

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1211  
(Representative DeKrey)

AN ACT to amend and reenact sections 32-09.1-03, 32-09.1-04, 32-09.1-07, and 32-09.1-09 of the North Dakota Century Code, relating to the garnishment of wages.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-03. Restriction on garnishment of earnings.**

1. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:
  - a. Twenty-five percent of disposable earnings for that week.
  - b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Within ten days after receipt of the garnishment summons, the garnishment debtor shall provide to the employer a verified list, signed under penalty of perjury by the garnishment debtor, of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is conclusively presumed that the garnishment debtor claims no dependents, but the garnishment debtor may provide the list at a later date, in which case the exemptions claimed will be in effect for amounts subject to garnishment after the date the list is provided.
3. The restrictions of subsection 1 do not apply in the case of:
  - a. Any order of any court for the support of any person.
  - b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
  - c. Any debt due for any state or federal tax.
4. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person may not exceed:
  - a. Where such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, fifty percent of the individual's disposable earnings for that week; and

- b. Where such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a must be deemed to be fifty-five percent and the sixty percent specified in subdivision b must be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

- 5. No court of this state may make, execute, or enforce any order or process in violation of this section.

**SECTION 2. 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 - Notice of renewal of garnishment of earnings.**

- 1. At least ten days before the 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 signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$\_\_\_\_\_.

\_\_\_\_\_  
Judgment Creditor  
Address

- 2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on wages under section 32-09.1-21, at least ten days but no more than twenty days before the expiration of the continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages under section 32-09.1-21. 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. This action is a renewal of the current garnishment order for this case. 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 signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$ \_\_\_\_\_.

\_\_\_\_\_  
Judgment Creditor  
Address

3. In addition to the notice required under subsection 1 or 2, the creditor shall serve a garnishment debtor's list in substantially the following form under the caption of the case:

To: Garnishee

I, under penalty of perjury, \_\_\_\_\_ (garnishment debtor) certify and affirm that the following persons are my dependents and they reside in my household and I claim the garnishment exemptions as provided by NDCC 32-09.1-03(2):

<u>Name</u>	<u>Social Security Number</u>
_____	_____
_____	_____
_____	_____

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Garnishment Debtor

**SECTION 3. 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 shall 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 which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee shall retain property or money in the garnishee's possession pursuant to 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 shall 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 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.) 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.)

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 4. 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, 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     )  
  ) ss.  
County of \_\_\_\_\_     )

In \_\_\_\_\_ Court  
\_\_\_\_\_

\_\_\_\_\_  
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.

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 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:

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 \_\_\_\_\_

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

Signature \_\_\_\_\_  
Garnishee or Authorized Representative  
of Garnishee

\_\_\_\_\_  
Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1211.

House Vote:      Yeas    86      Nays    4      Absent    4

Senate Vote:    Yeas    46      Nays    0      Absent    1

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State