

2013 SENATE JUDICIARY

SB 2140

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2140
1/21/2013
Job #17441

Conference Committee

Committee Clerk Signature



Minutes:

Written testimony attached

Relating to the service of the summons and notice of garnishment of earnings

Senator David Hogue - Chairman

Todd Kranda - ND Collectors Association - See written testimony.(1)

Senator Hogue - Asks if we they could serve it first class mail but also require them to do an affidavit of mailing that they in fact put this in the mailbox to the debtors.

Kranda - Replies that it isn't sent anywhere so it would be retained in the file. He explains the judgment process.

Senator Sitte - Asks if they can do a return receipt requested.

Kranda - Responds the problem is when they send a sheriff out for a second time for this person they are ducking and avoiding. He said they have talked to law enforcement before they introduced this bill and they say it is a headache.

Senator Armstrong - Asks what the time frame is for first garnishment.

Kim Granfor - ND Collector's Association - See written testimony (2). She explains the garnishment process. She speaks of the difficulty because of people in the western part of the state that live in their cars or are using the same post office box.

Joel Boon - Rotenburg Law Firm - He says they have this bill in Minnesota and it works.

Kim Schimetz - Procollect Services - See written testimony (3).

Opposition - none

Neutral - none

Close the hearing on 2140

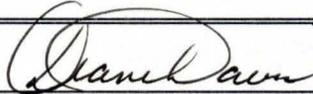
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2140
1/22/2013
Job #17542

Conference Committee

Committee Clerk Signature



Minutes:

Committee work

Senator Hogue outlines the bill to refresh everyone on it. Senator Lyson mentions that they can also serve the checking account even before going to an employer. He wonders that this will also take care of that. The committee discusses the cost to the person being garnished.

Senator Berry moves for a do pass
Senator Sitte second

Discussion

Committee continues to discuss costs involved and who gets paid. They also discuss that in the western part of the state some have no mailing address or are operating out of their vehicles.

Vote - 7 yes, 0 no

Motions passes

Senator Sitte will carry

Date: 1/22/13
Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2140**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Berry Seconded By S Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment S Sitte

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

REPORT OF STANDING COMMITTEE

SB 2140: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2140 was placed on the
Eleventh order on the calendar.

2013 HOUSE JUDICIARY

SB 2140

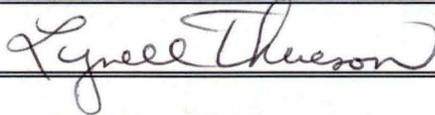
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2140
March 12, 2013
Job #19768

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to the service of the summons and notice of garnishment of earnings.

Minutes:

Testimony #1, 2, and 3, Amendment #4

Chairman Koppelman opened the hearing on SB 2140.

00:45 Todd Kranda: Attorney from **Kelsch Law Firm:** See Testimony #1. Representing the ND Collectors Association. Instead of serving personally on the defendant debtor that garnishee summons, allow us to serve by first class mail. We support this bill.

Representative Delmore: Are you assuring us that every one of these defendant has been served personally before this final garnishment comes out?

07:24 Todd Kranda: Yes. The law requires when you initiate a lawsuit to collect, you have a summons in point that has to be personally served by the rules of civil procedure.

08:03 Representative Delmore: Why are you not asking for a certified and signed letter on this notice just to cover your part and someone coming back and saying I didn't get it?

08:28 Todd Kranda: The main reason is that the defendants are shy and not easy to be found the second time around. It is their duty as a defendant debtor to represent themselves, to make appearances, and to keep their address current.

10:18 Representative Paur: Why do you serve? Isn't this just a notice by first class mail?

10:37 Todd Kranda: This is part of the garnishment documentation process. The notice of the summons going out to the employer is sent to the defendant debtor.

11:48 Representative Paur: So this is just a formality?

12:01 Todd Kranda: Just mailing to an address.

13:08 Representative Paur: You had the ability before to mail it, you could send it certified?

13:21 Todd Kranda: Yes. But there are issues with this as stated earlier in my testimony.

14:08 Representative Paur: You have no protection that you actually served the paper?

14:12 Todd Kranda: No. This is a fairness issue.

14:46 Representative Paur: Isn't refusal service a concerned service if it's certified?

14:51 Todd Kranda: There is a process where refusal service could be deemed but still have the problem with an additional cost for sending that out certified.

15:15 Representative Klemin: Are you required to establish anything to show proof of service for first class mail?

15:27 Todd Kranda: No.

16:13 Representative Klemin: You wouldn't use an affidavit of mailing? How would someone know if it was actually mailed?

16:21 Todd Kranda: You could document it in the file.

16:44 Representative Klemin: Do the other notices attached sent by first class mail have to be filed with the clerk?

16:57 Todd Kranda: No.

17:19 Representative Larson: You send out notices by first class mail and for the last step before garnishment of wages you also want to send this out by first class mail. There is no step where you are required to make sure that you actually have contacted that person?

17:50 Todd Kranda: Beyond the first process that is personally served, no.

18:15 Representative Larson: Where in this process at one point does someone actually have to speak to the person to let them know about this?

18:29 Todd Kranda: Not sure if we ever need to speak to the person.

18:43 Representative Larson: So the person has already appeared in court and knows what the next steps are going to be?

19:55 Todd Kranda: Could appear, could have defaulted.

20:32 Representative Larson: There are situations that come up where people won't be able to get their mail (referred to flooding).

21:14 Todd Kranda: The courts have a suspended period of time because of problems regarding the flood.

21:37 Representative Larson: After they have lost their wages then they'll be notified that that has happened?

21:44 Todd Kranda: That's true.

22:35 Representative Larson: You found the employers without the address?

22:47 Todd Kranda: We go to the Secretary of State's website.

23:30 Representative Paur: What percentage of this is currently done by mail?

23:43 Todd Kranda: Not sure.

23:51 Representative Paur: You said you could use certified restrictive? Would that be the preferred method?

23:58 Todd Kranda: The problem with that is you can try that by mail and if you spend your \$12-\$15.00 to do this and don't get it, that's a duplication of cost.

24:36 Chairman Koppelman: People are worried about money. How does this work and what is the cost to them? Was the form once something that required service and now its mail?

25:09 Todd Kranda: It doesn't cost anything to talk with their employer. Changes were done on the form.

30:56 Representative Klemin: All these costs of personal service get added to the amount that the person has to pay. Is that right?

31:29 Todd Kranda: Yes.

32:43: Kim Granfor, from the ND Collector's Association: See Testimony #2. Our goal is to help people get their bills paid. We are in support of SB 2140.

39:00: Representative Delmore: We want to make sure people's rights were protected.

40:06: Kim Granfor: Absolutely.

40:56: Representative Larson: Charging garnishes is adding to people's problems. They need to be contacted.

44:00 Kim Granfor: Man camps have P.O. boxes. We can't do a personal service to them but can get them a letter.

46:16 Michael For: from DCI Credit Services, Dickinson: The collection agencies are sympathetic and hardworking people who work with the consumer. Our agency takes 5-6% of the legal cases that are turned over to collection. The key is communication.

51:25 Representative Klemin: Wage garnishments aren't the only kind of garnishment that could be possible under this statute right?

51:41 Michael For: That's correct.

51:45 Representative Klemin: Garnishments can be served on a garnishee who is someone who might be holding money or property of the judgment debtor, is that correct?

51:58 Michael For: That's correct.

51:59 Representative Klemin: How do you do that then?

52:02 Michael For: We don't deal with that. Referred to Kim Granfor. We do an execution of the judgment.

52:55 Representative Klemin: You would have the sheriff go and attempt to collect that judgment based on what someone else might be holding as opposed to a garnishment?

53:09 Kim Granfor: Yes.

53:30 Representative Klemin: Do you know of any others in your association that do garnishment other than on wages?

53:38 Kim Granfor: Personally I do not.

53:57 Chairman Koppelman: In regard to the execution vs. garnishments, could you explain the difference on a bank account?

54:14 Kim Granfor: We would order a levy on the bank account.

54:41 Representative Delmore: How does the process work serving papers to a debtor or household member? Why is the post office not allowing a member to sign for the letter?

55:08 Kim Granfor: A process server can serve a household member.

55:31 Representative Delmore: Does it have to be direct or can they go through someone else to serve that person?

55:47 Kim Granfor: As long as you are over the age of 14.

Neutral Testimony:

56:15 Marilyn Foss, ND Bankers Association. See Testimony #3, Amendment #4. We are neutral on the bill but do propose an amendment to it, and if added, would be supported. Representing banks as the garnishee. We would like your help to solve a problem with how banks are receiving garnishment summons from collection agencies. This is an effort to protect the banks and credit unions. This amendment would help collection agencies as well as banks.

1:09:20 Representative Delmore: You would have a signed receipt or you sent back the disclosure that has been asked for?

1:09:32 Kim Granfor: You would have a signed receipt.

1:09:50 Representative Delmore: If we allow simple first class, no one will be signing for it so now you are saying that they must send certified mail to the bank?

1:09:59 Kim Granfor: The confusion is the bill in its original form. It's addressing correspondence between the collection agency and the person who actually owns the debt.

1:10:37 Representative Klemin: When is service complete?

1:10:47 Kim Granfor: When the bank mails its response.

1:10:51 Representative Klemin: Is there any other example you can give us of when service is complete depending upon when the party served responds to it?

1:11:02 Kim Granfor: This was unique and the situation has developed where collections are being done in greater volumes and involving banks, credit unions and employers.

1:11:36 Representative Hogan: Can you talk about the emergency measure?

1:11:45 Kim Granfor: Because of the conflict and the volume they are jeopardizing themselves under the privacy laws by it. We published an article in our legal update to alert banks to this as a problem.

1:12:29 Representative Koppelman: Are garnishments the norm?

1:12:48 Kim Granfor: In asking officers from different banks as to how many garnishments do you get, there are lots.

Hearing closed.

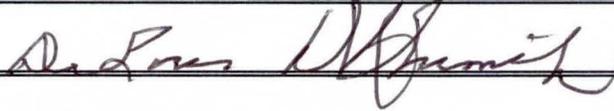
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2140
March 12, 2013
Job # 19803

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the service of the summons and notice of garnishment of earnings.

Minutes:

Testimony #5

Chairman K. Koppelman reconvened the hearing from this morning on SB 2140 having heard testimony in support and called for opposition and this is neutral testimony.

Greg Tschider, Credit Union Association of the Dakotas: We are in support of the amendment that was presented to the committee this morning by Marilyn Foss. The problem we are experiencing is that first sentence where it talks about the summons and notice and notice shall be served upon the garnishee in the same manner as other summons in that court of record; which to me means you follow the rules of civil procedure. If the collection agencies would simply follow the rules of civil procedure this amendment that has been proposed this morning is not necessary. The problem is attorneys being attorneys sometimes don't necessarily agree on things. Apparently some legal counsel feels that just sending a certified mail to the garnishee is sufficient and it is unless we are dealing with an association, corporation, partnership etc. The rules of civil procedure are very specific. It says you serve these entities in a certain manner. Addressing an envelope that says ABC credit union or ABC bank and shipping it out is not in my opinion valid legal process. For financial situations it is because we have been singled out by legislation under the privacy rules that basically says we can only release personnel financial information to outside people if there has been valid service. So the question is what is valid service for privacy issues? If you violate somebodys right to privacy under North Dakota law you get to just open up the checkbook. If we have a garnishment the process is when that comes in we have to freeze the money that is in their checking or savings accounts. If you freeze it all the checks the consumer has written are bounced. If the consumer is upset and comes back and says you have not validly served you should not have frozen our account. So we are caught in the middle. When you have people working that get the mail someone signed the certified mail and some attorneys are saying that is valid service. We are saying no under the rules of civil procedure it is supposed to be directed to specific people. I have talked to a couple individuals who testified this morning and they indicated with their collection agencies they are doing it correctly. They are going to the Secretary of State's website; they find out who the registered agent is and that who they address their mail to. The problem is we are experiencing serious problems with other

groups that don't want to do it that way. The amendment is there to basically say OK if you want to do it your way and just send it to the institution that will be fine as long as we submit the disclosure back to you. The Supreme Court of North Dakota has decided that proper service is when you are serving an entity you do it this way because that is the way it is written. If we don't follow the correct rules and do a proper garnishment disclosure the penalty for the bank and credit union is we could end up paying the whole bill, plus there is a \$5,000 judgment and there is only \$500 in the account so under the law we could get hit for the \$5,000, which doesn't make us real excited. We don't object to the proposal; we are just requesting some additional language to say if you are going to do it a certain way here are the rules or go back and do it the right way to begin with.

Rep. Klemin: I think the way this amendment is worded this gives the bank and credit union an indefinite time within which to respond. That seems contrary to all our other methods of service and how your account service. Does anyone else do it this way?

Greg Tschider: We are saying that the process of service is not correct in the first place.

Rep. Klemin: I am looking specifically to the language of the amendment. That says you have to serve the bank or credit union and get a signed receipt and then service is not complete until the bank or credit union responds. That gives them an indefinite time within which to respond. Isn't that right?

Greg Tschider: That is correct. The situation is if the plaintiff is garnishing does it correctly in the first place where they follow the rules of civil procedure and serve it to a specific officer or the registered agent this does not come into play. If you do it according to sentence one in this section then service is complete because you have followed the rules of civil procedure. If you do not follow these rules you have the second option. We are saying it is fine to send an envelope that is addressed to ABS financial institution. If you do it that way you run the risk that the bank or credit unions just doesn't respond. If you haven't gotten a response back in 15 days or 30 days then you go back and do it the way the rules of civil procedure say you are supposed to do it. We have one large entity that just mails the stuff out and they address it to the garnishment department. We don't have a garnishment department at any of our financial institutions in North Dakota that I know of.

Rep. Klemin: Isn't it right to object to the form of service and let the court decide? Thereafter that party that has been doing it wrong won't be able to do that again.

Greg Tschider: But we don't want to spend the money on attorney fees and time. We want some perimeters put on these things.

Rep. Klemin: Each garnishment notice sent; you would have to pay a \$25 fee?

Greg Tschider: That is correct. There is a \$25 disclosure fee that has to be paid. It is there so that the employer or the garnishee is reimbursed for their time that it takes them to freeze the funds; fill out the disclosure form etc.

Rep. Klemin: So if a collection agency sends 50 of these a week he is paying out \$1250 week in disclosure fees. I don't know why they just don't do the levy process.

Greg Tschider: I handle garnishments and executions and maybe executions aren't good words to use. We haven't executed anybody. I don't know why they go through the garnishment in the first place. The simplest is to just get an execution and send it to the sheriff and have the sheriff levy on the account. Then you just give the sheriff the money and it is the sheriff's responsibility.

Chairman K. Koppelman: Why are you getting all these garnishments? You are not talking about people who work for the bank. You are talking about money that is in a credit union or a bank in an account owned by someone who owes money. How does a garnishment work to attached that versus an execution?

Greg Tschider: With an execution the sheriff comes to the door and says I have this levy; whatever money is in the checking accounts or savings accounts I want it. With a garnishment they send out to the financial institution they also include all these interrogatories and in them they ask for all this personal information. So they use the garnishment process as a way of discovery and trying to find out other information which might lead them to other assets that they can pursue to collect on.

Chairman K. Koppelman: Why was this not brought in if it has been an ongoing problem that you are dealing with as a separate bill or why was this not addressed in the Senate side.

Greg Tschider: I missed it.

Chairman K. Koppelman: Does this give banks a unique protection? We have heard a lot of testimony on the bill about people questioning if first class mail is enough, might it get lost in the mail, and might people not get it and are they getting notice and the answer we are getting from the folks sending that mail is yes they are going to get it. Yet you are saying an institution as sophisticated as a financial institution might end up in file thirteen or a folder somewhere. Wouldn't that be the case with any business and you are serving notice for any kind of legal action are we being asked to do something that is unique for financial institutions in regard to service.

Greg Tschider: When it says service is going to occur when it is put in the mail box I have a real personal problem with that. On behalf of my clients I want to be sure that is changed to actual receipt. Discussed problems with mail delivery.

Rep. Delmore: If someone's account is garnished it always frozen so I have no access to those funds whatsoever. Is that what I am understanding you to say?

Greg Tschider: That is correct. Once the garnishment is received we are required to freeze the money. That is different from wages obviously.

Chairman K. Koppelman: On the day it is received you take what is there. Garnishment is received; it is frozen, the creditor apparently has access to it; what about future deposits? How long does it stay in affect?

Greg Tschider: It is only in affect once for none earnings. For earnings you can it will last for 270 days.

Rep. Klemin: When a bank receives an execution of the judgment they just can't turn the money over immediately. It has to be held 10 days either by the bank or sheriff so the debtor can file a claim for exemptions.

Greg Tschider: That is correct. You give the money to the sheriff and he is required to hold it because the debtor has a right to claim exemptions. The sheriff is not involved in the garnishment. The employer will hold the money.

Chairman K. Koppelman: Unless it is a garnishment for wages for one of your employees you are dealing with the garnishment of their assets at the bank or credit union, correct? If the sheriff isn't involved in the transaction like he would be with an execution; what happens when you receive that garnishment notice; does the bank hold the money for 10 days and then submit it to the creditor?

Greg Tschider: That is up to the financial institution as to how they are going to handle it. Most of the garnishment language states that you are required to freeze the money and then the plaintive will get a levy and ask the sheriff to go get the money.

Aaron Webb, Assistant Commissioner of the Department of Financial Institutions: I will be presenting the commissioners testimony since he is currently in a budget hearing right now. (See testimony #5) 23:00-24:08

Chairman K. Koppelman: How long ago was your department aware of the amendment?

Aaron Webb: Probably a couple of weeks ago.

Chairman K. Koppelman: Obviously the Senate has not had an opportunity to look at this at all. It is almost another bill. You think this would be useful for financial institutions so that is why you are here?

Aaron Webb: Yes to provide some clarity as to the meaning of the term.

Rep. Klemin: Service is not complete on the garnishment summons until the bank or credit union responses to the service which could be an indefinite period of time. How could that constitute a clear standard for a valid legal process?

Aaron Webb: We are just looking for clarity as to the standard to be applied to banks and credit unions. I was not here for the hearing this morning so I can't weigh in on that.

Rep. Klemin: You have seen the language on the amendment and that says service is not complete until the bank responds, which could be never. How is that a clearer standard for a valid legal process?

Aaron Webb: It provides more clarity than we have right now, but we are left with the questions of what constitutes valid legal process.

Rep. Klemin: In your position with the Department of Financial Institutions couldn't you have requested an Attorney General's opinion to what constitutes legal process or get some advice from the procedural committee at the Supreme Court that does the rules?

Aaron Webb: We could request an Attorney General's opinion and so can the legislature too.

Kim Granfor, North Dakota Collections Association: I was asked by Rep. Klemin to do quick survey on what our agencies are doing in the state. I was able to reach ten of them and one does garnishments of bank accounts. No one else does it. Everyone else does levy. The one that does it is here and you can ask those questions. We are opposed to the second part of the proposed amendment dealing with the garnishment summons. I am afraid if a garnishment goes to a bank and they don't fill it out then it is not valid so I am afraid what is going to happen with our employers that aren't banks they will say there is a section of law that says a bank doesn't have to fill out a disclosure why do we and we will be here again discussing another garnishment issue.

Chairman K. Koppelman: This morning Mr. Kranda said your organizations were neutral on the amendments and now you are against them. Am I understanding that correctly?

Kim Granfor: We found out about this minutes before coming in here and as it was being explained we thought we did not care. It was the second part we didn't understand prior to coming in here.

Rep. Delmore: How many were you able to reach?

Kim Granfor: We have 13 that are members.

Chairman K. Koppelman: Do you have any idea how many collection agencies there are and do they need a special designation or license to do that kind of work?

Kim Granfor: Most of the ones that do collection work are licensed. The rest are just doing it for a client.

Chairman K. Koppelman: I am talking about a law firm that might be a law firm that operates as a collection agency?

Kim Granfor: Yes some of them are.

Rep. Larson: So currently under our law before this change out of state collection agencies must have somebody contacted, but anybody out of state then also if we change this all they have to do is write a letter. Is that correct?

Kim Granfor: Any agency that is licensed in the state of North Dakota has to follow the same North Dakota procedures.

Brittany Bornemann, Attorney: am here to speak against the portion of the amendment regarding the banks submitting the disclosure forms. Every bank or entity, bank or credit union could avoid actually being sued by simply not returning the disclosure even though the other forms are appropriate and complete.

Rep. Klemin: When you serve a garnishment to a bank or credit union could you walk us through actually how you do it?

Brittany Bornemann: By certified mail address the banks copy to the garnishment division and send it by certified mail and they can then tract when it is received. Right now I don't believe we are doing it by restricted but I think it is something we are going to be changing shortly. In the event the bank doesn't respond my policy we would not be able to proceed.

Rep. Klemin: Why is it you can't get judgment by doing it without personal service in another manner?

Brittany Bornemann: The statue specifically touched forth the force service which I think indicates personnel service and one of the alternatives to the sheriff knocking on your door and certified mail.

Rep. Klemin: I thought I heard you say if you do it by the way you mentioned; certified mail to the garnishment division and they don't respond then you still can't get a judgment against the bank unless you do service in some other manner?

Brittany Bornemann: I wouldn't because of the fact that it wasn't restricted delivery. That is my practice.

Rep. Klemin: If you did do a restricted delivery would you have to name a specific person at the bank?

Brittany Bornemann: I can check. I think as long as they accept service in that manner I think that is sufficient.

Rep. Klemin: We have restricted to somebody?

Brittany Bornemann: I certainly can check it out. Generally what I do is have the sheriff contact someone personally at the bank.

Rep. Klemin: So if we said in this bill if it was serviced by mail it has to be certified mail restricted delivery to a named person at the bank or credit union would you have a problem with that?

Brittany Bornemann: No I don't think that would be a problem. The problem comes in when you add the language about the credit union or bank being able to not be subject to garnish unless they respond. Essentially that part puts them in the position of the judge because it gives them an opportunity to say whether or not they have been served appropriately. I think that is where the concern comes in.

Chairman K. Koppelman: Your current position is that service is completed when you send it to the attention of a nonexistent department at a bank; which we have heard testimony that there isn't a garnishment division at most banks or credit unions. You are saying service is complete when you aren't sending it to an individual; is that right?

Brittany Bornemann: That essentially is allowing the bank to make that determination. If they don't respond that is when things need to move forward. Generally I won't move forward unless it has been there has been a judgment against the garnishee.

Rep. Delmore: How many garnishments do you do in a typical month?

Brittany Bornemann: It varies between twenty and sixty a week?

Rep. Paur: The best solution to this is not to go with the first class mail; then all the notices would have to go in their original requirement. It must work. They elect the personal servicing for banks and for the individuals and it works now. It costs you an extra \$10 or whatever.

Brittany Bornemann: The role that the North Dakota Creditor's Association initially set forth this proposal is to only address service to the defendant; not to the garnishee. Service upon the garnishee still needed to be by personal service. The service upon the defendant would be by roll call service which is by first class mail.

Chairman K. Koppelman: Why does your firm use garnishment process versus execution which appears to be the normal elsewhere?

Brittany Bornemann: It reduces the amount of work that the sheriff and does reduce the court costs.

Chairman K. Koppelman: I am not talking about the bill; I am talking about the amendment. We were told if your firm is one of the few if not the only one that serves garnishment notices on financial institutions to abstract money from accounts of debtors and most of the others use the process of execution. Why do you choose that route which is appears too unusual?

Brittany Bornemann: The debtor twenty days to claim injunctions from the day that they are served and it does reduce the amount of work that the sheriff has to do because the

sheriff isn't the one going out and levying on the property. It keeps that out of work that the sheriff and fees and things like that that is attributed as well.

Chairman K. Koppelman: There are also a number of questions asked of the institution, organization or business being served with the garnishment requirements versus an execution where the sheriff comes and basically seizes the money that is there. One of the concerns that were expressed was that some of the information that was being requested is also protected under privacy laws elsewhere so the financial institutions are being put in a box that way because they are not able to provide what you are demanding they do.

Brittany Bornemann: No we haven't and actually when we have served a garnishment and it doesn't respond or claim exemptions I still have to ask the court for a couple debt executions and again send certified mail to a bank; but the sheriff isn't the one having to go out there and do that. The privacy issue for garnishment the questions we ask are whether or not they have a right of set offs and how much is in there and there is not a lot of other information asked for. We actually provide the identification information so the debtor can identify that account. Does that help?

Rep. Klemin: The form that you send with the questions is it derogatory. You can do that regardless of what form of personnel service you use right?

Brittany Bornemann: Yes

Rep. Klemin: Just to confirm what I thought you told me before is that if we said in this bill that if you are going to do service by mail that if you are required to do certified mail; restricted delivery to a named person at the bank that would be OK with you.

Brittany Bornemann: Yes is correct.

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2140
March 18, 2013
Job #20104

Conference Committee

Committee Clerk Signature

Carmen Heckle

Explanation or reason for introduction of bill/resolution:

A bill relating to the service of the summons and notice of garnishment of earnings.

Minutes:

Started at time mark 1:37:15 on recording 20104

Chairman Koppelman opened SB 2140 for committee work.

Vice Chairman Larry Klemin: This is a bill on garnishment in which the collectors association wanted to add some language on line 13 about being served by first class mail. Then the Credit Union and bankers and Department of financial institutions came in to say there should be an amendment relating to service because of an issue that had arisen relating the manner in which services was being made on banks and credit unions. The banks and credit unions came back with revision of the amendment they had. They original had an amendment that basically gave them an indefinite extension time to respond. This one doesn't do that it says that if they are going to serve by mail on a bank then it has to be served on a specifically named person or on a registered agent. In that has to be certified mail with restricted delivery and return receipt. That is what this amendment says except there is also an emergency clause apparently to take care of a problem they are having right now one collecting agency. There is a law firm sending out dozens of these every week. I did get an email from Kim Granfor they wouldn't oppose these although they didn't think it was necessary.

Vice Chairman Larry Klemin: Made a motion on the amendment.

Rep. Vicky Steiner: Second the motion.

Rep. Nathan Toman: The original bill didn't deal with banks, is that correct?

Vice Chairman Larry Klemin: No, this is something new that came up since the time the bill was in the Senate.

Chairman Kim Koppelman: There was some question for germaneness and I think that was for garnishments prior to the hearing the other day I probably wouldn't have thought that had nothing to do with banks either.

Vote voice carried.

Vice Chairman Larry Klemin: Made a motion for do pass as amended.

Rep. Vicky Steiner: Second the motion.

Discussion was held.

Vote 7-5-2

Vice Chairman Larry Klemin: Will carry the resolution to the floor.

End of recording 20104

YR
3/18/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2140

Page 1, line 2, after "earnings" insert "; and to declare an emergency"

Page 1, after line 6, insert:

"1."

Page 1, line 9, overstrike "The" and insert immediately thereafter:

"2. Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.

3. A"

Page 1, after line 15, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2140

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.6469.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote - carried

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2140

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.469.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman		/	Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt		/			
Rep. Karen Karls	/				
Rep. William Kretschmar					
Rep. Diane Larson		/			
Rep. Andrew Maragos	/				
Rep. Gary Paur		/			
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

SB 2140: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). SB 2140 was placed on the Sixth order on the calendar.

Page 1, line 2, after "earnings" insert "; and to declare an emergency"

Page 1, after line 6, insert:

"1."

Page 1, line 9, overstrike "The" and insert immediately thereafter:

"2. Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.

3. A"

Page 1, after line 15, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2013 TESTIMONY

SB 2140

**TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2140**

**SENATE JUDICIARY COMMITTEE
JANUARY 21, 2013**

Good morning Chairman Hogue and members of the Senate Judiciary Committee, my name is Todd D. Kranda. I am an attorney at the Kelsch Law Firm in Mandan and I am representing the North Dakota Collectors Association (NDCA) which association includes several North Dakota owned collection agencies who assist with the recover of debts owed to a creditor.

SB 2140 has a single change shown at line 13 which allows service of a garnishee summons and notice to be completed on the debtor defendant by first class mail.

Currently personal service is required even though the debtor defendant was previously served personally when the Summons and Complaint were issued. At this stage in the legal process the debtor defendant is already aware of the legal proceedings, a formal judgment has been entered by a court and the debtor defendant should only need to be sent by first class mail the additional court documentation such as the garnishment material. In fact, first class mail is already an option allowed for the notice before garnishment as provided for in Section 32-09.1-04. Copy attached. Likewise, SB 2140 would allow first class mail as an option for service of the garnishee summons and notice on the debtor defendant.

Members of NDCA are here to testify in support of SB 2140 so I will end my formal testimony at this point and stand for any questions and simply conclude with a request that you give a favorable **Do Pass** recommendation to SB 2140.

①

**CHAPTER 32-09.1
GARNISHMENT**

32-09.1-04. Notice before garnishment of earnings - Notice of renewal of garnishment of earnings.

1. At least ten days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. **The notice must be served personally or by first-class mail.** Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: _____ Date: _____
Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a list signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$ _____.

Judgment Creditor
Address

2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on wages under section 32-09.1-21, at least ten days but no more than twenty days before the expiration of the continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages under section 32-09.1-21. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: _____ Date: _____
Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer without any further court proceedings or notice to you. This action is a renewal of the current garnishment order for this case. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a list signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$ _____.

Judgment Creditor
Address

3. In addition to the notice required under subsection 1 or 2, the creditor shall serve a garnishment debtor's list in substantially the following form under the caption of the case:

To: Garnishee
I, under penalty of perjury, _____ (garnishment debtor) certify and affirm that the following persons are my dependents and they reside in my household and I claim the garnishment exemptions as provided by NDCC 32-09.1-03(2):

Name	Social Security Number
------	------------------------

_____	_____
_____	_____
_____	_____

Dated this _____ day of _____, _____.

Garnishment Debtor.



North Dakota Collectors Association

an association of collection specialists

**TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2140
Senate Judiciary
January 21, 2013**

Chairman Hogue and members of the Senate Judiciary Committee- My name is Kim Granfor and I represent the North Dakota Collector's Association.

SB Bill 2140 makes a simple change to section 32-09.1-08 of the North Dakota Century Code by adding six words "or served by first class mail". This section of the NDCC deals with garnishment of wages.

There are many steps that happen prior to litigation including numerous calls and letters asking for payment toward that debt. This includes the original creditor having to send out numerous notices and calls to attempt to recoup the money owed to them. When they are unable to get paid, they turn the account over to a professional collection agency. The collection agency then will make phone calls and send letters in an attempt to collect the debt. When this fails, legal action is taken against the debtor.

When a debtor refuses to pay voluntarily litigation is brought. The following are the steps in the legal process:

- 1) Summons and complaint is personally served on the debtor by:
 - a. Process server or sheriff will serve the papers upon the debtor or a household member can also be served for the debtor
 - b. Restricted certified mail or
 - c. By Publication after numerous attempts by the above (and expense)
- 2) Judgment
 - a. Mailed by *first class mail*
- 3) Notice of Entry of Judgment
 - a. Mailed by *first class mail*
- 4) Notice Prior to Garnishment
 - a. Mailed by *first class mail*
- 5) Garnishment
 - a. Current law requires a sheriff or process server to personally serve the debtor and employer by personal service.
- 6) Execution to release the garnishment funds
 - a. By Certified Delivery or
 - b. By personal service

After the Summons and complaint is served on the debtor, the Judgment, the entry of Judgment and the Notice Prior to Garnishment are all sent to the debtor by *first class mail*. Then we get to Garnishment and the brakes seem to be applied. Although we can do a garnishment by certified restricted delivery, the majority of the time the debtor is not going to sign for this. In addition, the post office will only make three attempts to get it served.

Restricted certified delivery is very difficult and not always done correctly. If the post office lets a household member sign for it, the garnishment still cannot proceed.

The law currently requires that the debtor is served the Garnishment summons by personal service only. This would not be a problem if every debtor worked in a building that the sheriff or process server could serve the garnishment papers at. But, there are numerous debtors working in the oil fields who move from site to site, there are truckers that their "office" is their truck moving down the highway, there are sales people who work out of their cars and other types of jobs where people are not accessible at a building. Is it right that due to the current law of personal service only for the Garnishment summons, that these types of workers are getting away with not paying their bills because we cannot get the papers served upon them?

We have debtors that work in the oil field that are making \$30 an hour that are capable of paying their bills, yet chose to not pay. We know where they work, we have gotten the judgment through the courts, but now we are stuck because we cannot get personal service upon the debtor.

If we can change this section of law to allow the garnishment papers to be served by first class mail, we can proceed with the garnishment of wages. They will still have all the same rights that they would have if the sheriff's office/process server had been able to serve the papers upon them.

The law needs to be updated to reflect our changing demographics. Today ND has a new look, with "man camps", more transient people, more people living in temporary housing. They are using ND healthcare facilities and local business. They are receiving services and materials and not paying for them, yet they are employed in North Dakota.

In addition, the current law creates a heavier burden on already overtaxed sheriff's departments, who are already battling a rising crime rate and have their own staffing issues.

To summarize:

- 1) The debtor owes the money and should have to pay
- 2) The current requirement of personal service is unnecessary as the Court has already determined that the debt is owed.
- 3) There is a cost savings to all parties:
 - a. By adding "by first class mail" the bill will be paid faster, which pays the original creditor quicker,
 - b. The debtor also saves money as they will not be assessed a sheriff fee or process server fee for serving the garnishment summons.

I request that you give a favorable DO PASS recommendation to SB 2140

SENATE BILL NO. 2140
TESTIMONY IN SUPPORT
Kathy Schimetz
Procollect Services

Chairman Hogue and members of the Senate Judiciary Committee-

I am testifying individually and as owner of Procollect Services.

Kim and the North Dakota Collector's Association have my full support for Senate Bill 2140. The following are some of my reasons for supporting this bill:

1. Sheriff offices are extremely overburdened. We recently had all of our papers that needed to be served upon debtors returned to us from one of the sheriff's offices, some of which were garnishment summons. The sheriff's office had a large share of these papers for 90 days or more and due to the over burdening of the sheriff's department they did not have time to serve them, because they are overworked and short of staff.
2. Process servers are difficult to find, especially in small communities. A great number of the process servers do process serving as a second job. It can be quite costly which is added onto the debtor's bill. Most small town law enforcement will not serve papers because they either do not have the time, the staff or the City Counsel does not want them serving papers to their residents.
3. Our North Dakota businesses need to recoup the income they have lost through their bad debt as quickly as possible. The current law states that we have to have personal service upon the debtor and because it is taking so long to get them served (if ever), our clients are not receiving their monies as quickly as they would if the law allowed the debtor to be served by first class mail.
4. In some instances unrecovered bad debt is putting a strain on our businesses, including our medical facilities.

I request that you give a favorable DO PASS recommendation to Senate Bill 2140.

/

**TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2140**

**HOUSE JUDICIARY COMMITTEE
MARCH 12, 2013**

Good morning Chairman Koppelman and members of the House Judiciary Committee, my name is Todd D. Kranda. I am an attorney at the Kelsch Law Firm in Mandan and I am representing the North Dakota Collectors Association (NDCA) which association includes several North Dakota owned collection agencies who assist with the recover of debts owed to a creditor.

SB 2140 has a single change shown at line 13 which allows service of a garnishee summons and notice to be completed on the debtor defendant by first class mail.

Currently, personal service is required even though the debtor defendant was previously served personally when the Summons and Complaint were issued. At this stage in the legal process the debtor defendant is already aware of the legal proceedings, a formal judgment has been entered by a court and the debtor defendant should only need to be sent by first class mail the additional court documentation such as the garnishment material. In fact, first class mail is already an option allowed for the notice before garnishment as provided for in Section 32-09.1-04. Copy attached. Likewise, SB 2140 would allow first class mail as an option for service of the garnishee summons and notice on the debtor defendant. The employer, garnishee, still receives personal service.

Members of NDCA are here to testify in support of SB 2140 so I will end my formal testimony at this point and stand for any questions and simply conclude with a request that you give a favorable **Do Pass** recommendation to SB 2140.



North Dakota Collectors Association

2

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**TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2140
House Judiciary
March 12, 2013**

Chairman Koppelman and members of the House Judiciary Committee- My name is Kim Granfor and I represent the North Dakota Collector's Association.

SB Bill 2140 makes a simple change to section 32-09.1-08 of the North Dakota Century Code by adding six words "or served by first class mail". This section of the NDCC deals with garnishment of wages.

There are many steps that happen prior to litigation including numerous calls and letters asking for payment toward that debt. This includes the original creditor having to send out numerous notices and calls to attempt to recoup the money owed to them. When they are unable to get paid, they turn the account over to a professional collection agency. The collection agency then will make phone calls and send letters in an attempt to collect the debt. When this fails, legal action is taken against the debtor.

When a debtor refuses to pay voluntarily litigation is brought. The following are the steps in the legal process:

- 1) Summons and complaint is personally served on the debtor by:
 - a. Process server or sheriff will serve the papers upon the debtor or a household member can also be served for the debtor
 - b. Restricted certified mail or
 - c. By Publication after numerous attempts by the above (and expense)
- 2) Judgment
 - a. Mailed by *first class mail*
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- 4) Notice Prior to Garnishment
 - a. Mailed by *first class mail*
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 - a. Current law requires a sheriff or process server to personally serve the debtor and employer by personal service.
- 6) Execution to release the garnishment funds
 - a. By Certified Delivery or
 - b. By personal service

After the Summons and complaint is served on the debtor, the Judgment, the entry of Judgment and the Notice Prior to Garnishment are all sent to the debtor by *first class mail*. Then we get to Garnishment and the brakes seem to be applied. Although we can do a garnishment by certified restricted delivery, the majority of the time the debtor is not going to sign for this. In addition, the post office will only make three attempts to get it served.



North Dakota Collectors Association

an association of collection specialists

Restricted certified delivery is very difficult and not always done correctly. If the post office lets a household member sign for it, the garnishment still cannot proceed.

The law currently requires that the debtor is served the Garnishment summons by personal service only. This would not be a problem if every debtor worked in a building that the sheriff or process server could serve the garnishment papers at. But, there are numerous debtors working in the oil fields who move from site to site, there are truckers that their "office" is their truck moving down the highway, there are sales people who work out of their cars and other types of jobs where people are not accessible at a building. Is it right that due to the current law of personal service only for the Garnishment summons, that these types of workers are getting away with not paying their bills because we cannot get the papers served upon them?

We have debtors that work in the oil field that are making \$30 an hour that are capable of paying their bills, yet chose to not pay. We know where they work, we have gotten the judgment through the courts, but now we are stuck because we cannot get personal service upon the debtor.

If we can change this section of law to allow the garnishment papers to be served by first class mail, we can proceed with the garnishment of wages. They will still have all the same rights that they would have if the sheriff's office/process server had been able to serve the papers upon them.

The law needs to be updated to reflect our changing demographics. Today ND has a new look, with "man camps", more transient people, more people living in temporary housing. They are using ND healthcare facilities and local business. They are receiving services and materials and not paying for them, yet they are employed in North Dakota.

In addition, the current law creates a heavier burden on already overtaxed sheriff's departments, who are already battling a rising crime rate and have their own staffing issues.

To summarize:

- 1) The debtor owes the money and should have to pay
- 2) The current requirement of personal service is unnecessary as the Court has already determined that the debt is owed.
- 3) There is a cost savings to all parties:
 - a. By adding "by first class mail" the bill will be paid faster, which pays the original creditor quicker,
 - b. The debtor also saves money as they will not be assessed a sheriff fee or process server fee for serving the garnishment summons.

I request that you give a favorable DO PASS recommendation to SB 2140

3-12-13

3

S.B. 2140

TESTIMONY OF MARILYN FOSS

Mr. Chairman, members of the Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I appear this morning to propose an amendment to this bill. In essence I am asking you to help solve a problem with how banks are receiving garnishment summons from collection agencies. The problem came to my attention after the bill was heard in the Senate.

As you know, judgment creditors use garnishment to collect debts that are owed by judgment debtors. But the process of collecting debts by garnishment means that third parties, such as an employer or bank or credit union, are the ones being "summoned" to pay over money the creditor, often a collection agency. Employers, banks and credit unions (and possibly others) are involved in the garnishment process because they owe money to the actual debtor in the form of unpaid wages, or deposits. The creditor wants to find out about and obtain that money from the employer or bank or credit union and to apply it on the employee's or depositor's debt.

To bring the bank into the process, a creditor is required to personally serve a summons and garnishment disclosure on the "garnishee" bank as provided by the North Dakota Rules of Civil Procedure. If the garnishment summons and disclosure statement is validly served, the bank must respond to it by completing the garnishment disclosure under oath and returning it to the creditor within 20 days. If the bank does not do so, the bank can be held liable for the amount owed to the creditor by the bank's depositor. If the garnishment summons has not been validly served, it has no legal effect and is void.

The problem is that banks and credit unions and collections agencies disagree about what is required for valid service under the applicable rules. Most garnishment summons are served by

certified mail. Bank lawyers are telling their banks that valid service by certified mail requires the envelope to be directed to a named "officer, director, superintendent or managing or general agent, or partner, or associate, or to an agent authorized by appointment or by law to receive service of process", or, to "one who has acted as an agent for [the bank] with respect to the matter". Lawyers for collection agencies disagree, contending that all they need to do is to send a certified letter that is addressed to the bank, or "Garnishment Department" or "Agent" without designating a specific individual.

The situation has placed banks and credit unions which are not otherwise involved in the collection case between the collection agency and judgment debtor in an untenable situation because banks and credit unions are not allowed to disclose customer information without following the privacy laws that apply specially to banks and credit unions. And, those laws, as set forth in N.D. Cent. Code Chapter 6-08.1 state specifically that there must be "valid legal process" in order for a bank to be allowed to disclose customer information. If there isn't "valid legal process" and the bank or credit union discloses information set forth on the garnishment disclosure, then the bank's customer/depositor can sue the bank for statutory damages and other money damages as well.

Having learned of the problem, I discussed it with banks. Honestly, they don't want to fight with collection agencies about this. But, they also are not experts about what constitutes valid service of a garnishment summons and disclosure statement and they don't want to be sued for responding to a legal document that says on its face it must be answered in twenty days. And, they don't want to have to ask a lawyer to review every garnishment summons for proper service because there are lots and lots of them being sent to banks. One community bank told me the bank receives 50 or more garnishments in a week.

The amendment I am proposing would allow the collection agency to continue to send garnishment summons by certified mail to a bank or credit union and to have any employee sign for the letter. And, if the bank or credit union responds, the process would be deemed to be valid legal process. My intention is to allow the process to move, but to protect the bank too. The reason for the rule requiring service on an entity to be to a specific individual officer, director, etc. is to make sure that the recipient of the legal document will know that it is important and where it should be directed and that the document is not "lost" in the mailroom or central mail processing facility. If the bank has responded, we know that has occurred. If the bank does not respond, the collection agency may re-serve the bank and name a specific officer or director. Honestly, I would expect that to occur only rarely, but it may occur.

This amendment is intended to solve a problem that has been brought to light by the unprecedented volume of garnishments banks are receiving and to avoid the expense and delay that will occur if banks return garnishments or, acting in good faith, respond when there is a question about valid service. Again, banks and credit unions are not involved in the underlying lawsuit and should not be jeopardized by a garnishment process that is ever more automatic and mechanized. We think the amendment would help collection agencies as well as banks and urge you to support it. Thank you.

Marilyn Foss

3-12-17

4

PROPOSED AMENDMENT TO S.B. 2140

Page 1, line 7, after "to" insert "a"

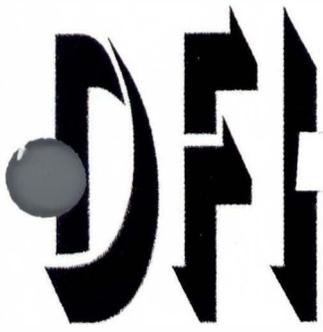
Page 1, line 7, after "defendant" insert "other than a bank or credit union"

Page 1, after line 8, insert "Delivery of a garnishment summons and disclosure statement to a bank or credit union by any form of mail or third party commercial delivery must be considered to be service by valid legal process if the sender received a receipt signed by an employee of the bank or credit union and the bank or credit union responds to the garnishment summons by disclosing the information set forth on the disclosure statement."

Page 1, after line 15, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly



State of North Dakota
**DEPARTMENT
of FINANCIAL
INSTITUTIONS**

5

Robert J. Entringer
Commissioner

Aaron K. Webb
Assistant Commissioner

I. Lise Kruse
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 12, 2013
TO: House Judiciary Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Amendment to SB 2140

Chairman Koppelman and members of the House Judiciary Committee, thank you for the opportunity to testify in support of the proposed amendment to SB 2140.

As you likely know bank and credit unions are bound by the North Dakota privacy statutes found in Chapter 6-08.1 of the North Dakota Century Code; banks and credit unions are prohibited from disclosing customer information except in certain instances including "To a person other than a governmental agency or law enforcement agency pursuant to valid legal process" (Emphasis added). If there is a question as to the meaning of valid legal process, it is possible that the bank or credit union

could be deemed to have improperly disclosed customer information, and therefore be held liable for damages under chapter 6-08.1-08.

Mr. Chairman and members of the committee I urge you to adopt the proposed amendment in order to provide a clear standard relating to when a garnishment summons served on a bank or credit union will be deemed to be valid legal process.

Mr. Chairman, thank you for the opportunity to provide this testimony, and I would be happy to answer any questions the Committee may have.