

SENATE BILL NO.

Introduced by

Senator Holmberg

1 A BILL for an Act to create and enact chapter 28-21.1 of the North Dakota Century Code,
2 relating to execution of judgments; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 28-21.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **28-21.1-01. Enforcement of judgment.** A judgment creditor may enforce a judgment
7 by execution under this chapter.

8 **28-21.1-02. Two kinds of executions.** There are two kinds of executions:

9 1. A special execution must be issued when the judgment requires the sale of specific
10 property; and

11 2. A general execution must be issued when the judgment requires the payment of
12 money to the judgment creditor.

13 **28-21.1-03. Self-executing judgments.** If the judgment requires the delivery of
14 possession of property, establishes the title or right to possession of property, or requires the
15 performance of any other act, a certified copy of the judgment may be served on the party
16 against whom it is given or the person who is required by the judgment or by law to obey the
17 judgment. Refusal to obey may be punished as contempt.

18 **28-21.1-04. Execution issued to sheriff.** A special execution may be issued to any
19 sheriff designated in the judgment or authorized by law to sell the property described in the
20 judgment. A general execution may be issued to the sheriff of any county in which the
21 judgment has been docketed. All executions must be issued by the clerk of court in which the
22 judgment was entered.

23 **28-21.1-05. Persons authorized to enforce execution.** An execution issued to the
24 sheriff of a county may be enforced by the elected sheriff, any person appointed to act as

1 sheriff, any deputy sheriff of that county, any other person duly appointed by the county
2 commissioners to perform those acts, or any person designated by the court, either in the
3 judgment or a separate order.

4 **28-21.1-06. Issuance and contents of execution.** Executions must be issued in the
5 name of the state of North Dakota, attested in the name of the judge of the court that entered
6 the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and
7 directed and delivered to a sheriff. The execution must state the date and time the judgment
8 was filed with the clerk, the courts and counties to which the judgment has been transcribed,
9 and the names of the parties. The execution must also state the amount of money the
10 judgment ordered the debtor to pay to the judgment creditor, the date and time the judgment
11 was docketed by the clerk, the rate of interest to be used in calculating the interest due on the
12 judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of
13 the date of issuance of the execution, and if the execution is being issued to a sheriff of another
14 county, the date and time the judgment was docketed in the county of the sheriff to whom the
15 execution is being issued. A special execution must also particularly describe the property,
16 identify a party entitled to possession of the property, and if the judgment orders a judgment
17 debtor to pay the following, list the amounts of the costs, damages, or rents or profits due as of
18 the date of issuance of the execution.

19 **28-21.1-07. Proceedings on receipt of execution.** Upon receipt of an execution, a
20 sheriff shall endorse on the execution the day and hour the execution was received and
21 proceed to execute the execution with diligence. The sheriff shall itemize each item sold in
22 satisfaction of the judgment, including the date of sale and costs incurred, or state any other act
23 done pursuant to the execution, either on the execution or attached to the execution. If the
24 execution could not be satisfied, the execution must be returned showing the extent collected,
25 the costs incurred, and any reasons why the execution could not be fully executed.

26 **28-21.1-08. Enforcement of execution.**

27 1. Upon receipt of a general execution the sheriff shall satisfy the judgment, including
28 accrued interest and costs, out of the personal property of the debtor. If sufficient
29 personal property cannot be found, the judgment shall be satisfied out of any
30 interest of the judgment debtor in real property on which the judgment is a lien or is
31 otherwise available to satisfy the judgment.

1 2. Upon receipt of a special execution or a certified copy of a self-executing judgment,
2 the sheriff shall comply with the provisions of the execution or judgment and, if the
3 special execution requires the payment of money, including costs, the sheriff shall
4 collect the amount as if it were a general execution.

5 **28-21.1-09. Property subject to execution.** Any interest of a judgment debtor in any
6 property that is not exempt is subject to execution.

7 **28-21.1-10. Levy on execution.** The levy on an execution is the act of taking property
8 pursuant to an execution to satisfy a judgment. The sheriff shall levy on personal property by
9 taking possession of the property. The sheriff shall take actual possession of all personal
10 property capable of manual delivery and shall give the person from whom possession was
11 taken a copy of the execution on which has been listed the property taken. If manual delivery is
12 not possible, or if the sheriff elects not to take possession of the property, the sheriff shall take
13 possession by serving on the person having possession a copy of the execution on which the
14 property has been listed who shall then hold the property for the sheriff. A levy on intangible
15 personal property is effected by serving a copy of the execution on the person holding the
16 documentary evidence of the property, having control of the books on which transfers are
17 recorded, or the person responsible for disbursement of money, whichever is the most
18 appropriate means of ensuring application of the property to satisfaction of the judgment. This
19 section does not apply to wages. Wages must be collected by garnishment. A levy on real
20 property is affected by filing a notice of levy with the county recorder. The notice of levy must
21 be signed by the sheriff and contain the legal description of the property.

22 **28-21.1-11. Time of return.** The execution must be returned to the clerk of court who
23 issued the execution within sixty days after the execution is received, except when a levy has
24 been made which requires the sale of property, then the execution must be returned within a
25 reasonable time after the sale but not more than ninety days after the execution was received.

26 **28-21.1-12. Notice of levy.** The sheriff shall serve notice upon the judgment debtor
27 whose property on which there has been a levy. The notice must include notice to the debtor
28 that any claim of exemptions must be made within ten days after service of the notice. The
29 notice must be served in the same manner as a summons.

1 **28-21.1-13. Sale of property.** Property levied upon to satisfy an execution must be
2 sold by the sheriff and sufficient proceeds from the sale to satisfy the judgment paid to the
3 judgment creditor.

4 **28-21.1-14. Delivery of property - Penalty.** Any person having possession of
5 property levied upon who fails to deliver the property to the sheriff upon demand is guilty of a
6 class B misdemeanor and is subject to civil contempt.