

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2274

Introduced by

Senators Wardner, Lyson

Representatives Dosch, Kretschmar, Porter

1 A BILL for an Act to amend and reenact sections 32-09.1-07 and 32-09.1-09 of the North
2 Dakota Century Code, relating to the garnishment summons, notice, and disclosure.

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

4 **SECTION 1. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-09.1-07. Form of summons and notice.** The garnishee summons must state that
7 the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after
8 service of the garnishee summons a written disclosure, under oath, of indebtedness to the
9 defendant and answers to all written interrogatories that are served with the garnishee
10 summons. The plaintiff may not require disclosure of indebtedness or property of the defendant
11 in the garnishee's possession or under the garnishee's control to the extent that the
12 indebtedness or property exceeds one hundred ten percent of the amount of the judgment
13 which remains unpaid plus an additional one hundred fifty dollars. The garnishee summons
14 must include the full name of the defendant and place of residence and the amount of the
15 judgment which remains unpaid. The garnishee summons must also state that the garnishee
16 shall retain property or money in the garnishee's possession pursuant to this chapter until the
17 plaintiff causes a writ of execution to be served upon the garnishee or until the defendant
18 authorizes release to the plaintiff and must state that after the expiration of the period of time
19 specified in section 32-09.1-20, the garnishee shall release all retained property and money to
20 the defendant and is discharged and relieved of all liability on the garnishee summons. The
21 garnishee summons must state that no employer may discharge any employee because the
22 employee's earnings are subject to garnishment. The garnishee summons must state that any
23 assignment of wages made by the defendant or indebtedness to the garnishee incurred within
24 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 against the defendant. The garnishee summons must state that the defendant shall 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:

You shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$_____. (Enter 110 percent of the plaintiff's judgment which remains unpaid plus an additional \$150.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$_____.

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

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid plus an additional \$150.)

You shall retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 360 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within 360 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

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

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

Dated _____, _____.

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 2. AMENDMENT. Section 32-09.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- 1 disclosure for earnings from both the past pay period and the current pay
2 period.
- 3 2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the
4 garnishee or other persons by reason of ownership or interest in the
5 defendant's property. You must state the name and address and the nature
6 of that person's claim if known. (Any assignment of wages made by the
7 defendant or any indebtedness to a garnishee within ten days before the
8 receipt of the first garnishment on a debt is void and should be disregarded.)
- 9 3. Dependent. Any family member of the defendant who is residing in the
10 defendant's residence. (If properly claimed within ten days after receipt of the
11 garnishee summons.)
- 12 4. Worksheet:
- 13 a. Total earnings in pay period _____
- 14 b. Federal tax _____
- 15 c. State tax _____
- 16 d. FICA (social security/medicare) _____
- 17 e. Total deductions (lines b+c+d) _____
- 18 f. Disposable earnings (line a less line e) _____
- 19 g. Twenty-five percent of line f _____
- 20 h. Minimum wage exemption
21 (minimum wage times forty hours times
22 number of weeks in pay period) _____
- 23 i. Line f less line h _____
- 24 j. Line g or line i (whichever is less) _____
- 25 k. Dependent exemption (twenty dollars
26 per dependent per week, if claimed) _____
- 27 l. Adverse interest or setoff _____
- 28 m. Total of lines k and l _____
- 29 n. Line j less line m _____

Notary Public