

# STARK COUNTY SHERIFF'S OFFICE

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TELEPHONE 701.456.7610 | FACSIMILE 701.456.7692

**SHERIFF COREY LEE**



2/5/23

Sgt. Matt Keesler  
Stark County Sheriff's Office  
Civil Process  
66 W Museum Dr.  
Dickinson, ND 58601

Testimony in Opposition to SB 2385

To the Chair and Members of the ND Senate Judiciary Committee:

I submit testimony in opposition to this bill as written.

ND statute requires the sheriff to enforce both post judgment and pre-judgment actions by way of Execution, Claim and Delivery (Replevin), Attachment, Distraint, Foreclosure of Liens on Personal Property and Eviction. All involve the potential seizure of personal property for purposes of satisfying either a judgment, or for the securing of assets and/or collateral prior to a judgment or hearing.

Due process has been applied in these actions by way of a court order. A judgment has been rendered based on both a preponderance of evidence, and whether rules of civil procedure, such as sufficient service on a defendant/respondent, had been followed. Sufficient service, as evidenced by a sheriff's return and/or affidavit of service, establishes personal jurisdiction over a party by the district and/or small claims court *See ND Rules of Civil Procedure, Rule 4(b)(4).*

While case law has established that the intention of a particular statute can be examined on review, the supreme court has also established the standard of plain language. This is especially true when no other meaning plainly appears to the contrary. NDCC 01-02-05 requires the wording of a statute to supersede the "spirit of the law," so to speak.

Provisions exist for the enforcement of civil judgments under law. When taking property, the sheriff shall deliver a copy of the Notice of Levy to both the Defendant, and to any other interested party who may be holding said property, such as a bank.

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The defendant is given the opportunity to submit claims for exemptions in opposition to the levy within ten (10) of service; the first "day" begins the day after service. If not contested by the plaintiff, any property seized is returned to the defendant. The same principals of due process apply to Attachment, Claim and Delivery, Distraint, etc.

As written, SB 2385 would appear to limit ND sheriffs from enforcing judgments rendered by either a district or small claims court. I would ask that exceptions be written into this bill reflective of the aforementioned examples.

I would like to thank the Senate Judiciary Committee for the opportunity to submit written and oral testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Keesler".

Sgt. Matt Keesler  
Stark Co Sheriff's Office