

JUDICIAL REMEDIES

CHAPTER 885

SENATE BILL NO. 2601

(Stenehjem)

(Approved by the Committee on Delayed Bills)

GARNISHEE SUMMONS AND NOTICE

AN ACT to amend and reenact section 32-09.1-07 of the North Dakota Century Code, relating to the form of a garnishee summons and notice to defendant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers 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. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property 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 after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state 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 the defendant 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 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.

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

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

 Plaintiff
 against ----- Garnishee Summons and
 ----- Notice to Defendant
 Defendant
 and -----

 Garnishee

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

You are hereby summoned and required to must 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 110 percent of the plaintiff's judgment which remains unpaid.) 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 which that remains unpaid is \$----- You are required to retain in your possession the defendant's property, money, and effects in an amount not exceeding the amount required to be disclosed by you, or so much thereof as is not exempt.

The defendant must 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 110 percent of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, 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 180 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 180 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 ~~have been subjected~~ are subject to garnishment.

Dated this ---- day of -----, 19----.
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. EFFECTIVE DATE. This Act becomes effective on the date it is filed with the secretary of state.

Approved November 14, 1991
Filed November 14, 1991