



# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

652N0464

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 123** - 01/29/2007

Introduced by: Senators Albers, Abdallah, Apa, Bartling, Gant, Gray, Nesselhuf, and Olson (Ed) and Representatives Hargens, Cutler, Deadrick, Dykstra, Gillespie, Lust, Moore, Pederson (Gordon), Rave, Weems, and Willadsen

1 FOR AN ACT ENTITLED, An Act to provide that sheriffs receive payment for marshaling  
2 assets for an execution of judgment or execution sale even if no sale occurs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 15-18-32 be amended to read as follows:

5 15-18-32. The party for whom the execution was issued or ~~his~~ the party's attorney of record,  
6 or otherwise authorized, may abandon proceedings under any execution at any time by filing  
7 with the court from which issued a written statement of such abandonment, or by causing the  
8 writ to be returned and filed with an endorsement to the effect that it had been so abandoned,  
9 and by paying the costs of such execution and proceedings thereunder, including any actual out-  
10 of-pocket expenses and reasonable costs incurred by the sheriff, and by discharging of record  
11 any notice of levy which has been filed in any recording or registry office, and by releasing any  
12 property seized thereunder. All proceedings, notices, levies, and liens taken pursuant to such  
13 execution shall be deemed abandoned, discharged, and released upon the filing of such  
14 statement or endorsement. The abandonment of an execution as herein permitted shall be



1 without prejudice to the issue of subsequent executions.

2 Section 2. That § 15-19-35 be amended to read as follows:

3 15-19-35. ~~It shall be the duty of every~~ Every officer or person who conducts an execution  
4 sale ~~to~~ shall apply the proceeds of such sale:

5 (1) To the payment of the costs and expenses of the sale, including any actual out-of-  
6 pocket expenses and reasonable costs incurred by a sheriff;

7 (2) To the satisfaction of the execution under which the sale is made;

8 (3) To the satisfaction of any other execution in ~~his~~ the officer's or person's hands, to  
9 which such proceeds may be lawfully applied;

10 (4) To pay the surplus, if any, to the defendant, or into court for the use of the defendant  
11 or the person entitled thereto, subject to the order of the court. If such surplus or any  
12 part thereof ~~shall remain~~ remains in the court for the term of three months without  
13 being applied for, the court may direct the same to be put out at interest for the  
14 benefit of the defendant, ~~his~~ the defendant's representatives, or assigns, subject to the  
15 order of the court.