

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2274
(Senators Wardner, Lyson)
(Representatives Dosch, Kretschmar, Porter)

AN ACT to amend and reenact sections 32-09.1-07, 32-09.1-09, 32-09.1-14, and 32-09.1-15 of the North Dakota Century Code, relating to garnishment proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice.

1. The garnishee summons must state ~~that~~:

a. ~~That~~ the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons ~~a~~:

(1) ~~A~~ written disclosure, under oath, of indebtedness to the defendant; and ~~answers~~

(2) ~~Answers, under oath, to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid.~~

b. ~~The garnishee summons must include the full name of the defendant and, the defendant's place of residence, the date of the entry of judgment against the defendant, the total amount of the judgment which remains unpaid, and the retention amount of. The retention amount is the sum of the amount of the judgment which remains unpaid, one hundred twenty-five dollars, and an amount equal to nine months of interest on the amount of the judgment which remains unpaid. The garnishee summons must also state that~~

c. ~~That~~ the garnishee shall retain property, ~~earnings~~, or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff ~~and must state that~~.

d. ~~That~~ after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall release all retained property, ~~earnings~~, and money to the defendant and is discharged and relieved of all liability on the garnishee summons. ~~The garnishee summons must state that no~~

e. ~~That an~~ employer may ~~not~~ discharge ~~any~~ ~~an~~ employee because the employee's ~~property, earnings, or money~~ are subject to garnishment. ~~The garnishee summons must state that~~

f. ~~That~~ any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment

on the underlying debt is void. ~~The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that~~

- g. ~~That the defendant shall~~ must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. ~~The garnishee summons must state that~~
- h. That failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

2. Under subdivision a of subsection 1, the plaintiff may not require the garnishee to disclose indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds the retention amount.

3. The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota)) ss. County of _____)	In _____ Court _____
Plaintiff	
against	Garnishee Summons and Notice to Defendant
Defendant	
and	
Garnishee	

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

You shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$_____. (~~Enter 440 percent of the plaintiff's judgment which remains unpaid~~ retention amount.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$_____.

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

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$_____. (~~Enter the lesser of the plaintiff's judgment against the defendant or 440 percent of the~~ retention amount that remains unpaid.)

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

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

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

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

Dated _____, ____.

By: _____

NOTICE TO DEFENDANT

To: _____

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

(Attorneys for Plaintiff)

(Address)

(Telephone)

SECTION 2. AMENDMENT. Section 32-09.1-09 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-09. Disclosure.

1. Within the time as limited in the garnishee summons, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed ~~one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests~~ the retention amount. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by ~~some~~ an officer, a manager, or an agent having knowledge of the facts.
2. Disclosure must state:
 - 4- a. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
 - 2- b. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.

- 3. c. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
 - 4. d. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
 - 5. e. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.
3. A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form, subject to subsection 3 of section 32-09.1-03:

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:

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. Money. Any amounts due and owing to defendant from the garnishee, except for earnings. (amount and facts)
3. Property. Any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee. (description, estimated value, and facts)
4. 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. 5. 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.)

4. ~~Worksheet~~

6. Earnings worksheet:

- 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 (the amount of earnings
subject to garnishment) _____

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

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

Signature _____
Garnishee or Authorized Representative
of Garnishee

Title

Subscribed and sworn to before me on _____, _____.

Notary Public

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

32-09.1-14. Default. If any garnishee who is duly summoned willfully fails to serve disclosure as required in this chapter, the court, upon proof by affidavit of the creditor, may render judgment against the garnishee for an amount not exceeding the lesser of the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller the retention amount as defined under section 32-09.1-07. The creditor shall serve the garnishee with a copy of the affidavit and a notice of intent to take default judgment. The court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

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

32-09.1-15. Judgment against garnishee. Judgment against a garnishee ~~shall~~ must be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed in the proceeding against the garnishee but not to exceed ~~one hundred ten percent of the amount which remains unpaid~~ the retention amount defined under section 32-09.1-07. The judgment ~~shall~~ must discharge the garnishee from all claims of all the parties named in the process to the property, earnings, or money paid, delivered, or accounted for by the garnishee by force of the judgment. When ~~any~~ a person is charged as garnishee by reason of any property in possession other than an indebtedness payable in money, that person shall deliver the property, or so much ~~thereof~~ of the property as may be necessary, to the officer holding execution, and the property ~~shall~~ must be sold and the proceeds accounted for in the same manner as if ~~it~~ the property had been taken on execution against the defendant. The garnishee ~~shall~~ may not be compelled to deliver any specific articles at any time or place other than as stipulated in the contract with the defendant.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2274.

Senate Vote: Yeas 44 Nays 2 Absent 1

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State