

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2170

2007 SENATE JUDICIARY

SB 2170

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2170

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1212

Committee Clerk Signature *Moina L Solberg*

Minutes: Relating to amount payable to the sheriff by a depository institution or credit union under a notice of levy.

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

Testimony In Support of Bill:

Sen. Lyson Introduced and reviewed the bill (meter 1:25) Discussed how the process currently worked.

Sen. Olafson (meter 4:0) asked what an exemption would be. Responded that the automatic \$5,000 exemption along with additional ones.

Sen. Fiebiger (meter 5:00) questioned the language on line 7, referring to the "time" limit. Discussion of this.

Marilyn Foss, ND Bankers Assoc. (meter 7:30) gave testimony – Att. #1 Marilyn explained the process in great detail, along with **Sen. Lyson**. (15:00) Discussion how the language helps the banks so they do not have to make the decision which in turn helps the sheriffs.

Greg Tschider, Lobbyist for Mid-America Credit Union Assoc. (meter 26:33) Att. #2

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

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

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
January 16, 2007 10:12 a.m.

Module No: SR-10-0610
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2170: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2170 was placed on the
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2170

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2170

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/21/07

Recorder Job Number: 3542, 3547

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2170.

Sen. Stan Lyson: Sponsor of bill, explained the bill. If a person has a judgment levied against them for non-payment of something, and the sheriff gets an execution from the creditor, the sheriff will go to the bank and serve a levy on the bank account of that person to get the money out. First, the person has to get a judgment against the debtor. Then get an execution for the sheriff to take action against the debtor and one of the things they can do is serve a levy on the bank. This bill simply says that when the sheriff serves a levy on that bank, that the monies in the bank at the time of service, is the only amount of money that he can receive on that levy. Here is part of the problem. Some sheriff's, because you have a 10 day period for exemptions, some say that I'm serving a levy but you keep a hold of that money and I'll come and get it after the 10 days where you can try and get an exemption if you want. Sometimes, some of the banks didn't quite understand what the law said, and paid all of the money that was in after the 10 days, and they may have made a deposit since the time of the levy. This just clarifies the law to say that the money that they are going to receive from that bank, is the money that was in the account on the date and time that the levy was originally served, and nothing more.

Rep. Klemin: Can a sheriff under any circumstances levy on that amount more than once during that 10 day period.

Sen. Stan Lyson: Yes, you can levy on it again. I've never had to do that, so I guess I should say that. I would guess that you can. One of the good things about this, when the sheriff goes to pick that money up at the end of the 10 days, and receives it, he can ask then, is there any other money in the bank, and if they say it is, he pulls out another levy and hands it to the bank.

Rep. Klemin: So he could do that at the end of the 10 days. That would still be okay under this bill.

Sen. Stan Lyson: It only means a levy that was served at the time it was served is when he can do that. He can check and if he's a good sheriff he's going to check and see if there have been any deposits since that levy was done and if they did, he will have another levy in his pocket to sign and hand to the bank.

Rep. Koppelman: What is this trying to solve, how does this apply. If you deposit money the next day, the levy can take it.

Sen. Stan Lyson: It does not apply to any monies deposited after the day and time that that original levy was served upon the bank. This just clarifies the law. The law always was what this bill really says now. Most sheriffs will go in and serve the levy and collect the money right there. But there are some and especially in small communities, that go in and say well, you've got 10 days to make out an exemption, so I'm going to leave the money there. The problems came in, when they went back to get the money after the 10 days, and some banks gave them money that was deposited after the first levy was made. That is where the problem came in.

Chairman DeKrey: Thank you. Further testimony in support.

Marilyn Foss, ND Bankers Association: Support (see attached testimony).

Rep. Meyer: What happens in the first scenario where the debtor wrote a check and there weren't enough funds to cover the account. Would the debtor be responsible for \$35 for every bounced check that comes in. When is the notice of the levy given to the debtor.

Marilyn Foss: The debtor receives the notice of the levy essentially when the sheriff gets it, the debtor may not have received it before the bank gets it, but he receives it about the same time.

Rep. Meyer: So in the case where he has an active account, a bank would pay for it and then as many outstanding checks are charged \$35 that would automatically be bounced.

Marilyn Foss: Yes, that is what happens right now. This bill would actually assist a debtor, an account holder, in that situation, who having received the notice of levy, and the funds in the account being taken out and paid over to the sheriff, this would give the debtor an opportunity to come in and deposit additional money to cover the checks that are outstanding. We think this bill helps the customer and debtor also.

Rep. Boehning: Is this for one account or all the accounts that a person has in the bank.

Marilyn Foss: All the accounts at that bank of which you are party.

Rep. Onstad: When a levy is served, is the amount that's in the account currently, is that closed at that point.

Marilyn Foss: Yes, if I have an account that has \$10,000 in it, and the levy is for \$8,000, \$8,000 goes out to the levy. If I have an account with \$10,000 in it, and the levy is for \$12,000, \$10,000 goes out.

Rep. Onstad: But if they wait for that 10 day period, and then maybe there's some withdrawals from the checking account, to lower it to \$6,000 in it.

Marilyn Foss: That doesn't happen because the institution will either take the money out immediately or freeze the account. If the bank let that happen, the bank would be on the hook

for the amount that was withdrawn in the interim period. We think this bill will help that situation too. Everybody will know better at what moment the funds to be paid over and when are you looking.

Rep. Boehning: If you're writing checks, and it takes 2-3 days for them to get into the system, if the sheriff does a levy on one day, and you've got 4 or 5 checks coming into that were written before that date, what happens with those checks.

Marilyn Foss: Right now, what happens to the checks is they are returned because the funds in the account have been used. That's why I'm saying that we think this bill actually helps that situation too, because a debtor that receives a notice of levy, finds out what money was in his account and then can come in and deposit funds to cover checks that have not cleared before the levy. They would be paid, unless before they got paid the sheriff came with another levy.

Rep. Meyer: I guess I'm not clear on the timeline. Do they get the levy the same day that the bank gets the notice of the levy, he actually has no time whatsoever to correct that situation.

Marilyn Foss: That's accurate, but that is not a matter that the bank has control over. Honestly, as I said, this actually helps the debtor out in that situation, because he gets the notice of the levy, he knows approximately how much they have in their bank accounts, they know approximately how many checks they've written and whatever. So they know the amount of the judgment against them, because the judgment comes at the end of legal proceedings. Well, if the debtor receives a notice of levy, he knows he has \$5,000 in his account and the judgment is \$10,000, he knows that all of the money is going to go out to pay the levy. When he goes into the bank with this bill, not under the current system, but when he goes in with this bill, he knows that the account has been essentially used entirely to pay the levy, which the law requires because the amount of the levy was greater than the amount of

money in the account and he will know then that if I deposit funds now, if there's not another immediate levy they will be there to pay the checks. Now, there's not that clarity in the law, where the sheriff hasn't taken the funds.

Rep. Charging: You referenced the IRS, there is no wiggle room when they move in on a bank account.

Marilyn Foss: Their law is very clear. The amount that is in the account, to the extent that it's not more than the levy, at the time of the IRS levy is served on the bank, is the amount that you take out and paid. Yes, that is clear. There is no wiggle room, but there's also no lack of clarity about it. The rule is clear and everybody knows how it applies.

Rep. Charging: So you're saying that this makes it clear.

Marilyn Foss: Yes.

Chairman DeKrey: Just a note, my account was levied by the IRS with no notice to me, and it took me 6 weeks to find out from the IRS that they took the money and an additional 6 weeks to find out that they were wrong, and then they didn't even notify me that they put the money back into my account. It just showed up on my bank statement that the IRS had deposited the money into my account.

Rep. Delmore: Does this provide for notification to the debtor that they are going to take it.

Marilyn Foss: This doesn't provide for notification. They get notice under other statutes, they get notice under their right to claim exemptions. They are told that the levy is being taken and they have 10 days in which to determine if these funds are exempt from process and can be returned to you, and they get notice of that whole process under other statutes.

Rep. Klemin: When the sheriff serves the levy, he also gives the notice to the debtor. The sheriff, even if he collects the funds immediately, still has to wait 10 days to see if the debtor

brings in a list of exemptions and then the sheriff would have to put that money back into their account. If he doesn't wait, he would be on the hook for the money.

Chairman DeKrey: Thank you. Further testimony in support.

Tanner Blair, Mid America Credit Union Association: Support this bill. We ask for a Do Pass.

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

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2170.

Rep. Griffin: I move a Do Pass.

Rep. Delmore: I second.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Griffin

Date: 2/21/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2170

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Guffin Seconded By Rep. Delmore

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Chairman DeKrey | ✓ | | Rep. Delmore | ✓ | |
| Rep. Klemin | ✓ | | Rep. Griffin | ✓ | |
| Rep. Boehning | ✓ | | Rep. Meyer | ✓ | |
| Rep. Charging | ✓ | | Rep. Onstad | ✓ | |
| Rep. Dahl | ✓ | | Rep. Wolf | ✓ | |
| Rep. Heller | ✓ | | | | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Guffin

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

REPORT OF STANDING COMMITTEE (410)
February 21, 2007 12:45 p.m.

Module No: HR-33-3604
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2170: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2170 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2170

TESTIMONY OF MARILYN FOSS
ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION
SENATE BILL 2170

Chairman Nething, members of the Senate Judiciary Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. I appear before you today to urge **DO PASS** for this bill. Its purpose is to make North Dakota law clear about the amount of money that a depository institution or credit union is to pay over to a sheriff when, as part of the process of execution of a judgment, the sheriff levies against the judgment debtor's deposit account(s). The uncertainty about this is due to the fact that current law gives the sheriff the option of serving the levy, but declining to take possession of the money in the debtor's deposit accounts for the ten day period in which the debtor may claim statutory exemptions.

This issue was brought to my attention by a North Dakota bank which had been served with a sheriff's levy. The amount of the levy was greater than the debtor's account balance when the levy was served, so the bank cut a check for the amount of the account balance and attempted to turn it over to the sheriff's deputy. But the deputy refused to accept the check, telling the bank it should hold it for ten days before turning it over to the sheriff. Within that ten day period, the bank expected to receive an automatic deposit into the debtor's account. The bank wanted to know what it should do. Could the bank ignore the fact of the new deposit or was it obligated to take more money out of the debtor's account and turn it over to the sheriff at the end of the ten days? I looked at the statutes and came to the conclusion they didn't expressly cover this situation, so I couldn't tell the bank conclusively how to protect itself from a sheriff's claim that it hadn't paid over enough or its customer's claim that it had paid over too much. (This is not a theoretical concern on the part of the bank. If the bank pays too little to the sheriff, the law makes the bank responsible for the shortfall. If the bank pays too much to the sheriff, the law of conversion and unauthorized withdrawals makes the bank liable to its depositor for the overage.)

While looking into this further, I learned that the IRS specifies that, in response to a levy, the bank is to turn over the amount of the account balance when the levy is served. Banks and credit unions are familiar with the process and find to be clear. That is the reason SB 2170 is drafted as it is- to be consistent with IRS procedure. (I checked with the state tax department and learned that 1) it, too, has had problems with the current statutes, and 2) that it did not have a different system of its own.

With SB 2170 a bank or credit union that is served with a levy will be able to check its records, cut a check to the sheriff without delay and turn it over immediately or send it in once the ten day period has elapsed. Deposits after the day of the levy will be available to the debtor, unless there is another levy.

It appears to me that the problem we have identified is not likely to affect others who are served with a levy. It affects banks and credit unions because deposit account balances fluctuate and because with changes in the way people do their banking, automatic deposits are becoming more and more commonplace. Debtors also make deposits after an account levy in order to cover checks that were written, but not cleared before the levy.

In closing I want to emphasize one thing: When a bank is served with a sheriff's levy, the law is placing the bank in the middle of the sheriff and the debtor. This is not a pleasant place to be. We think the least the law can do is be clear about the exact responsibility of the bank (or credit union) under the circumstances. We think SB 2170 is a big step in that direction and hope that you will see it the same way.

Thank you.

Marilyn Foss, Lobbyist #76
North Dakota Bankers Association
701-355-4538
marilyn@ndba.com

TESTIMONY IN SUPPORT OF SENATE BILL NO. 2170

GREG TSCHIDER, MID-AMERICA CREDIT UNION
ASSOCIATION

Mr. Chairman and Members of the Senate Judiciary Committee, I am Greg Tschider and I represent the Mid-America Credit Union Association.

When a Sheriff levies on an account at a financial institution, the Sheriff normally does not take the account balance immediately. The financial institution freezes the account balance so that no withdrawals can occur. Under North Dakota Century Code Section 28-22-06, the debtor has ten (10) days after the Sheriff's service of levy to file the debtor's claim of exemption. If the debtor does not file a claim of exemptions claiming the account balance as exempt, then the Sheriff is entitled to the proceeds in the account.

But what happens if the debtor has made a deposit during the ten (10) day period? If the Sheriff has levied on a checking account, the debtor may desire to make an additional deposit so that the debtor's checks don't bounce. Or there may be an automatic deposit or there may be automatic withdrawals to cover car or house payments, insurance, or utilities which occur after the time of the levy. The law presently does not address those issues.

This bill provides that the levy only applies to the proceeds in the account at the time the levy occurs.

Thank you.

TESTIMONY OF MARILYN FOSS
ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION
SENATE BILL 2170

Chairman DeKrey, members of the House Judiciary Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. I appear before you today to urge **DO PASS** for SB 2170. Its purpose is to make North Dakota law clear about the amount of money that a depository institution or credit union is to pay over to a sheriff when, as part of the process of execution of a judgment, the sheriff levies against the judgment debtor's deposit account(s). The uncertainty about this is due to the fact that current law gives the sheriff the option of serving the levy, but declining to take possession of the money in the debtor's deposit accounts for the ten day period in which the debtor may claim statutory exemptions.

This issue was brought to my attention by a North Dakota bank which had been served with a sheriff's levy. The amount of the levy was greater than the debtor's account balance when the levy was served, so the bank cut a check for the amount of the account balance and attempted to turn it over to the sheriff's deputy. But the deputy refused to accept the check, telling the bank to hold onto the money for ten days before turning it over to the sheriff. Within that ten day period, the bank expected to receive an automatic deposit into the debtor's account. The bank wanted to know what it should do. Could the bank ignore the fact of the new deposit or was it obligated to take more money out of the debtor's account and also turn it over to the sheriff at the end of the ten days? I looked at the statutes and came to the conclusion they didn't expressly cover this situation, so I couldn't tell the bank conclusively how to protect itself from a sheriff's claim that it hadn't paid over enough or its customer's claim that it had paid over too much. (This is not a theoretical concern on the part of the bank. If the bank pays too little to the sheriff, the law makes the bank responsible for the shortfall. If the bank pays too much to the sheriff, the law of conversion and unauthorized withdrawals makes the bank liable to its depositor for the overage.)

While looking into this further, I learned that the IRS specifics that, in response to a levy, the bank is to turn over the amount of the account balance when the levy is served. Banks and credit unions are familiar with the process and find to be clear. That is the reason SB 2170 is drafted as it is -- to be consistent with IRS procedure. (I checked with the state tax department and learned that it too has had problems with the current statutes, that it does not have its own separate process for obtaining funds from a debtor's account, and that clarification of this point would be helpful.)

With SB 2170 a bank or credit union that is served with a levy will be able to check its records, cut a check to the sheriff without delay and turn it over immediately or send it in once the ten day period has elapsed. Deposits after the day of the levy will be available to the debtor, unless there is another levy.

The problem we have identified is not likely to affect others who are served with a levy. It affects banks and credit unions because deposit account balances fluctuate and because with changes in the way people do their banking, automatic deposits are becoming more and more commonplace. Debtors also make deposits after an account levy in order to cover checks that were written, but not cleared before the levy.

In closing I want to emphasize one thing: When a bank is served with a sheriff's levy, the law is placing the bank in the middle of the sheriff and the debtor. This is not a pleasant place to be. We think the least the law can do is be clear about the exact responsibility of the bank (or credit union) under the circumstances. We think SB 2170 is a big step in that direction and hope that you will see it the same way. Thank you.

Marilyn Foss, Lobbyist #76
North Dakota Bankers Association