

SENATE BILL NO. 2204

Introduced by

Senators Wardner, Lyson, Traynor

Representatives Eckre, Kretschmar, Wrangham

1 A BILL for an Act to amend and reenact sections 28-21-04.1, 32-09.1-07, 32-09.1-20, and
2 32-09.1-21 of the North Dakota Century Code, relating to the expiration of a garnishment.

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

4 **SECTION 1. AMENDMENT.** Section 28-21-04.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-21-04.1. Summary execution on moneys retained pursuant to garnishment.**

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

20 **SECTION 2. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **32-09.1-07. Form of summons and notice.** The garnishee summons must state that
23 the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after
24 service of the garnishee summons a written disclosure, under oath, of indebtedness to the

1 defendant and answers to all written interrogatories that are served with the garnishee
2 summons. The plaintiff may not require disclosure of indebtedness or property of the defendant
3 in the garnishee's possession or under the garnishee's control to the extent that the
4 indebtedness or property exceeds one hundred ten percent of the amount of the judgment
5 which remains unpaid. The garnishee summons must include the full name of the defendant
6 and place of residence and the amount of the judgment which remains unpaid. The garnishee
7 summons must also state that the garnishee shall retain property or money in the garnishee's
8 possession pursuant to this chapter until the plaintiff causes a writ of execution to be served
9 upon the garnishee or until the defendant authorizes release to the plaintiff and must state that
10 after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall
11 release all retained property and money to the defendant and is discharged and relieved of all
12 liability on the garnishee summons. The garnishee summons must state that no employer may
13 discharge any employee because the employee's earnings are subject to garnishment. The
14 garnishee summons must state that any assignment of wages made by the defendant or
15 indebtedness to the garnishee incurred within ten days before the receipt of notice of the first
16 garnishment on the underlying debt is void. The garnishee summons must state the date of the
17 entry of judgment against the defendant. The garnishee summons must state that the
18 defendant shall provide to the garnishee within ten days after receipt of the garnishee summons
19 a verified list of the dependent family members who reside with the defendant and their social
20 security numbers, if 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 failure of the
22 defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee
23 summons is conclusive with respect to whether the defendant claims no family members.

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

26 State of North Dakota) In _____ Court
27) ss.
28 County of _____) _____
29 _____
30 Plaintiff
31 against Garnishee Summons and

Notice to Defendant

1 _____

2 Defendant

3 and

4 _____

5 Garnishee

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

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

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

22 Failure to disclose and withhold may make you liable to the plaintiff for the sum of
23 \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or
24 110 percent of the amount that remains unpaid.)

25 You shall retain the defendant's nonexempt property, money, and effects in your
26 possession until a writ of execution is served upon you, until the defendant authorizes
27 release to the plaintiff, or until the expiration of ~~270~~ 360 days from the date of service of
28 this summons upon you. If no writ of execution has been served upon you or no
29 agreement has been made for payment within ~~270~~ 360 days, the garnishment ends and
30 any property or funds held by you must be returned to the defendant if the defendant is
31 otherwise entitled to their possession.

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

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

6 Dated _____, ____.

7 By: _____

8 NOTICE TO DEFENDANT

9 To: _____

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

13 _____

14 (Attorneys for Plaintiff)

15 _____

16 (Address)

17 _____

18 (Telephone)

19 **SECTION 3. AMENDMENT.** Section 32-09.1-20 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **32-09.1-20. Termination of garnishment.** A garnishee summons lapses and the
22 garnishee is discharged of any liability upon the expiration of ~~two~~ three hundred ~~seventy~~ sixty
23 days after the service of the summons, or a longer period of time either agreed to in writing by
24 the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the
25 garnishee summons, all earnings, money, property, and effects that the garnishee has been
26 retaining pursuant to the garnishment must be returned to the defendant if the defendant is
27 otherwise legally entitled to receipt of them.

28 **SECTION 4. AMENDMENT.** Section 32-09.1-21 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **32-09.1-21. Continuing lien on wages.** A plaintiff may obtain a ~~one~~ two hundred
31 ~~eighty-day~~ seventy-day continuing lien on wages by garnishment. A plaintiff obtaining a

1 continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the
2 garnishee summons. Each garnishment disclosure form must provide the garnishee will
3 continue to hold the nonexempt portion of the defendant's earnings as the earnings accrue
4 through the last payroll period ending on or before ~~one~~ two hundred ~~eighty~~ seventy days from
5 the effective date of the garnishee summons, or until the sum held equals the amount stated in
6 the garnishee summons, or until the employment relationship terminates, whichever first
7 occurs.

8 If the garnishee's answers to a garnishment disclosure form provide the amount
9 withheld is less than ten dollars, the garnishee is not required to return subsequent forms to the
10 plaintiff until the amount withheld is ten dollars or more. For any pay period in which the
11 garnishee is not required under this section to return the form to the plaintiff, the garnishee's
12 answers from the previous form remain in effect. At the expected termination of the lien, the
13 plaintiff shall mail the garnishee an additional copy of the garnishment disclosure form upon
14 which the garnishee within ten days shall make further disclosure.