

SENATE BILL NO. 2378

Introduced by

Senators Dever, Lyson, Syverson

Representatives Dosch, L. Meier, Weiler

1 A BILL for an Act to amend and reenact section 32-09.1-09 of the North Dakota Century Code,
2 relating to the garnishment disclosure form.

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

4 **SECTION 1. AMENDMENT.** Section 32-09.1-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-09.1-09. Disclosure.** Within the time as limited, the garnishee shall serve upon the
7 plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the
8 garnishment disclosure form and to any written interrogatories that are served upon the
9 garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent
10 of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of
11 setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be
12 served personally or by mail. If disclosure is by a corporation or limited liability company, it
13 must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure
14 must state:

- 15 1. The amount of disposable earnings earned or to be earned within the defendant's
16 pay periods which may be subject to garnishment and all of the garnishee's
17 indebtedness to the defendant.
- 18 2. Whether the garnishee held, at the time, the title or possession of or any interest in
19 any personal property or any instruments or papers relating to any property
20 belonging to the defendant or in which the defendant is interested. If the garnishee
21 admits any interest or any doubt respecting the interest, the garnishee shall set
22 forth a description of the property and the facts concerning the property and the
23 title, interest, or claim of the defendant in or to the property.

3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

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

Plaintiff		
vs.		

Defendant		
and		Garnishment Disclosure

Garnishee		

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On _____, _____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to

garnishment to enforce any order for the support of a dependent child.

"Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.

a. ~~Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.~~

b. ~~Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.~~

c. ~~Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a. If the amount is zero, skip lines d through g and enter zero on line h.~~

d. ~~Enter on the line below 25 percent of line a.~~

e. ~~Enter on the line below the lesser of line c and line d.~~

f. ~~Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).~~

- 1 _____
- 2 g. Enter on the line below an amount equal to the number of dependents
- 3 (line f) times twenty dollars times the number of workweeks used to
- 4 compute line b.
- 5 _____
- 6 h. Enter on the line below the difference (never less than zero) when line g
- 7 is subtracted from line e.
- 8 _____
- 9 2. Money. Enter on the line below any amounts due and owing defendant,
- 10 except earnings, from the garnishee.
- 11 _____
- 12 3. Property. Describe on the line below any personal property, instruments, or
- 13 papers belonging to the defendant and in the possession of the garnishee.
- 14 _____
- 15 4. Setoff. If the amount set forth on lines 1(h), 2, and 3 is zero, skip lines 5
- 16 through 8 and go to line 9. If the amount set forth on lines 1(h), 2, and 3 is
- 17 more than zero, enter on the line below the amount of any setoff, defense,
- 18 lien, or claim which the garnishee claims against the amount set forth on lines
- 19 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is
- 20 claimed. (Any indebtedness to a garnishee employer incurred by the
- 21 judgment debtor within ten days before the receipt of the first garnishment on
- 22 a debt is void and should be disregarded.)
- 23 _____
- 24 _____
- 25 5. Adverse Interest. Enter on the line below any amounts claimed by other
- 26 persons by reason of ownership or interest in the defendant's property. State
- 27 each person's name and address and the nature of that person's claim, if
- 28 known. (Any assignment of wages made by the defendant within ten days
- 29 before the receipt of the first garnishment on a debt is void and should be
- 30 disregarded.)
- 31 _____

6. ~~Enter on the line below the total of lines 4 and 5.~~

7. ~~Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of lines 1(h), 2, and 3.~~

8. ~~Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.~~

9. ~~If the amount set forth on lines 1(h), 2, and 3 is zero, enter zero on the line below. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.~~

10. ~~If this form was completed for the plaintiff for the immediately preceding pay period and the amount on line 9 was less than \$10.00, the answers to disclosure for the immediately preceding pay period remain in effect and the garnishee is not required to answer the questions in the garnishment disclosure for subsequent pay periods until the amount on line 9 is \$10.00 or more.~~

2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

3. Dependent. Any child of the defendant who is under the age of nineteen and is residing in defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)

4. Worksheet:

a. _____ Total earnings in pay period

b. _____ Federal tax

- 1 c. _____ State tax
- 2 d. _____ Social security
- 3 e. _____ Disposable earnings (line a minus lines b, c, and d)
- 4 f. _____ Twenty-five percent of line e
- 5 g. _____ Minimum wage exemption (forty times minimum wage
- 6 times number of weeks in pay period)
- 7 h. _____ Line e minus line g
- 8 i. _____ Line f or line h (whichever is less)
- 9 j. _____ Dependent exemption (twenty dollars per dependent
- 10 per week, if claimed)
- 11 k. _____ Adverse interest and setoff
- 12 l. _____ Line i less lines j and k
- 13 Line l is the amount subject to garnishment (not to exceed
- 14 110 percent of the amount of the judgment which remains unpaid).

15 AFFIRMATION

16 I, _____ (person signing affirmation), am the garnishee or I am

17 authorized by the garnishee to complete this garnishment disclosure, and have

18 done so truthfully and to the best of my knowledge.

19 Dated this _____ day of _____, _____.

20 Signature _____

21 Authorized Representative

22 of Garnishee

23 _____

24 Title

25 Subscribed and sworn to before me on _____, _____.

26 _____

27 Notary Public