

Written Testimony in Support of SB 2310 Garnishment Fee

Chairman Headland and Members of the Committee,

For the record, I am Rick Clayburgh, President and CEO of the North Dakota Banker's Association. Thank you to Senator Barta for introducing SB 2310 on behalf of the NDBA. The NDBA supports the enactment of SB 2310, which proposes to increase the garnishment disclosure fee from \$25 to \$40.

The proposal will amend sections 32-09.1-05 and 32-09.1-10 of the North Dakota Century Code to ensure that fees for ND OMB and other non-state government garnishees' fees are aligned.

The last time the amount was updated was in 2005, when the fee was increased from \$10 to \$25. The increase from \$25 to \$40 is consistent with inflation since 2005.

It is important to understand that the actual costs associated with responding to garnishments for banks and other businesses far exceed \$40. Garnishees must first determine their legal obligations under the garnishment, complete the disclosure forms, and take other necessary compliance steps. Banks must also navigate federal regulations protecting customer accounts that hold federal funds, which are exempt from garnishment. If the garnishment involves wages, these steps must be repeated for every paycheck, with funds held until the judgment creditor executes on the garnished funds.

Additionally, garnishments function as ancillary lawsuits, making garnishees actual parties to the initial lawsuit and subjecting them to discovery requests alongside disclosure and hold requirements.

Mistakes in garnishment filings are also common, such as incorrect bank or customer names and improper service of process. In these cases, banks cannot comply or disclose customer information without violating state and federal privacy laws. Resolving such errors often requires legal counsel, adding significant time and expense for the garnishee.

Complying with a garnishment summons in adherence with state and federal laws and regulations requires considerable effort and resources, far exceeding the compensation provided by the \$25 or even \$40 fee.

Members of the Committee, the North Dakota Bankers Association requests a do-pass motion on SB 2310.

Thank you

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Procedure for Garnishments is as follows:

1. **Judgment Requirement:** a creditor must first obtain a judgment against the debtor in a court of competent jurisdiction before proceeding with garnishment. N.D.C.C. 32-09.1-02.

- **Concerns for Banks:** When reviewing the garnishee summons issued after obtaining a judgment, the bank must confirm that the judgment was obtained in a court of competent jurisdiction. So, for example, if the judgment was obtained in a foreign jurisdiction and is not subsequently transcribed to the county in which the property the Plaintiff is seeking to garnish is located, and the bank fails to notice, the bank is exposing itself to liability because complying with the garnishment not only violated their duty of confidentiality under N.D.C.C. § 6-08.1-03, but they could also be sued by their customer for releasing their property without the legal authority to do so.

2. **Notice to Debtor:**

For a garnishment of property: a copy of the garnishee summons and copies of all papers served on the garnishee bank must be served personally upon the defendant or served by first-class mail no later than ten days after service is made upon the garnishee. N.D.C.C. § 32-09.1-08

For a garnishment of earnings: at least ten days before issuing a garnishee summons against the earnings of any person the creditor must serve the debtor with a notice that a garnishee summons may be issued. Failure to serve this notice renders any subsequent garnishment void.

Generally, the Bank is not privy to this part. It is up to the Judgment Creditor to do this.

3. **Issuance of Garnishee Summons:** The garnishee summons must state specific information, including the garnishee's obligations, the debtor's details, the judgment amount, and the retention amount. It must also state that the garnishee is to retain the debtor's property, earnings, or money until a writ of execution is served or the debtor authorizes release to the plaintiff.
4. **Service of Garnishee Summons:** The garnishment statutes related to service of a garnishee summons on a bank states that service is only effective if the garnishee summons is served on a specifically named president, vice president, or registered agent.

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- **Concerns for Banks:** Banks have a statutorily mandated duty of confidentiality under N.D.C.C. 6-08.1-03. Under this statute, a bank cannot disclose customer information without the consent of the customer or pursuant to valid legal process. So, if a garnishment is served on bank personnel who are not a president, vice president, or registered agent, and that bank provides customer information, they violate this statute and expose themselves to liability. Furthermore, they are statutorily obligated to comply within 20 days of service, failing to do so entitles the plaintiff to a judgment for the lesser of the amount of the plaintiff's judgment or the retention amount.

This results in banks diverting valuable time and resources to garnishments when served because failing to comply with a validly served garnishment could result in a judgment for the entire judgment or retention amount, and if the garnishee summons is not served correctly, they are liable to their customer for disclosing customer information without the authority to do so.

5. **Garnishee's Disclosure:** The garnishee must serve a written disclosure under oath to the plaintiff or plaintiff's attorney within twenty days after valid service of the garnishee summons. The disclosure must detail any indebtedness to the defendant and answer any written interrogatories served with the garnishee summons. N.D.C.C. § 32-09.1-07(3).

- **Concerns for Banks:** failing to respond within twenty days of valid service entitles the Plaintiff to a judgment for the lesser of the amount of the plaintiff's judgment or the retention amount.
- Banks have the added federal requirement to make sure that the amounts stated do not include federal payments to the customer.

6. **Retention of Property:** The garnishee must retain the defendant's nonexempt property, earnings, and money in their possession until a writ of execution is served, the defendant authorizes release, or 360 days pass from the date of service of the summons. N.D.C.C. § 32-09.1-07.

- **Concern for Banks:** For an earnings garnishment, 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 25% of disposable earnings for that week or the amount by which disposable earnings for that week exceed 40 times the federal minimum hourly wage N.D.C.C. § 32-09.1-03. Additionally, the maximum amount subject to garnishment must be reduced by \$20 for each dependent family member residing with the garnishment debtor. N.D.C.C. § 32-09.1-03. Therefore, a bank must devote valuable time and resources to ensure they are retaining the appropriate amount of earnings to ensure they are complying with applicable law.

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7. **Execution of Judgment:** The Judgment Creditor can serve a writ of execution on the bank for the retained funds or earnings. If not writ of execution is served within 360 days, the garnishment ends, and any property or funds held by the garnishee must be returned to the defendant.
8. The garnishee summons and disclosure statement must serve a written disclosure under oath to the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons. This disclosure must detail any indebtedness to the defendant and answer any written interrogatories served with the garnishee summons. N.D.C.C. § 32-09.1-07.

For a Bank the garnishee summons must be served on a specifically named president, vice president, or registered agent. 32-09.1-08(2).