

SENATE BILL NO. 2274
with House AmendmentsSixtieth
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, 32-09.1-09, 32-09.1-14, and
2 32-09.1-15 of the North Dakota Century Code, relating to garnishment proceedings.

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.**

7 1. The garnishee summons must state ~~that~~:

8 a. ~~That~~ the garnishee shall serve upon the plaintiff or the plaintiff's attorney
9 within twenty days after service of the garnishee summons ~~a~~:

10 (1) ~~A~~ written disclosure, under oath, of indebtedness to the defendant; and
11 ~~answers~~

12 (2) ~~Answers, under oath,~~ to all written interrogatories that are served with
13 the garnishee summons. ~~The plaintiff may not require disclosure of~~
14 ~~indebtedness or property of the defendant in the garnishee's~~
15 ~~possession or under the garnishee's control to the extent that the~~
16 ~~indebtedness or property exceeds one hundred ten percent of the~~
17 ~~amount of the judgment which remains unpaid.~~

18 b. ~~The garnishee summons must include the full name of the defendant and, the~~
19 ~~defendant's place of residence, the date of the entry of judgment against the~~
20 ~~defendant, the total amount of the judgment which remains unpaid, and the~~
21 ~~retention amount of.~~ The retention amount is the sum of the amount of the
22 judgment which remains unpaid, one hundred twenty-five dollars, and an
23 amount equal to nine months of interest on the amount of the judgment which
24 remains unpaid. ~~The garnishee summons must also state that~~

- 1 c. That the garnishee shall retain property, earnings, or money in the
2 garnishee's possession pursuant to this chapter until the plaintiff causes a writ
3 of execution to be served upon the garnishee or until the defendant
4 authorizes release to the plaintiff ~~and must state that~~.
- 5 d. That after the expiration of the period of time specified in section 32-09.1-20,
6 the garnishee shall release all retained property, earnings, and money to the
7 defendant and is discharged and relieved of all liability on the garnishee
8 summons. ~~The garnishee summons must state that no~~
- 9 e. That an employer may not discharge ~~any~~ an employee because the
10 employee's property, earnings, or money are subject to garnishment. ~~The~~
11 ~~garnishee summons must state that~~
- 12 f. That any assignment of wages made by the defendant or indebtedness to the
13 garnishee incurred within ten days before the receipt of notice of the first
14 garnishment on the underlying debt is void. ~~The garnishee summons must~~
15 ~~state the date of the entry of judgment against the defendant. The garnishee~~
16 ~~summons must state that~~
- 17 g. That the defendant ~~shall~~ must provide to the garnishee within ten days after
18 receipt of the garnishee summons a verified list of the dependent family
19 members who reside with the defendant and their social security numbers, if
20 any, to have the maximum amount subject to garnishment reduced under
21 subsection 2 of section 32-09.1-03. ~~The garnishee summons must state that~~
- 22 h. That failure of the defendant to provide a verified list to the garnishee within
23 ten days after receipt of the garnishee summons is conclusive with respect to
24 whether the defendant claims no family members.

25 2. Under subdivision a of subsection 1, the plaintiff may not require the garnishee to
26 disclose indebtedness or property of the defendant in the garnishee's possession
27 or under the garnishee's control to the extent that the indebtedness or property
28 exceeds the retention amount.

29 3. The garnishee summons and notice to defendant must be substantially in the
30 following form:
31

1 State of North Dakota) In _____ Court
2) ss.
3 County of _____) _____
4 _____
5 Plaintiff
6 against Garnishee Summons and
7 _____ Notice to Defendant
8 Defendant
9 and
10 _____
11 Garnishee

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

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

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

28 Failure to disclose and withhold may make you liable to the plaintiff for the sum of
29 \$_____. (~~Enter the lesser of the plaintiff's judgment against the defendant or~~
30 ~~110 percent of the retention amount that remains unpaid.~~)

You shall retain the defendant's nonexempt property, money, earnings, 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.

1. Within the time as limited in the garnishee summons, 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, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests~~ the retention amount. 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~~ an officer, a manager, or an agent having knowledge of the facts.

2. Disclosure must state:

- ~~4-~~ a. 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-~~ b. 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-~~ c. 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-~~ d. 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-~~ e. 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.
3. A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form, subject to subsection 3 of section 32-09.1-03:

State of North Dakota)

In _____ Court

1) ss.

2 County of _____) _____

3 _____

4 Plaintiff

5 vs.

6 _____

7 Defendant

8 and Garnishment Disclosure

9 _____

10 Garnishee

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

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

15 1. Earnings. For the purposes of garnishment, "earnings" means compensation
16 payable for personal service whether called wages, salary, commission,
17 bonus, or otherwise, and includes periodic payments under a pension or
18 retirement program. "Earnings" does not include social security benefits or
19 veterans' disability pension benefits, except when the benefits are subject to
20 garnishment to enforce any order for the support of a dependent child.
21 "Earnings" includes military retirement pay. "Disposable earnings" means
22 that part of the earnings of an individual remaining after the deduction from
23 those earnings of amounts required by law to be withheld. If the garnishee
24 summons was served upon you at a time when earnings from a prior
25 completed pay period were owing but not paid, complete the following
26 disclosure for earnings from both the past pay period and the current pay
27 period.

28 2. Money. Any amounts due and owing to defendant from the garnishee, except
29 for earnings. (amount and facts)

3. Property. Any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee. (description, estimated value, and facts)

4. 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.~~ 5. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)

~~4.~~ Worksheet

6. Earnings worksheet:

- | | | |
|----|---|-------|
| a. | Total earnings in pay period | _____ |
| b. | Federal tax | _____ |
| c. | State tax | _____ |
| d. | FICA (social security/medicare) | _____ |
| e. | Total deductions (lines b+c+d) | _____ |
| f. | Disposable earnings (line a less line e) | _____ |
| g. | Twenty-five percent of line f | _____ |
| h. | Minimum wage exemption
(minimum wage times forty hours times
number of weeks in pay period) | _____ |
| i. | Line f less line h | _____ |
| j. | Line g or line i (whichever is less) | _____ |
| k. | Dependent exemption (twenty dollars
per dependent per week, if claimed) | _____ |
| l. | Adverse interest or setoff | _____ |
| m. | Total of lines k and l | _____ |

n. Line j less line m (the amount of earnings
subject to garnishment) _____

~~Line n is the amount subject to garnishment (not to exceed
110 percent of the amount of the judgment which remains unpaid).~~

7. Total of property, earnings, and money. The garnishee shall add the total of
property, earnings, and money and if this sum is ten dollars or more, the
garnishee shall retain this amount, not to exceed the retention amount
identified by the plaintiff in the garnishee summons.

Signature _____

Garnishee or Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

SECTION 3. AMENDMENT. Section 32-09.1-14 of the North Dakota Century Code is
amended and reenacted as follows:

32-09.1-14. Default. If any garnishee who is duly summoned willfully fails to serve
disclosure as required in this chapter, the court, upon proof by affidavit of the creditor, may
render judgment against the garnishee for an amount not exceeding the lesser of the plaintiff's
judgment against the defendant or ~~one hundred ten percent of the amount which remains~~
~~unpaid, whichever is the smaller~~ the retention amount as defined under section 32-09.1-07.

The creditor shall serve the garnishee with a copy of the affidavit and a notice of intent to take
default judgment. The court upon good cause shown may remove the default and permit the
garnishee to disclose on terms as may be just.

SECTION 4. AMENDMENT. Section 32-09.1-15 of the North Dakota Century Code is
amended and reenacted as follows:

32-09.1-15. Judgment against garnishee. Judgment against a garnishee ~~shall~~ must
be rendered, if at all, for the amount due the defendant, or so much thereof as may be
necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed

1 in the proceeding against the garnishee but not to exceed ~~one hundred ten percent of the~~
2 ~~amount which remains unpaid~~ the retention amount defined under section 32-09.1-07. The
3 judgment ~~shall~~ must discharge the garnishee from all claims of all the parties named in the
4 process to the property, earnings, or money paid, delivered, or accounted for by the garnishee
5 by force of the judgment. When ~~any~~ a person is charged as garnishee by reason of any
6 property in possession other than an indebtedness payable in money, that person shall deliver
7 the property, or so much ~~thereof~~ of the property as may be necessary, to the officer holding
8 execution, and the property ~~shall~~ must be sold and the proceeds accounted for in the same
9 manner as if ~~it~~ the property had been taken on execution against the defendant. The garnishee
10 ~~shall~~ may not be compelled to deliver any specific articles at any time or place other than as
11 stipulated in the contract with the defendant.