

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2196

2001 SENATE JUDICIARY

SB 2196

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2196

Senate Judiciary Committee

Conference Committee

Hearing Date January 23rd, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	29.9-end/0-16.1
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2196: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 28-21 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO EXECUTION ON MONEYS RETAINED BY GARNISHMENT.

Senator Watne, testified on behalf of SB 2196. This bill could save money for all involved.
(testimony attached)

Representative Maragos, supports SB 2196.

Todd Kranda, attorney testifies on behalf of the North Dakota Collectors Association, supports SB 2196.

Senator Nelson, ND collectors association, what are they?

Michael Lefor, we're a collection agency.

Lisa Lauinger, (Testimony attached explaining the bill and process)

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Senate Judiciary Committee

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Senator Traynor: On line 10 are you talking about execution for service? Maybe it should read the execution may be served by the attorney for the judgment creditor. Instead of "made," "served."

Lisa Lauinger: yes. The execution can be turned over to the attorney or sheriff or clerk. It's not as restrictive as it is currently set up.

Senator Traynor: The execution is issued by the Clerk. The clerk does not serve the execution.

Lisa Lauinger: yes.

Senator Trenbeath: This would seem to require some revision of some current acting law. Are we replacing some law or are we revising some court law?

Lisa Lauinger: No we believe it doesn't interfere with any acting laws, it only pertains to garnishments.

Senator Trenbeath: Doesn't that mean execution relating to garnishments? So does that mean all other statutes regarding garnishment executions are under some general execution statute?

Lisa Lauinger: yes.

Senator Trenbeath: I'm concerned about line 12 to line 13. "A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed." It seems that what we're doing here is giving extraterritorialial power to a judgment without it having been filed in that county.

Lisa Lauinger: yes.

Senator Trenbeath: I understand that to be the case, but why is that different from that. Why wouldn't we be seeing next a bill proposed that you didn't need to file a transcript for property. It's a similar argument.

Lisa Lauinger: my assumption would be that there is no work being performed in Burleigh county. There is no requirement that the clerk perform function in that county.

Senator Lyson: What happens to person who gets execution from other counties. Won't this cause a problem with the IRA. I see a problem with that. No one will see that judgment coming in. I see money can be given to a sheriff or attorney, I don't see this is in the bill.

Lisa Lauinger: On line 14 and 15 it does address that a third party shall remit the amount due to the sheriff or the attorney. After funds are obtained by a third party. Garnishment forms are specific; they provide for anything that may be creating things on the money by the bank or the employer. The bank or employer is, by law, to complete those garnishment requirements. That is addressed in the garnishment statutes.

Senator Lyson: but that's happening in the county that has the judgment. I don't see the banker or whoever is checking doesn't know a title is occurring.

Lisa Lauinger: My guess is that it applies to real and personal property in that county. No money will be withheld. If the IRS knows where the bank is, that will be addressed. We are trying to protect the rights of the consumer, and make it more cost effective.

Senator Traynor: If the attorney collects from the debtor, then the attorney would provide the clerk with a return of the execution. Instead of the sheriff doing it.

Lisa Lauinger: yes that would be correct.

Senator Trenbeath: On line 16, "if the judgment debtor files a claim of exemptions under section 32-09.1-22." I guess the change would be under present law he or she would file a claim of exemption with the court of the county in which execution was served and now that person has to file claims in the original court.

Lisa Lauinger: I think everything goes to the original county. That's my experience.

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Senate Judiciary Committee

Bill/Resolution Number SB 2196

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Senator Traynor: Is this last sentence in the current code?

Senator Trenbeath: yes. It's not crystal clear.

Rusty Steffan, representing ND Collectors Association.

Senator Traynor: If the attorney for the creditor serves the execution, on the bank for instance, what else accompanies the service? Besides a copy of the execution. Is there a letter?

Rusty Steffan: They would have a letter from the bank, notifying of the execution.

Senator Traynor: would that letter contain any language concerning the neglect of the bank and committee?

Rusty Steffan: I'm not sure.

Todd Kranda: It says we have a fund that we are indebted to a certain amount. They have a contact. How much are you required to deduct. I also anticipate a cover letter. Here is the execution; fees are added, etc...

Senator Traynor: Some members of the committee are afraid of getting rid of a file.

Todd Kranda: Changing the language on line 10 from "made" to "serve" is an appropriate term. Regarding line 12 and 13 about a transcript, I don't see why there needs to be another fee to be paid. There are some debtors that deal only in cash.

Senator Traynor: This elimination would deal only with garnishment?

Todd Kranda: only under this limited summary execution proceeding.

Senator Lyson: on line 12, what is execution? Shouldn't that mean "a copy of the judgment?"

Todd Kranda: it is a term that means a process. A specific document that a clerk issues.

Senator Lyson: but your serving the execution.

Todd Kranda: it's a caption issued by the clerk. It's a one sheet summary of the case, etc... we could amend that.

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Senate Judiciary Committee
Bill/Resolution Number SB 2196
Hearing Date January 23rd, 2001

Senator Traynor closed the hearing on SB 2196.

A MOTION WAS MADE BY SENATOR WATNE TO AMEND LINE 10, PAGE 1 TO CHANGE "MADE" TO "SERVED." SECONDED BY SENATOR NELSON. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. A SECOND MOTION WAS MADE TO AMEND LINE 11, PAGE 1 AFTER "PARTY" TO REMOVE "AND MUST CONTAIN A COPY OF" AND TO REMOVE "THE EXECUTION" ON LINE 12, PAGE 1. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. A THIRD MOTION WAS MADE BY SENATOR WATNE TO DO PASS AS TWICE AMENDED. SECONDED BY SENATOR NELSON. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2196

Page 1, line 10, replace "made" with "served"

Page 1, line 11, remove "and must contain a copy of"

Page 1, line 12, remove "the execution"

H's

Renumber accordingly

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:14 a.m.

Module No: SR-13-1564
Carrier: Watne
Insert LC: 18275.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2196: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2196 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "made" with "served"

Page 1, line 11, remove "and must contain a copy of"

Page 1, line 12, remove "the execution"

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2196

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2196

House Judiciary Committee

Conference Committee

Hearing Date 03-12-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		163 to 1261
TAPE II	x		5014 to 5323
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2196. Relating to prohibited employer retaliation for employee reporting of violations of laws, ordinances or regulations.

Senator Watne: District 5, (see attached testimony).

Chairman DeKrey: If there are no questions, thank you for appearing before this committee. Mr Kranda before you start, what is the difference between certified and registered mail?

Todd Kranda: North Dakota Collectors Association. Gives an answer to the chairman's question.

Chairman DeKrey: Certified is the one that you get the green card back.

Rep Klemin: Registered has to do with value of whatever you are serving.

Todd Kranda: appears on behalf of the North Dakota Collectors Association, in support of SB 2196. He explained one of the amendments that was added while in the Senate. Change on line ten, the word made was in the original bill, and that was replaced by the word served. There was some confusion as to whether the attorney makes the execution as the document comes out of the clerk of courts office, we did not intend to change that process. The second area that was changed

was on line eleven, at the end of the sentence after the words third party, there was another clause. The clause was and must contain a copy of the execution, it was determined after reading the language a little closer that the language was unnecessary.

Chairman DeKrey: If there are no questions, thank you for appearing before the committee.

Lisa Lauinger: North Dakota Collectors Association, (see testimony attached).

Rep Disrud: How is this a win, win situation, if the person stands a chance to lose their job due to the judgment.

Lisa Lauinger: A person cannot be fired if their wage is garnished.

Rep Disrud: How about if they just say I am going to quit.

Lisa Lauinger: That is an option that they can choose.

Rep Disrud: On the certified mail, what if you send it to me and I just don't pick it up.

Lisa Lauinger: I believe that the way the bill is set up, the certified mail is sent to a third party, which is the employer. If the employer does not pick it up there are other options.

Chairman DeKrey: If there no further questions, thank you for appearing. Is there anyone else wishing to testify in opposition to SB 2196.

Russ Steffan: North Dakota Collectors Association, (see attached testimony) spoke in support of SB 2196.

Chairman DeKrey: Thank you for appearing before the committee. Is there anyone else wishing to testify on SB 2196, if not we will close the hearing on SB 2196.

COMMITTEE ACTION

Chairman DeKrey: Let's move on to SB 2196. Rep Onstad moved a DO PASS, seconded by Rep Gunter.

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House Judiciary Committee
Bill/Resolution Number SB 2196
Hearing Date 03-12-01

DISCUSSION

Chairman DeKrey: The clerk will call the roll on a DO PASS motion on SB 2196. The DO PASS motion passed with 13YES, 0 NO and 2 ABSENT. Carrier Rep Wrangham.

Date: 02-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2196

House JUDICIARY Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Onstad Seconded By Rep Gunter

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Wrangham

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

REPORT OF STANDING COMMITTEE (410)
March 12, 2001 4:28 p.m.

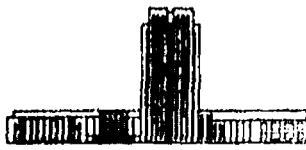
Module No: HR-42-5417
Carrier: Wrangham
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2196, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2196 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2196



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary.
Vice Chairman
Political Subdivisions

Senator Darlene Watne
District 5
520 28th Avenue SW
Minot, ND 58701-7065

January 23, 2001

Hon. Chairman Traynor and Members of the Senate Judiciary:

I believe you all know what a garnishment is. Senate Bill 2196 concerns the process of executing the monies obtained through the garnishment process.

When Attorney Todd Kranda asked if I would sponsor this bill and he explained it to me, it sounded very logical. It sounded like it could save money for the parties involved and make the process more flexible.

I have heard no objections to this bill.

And since I am not an attorney, Todd will explain in more detail what this bill will do.

Thank you.

Respectfully,

Darlene Watne
Senator, Fifth District

TESTIMONY FOR SENATE BILL NO. 2196

Senate Judiciary - Chairman: Sen. J. Traynor

A ' Process Server ' is any person who is of legal age and who is not a party to or interested in the case.

Why use certified mail or personal service?

- 1.) Lower costs to the consumer. (the cost of sheriffs service , certified mail or a process server can and normally is passed on to the judgement debtor.)
- 2.) Time (Our sheriffs departments are stretched to the limits for time and personnel. The demands of the more serious issues related to law enforcement will, and should, take precedence over service of civil papers.)
- 3.) Choice (The opportunity to utilize an option specific to the needs of a particular situation.)

In cases where a process server or certified mail is used, the person giving or mailing the papers to the plaintiff or third party will fill out an Affidavit of Mailing/Personal Service, which would list the pertinent information such as:

- Name of person serving the papers.
-
- Time papers where served.
-
- Date papers where served.
-
- Person or entity papers where served on.
-
- Address where papers where served

The use of certified mail or personal service in the summary execution on moneys retained pursuant to garnishment is a win-win situation for all parties involved. The option to use certified mail or personal service does not mean that the sheriffs departments will be excluded from the serving of these papers, but simply means that there would be alternatives to be used when deemed necessary. The North Dakota Collectors Association feels that the sheriffs departments will still be utilized, but in a more manageable fashion so as to be more efficient and cost effective to the consumer.

Thank You for the opportunity to present this testimony.

Prepared by Rusty Steffan, North Dakota Collectors Association

Questions:

TESTIMONY FOR SENATE BILL NO. 2196

Introduction:

Current Process:

1. A judgment gives the creditor the ability to do a bank or wage garnishment, issue post judgment interrogatories, and proceed with an execution.
2. Wage/Bank Garnishments
 - a. Served by certified mail, sheriff or process server
 - b. Employer/Bank completes the garnishment form by a specific formula laid out in NDCC §32-09.1-09.
 - c. Completed garnishment papers are returned to the person who issued the papers within 20 days.
 - d. Garnishment statutes allow the money to be released by execution or voluntarily surrendered by the consumer after 20 days and before 270 days.
3. Execution
 - a. The way the law is currently set up, when requesting an execution from the court for the release of the garnished funds, that execution must be sent to the sheriff. The sheriff then picks up the garnished funds.
 - b. Senate Bill 2196 provides the creditor with some options for obtaining and serving the execution for the release of the garnished funds.

Changing the Process:

1. Background Memorandum on Garnishment Study prepared by the Legislative Council Staff for the Judiciary "C" Committee, July 1979
 - a. Legislature removed the requirement of a prior execution levy and heard testimony that such a requirement "is futile and only adds to the cost of the garnishment proceedings."
 - b. If we are trying to make the garnishment proceedings more cost effective, then SB 2196 will help accomplish that.

2. **Benefits of Changing the Process**

a. **More cost effective**

- (1) By using certified mail or a process server in some situations, more money can be used to satisfy the judgment. For example, if the employer/bank is in Glen Ullin, it would be more cost-effective to send the execution by certified mail rather than paying mileage from Mandan to Glen Ullin.
- (2) If the garnished funds are sitting in another county other than the original county in which the judgment was obtained, the judgment does not have to be transcribed to that county. Again, more money can be used to satisfy the judgment.

b. **Money is still released to the sheriff or the attorney**

- (1) This ensures that the appropriate paperwork will be filed with the court indicating that money has been picked up and applied to the judgment

c. **All rights are still afforded the consumer to claim his exemptions which would stop the execution from being made until the validity of the consumer's exemptions are determined by a court of law.**

Conclusion:



NORTH DAKOTA SENATE



Senator Darlene Watne
District 5
570 28th Avenue SW
Minot, ND 58701-7065

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES
Judiciary
Vice Chairman
Political Subdivisions

Mr. Chairman, Members of the House Judiciary:

Senate Bill 2196 concerns the process of executing the monies obtained through the garnishment process. This bill relates only to the release of garnished funds.

I am convinced this bill can save the unfortunate parties involved in this process money. I also believe it makes the process more flexible. This bill allows the execution to be served by the attorney for the creditor or a sheriff, or their agents, or by certified mail. At the present time only the Sheriff does such executions and our Sheriffs can better use their time on law enforcement matters instead of service of civil papers.

We have some excellent witnesses here for you today who can fully explain how this bill changes the present process so my introduction is short.

I do urge a DO PASS recommendation.

Respectfully,

Darlene Watne
Senator, Fifth District

TESTIMONY FOR SENATE BILL NO. 2196

Presented Before the House Judiciary Committee

By: Lisa Lauinger on behalf of North Dakota Collectors' Association

Introduction:

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a. More cost effective

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(2) If the garnished funds are sitting in another county other than the original county in which the judgment was obtained, the judgment does not have to be transcribed to that county. Again, more money can be used to satisfy the judgment.

b. The execution is still issued by the clerk of court

(1) The clerk of court still maintains control over the executions being issued and filed back with the court

c. Money is released to the sheriff or the attorney

(1) This ensures that the appropriate paperwork will be filed with the court indicating that money has been picked up and applied to the judgment

d. All rights are still afforded the consumer to claim his exemptions which would stop the execution from being made until the validity of the consumer's exemptions is determined by a court of law.

Conclusion:

TESTIMONY FOR ~~HOUSE~~ BILL NO. 2196

House Judiciary - Chairman: Rep. D. DeKrey

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Prepared by Robert (Rusty) Steffan, North Dakota Collectors Association