.8600% six months; 3.2100% one year. Effective rate for contracts entered into two days from date appearing at top of this column.

Euro Libor: 2.11563% one month; 2.14450% three months; 2.19519% six months; 2.31375% one year. Effective rate for contracts entered into two days from date appearing at top of this column.

Euro Interbank Offered Rates (Euribor): 2.115% one month; 2.146% three months; 2.194% six months; 2.310% one year. Source: Reuters.

Foreign Prime Rates: Canada 4.25%; European Central Bank 2.00%; Japan 1.375%; Switzerland 2.66%; Britain 4.75%.

Treasury Bills: Results of the Monday, January 10, 2005, auction of short-term U.S. government bills, sold at a discount from face value in units of $1,000 to $1 million: 2.330% 13 weeks; 2.600% 26 weeks. Tuesday, January 11, 2005 auction: 1.980% 4 weeks.

Overnight Repurchase Rate: 2.11%. Source: Garban Intercapital.

Freddie Mac: Posted yields on 30-year mortgage commitments. Delivery within 30 days 5.45%, 60 days 5.50%, standard conventional fixed-rate mortgages: 2.875%, 2% rate capped one-year adjustable rate mortgages.

Fannie Mae: Posted yields on 30 year mortgage commitments (priced at par) for delivery within 30 days 5.53%, 60 days 5.59%, standard conventional fixed-rate mortgages. Constant Maturity Debt Index: 2.590% three months; 2.827% six months; 3.115% one year.

Merrill Lynch Ready Assets Trust: 1.56%.

Consumer Price Index: November, 191.0, up 3.5% from a year ago. Bureau of Labor Statistics.

#3

TESTIMONY
SENATE BILL 2302 – DEPARTMENT OF HUMAN SERVICES
SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
JANUARY 26, 2005

Chairman Traynor, members of the Senate Judiciary Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services. I am here to express the Department's support for Senate Bill 2302 and to request an amendment regarding interest on unpaid child support.

By state law, the official records of the state regarding all child support amounts owed, collected, and distributed are kept on the automated computer system maintained by the Department, also known as FACSES (Fully Automated Child Support Enforcement System). Unpaid child support is a judgment by operation of law and therefore bears interest at the state judgment interest rate. Judgment interest that accrues on unpaid child support is recorded on FACSES, enforced, and collected along with the principal of the debt.

The Department supports a realistic interest rate that compensates the judgment creditor for the lost use of the money without penalizing the debtor. In the last biennium, we sent letters to child support obligors advising them of the interest that is accruing on their unpaid child support. We know of some cases, and there are probably many more, where the obligor paid all or part of the unpaid child support to avoid the judgment interest. Set at the proper rate, it is our belief that the accrual of judgment interest on unpaid child support is an incentive for obligors to pay the debt. Set too high, obligors cannot afford to pay the interest much less the principal of the debt and they get further behind.

Unpaid child support is unique in the sense that it is made up of monthly, "mini-judgments." As such, these debts are frequently paid off only to be replaced with a newer debt when another month's payment is missed. For simplicity, we

offer an amendment to apply the same variable interest rate to all unpaid child support, regardless of when the debt first accrued. FACSES was designed to easily change the interest rate on unpaid child support, but if the pre-existing debts accrue interest at the old rate and debts arising after the effective date of the Act accrue interest at the new variable rate, the cost of reprogramming FACSES would be significant to handle multiple interest rates.

Mr. Chairman, that concludes my testimony and I would be happy to answer any questions the committee may have.

#4

Prepared by the North Dakota
Department of Human Services
January 26, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2302

Page 1, line 18, overstrike "Interest", insert immediately thereafter "Except as otherwise provided in this section, interest", overstrike "recovered" and insert immediately thereafter "entered"

Page 1, line 21, after the period insert "Interest on unpaid child support obligations must be calculated under section 14-09-25 according to the rate currently in effect under this section regardless of the date the obligations first became due and unpaid."

Renumber accordingly

#7

SB 2302
Senate Judiciary Committee, Chairman Traynor
January 26, 2005

Information prepared by
Paula J. Grosinger, Lobbyist
North Dakota Trial Lawyers Association
701-202-1293 grosingr@ndtla.com

The Trial Lawyers Association asserts that the post-judgment interest rate should fairly compensate the prevailing party for losses resulting from delays in satisfying the judgment.

Post-judgment interest should encourage obligors to pay judgments in a timely fashion rather than delay payment.

If an individual or entity has already been harmed resulting in economic loss, they are unable to collect interest on their losses until a judgment has been entered. They may be unable to meet their own financial obligations until the judgment has been satisfied, and they may be incurring higher rates of interest as a result of those obligations.

With regard to small businesses, cash flow is critical. An unsatisfied judgment owed a small business may severely restrict activities or even force a small business to close.

Other creditors commonly apply fees and increased interest rates for late payments. An obligor has essentially tied up a judgment creditor's assets. This has not been done through mutual agreement with the creditor. The creditor has had to engage in an adversarial process to seek justice and make recovery from the harm done to them.

The obligor should not have the benefit of lending institution rates of interest, especially when rates are at a historical low, at the expense of the judgment creditor.

NDTLA opposes changing Section 28-20-34 of the North Dakota Century Code to allow post-judgment interest rates of prime rate plus two percent.

AH 5

North Dakota Collectors Association

an association of collection specialists

SB 2302
In opposition

Chairman Traynor and members of the Senate Judiciary committee, my name is Kim Rau and I am representing the ND Collectors Association. Our association includes twenty-four ND owned collection agencies.

Our Association opposes SB 2302 for the following reasons:

A. The current interest rate of 12% provides an incentive to individuals to pay their past due accounts as fast as they can. Decreasing the interest rate would be rewarding them for not paying their bills or obligations.

B. There will be a systems issue for our agencies and other companies. In discussing this with other agencies, our software allows for one rate of interest on judgments. Any other judgments that are filed that do not fit into the current 12% are calculated by hand. Businesses will have to incur the expense of revamping their software (or purchasing new software) in order to accommodate changing interest rates. Or worse they will have to calculate the interest by hand, which would be labor intensive (and expensive) and would be subject to human error.

C. Interpretation of the law. Is the interest that accumulates on a Judgment stay at the rate that is in effect at the time of entry of judgment or does the interest change every January 1st? We are not clear as to what the intent is. We work with this every day and if we can interpret it either way than it is obviously going to be an issue for others as well.

D. Obtaining the rate of interest. Will the change in the interest rate require a phone call to the Clerk of Court every December 20th? There are over 1800 attorneys licensed in the State of ND, there are 290 collection agencies licensed in ND and there are numerous small claims court actions that occur in this state.... Each of these will need to know what the current interest rate is on the Judgments that are filed every single year. That is a lot of phone calls to the Clerks of Court. Than additional calls will take place as they ask the same question that we are asking – does the interest rate stay the same for the remainder of the Judgment or do we call back every year for the new rate.

701-224-9439 • Fax 701-224-9529
P.O. Box 7340 • Bismarck, North Dakota 58507-7340

AH #6

1/26/05

SB2302

Testimony:

Bryan R. Dvirnak
President
Collection Center Inc.

Good morning Chairman and members of the Senate Judiciary Committee. My name is Bryan Dvirnak and I am President of Collection Center Inc located in Bismarck. Collection Center Inc. is a member of the North Dakota Collectors Association, which includes 24 North Dakota owned collection agencies. Collection Center Inc. is also a member of the American Collectors Association, which is comprised of some 5,000 collection agencies and attorneys nationwide.

Collection Center Inc is opposed to SB2302 for a number of reasons namely:

1. **An administrative nightmare for the county sheriff, clerk of courts and the Collection agency.** A variable interest rate is an administrative nightmare for the collection industry as the industry is not "geared up" for variable interest rates. The banking industry computer software programs are readily available for variable interest rates but the collection industry is not. Many debtors will call in to payoff their account expecting information at a moments notice. A variable interest rate is an extremely difficult issue for a collection agency to deal with.

   Judgments are filed for 10 years with the option to renew for an additional 10

Years. I don't know of anyone, who has an unpaid judgment, who does not Renew the judgment. To have a judgment on the books for 10-20 years and to Calculate the interest would be extremely time consuming, and I have a concern with the accuracy of the interest calculation.

The county sheriff is responsible for calculating the interest costs on garnishments. A variable interest rate will also pose a challenge and a nightmare to local law enforcement.

2. **The proposed legislation stipulates a rate (National Prime + 2.0%) only reserved for those borrowers who were financially sound, strong and credit worthy.** Yesterday National Prime was 5.25%. I was in banking for 27 years. Only the good customers qualified for an interest rate of Prime or Prime + 1-2.0%.

3. **Why reward the debtor for their bad behavior?** The judgment creditor has already been harmed financially. This legislation seems to protect the debtor at the expense of the judgment creditor. If you are considering going from a fixed interest rate of 12.0% to a variable, then price the debt based on the past behavior of the debtor and the credit risk. A more acceptable rate would be Prime + 6-8.0%. Credit card companies price their credit cards based on risk, expected loan losses Etc. Most credit card rates today are priced in the 15-18% range. Should this be any different? This is high risk financing.

4. **Judgments are obtained only as a last resort**. The debtor has been

uncooperative thereby leaving the creditor no other option but to pursue the debt legally. Typically a collection agency is willing to work with the debtor in setting up a realistic and reasonable repayment plan. A collection agency doesn't care to litigate an account because it costs us money to obtain and execute on a judgment. The judgment is our last resort. To provide an interest rate of Prime + 2.0% is rewarding the debtor for their bad behavior and gives them little, if any incentive to satisfy the judgment. Keep the interest rate high enough to give the debtor an incentive to pay their debt that they legally incurred and owe. Don't reward them for their past bad behavior. I believe we should be focusing on protecting the judgment creditor, who has already been harmed by the debtor who obtained services and didn't pay.

5. **Finally, keep it simple**. Leave the interest rate fixed at 12.0%. The interest rate and terms are acceptable to the industry. The fixed interest rate makes the administrative task for law enforcement doable. It allows the collection industry to function. And it still is a relatively low interest rate for the debtor, even in today's interest rate environment but yet gives them some incentive to "take care of business" that they should have done from the start. Protect the creditor and don't reward the debtor. Why change for the sake of change?

Thank you for allowing me the opportunity to share my thoughts and concerns on SB2302. I would be happy to answer any questions.

Testimony in Support of SB 2302
Joel Gilbertson, Vogel Law Firm
On Behalf of the Health Policy Consortium

Good morning, Mr. Chairman. I am Joel Gilbertson, with the Bismarck office of the Vogel Law Firm. I am here on behalf of the Health Policy Consortium (HPC), a consortium of MeritCare Health System in Fargo, Altru Health System in Grand Forks, Trinity Health System in Minot and Medcenter One Health System in Bismarck. We support SB 2302.

The present status in North Dakota is that a flat 12% per year is paid on every judgment. That means if there is a $1 million judgment entered against a person, that person appeals and the entire appeals process takes two years, there would be an additional $240,000 in interest due. There are some things to point out:

- Interest on a judgment is meant to be fair interest, but is not meant to be punitive.

- The vast majority of states and the federal government for judgments in federal court do not have a flat interest rate, they have a rate tied to some type of index.

- There is a fairness factor here. If the prevailing interest rates are high, the interest on judgments should be high. If the prevailing interest rates are low, the interest on judgments are low.

- Tying this to the Prime Rate, as published in the Wall Street Journal, is an easy and fair way to determine a rate.

- The present prime rate (as shown on the attached page from the Journal) is 5.25% so the present interest rate on judgments (with the amendments in the Senate) would be 8%.

- It is unnecessary to change the rate on judgments more than once per year.

- It would be easiest if we simply start at the beginning of the next year.

- This will have no effect on judgments that are presently entered or will be entered on or before December 31, 2005.

We support a Do Pass on SB 2302. You should know that the Senate agreed. The Senate Judiciary Committee voted 6-0 Do Pass and the floor of the Senate agreed, 46-0. That was the Senate and you are the House – however, we think that in this case they all were on the right team. Thanks so much.

Joel Gilbertson

Testimony of Dave MacIver
President, Greater North Dakota Chamber of Commerce
Presented to the House Judiciary Committee
March 15, 2005

GREATER NORTH DAKOTA CHAMBER of COMMERCE

SB 2302

Mr. Chairman and members of the House Judiciary Committee, my name is Dave MacIver. I am here today representing a coalition of a number of associations, many of which are in this room together with 17 chambers of commerce that speak for over 7,400 member businesses. I am here today to urge you to **support** Senate Bill 2302.

This bill is an effort to correct an injustice with post-judgment interest. Currently there is a flat rate of 12 percent per year being charged after the judgment is entered. We believe that interest on a judgment is meant to be fair, but is not meant to be punitive. This is a fairness issue. If the prevailing interest rates are high, the interest on judgments should be high. If the prevailing interest rates are low, the interest on judgments should be low.

We believe that tying this to the Prime Rate, as published in the Wall Street Journal, is an easy and fair way to determine a rate. Also, it will be easy to compute the interest as it will only change once per year.

Thank you, Chairman DeKrey and members of the House Judiciary Committee, for this opportunity to discuss the business community's position on SB 2302. We urge a **DO PASS** for SB 2302. Thank you and I would be happy to answer any questions at this time.

2000 Schafer Street PO Box 2639 Bismarck, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
Web site: www.ndchamber.com E-mail: ndchamber@ndchamber.com

The following chambers are members of a coalition that support our policy statements:

Beulah
Bismarck-Mandan
Bottineau
Cando
Crosby
Devils Lake
Dickinson
Fargo
Grand Forks
Greater North Dakota Chamber of Commerce
Hettinger
Jamestown
Langdon
Minot
Wahpeton
Watford City
West Fargo
Williston

Total Businesses Represented= 7429

TESTIMONY
SENATE BILL 2302 – DEPARTMENT OF HUMAN SERVICES
HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
MARCH 15, 2005

Chairman DeKrey, members of the House Judiciary Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Office of the Department of Human Services. I am here to express the Department's support for Engrossed Senate Bill 2302.

By state law, the official records of the state regarding all child support amounts owed, collected, and distributed are kept on the automated computer system maintained by the Department, also known as FACSES (Fully Automated Child Support Enforcement System). Unpaid child support is a judgment by operation of law and therefore bears interest at the state judgment interest rate. Judgment interest that accrues on unpaid child support is recorded on FACSES, enforced, and collected along with the principal of the debt.

The Department supports a realistic interest rate that compensates the judgment creditor for the lost use of the money without penalizing the debtor. In the last biennium, we sent letters to child support obligors advising them of the interest that is accruing on their unpaid child support. We know of some cases, and there are probably many more, where the obligor paid all or part of the unpaid child support to avoid the judgment interest. Set at the proper rate, it is our belief that the accrual of judgment interest on unpaid child support is an incentive for obligors to pay the debt. Set too high, obligors cannot afford to pay the interest much less the principal of the debt and they get further behind.

Unpaid child support is unique in the sense that it is made up of monthly, "mini-judgments." As such, these debts are frequently paid off only to be replaced with a newer debt when another month's payment is missed. For simplicity, the Senate adopted an amendment to apply the same variable interest rate to all

unpaid child support, regardless of when the debt first accrued. This avoids significant programming costs to change FACSES to handle multiple interest rates.

Mr. Chairman, that concludes my testimony and I would be happy to answer any questions the committee may have.

3/15/05

SB2302

Testimony:

Bryan R. Dvirnak
President
Collection Center Inc.

Good morning Chairman and members of the Senate Judiciary Committee. My name is Bryan Dvirnak and I am President of Collection Center Inc located in Bismarck.

I am a former banker who spent 27 years in the banking industry as consumer lender, commercial lender, considerable time working out of "troubled credit", and in bank management.

Collection Center Inc. is a member of the North Dakota Collectors Association, which includes 24 North Dakota owned collection agencies. Collection Center Inc. is also a member of the American Collectors Association, which is comprised of some 5,000 collection agencies and attorneys nationwide.

Collection Center Inc is opposed to SB2302 for a number of reasons namely:

1. **The proposed legislation stipulates a rate (National Prime + 2.0%), which is only reserved for borrowers who are financially sound, financially strong and credit worthy.** (Yesterday National Prime was 5.50%). The banking industry uses the **"3 C's of Credit"** as a starting point in evaluating

the merits of loan requests and "pricing of the credit". **The 3 C's of Credit** stand for: (1) The *Character of the individual.* In other words, is the individual a person my bank would like to do business with? Do I feel comfortable with the person? Do I believe in them? Can I count on them to repay the loan? (2) The *Capacity of the individual* to repay the debt. Does the individual have the necessary income/cashflow to repay the debt? (3) *Collateral.* Collateral is the "secondary source of repayment" (assuming the borrowers income/cashflow fails to repay or service the debt). Is the collateral adequate and of the type the bank would be willing to liquidate if they were forced to do so?

Only the good customers qualified for an interest rate of Prime or Prime + 2%. A judgment debtor is an unsecured debt where the borrower/debtor has failed to pay their obligation. The judgment debtor, by their very nature, are "high risk" credit. They are "high risk unsecured credit". An unsecured bank loan to the better borrowers today will run Prime +1-3%. High risk borrowers may not qualify for bank credit and if they do, they would pay in the range of 12-15%, (i.e. prime + 6-9.0%).

Credit card loans are typically priced higher due to being unsecured, & because of the anticipated default rate. Unsecured credit card loans today are priced today at 14.9%-21.0%. The credit card rates of 14.9-21.0% is an interest range where judgment rates should be priced. To do so would require

SB2302 to call for an interest rate of Prime + 9-15.0%.

2. **The cost of the bad debt to the creditor.** The creditor typically has purchased inventory; incurred overhead costs such as labor costs, utility costs, & facility costs; incurred interest costs on borrowed money; plus lost opportunity costs, all of which negatively impacted the company's cashflow. The judgment debtors failure to pay the creditor has a significant "negative drag" on the company's balance sheet, P/L, and it's cashflow.

3. **Why reward the judgment debtor for their bad behavior?** The *judgment creditor* has already been harmed financially. SB2302 seems to protect the *judgment debtor* at the expense of the *judgment creditor.* As this Committee considers SB2302, going from a fixed interest rate of 12.0% to a variable, I would suggest pricing the debt based on the past behavior of the debtor and the credit risk. A more acceptable rate would be Prime + 6-9.0%. Credit card companies price their credit cards based on risk, expected loan losses etc. Why *should a judgment debtor be treated any different? This is high risk financing.*

4. **Judgments are obtained only as a last resort**. The debtor has been typically uncooperative thereby leaving the creditor no other option but to pursue the debt legally. Typically collection agencies are willing to work with the debtor in setting up a realistic and reasonable repayment plan. A collection agency doesn't care to litigate an account. The collection agency is financially ahead by avoiding

litigation due to the costs incurred in obtaining a judgment and its execution.

5. **An administrative nightmare for the county sheriff, clerk of courts and the collection agency.** Judgments are filed for 10 years with the option to renew for an additional 10 years. I don't know of anyone, who has an unpaid judgment, who does not renew the judgment. To have a judgment on the books for 10-20 years and to calculate the interest would be extremely time consuming. In addition, I have a concern with the accuracy of the interest calculation.

A variable interest rate is an administrative nightmare for the collection industry as the industry is not "geared up" for variable interest rates. The banking industry computer software programs are readily available for variable interest rates but the collection industry is not.

Many debtors will call in to payoff their account expecting information at a moments notice. A variable interest rate is an extremely difficult issue for a collection agency to deal with. I recognize that is our problem and not yours. If SB2302 passes, the collection industry will have to deal with it.

Finally, the county sheriff is responsible for calculating the interest costs on garnishments. A variable interest rate will also pose a challenge and a nightmare to local law enforcement.

In closing, to provide an interest rate of Prime + 2.0% is rewarding the debtor for

their bad behavior and gives them little incentive, if any, to satisfy the judgment. Keep the interest rate high enough to give the debtor an incentive to pay their debt they willingly incurred. *Don't reward the judgment debtor with a "attractive interest rate"!*

As you evaluate SB2302, I ask that you keep in mind the *judgment creditors rights which, in my opinion, we should be concerned about protecting.* Keep the interest rate high enough to encourage the judgment debtor to pay the judgment creditor the money that is rightfully owed. An interest rate of Prime + 4-8.0% would continue to send a clear message to the debtor that it is in their best interests to pay the debt.

Thank you for allowing me the opportunity to share my thoughts and concerns with this Committee on SB2302. I would be happy to answer any questions.

SB 2302
House Judiciary Committee, Honorable Duane DeKrey Chair
March 15, 2005

Information prepared by
Paula J. Grosinger, RN - Lobbyist 114
North Dakota Trial Lawyers Association
701-202-1293 grosingr@ndtla.com

This bill is about basic judgment law and debtor/creditor law. It was initially presented as a medical malpractice issue, but medical institutions are more often judgment creditors than judgment debtors. It was also presented as a business liability issue, but the impact to small business collections will be adverse.

When there is no prevailing contract or instrument establishing interest, failure to pay a debt means a healthcare provider, small business or individual cannot collect interest on the debt until they prevail in court and a judgment has been entered. As a result they:

- May be unable to meet their own financial obligations until the judgment has been satisfied
- May incur higher rates of interest on business or consumer debt
- Incur damage to their credit as a result of being unable to meet their financial obligations.

Cash flow is critical to institutions and businesses, especially small businesses. Delays in satisfying a judgment owed a small business may severely restrict activities or even force a small business into bankruptcy.

Post-judgment interest should fairly compensate for losses resulting from delays in satisfying the judgment.

Creditors such as banks and credit card companies commonly apply fees and increased interest rates for late payments. A judgment debtor has incurred a debt that has been proved valid in a court of law. The creditor has had to engage in the legal process, usually at their own expense, to remedy the problem.

Many NDTLA attorneys represent individuals in collection cases. Those individuals would prefer not to have to pay any interest or a low rate of interest on judgments. But that isn't fair to the institution, business or individual to whom the debt is owed.

The questions you should ask are:

- Should a judgment debtor have the benefit of lending institution rates of interest, especially when rates are at a historical low, at the expense of the injured party (judgment creditor)?
- Is prime plus two percent adequate to ensure just compensation for delays in satisfying the judgment?

If judgment interest is at prime plus two percent, it will encourage more litigation and delay remedies to small businesses, individuals and even the state by giving debtors an incentive to appeal.

NDTLA recommends the following amendment:
Line 13 Change "<u>two</u>" to "<u>three point nine</u>"

Testimony of:

Mike Lefor
Legislative Director
North Dakota Collectors Association
Senate Bill 2302

Good morning Chairman DeKrey and members of the House Judiciary Committee. My name is Mike Lefor and I serve as the legislative director for the North Dakota Collectors Association.

Our association opposes Senate Bill 2302 for several reasons. First, collection agencies across the state of North Dakota represent thousands of small businesses throughout North Dakota collecting past due debts owed to these businesses.

These businesses have tried and failed to collect these dollars, which is why they utilize collection services. Once a collection agency receives an account for collection, we attempt to make telephone calls or send out notices in attempt to convince the debtor to pay their bill.

However, if all of our efforts to collect the account are not successful, we may obtain a judgment against the individual. In the case of North Dakota collection agencies, we cannot take legal action against individuals in small claims court, so we must obtain a district court judgment.

All of the advanced costs incurred are paid by the collection agency. The cost of a summons and complaint, a judgment filing fees, attorney fee, sheriff costs and more are paid by collection agencies. A typical judgment may cost in the range of $120.00 to $150.00.

Typically, 50%-60% of judgments, collection agencies take are ~~ever~~ paid. Therefore, that means the 40%-50% of the fees paid by the agencies to obtain judgments are never recovered.

I talked to a couple of my banker friends recently in regard to the interest they charge for consumer loans. They told me the best rates they give for consumer loans are prime plus three or four points and, for higher risk individuals, anywhere from 11%-14%. One of the bankers told me and I quote: "We need to get paid for the risk we are taking."

When you think about the extension of credit, you need to think of the risk businesses are taking by extending credit, knowing that in some cases their good faith will go unrewarded. I would ask this committee if you borrowed someone $300.00 and they did not pay you back nor did they have any intention of paying you back, do they deserve the same rate of interest as those individuals who do pay their bills on time?

We feel that taking the rate of post judgment interest from 12% to prime plus 2% is too large of a drop and is rewarding those debtors who do not pay North Dakota businesses for goods and services obtained on credit. I would be happy to answer any questions you may have.