

HOUSE BILL NO. 1211

Introduced by

Representative DeKrey

1 A BILL for an Act to amend and reenact sections 32-09.1-03, 32-09.1-04, 32-09.1-07, and
2 32-09.1-09 of the North Dakota Century Code, relating to the garnishment of wages.

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

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

6 **32-09.1-03. Restriction on garnishment of earnings.**

- 7 1. The maximum part of the aggregate disposable earnings of an individual for any
8 workweek which is subject to garnishment may not exceed the lesser of:
- 9 a. Twenty-five percent of disposable earnings for that week.
 - 10 b. The amount by which disposable earnings for that week exceed forty times
11 the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair
12 Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29
13 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the
14 secretary of labor in case of earnings for any pay period other than a week, in
15 effect at the time the earnings are payable.
- 16 2. The maximum amount subject to garnishment under subsection 1 for any
17 workweek must be reduced by twenty one hundred dollars for the garnishment
18 debtor and one hundred dollars for each dependent family member residing with
19 the garnishment debtor. Within ten days after receipt of the garnishment
20 summons, the garnishment debtor shall provide to the employer a ~~verified~~ list
21 signed by the garnishment debtor of the names and social security numbers, if
22 any, of the dependents who reside with the garnishment debtor. If the garnishment
23 debtor fails to provide the list, it is ~~conclusively~~ presumed that the garnishment
24 debtor claims no dependents, but the garnishment debtor may provide the list at a

- 1 later date, in which case the exemptions claimed will be in effect for amounts
2 subject to garnishment after the date the list is provided.
- 3 3. The restrictions of subsection 1 do not apply in the case of:
- 4 a. Any order of any court for the support of any person.
- 5 b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
- 6 c. Any debt due for any state or federal tax.
- 7 4. The maximum part of the aggregate disposable earnings of an individual for any
8 workweek which is subject to garnishment to enforce any order for the support of
9 any person may not exceed:
- 10 a. Where such individual is supporting a spouse or dependent child other than a
11 spouse or child with respect to whose support such order is used, fifty percent
12 of the individual's disposable earnings for that week; and
- 13 b. Where such individual is not supporting a spouse or dependent child other
14 than a spouse or child with respect to whose support such order is used, sixty
15 percent of the individual's disposable earnings for that week;
- 16 except that, with respect to the disposable earnings of any individual for any
17 workweek, the fifty percent specified in subdivision a must be deemed to be
18 fifty-five percent and the sixty percent specified in subdivision b must be deemed to
19 be sixty-five percent, if and to the extent that the earnings are subject to
20 garnishment to enforce a support order with respect to a period which is prior to the
21 twelve-week period which ends with the beginning of such workweek.
- 22 5. No court of this state may make, execute, or enforce any order or process in
23 violation of this section.

24 **SECTION 2. AMENDMENT.** Section 32-09.1-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **32-09.1-04. Notice before garnishment of earnings - Notice of renewal of**
27 **garnishment of earnings.**

- 28 1. At least ten days before the issuance of any garnishee summons against the
29 earnings of any person, the creditor shall serve upon the debtor a notice that a
30 garnishee summons may be issued. The notice must be served personally or by

1 first-class mail. Failure to serve the notice renders any subsequent garnishment
2 void. The notice must be in substantially the following form:

3 To: _____ Date: _____

4 ~~Judgment~~ Debtor

5 Please take notice that a garnishee summons that will require
6 part of your wages to be withheld may be served upon your employer,
7 without any further court proceedings or notice to you, at any time after
8 ten days following the date of this notice. For each dependent family
9 member residing with you, the amount subject to garnishment for any
10 workweek may be reduced by ~~twenty~~ one hundred dollars, if within ten
11 days after receipt of the garnishee summons you provide to your
12 employer a ~~verified~~ list signed by you of the dependent family members
13 residing with you and their social security numbers, if any. If you
14 provide the list of dependents after the ten-day period, the exemptions
15 you claim will apply only to the amounts subject to garnishment after
16 the date you provide the list. You may wish to contact the undersigned
17 judgment creditor or attorney to arrange for the settlement of the debt,
18 which is \$_____.

19 _____

20 Judgment Creditor

21 Address

22 2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on
23 wages under section 32-09.1-21, at least ten days but no more than twenty days
24 before the expiration of the continuing lien on wages, the creditor may serve upon
25 the debtor a notice that a garnishee summons may be reissued for a continuing
26 lien on wages under section 32-09.1-21. The notice must be served personally or
27 by first-class mail. Failure to serve the notice renders any subsequent garnishment
28 void. The notice must be in substantially the following form:

29 To: _____ Date: _____

30 ~~Judgment~~ Debtor

1 Please take notice that a garnishee summons that will require
2 part of your wages to be withheld may be served upon your employer
3 without any further court proceedings or notice to you. This action is a
4 renewal of the current garnishment order for this case. For each
5 dependent family member residing with you, the amount subject to
6 garnishment for any workweek may be reduced by ~~twenty~~ one hundred
7 dollars, if within ten days after receipt of the garnishee summons you
8 provide to your employer a ~~verified~~ list signed by you of the dependent
9 family members residing with you and their social security numbers, if
10 any. If you provide the list of dependents after the ten-day period, the
11 exemptions you claim will apply only to the amounts subject to
12 garnishment after the date you provide the list. You may wish to contact
13 the undersigned judgment creditor or attorney to arrange for the
14 settlement of the debt, which is \$ _____.

15 _____
16 Judgment Creditor
17 Address

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

21 To: Garnishee
22 I _____ (garnishment debtor) certify and affirm that the following
23 persons are my dependents and they reside in my household and I claim the
24 garnishment exemptions as provided by NDCC 32-09.1-03(2):

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

29 Dated this _____ day of _____, _____.

30 _____
31 Garnishment Debtor

1) ss.
2 County of _____) _____
3 _____
4 Plaintiff
5 against Garnishee Summons and
6 _____ Notice to Defendant
7 Defendant
8 and
9 _____
10 Garnishee

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

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

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

27 Failure to disclose and withhold may make you liable to the plaintiff for the sum of
28 \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or
29 110 percent of the amount that remains unpaid.)

30 You shall retain the defendant's nonexempt property, money, and effects in your
31 possession until a writ of execution is served upon you, until the defendant authorizes

1 release to the plaintiff, or until the expiration of 360 days from the date of service of this
2 summons upon you. If no writ of execution has been served upon you or no agreement
3 has been made for payment within 360 days, the garnishment ends and any property or
4 funds held by you must be returned to the defendant if the defendant is otherwise
5 entitled to their possession.

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

9 You may not discharge the defendant because the defendant's earnings are
10 subject to garnishment.

11 Dated _____, ____.

12 By: _____

13 NOTICE TO DEFENDANT

14 To: _____

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

18 _____

19 (Attorneys for Plaintiff)

20 _____

21 (Address)

22 _____

23 (Telephone)

24 **SECTION 4. AMENDMENT.** Section 32-09.1-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **32-09.1-09. Disclosure.** Within the time as limited, the garnishee shall serve upon the
27 plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the
28 garnishment disclosure form and to any written interrogatories that are served upon the
29 garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent
30 of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of
31 setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be

1 served personally or by mail. If disclosure is by a corporation or limited liability company, it
2 must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure
3 must state:

- 4 1. The amount of disposable earnings earned or to be earned within the defendant's
5 pay periods which may be subject to garnishment and all of the garnishee's
6 indebtedness to the defendant.
- 7 2. Whether the garnishee held, at the time, the title or possession of or any interest in
8 any personal property or any instruments or papers relating to any property
9 belonging to the defendant or in which the defendant is interested. If the garnishee
10 admits any interest or any doubt respecting the interest, the garnishee shall set
11 forth a description of the property and the facts concerning the property and the
12 title, interest, or claim of the defendant in or to the property.
- 13 3. If the garnishee claims any setoff or defense or claim or lien to disposable
14 earnings, indebtedness, or property, the garnishee shall disclose the amount and
15 the facts.
- 16 4. Whether the defendant claims any exemption from execution or any other
17 objection, known to the garnishee or the defendant, against the right of the plaintiff
18 to apply upon demand the debt or property disclosed.
- 19 5. If other persons make claims to any disposable earnings, debt, or property of the
20 defendant, the garnishee shall disclose the names and addresses of the other
21 claimants and, so far as known, the nature of their claims.

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

24 State of North Dakota) In _____ Court
25) ss.
26 County of _____) _____
27 _____
28 Plaintiff
29 vs.
30 _____
31 Defendant

1 and

Garnishment Disclosure

2 _____

3 Garnishee

4 I am the _____ of the garnishee and duly authorized to disclose for
5 the garnishee.

6 On _____, _____, the time of service of garnishee summons on the
7 garnishee, there was due and owing the defendant from the garnishee the following:

8 1. Earnings. For the purposes of garnishment, "earnings" means compensation
9 payable for personal service whether called wages, salary, commission,
10 bonus, or otherwise, and includes periodic payments under a pension or
11 retirement program. "Earnings" does not include social security benefits or
12 veterans' disability pension benefits, except when the benefits are subject to
13 garnishment to enforce any order for the support of a dependent child.

14 "Earnings" includes military retirement pay. "Disposable earnings" means that
15 part of the earnings of an individual remaining after the deduction from those
16 earnings of amounts required by law to be withheld. If the garnishee
17 summons was served upon you at a time when earnings from a prior
18 completed pay period were owing but not paid, complete the following
19 disclosure for earnings from both the past pay period and the current pay
20 period.

21 2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the
22 garnishee or other persons by reason of ownership or interest in the
23 defendant's property. You must state the name and address and the nature
24 of that person's claim if known. (Any assignment of wages made by the
25 defendant or any indebtedness to a garnishee within ten days before the
26 receipt of the first garnishment on a debt is void and should be disregarded.)

27 3. Dependent. Any family member of the defendant who is residing in the
28 defendant's residence. (If properly claimed ~~within ten days~~ after receipt of the
29 garnishee summons.)

30 4. Worksheet:
31 a. Total earnings in pay period _____

Sixtieth
Legislative Assembly

- 1 b. Federal tax _____
- 2 c. State tax _____
- 3 d. FICA (social security/medicare) _____
- 4 e. Total deductions (lines b+c+d) _____
- 5 f. Disposable earnings (line a less line e) _____
- 6 g. Twenty-five percent of line f _____
- 7 h. Minimum wage exemption
- 8 (minimum wage times forty hours times
- 9 number of weeks in pay period) _____
- 10 i. Line f less line h _____
- 11 j. Line g or line i (whichever is less) _____
- 12 k. ~~Dependent~~ Debtor and dependent exemption
- 13 (~~twenty~~ one hundred dollars for debtor plus
- 14 one hundred dollars per dependent per week,
- 15 if claimed) _____
- 16 l. Adverse interest or setoff _____
- 17 m. Total of lines k and l _____
- 18 n. Line j less line m _____

19 Line n is the amount subject to garnishment (not to exceed
20 110 percent of the amount of the judgment which remains unpaid).

21 Signature _____

22 Garnishee or Authorized Representative
23 of Garnishee

24 _____

25 Title

26 Subscribed and sworn to before me on _____, _____.

27 _____

28 Notary Public