

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2378

2005 SENATE JUDICIARY

SB 2378

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2378

Senate Judiciary Committee

Conference Committee

Hearing Date February 1 , 2005

Tape Number	Side A	Side B	Meter #
1	X		0.00 - 1350
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: Relating to the garnishment disclosure form.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen. Dick Dever, Dist 32 - Introduced the bill. (meter 537) This bill is to simplify a form.

Kim Rau - Representing ND Collector's Assoc. (meter 70)

The committee discussed to usage of "dependent" on page 5, line 26. Ms. Rau also distributed new form - Att #2. Sen. Trenbeath asked what the IRS uses as "dependent"

Mike LeFor - NDCA (meter 659) Gave his testimony - Att # 3.

Sen. Traynor asked if the definition of earnings included Social Security Benefits, Veterans pay... **Mr. LeFor** said that they did not change the definition and it is the one used in the century code.

Page 2

Senate Judiciary Committee

Bill/Resolution Number SB 2378

Hearing Date February 1, 2005

Senator Triplett still did not think that the form was "user" friendly and would like to set it up like a tax document.

They will come back with a better form. The committee discussed why earnings did not include Social security, Medicare excreta. (meter 1009)

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2378

Senate Judiciary Committee

Conference Committee

Hearing Date February 8, 2005

Tape Number	Side A	Side B	Meter #
1	X		1500 - 1940
Committee Clerk Signature <i>Maria L. Selberg</i>			

Minutes: Relating to the garnishment disclosure form.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following:

Senator Triplett presented to the committee her proposed amendment of the new garnishment form.

Discussion of dependent and the age of a dependent child possible being over 19, or dependent parents.

Sen. Trenbeath made the motion to do pass Att #1 amendment and **Senator Triplett** seconded the motion. All were in favor and motion passes.

Sen. Trenbeath made the motion to do pass amended bill and **Senator Triplett** seconded the motion. All were in favor and motion passes.

Carrier: **Senator Syverson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 2/8/05
 Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2378

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend Bill to include Worksheet Att #1

Motion Made By Sen. Trenbeath Seconded By Sen. Triplett

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) 6 No 0

Absent _____ 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/8/05
 Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2378

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Trenbeath Seconded By Sen. Triplett

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Sen. Syverson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2378: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2378 was placed on the Sixth order on the calendar.

Page 5, line 26, replace "child" with "family member" and remove "is under the age of nineteen and"

Page 5, line 27, after "in" insert "the"

Page 5, replace lines 30 and 31 with:

- "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 _____"

Page 6, remove lines 1 through 12

Page 6, line 13, replace "l" with "n"

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2378

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2378

House Judiciary Committee

Conference Committee

Hearing Date 3/15/05

Tape Number	Side A	Side B	Meter #
1	xx		6.8-15.5
1		xx	44-end
2	xx		0-0.3

Committee Clerk Signature *Dawn Penrose*

Minutes: 13 members present, 1 member absent (Rep. Charging).

Chairman DeKrey: We will open the hearing on SB 2378.

Sen. Dick Dever: Sponsor, explained the bill. I am going to keep my testimony real simple, because this bill is simply to simplify garnishment forms and that's kind of the extent of my understanding of it. I think simple's a good thing. I would be happy to respond to any simple question.

Chairman DeKrey: Thank you. Further testimony in support of SB 2378.

Mike Lefor, ND Collections Association: Support (see written testimony plus form).

Chairman DeKrey: Do you have copies of the old form.

Mike Lefor: Yes, I do, but only a copy. Here's what the form will look like and the bill has the old form, just lined out. Basically, with the form that is being handed out here, it makes it very simple. This is substantially what we do in the state of Montana.

Representative Koppelman: So will the new form basically give the same information as the old one or are we cutting out some substantive part.

Mike Lefor: No, it is exactly what it needs to be to fill out. There are no changes in what the current law has.

Representative Koppelman: Explain this to me. How does this work, when someone has a judgment against someone first, and then garnish their wages. You give them this form and you file it with the court after you filled it out. How does the process work.

Mike Lefor: You're right. We have to get a judgment first. Once we've obtained a judgment, we then have to send out documentation to the employer and employee prior to even garnishing their wages, so they know. There is a 10 day disclosure notice before it even happens, so sometimes we get calls from the debtor, that he doesn't want to be garnished, so they'll call us and try to work things out. Yes, they have 10 day notification prior to the garnishment process taking place.

Representative Koppelman: Is this a document that is filed with the court, so the court is aware of the process, or does it go to you or...

Mike Lefor: It is not filed with the court.

Representative Klemm: On page 6, line 18 and 19, the word affirmation. The statute requires that this disclosure be signed under oath, and as I understand it, affirmation is an alternative to that. I guess I'm just wondering from the technical standpoint, whether you should be using that word affirmation there on lines 18 and 19. It does have a subscribed and sworn to at the bottom, but it says affirmation. Did that come off of the Montana form.

Mike Lefor: I believe it does.

Representative Klemm: If you go back to page 1 of the bill, line 7, under disclosure, it says "the garnishee shall serve on the plaintiff or plaintiff's attorney written answers, under oath," so doesn't the garnishment disclosure have to be under oath, and I guess I'm just wondering if you know why the word affirmation is put in there on page 6 of this bill.

Mike Lefor: I don't..again, it's taken from Montana.

Representative Klemm: I think an affirmation is for people who don't take oaths, and so it's kind of, I'm not sure that the word affirmation should be there at all. It doesn't have to be there.

Mike Lefor: Our goal is to make it easier.

Representative Onstad: On the new form, Earnings, has earnings always dealt with pension and retirement programs, and goes on that earnings can include military retirement pay. Has it always been that way.

Mike Lefor: I believe I'm correct in saying that this is taken out of existing law. We haven't changed anything there.

Chairman DeKrey: Thank you. Further testimony in support of SB 2378.

Kim Rau, ND Collections Association: I just want to clarify two things. On the Affirmation part, it actually came from the Montana one, and we would be happy to strike that out and change it to Oath. Because right now a notary has to sign it. The other question that came up regarding whether there were any substantive changes, we did eliminate two sections of the current garnishment law. If you look on page 4, line 9 and 10, and on page 4, line 7-13, money and property. The reason we eliminated those from the new form, was due to the confusion of it and its non-use. The meaning of these two sections gets asked constantly by employers, what am I supposed to do with this. In North Dakota, we do have a section of law that deals with execution

of property, and that will take care of that part. We don't garnish property, we just garnish money.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2378.

Representative Klemin: I spoke briefly with Todd Kranda, legal counsel for the ND Collectors Association, and he agreed with me on the issue of the Affirmation, and so what he suggested and I think I agree with is that, only delete lines 18-21 on page 6. The reason for that is that when a person signs something like this, and you have a subscription under oath, following the signatures, a typical affidavit or any legal document like that, you don't have to have this kind of introduction saying those kinds of things, that I'm authorized, it already says authorized representative down on line 23 and the subscription means it is being given under oath, and that you're signing this under oath, so the words Affirmation on lines 18 and 19 are incorrect and the rest of that language on lines 19-21 are just not even needed. Based on those discussions with Mr. Kranda, I would move that we removed lines 18-21 on page 6.

Representative Maragos: Then under the signature block, where it says authorized representative of garnishee, should you add or garnishee, because it says here, I am the garnishee or I am authorized by the garnishee.

Representative Klemin: I see your point. You could say on line 24, garnishee or authorized representative.

Representative Maragos: Okay, thank you. I saw where it said in line 19 and 20.

Representative Maragos: Second.

Representative Koppelman: So if you sign a document and it is notarized, is that automatically considered under oath then.

Representative Klemin: That's what the subscription is, where it says subscribed and sworn to.

Representative Koppelman: So is that true that any time you have your signature notarized, or is it just a consent matter.

Representative Klemin: There is one other kind of thing that's called an acknowledgment, which is different. This is not an acknowledgment, this is a subscription.

Chairman DeKrey: Further discussion on the Klemin amendment, which removes lines 18-21 on page 6 and adds on line 24, "garnishee or".

Representative Klemin: We probably don't need the word on line 25, we don't need "of garnishee" either. So that is in my motion also.

Chairman DeKrey: Motion carried.

Representative Maragos: I move a Do Pass as amended.

Representative Klemin: Seconded.

11 YES 0 NO 3 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

Date: 3/15/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2378

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	A		Representative Zaiser	A	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 16, 2005 8:18 a.m.

Module No: HR-48-5101
Carrier: Maragos
Insert LC: 50800.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2378, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2378 was placed on the Sixth order on the calendar.

Page 6, remove lines 18 through 22

Page 6, after line 23, insert:
Garnishee or"

Renumber accordingly

2005 TESTIMONY

SB 2378



North Dakota Collectors Association

an association of collection specialists

Att # 1

SB2378 In favor

Chairman Traynor and members of the Senate Judiciary Committee, my name is Kim Rau. I am representing the ND Collector's Association. Our Association includes 24 ND owned Collection agencies.

During the 2003 Legislative Session, we were asked to look at revamping the garnishment disclosure form. The form in its current state is long and cumbersome for employers to fill out. Many of our agencies are licensed in other states and therefore utilize the garnishment procedures allowed in those states. The examples that we used to draft this proposed form was taken primarily from the Montana garnishment disclosure form.

This form has not changed the amount that can be withheld from the defendant's pay. They still are allowed the minimum wage exemption and the dependent exemption. The form has simply been made user friendly for the employer.

We eliminated two sections of the current garnishment disclosure form... Money (page 4, line 9 & 10) and Property (page 4, line 12 & 13). The reason for eliminating these sections was due to confusion and non-use. The meaning of these two sections is often asked by employers as they are filling out the disclosure form. In North Dakota we have a section of law that allows for executions on property, therefore these sections in the garnishment form serves no purpose.

This form has accomplished the task that was given to us during the 2003 session and has made filling out the disclosure easier for the employer.

Thank you for your favorable consideration for SB 2378.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota) In _____ Court
)ss.
County of _____)

Plaintiff

vs.

Defendant

Garnishment Disclosure

and

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 child of the defendant who is under the age of nineteen and is residing in 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. _____ Social security
- e. _____ Disposable earnings (line a minus lines b, c and d)
- f. _____ Twenty-five percent of line e
- g. _____ Minimum wage exemption (forty times minimum wage times number of weeks in pay period)
- h. _____ Line e minus line g
- i. _____ Line f or line h (whichever is less)
- j. _____ Dependant exemption (twenty dollars per dependant per week, if claimed)
- k. _____ Adverse interest and setoff
- l. _____ Line i less lines j and k

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

AFFIRMATION

I, _____ (person signing affirmation), am the garnishee or I am authorized by the garnishee to complete this garnishment disclosure, and have done so truthfully and to the best of my knowledge.

Dated this _____ day of _____, _____.

Signature _____
Authorized Representative of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

Att #3

Testimony of:

Mike Lefor, NDCA
Senate Bill 2378
February 1, 2005

Good morning, Chairman Traynor and members of the Senate Judiciary Committee, my name is Mike Lefor and I am the legislative director for the North Dakota Collections Association. Our association supports Senate Bill 2378 as it simplifies the process. In the last legislative session, our association promised to research ways to simplify the employer disclosure form in the garnishment process.

Simply stated, this bill would save employers a tremendous amount of time in filling out the disclosure form. I have personally been in the collection business for over twenty-five years and during that time, we have taken legal action against consumers in North Dakota, South Dakota and Montana. The North Dakota form is the most difficult form for an employer to try to figure out. It is also time consuming. The research our association has done includes looking at the employer disclosure form in other states. The easiest form we could find was in Montana.

As I stated earlier, our company has taken action against consumers in Montana and during the last twenty-five years our staff cannot think of even one instance when an employer in Montana called to ask how to fill the form out. In North Dakota, we receive numerous calls asking for assistance in understanding the form and how to fill it out.

We have taken a five page document and made it into a two page document, which resembles the Montana form. The new two page document makes the process easier and faster. We have recently asked Montana employers how long it takes to fill out the form

Senate Bill 2378
Testimony
Page 2

we are proposing. The answers ranged from five to ten minutes.

The new form is quick to fill out and easy to understand. It makes the garnishment process easier for the employer, the employee and the businesses taking action against them. We believe Senate Bill 2378 is a win-win situation and we ask your committee to give it a favorable recommendation to the Senate. Thank you for your time and if you have any questions, I would be happy to answer them for you.

2/8
Att #7

Proposed Amendments to SB 2378

Page 5, line 26, replace "child" with "family member" and remove "is under the age of nineteen and"

Page 5, line 29, after "Worksheet:" insert:

- A. Total earnings in pay period _____
- B. Federal tax _____
- C. State tax _____
- D. FICA (social security/medicare) _____
- E. Total deductions (line 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 40 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 (\$20 per dependent
per week, if claimed) _____
- L. Adverse interest or setoff _____
- M. Total of lines K and L _____
- N. Line J less line M _____

Page 5, remove lines 30 and 31

Page 6, remove lines 1 through 12

Re-number accordingly

13- Line N
(change L.)

Proposed Amendments to SB 2378

Page 5, line 26, replace "child" with "family member" and remove "is under the age of nineteen and"

Page 5, line 29, after "Worksheet:" insert:

<u>A. Total earnings in pay period</u>	_____
<u>B. Federal tax</u>	_____
<u>C. State tax</u>	_____
<u>D. FICA (social security/medicare)</u>	_____
<u>E. Total deductions (line B+C+D)</u>	_____
<u>F. Disposable earnings (line A less line E)</u>	_____
<u>G. Twenty-five percent of line F</u>	_____
<u>H. Minimum wage exemption</u> <u>(minimum wage times 40 hours times</u> <u>number of weeks in pay period)</u>	_____
<u>I. Line F less line H</u>	_____
<u>J. Line G or line I (whichever is less)</u>	_____
<u>K. Dependent exemption (\$20 per dependent</u> <u>per week, if claimed)</u>	_____
<u>L. Adverse interest or setoff</u>	_____
<u>M. Total of lines K and L</u>	_____
<u>N. Line J less line M</u>	_____

Page 5, remove lines 30 and 31

Page 6, remove lines 1 through 12
Page 6, line 13 replace "I" with "IV"
Renumber accordingly

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

Garnishee

Garnishment Disclosure

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:

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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.)

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- a. Total earnings in pay period _____
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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 and 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).

AFFIRMATION

I, _____ (person signing affirmation), am the garnishee or I am authorized
by the garnishee to complete this garnishment disclosure, and have done so truthfully and to the
best of my knowledge.

Dated this _____ day of _____, _____.

Signature _____
Authorized Representative of Garnishee

_____ Title

Subscribed and sworn to before me on _____, _____.

Notary Public



North Dakota Collectors Association

an association of collection specialists

Mike Lefor, NDCA
Senate Bill 2378

Good morning, Chairman DeKrey and members of the House Judiciary Committee, my name is Mike Lefor and I am the legislative director for the North Dakota Collections Association. Our association supports Senate Bill 2378 as it simplifies the process. In the last legislative session, our association promised to research ways to simplify the employer disclosure form in the garnishment process.

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As I stated earlier, our company has taken action against consumers in Montana and during the last twenty-five years our staff cannot think of even one instance when an employer in Montana called to ask how to fill the form out. In North Dakota, we receive numerous calls asking for assistance in understanding the form and how to fill it out.

We have taken a five page document and made it into a two page document, which resembles the Montana form. The new two page document makes the process easier and faster. We have recently asked Montana employers how long it takes to fill out the form



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Senate Bill 2378
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