

JUDICIAL REMEDIES

CHAPTER 326

HOUSE BILL NO. 1389
(Atkinson, Metzger)

RESTRICTION ON GARNISHMENT

AN ACT to amend and reenact sections 32-09-02 and 32-09-03 of the North Dakota Century Code, relating to garnishment of earnings.

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

SECTION 1. AMENDMENT.) Section 32-09-02 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09-02. RESTRICTION ON GARNISHMENT OF EARNINGS.)

1. As used in this chapter:
 - a. The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program; and
 - b. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by other law to be withheld.
2. 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 his disposable earnings for that week; or
 - b. The amount by which his 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 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.

3. The restrictions of subsection 2 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; or
 - c. Any debt due for any state or federal tax.
4. No court of this state may make, execute, or enforce any order or process in violation of this section.

SECTION 2. AMENDMENT.) Section 32-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09-03. NOTICE BEFORE GARNISHMENT OF EARNINGS.) At least two days prior to the issuance of any garnishment summons against the earnings of any person, the creditor shall cause demand to be served upon the debtor and the employer for any disposable earnings subject to garnishment under section 32-09-02. In an action in justice court, such demand, with proof of service, shall be filed with the court at the time of the issuance of the garnishment summons, and in an action in district court or county court with increased jurisdiction, at the time the summons is filed. Failure to serve or file the notice as herein provided shall render such garnishment void. The amount of disposable earnings subject to garnishment shall be held by the employer subject to such garnishment from the time of service of such demand and for five days thereafter.

Approved March 29, 1971

CHAPTER 327

HOUSE BILL NO. 1131
(Bunker)

REDEMPTION PERIOD UNDER
CONTRACT FOR DEED

AN ACT to amend and reenact sections 32-18-02, 32-18-04, and 32-18-05 of the North Dakota Century Code, relating to the period of redemption allowed a defaulting purchaser under a contract for deed or similar instrument.

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

SECTION 1. AMENDMENT.) Section 32-18-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-18-02. DEFAULT - CONTENTS OF NOTICE.) Whenever any default shall have been made in the terms or conditions of any such instrument for future conveyance of real estate or equity therein, and the owner or vendor shall desire to cancel or terminate the same, he, within a reasonable time after such default, shall cause a written notice to be served upon the vendee or purchaser, or his assigns, stating that such default occurred, and that said contract will be canceled or terminated, and shall recite in said notice the time when said cancellation or termination shall take effect, which shall be as provided in section 32-18-04.

SECTION 2. AMENDMENT.) Section 32-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-18-04. TIME ALLOWED TO CORRECT DEFAULT.) The vendee or purchaser, or his assigns, shall have the following periods of time after the service of notice of cancellation upon him in which to perform the conditions or comply with the provisions upon which the default shall have occurred:

1. If the amount claimed due under such instrument at the date of notice is more than sixty-six and two-thirds percent of the original indebtedness, the time allowed to correct the default shall be six months.
2. In any other case, the time for correction shall be one year.

Upon such performance and upon making such payments, together with the cost of service of such notice, such contract or other instrument shall be reinstated and shall remain in full force and effect as if no default had occurred therein. If, however, such vendee or purchaser, or his assigns, shall not complete such performance or make such payment within the time periods provided by this section, the contract shall be terminated and shall not be reinstated by any subsequent offer of performance, or tender of payment. No provisions in any contract for the purchase of land or an interest in land shall be construed to obviate the necessity of giving the aforesaid notice and no contract shall terminate unless such notice is given, any provision in such contract to the contrary notwithstanding, but the notice herein required shall not be deemed necessary where the contract in question is sought to be terminated by an action at law or in equity brought for that purpose upon failure to perform. This section shall apply to all instruments for a future conveyance of real estate or an equity therein which are executed on or after July 1, 1971. The time allowed to correct the default shall not be less than one year except in contracts involving an area not to exceed three acres.

SECTION 3. AMENDMENT.) Section 32-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-18-05. NOTICE OF CANCELLATION TO BE RECORDED.) In all cases of cancellation by notice of any contract for deed which has been recorded in the office of the register of deeds, the following documents shall also be recorded in that office: a copy of the notice of cancellation served upon the vendee, together with an affidavit of service and an affidavit of the vendor or his assigns, that the default of the vendee under the terms of the contract was not cured, after the date of service of such notice, within the time periods provided in section 32-18-04.

Approved March 16, 1971

CHAPTER 328

SENATE BILL NO. 2446
(Wenstrom)

LIMITATION ON USE OF SHORT TERM
MORTGAGE REDEMPTION PERIOD

AN ACT to amend and reenact section 32-19.1-01 of the North Dakota Century Code, relating to acreage for use of short term redemption mortgage.

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

SECTION 1. AMENDMENT.) Section 32-19.1-01 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-01. MORTGAGE MAY PROVIDE FOR FORECLOSURE UNDER CHAPTER.) The parties to a real estate mortgage upon property involving an area not to exceed ten acres may provide in said mortgage that upon default in the conditions of the mortgage, the mortgage may be foreclosed as provided in this chapter.

Approved March 19, 1971