

**SENATE BILL NO. 2274  
with House Amendments**

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, 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~~.)



1 are served upon the garnishee. The amount of the garnishee's disclosure need  
2 not exceed ~~one hundred ten percent of the amount of the plaintiff's judgment which~~  
3 ~~remains unpaid, after subtracting the total of setoffs, defenses, exemptions,~~  
4 ~~ownerships, or other interests~~ the retention amount. The written answers may be  
5 served personally or by mail. If disclosure is by a corporation or limited liability  
6 company, it must be verified by ~~some~~ an officer, a manager, or an agent having  
7 knowledge of the facts.

8 2. Disclosure must state:

9 ~~4.~~ a. The amount of disposable earnings earned or to be earned within the  
10 defendant's pay periods which may be subject to garnishment and all of the  
11 garnishee's indebtedness to the defendant.

12 ~~2.~~ b. Whether the garnishee held, at the time, the title or possession of or any  
13 interest in any personal property or any instruments or papers relating to any  
14 property belonging to the defendant or in which the defendant is interested. If  
15 the garnishee admits any interest or any doubt respecting the interest, the  
16 garnishee shall set forth a description of the property and the facts concerning  
17 the property and the title, interest, or claim of the defendant in or to the  
18 property.

19 ~~3.~~ c. If the garnishee claims any setoff or defense or claim or lien to disposable  
20 earnings, indebtedness, or property, the garnishee shall disclose the amount  
21 and the facts.

22 ~~4.~~ d. Whether the defendant claims any exemption from execution or any other  
23 objection, known to the garnishee or the defendant, against the right of the  
24 plaintiff to apply upon demand the debt or property disclosed.

25 ~~5.~~ e. If other persons make claims to any disposable earnings, debt, or property of  
26 the defendant, the garnishee shall disclose the names and addresses of the  
27 other claimants and, so far as known, the nature of their claims.

28 3. A garnishment disclosure form must be served upon the garnishee. The  
29 disclosure must be substantially in the following form, subject to subsection 3 of  
30 section 32-09.1-03:

31 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)

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

1 n. Line j less line m (the amount of earnings  
2 subject to garnishment) \_\_\_\_\_  
3 ~~Line n is the amount subject to garnishment (not to exceed~~  
4 ~~110 percent of the amount of the judgment which remains unpaid).~~

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

9 Signature \_\_\_\_\_  
10 Garnishee or Authorized Representative  
11 of Garnishee

12 \_\_\_\_\_  
13 Title

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

15 \_\_\_\_\_  
16 Notary Public

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

19 **32-09.1-14. Default.** If any garnishee who is duly summoned willfully fails to serve  
20 disclosure as required in this chapter, the court, upon proof by affidavit of the creditor, may  
21 render judgment against the garnishee for an amount not exceeding the lesser of the plaintiff's  
22 judgment against the defendant or one hundred ten percent of the amount which remains  
23 unpaid, whichever is the smaller the retention amount as defined under section 32-09.1-07.

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

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

29 **32-09.1-15. Judgment against garnishee.** Judgment against a garnishee ~~shall~~ must  
30 be rendered, if at all, for the amount due the defendant, or so much thereof as may be  
31 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.