

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2231

Introduced by

Senators Goetz, Kinnoin, Tallackson

Representatives Carlson, Nichols, Svedjan

1 A BILL for an Act to create and enact a new section to chapter 28-21 of the North Dakota
2 Century Code, relating to execution on money retained pursuant to garnishment; and to amend
3 and reenact sections 32-09.1-02, 32-09.1-04, 32-09.1-06, 32-09.1-07, 32-09.1-08, 32-09.1-22,
4 and 32-09.1-23 of the North Dakota Century Code, relating to garnishment proceedings and
5 claims of exemptions.

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

7 **SECTION 1.** A new section to chapter 28-21 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Summary execution on moneys retained pursuant to garnishment.** When a
10 judgment creditor proposes to execute moneys owed to the judgment debtor by a third party
11 who is retaining the money pursuant to garnishment, the execution must be made between
12 twenty and one hundred eighty days after service of the garnishment summons. The execution
13 may be made by the attorney for the judgment creditor or a sheriff, or an agent of either,
14 through certified mail or personal service to the third party and must contain a copy of the
15 execution. The execution may be directed to the sheriff of any county. A transcript of the
16 judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon
17 receipt, the third party shall remit the amount due under the garnishment to the sheriff or
18 attorney who shall proceed in all other respects like the sheriff making a similar execution. If
19 the judgment debtor files a claim of exemptions under section 32-09.1-22 at or before twenty
20 days after service of the garnishment summons, no execution may be made against moneys
21 claimed as exempt and retained pursuant to the garnishment summons until the court
22 determines that the moneys being garnished are not exempt.

23 **SECTION 2. AMENDMENT.** Section 32-09.1-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

32-09.1-02. Creditors may proceed by garnishment.

1. Any creditor is entitled to proceed by garnishment in any court having jurisdiction of the subject of the action against any ~~person, any public corporation, the United States, the state of North Dakota, or any institution, department, or agency of the state,~~ third party indebted to or having any property in possession or under control, belonging to the creditor's debtor ~~after securing a judgment against the debtor in a court of competent jurisdiction, in the cases, upon the conditions, and in the manner prescribed in this chapter~~ in the following instances:

a. At any time forty days or more after the service of the summons and complaint upon the debtor in a civil action when a judgment by default could have, but has not, been entered pursuant to rule 55(a)(1) of the North Dakota Rules of Civil Procedure. No filing of a pleading or other documents by the creditor is required to issue a garnishment summons. However, the first time a garnishment summons is served on the debtor under this subsection, the creditor also shall serve a copy of the affidavit or sheriff's certificate of service of the original summons and complaint.

b. At any time after entry of a money judgment in a civil action.

2. A garnishment action brought ~~pursuant to~~ under this chapter is the exclusive procedure ~~which may be used to execute~~ for execution on earnings of a debtor while those earnings are ~~held~~ due or will become due by a third party employer.

SECTION 3. AMENDMENT. Section 32-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-04. Notice before garnishment of earnings. At least ten days before the first 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: _____

Judgment 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 verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$_____.

Judgment Creditor

Address

SECTION 4. AMENDMENT. Section 32-09.1-06 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-06. Garnishee summons. In any action in a court of record for the recovery of money, ~~at any time after judgment~~, a garnishee summons may be issued against any third ~~person party~~ as provided in this chapter. The plaintiff and defendant ~~shall~~ must be designated in the summons. The ~~person party~~ against whom the summons is issued ~~shall~~ must be designated as the garnishee.

SECTION 5. AMENDMENT. Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the ~~judgment~~ claim which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the ~~judgment~~ claim which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession ~~pursuant to~~ under this chapter until the plaintiff causes a writ of

execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment, if any, against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota)	In _____ Court
	} ss.	
County of _____)		_____

Plaintiff		
against		Garnishee Summons and
_____		Notice to Defendant
Defendant		
and		

Garnishee		

The State of North Dakota to the above-named Garnishee:

1 You must serve upon the plaintiff or the plaintiff's attorney, within twenty days
2 after service of this summons upon you, a written disclosure, under oath, setting
3 forth the amount of any debt you may owe to the defendant, _____
4 (give full name and residence of defendant) and a description of any property,
5 money, or effects owned by the defendant which are in your possession. Your
6 disclosure need not exceed \$_____. (Enter 110 percent of the plaintiff's
7 ~~judgment~~ claim which remains unpaid.) The date of entry of the judgment against
8 the defendant was _____ (enter date of entry of plaintiff's judgment, if any)
9 and the amount of the ~~judgment~~ claim which remains unpaid is \$_____.

10 The defendant must provide you with a verified list of the names of dependent
11 family members who reside with the defendant and their social security numbers if
12 the defendant desires to have the garnishment amount reduced under
13 subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to
14 you is conclusive to establish that the defendant claims no dependent family
15 members reside with the defendant.

16 Failure to disclose and withhold may make you liable to the plaintiff for the
17 sum of \$_____. (Enter the lesser of the plaintiff's ~~judgment~~ claim against
18 the defendant or 110 percent of the amount that remains unpaid.)

19 You must retain the defendant's nonexempt property, money, and effects in
20 your possession until a writ of execution is served upon you, until the defendant
21 authorizes release to the plaintiff, or until the expiration of 180 days from the date
22 of service of this summons upon you. If no writ of execution has been served upon
23 you or no agreement has been made for payment within 180 days, the
24 garnishment ends and any property or funds held by you must be returned to the
25 defendant if the defendant is otherwise entitled to their possession.

26 Any assignment of wages by the defendant or indebtedness to you incurred
27 by the defendant within ten days before the receipt of the first garnishment on a
28 debt is void and should be disregarded.

29 You may not discharge the defendant because the defendant's earnings are
30 subject to garnishment.

31 Dated this ____ day of _____, 19____.

By: _____

NOTICE TO DEFENDANT

To: _____

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon _____, the garnishee.

(Attorneys for Plaintiff)

(Address)

(Telephone)

SECTION 6. AMENDMENT. Section 32-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-08. Service. The garnishee summons and notice to defendant ~~shall~~ must be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal. The plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served by mail at the last known mailing address of the defendant or personally upon the defendant in accordance with the North Dakota Rules of Civil Procedure ~~for personal service~~ not later than ten days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

SECTION 7. AMENDMENT. Section 32-09.1-22 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-22. Claim of exemptions - How made. When the defendant claims that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution, the defendant, at or before twenty days after the service of the garnishee summons, shall serve and file a schedule of all personal property subscribed and sworn to as provided in section 28-22-07. Failure of the defendant to serve and file within that time renders the claim void.

1 **SECTION 8. AMENDMENT.** Section 32-09.1-23 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **32-09.1-23. Claim of exemptions - When heard.** In all cases when the defendant
4 claims the debt or property garnished to be exempt, the claim of exemptions may be heard and
5 determined by the court at any time after the claim is made, on three days' notice to the plaintiff
6 or five days' notice to the defendant.