

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED 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 dollars for each dependent family member
18 residing with the garnishment debtor. Within ten days after receipt of the
19 garnishment summons, the garnishment debtor shall provide to the employer a
20 verified list, signed under penalty of perjury by the garnishment debtor, of the
21 names and social security numbers, if any, of the dependents who reside with the
22 garnishment debtor. If the garnishment debtor fails to provide the list, it is
23 conclusively presumed that the garnishment debtor claims no dependents, but the
24 garnishment debtor may provide the list at a later date, in which case the

- 1 exemptions claimed will be in effect for amounts subject to garnishment after the
2 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
19 to 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
21 the 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 dollars, if within ten days after
11 receipt of the garnishee summons you provide to your employer a
12 ~~verified~~ list signed by you, under penalty of perjury, of the dependent
13 family members residing with you and their social security numbers, if
14 any. If you provide the list of dependents after the ten-day period, the
15 exemptions you claim will apply only to the amounts subject to
16 garnishment after the date you provide the list. You may wish to contact
17 the undersigned judgment creditor or attorney to arrange for the
18 settlement of the debt, 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
28 garnishment 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 dollars, if
7 within ten days after receipt of the garnishee summons you provide to
8 your employer a ~~verified~~ list signed by you, under penalty of perjury, of
9 the dependent family members residing with you and their social
10 security numbers, if any. If you provide the list of dependents after the
11 ten-day period, the exemptions you claim will apply only to the amounts
12 subject to garnishment after the date you provide the list. You may wish
13 to contact the undersigned judgment creditor or attorney to arrange for
14 the settlement of the debt, which is \$ _____.

Judgment Creditor
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, under penalty of perjury, _____ (garnishment debtor) certify and
23 affirm that the following persons are my dependents and they reside in my
24 household and I claim the garnishment exemptions as provided by NDCC
25 32-09.1-03(2):

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

30 Dated this _____ day of _____, _____.

31 _____

1 Garnishment Debtor

2 **SECTION 3. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is
3 amended and reenacted as follows:

4 **32-09.1-07. Form of summons and notice.** The garnishee summons must state that
5 the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after
6 service of the garnishee summons a written disclosure, under oath, of indebtedness to the
7 defendant and answers to all written interrogatories that are served with the garnishee
8 summons. The plaintiff may not require disclosure of indebtedness or property of the
9 defendant in the garnishee's possession or under the garnishee's control to the extent that the
10 indebtedness or property exceeds one hundred ten percent of the amount of the judgment
11 which remains unpaid. The garnishee summons must include the full name of the defendant
12 and place of residence and the amount of the judgment which remains unpaid. The garnishee
13 summons must also state that the garnishee shall retain property or money in the garnishee's
14 possession pursuant to this chapter until the plaintiff causes a writ of execution to be served
15 upon the garnishee or until the defendant authorizes release to the plaintiff and must state that
16 after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall
17 release all retained property and money to the defendant and is discharged and relieved of all
18 liability on the garnishee summons. The garnishee summons must state that no employer may
19 discharge any employee because the employee's earnings are subject to garnishment. The
20 garnishee summons must state that any assignment of wages made by the defendant or
21 indebtedness to the garnishee incurred within ten days before the receipt of notice of the first
22 garnishment on the underlying debt is void. The garnishee summons must state the date of the
23 entry of judgment against the defendant. The garnishee summons must state that the
24 defendant shall provide to the garnishee within ten days after receipt of the garnishee
25 summons a ~~verified~~ list of the dependent family members who reside with the defendant and
26 their social security numbers, if any, to have the maximum amount subject to garnishment
27 reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that
28 failure of the defendant to provide a ~~verified~~ list to the garnishee within ten days after receipt of
29 the garnishee summons is conclusive with respect to whether the defendant claims no family
30 members.

1 The garnishee summons and notice to defendant must be substantially in the following
2 form:

3 State of North Dakota) In _____ Court
4) ss.
5 County of _____) _____
6 _____
7 Plaintiff
8 against Garnishee Summons and
9 _____ Notice to Defendant
10 Defendant
11 and
12 _____
13 Garnishee

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

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

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

1 Failure to disclose and withhold may make you liable to the plaintiff for the sum of
2 \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or
3 110 percent of the amount that remains unpaid.)

4 You shall retain the defendant's nonexempt property, money, and effects in your
5 possession until a writ of execution is served upon you, until the defendant authorizes
6 release to the plaintiff, or until the expiration of 360 days from the date of service of this
7 summons upon you. If no writ of execution has been served upon you or no agreement
8 has been made for payment within 360 days, the garnishment ends and any property or
9 funds held by you must be returned to the defendant if the defendant is otherwise
10 entitled to their possession.

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

14 You may not discharge the defendant because the defendant's earnings are
15 subject to garnishment.

16 Dated _____, ____.

17 By: _____

18 NOTICE TO DEFENDANT

19 To: _____

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

23 _____

24 (Attorneys for Plaintiff)

25 _____

26 (Address)

27 _____

28 (Telephone)

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

1 County of _____) _____

2 _____

3 Plaintiff

4 vs.

5 _____

6 Defendant

7 and Garnishment Disclosure

8 _____

9 Garnishee

10 I am the _____ of the garnishee and duly authorized to disclose
11 for the garnishee.

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

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

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

27 2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the
28 garnishee or other persons by reason of ownership or interest in the
29 defendant's property. You must state the name and address and the nature
30 of that person's claim if known. (Any assignment of wages made by the

1 defendant or any indebtedness to a garnishee within ten days before the
2 receipt of the first garnishment on a debt is void and should be disregarded.)
3 3. Dependent. Any family member of the defendant who is residing in the
4 defendant's residence. (If properly claimed ~~within ten days~~ after receipt of the
5 garnishee summons.)

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

24 Line n is the amount subject to garnishment (not to exceed
25 110 percent of the amount of the judgment which remains unpaid).

26 Signature _____
27 Garnishee or Authorized Representative
28 of Garnishee
29 _____
30 Title

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

1

2

Notary Public