CHAPTER 32-09.1
GARNISHMENT

32-09.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Defendant" means every judgment debtor.
2. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by other law to be withheld.
3. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to 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.
4. "Person" includes an individual, an individual's personal representative or other fiduciary, any two or more persons having a joint or common interest, a partnership, an association, a corporation, a limited liability company, and any other legal or commercial entity.
5. "Plaintiff" means every judgment creditor.

32-09.1-02. Creditors may proceed by garnishment.

Any creditor is entitled to proceed by garnishment in any court having jurisdiction of the subject of the action against any person, any public corporation, the United States, the state of North Dakota, or any institution, department, or agency of the state, indebted to or having any property in possession or under control, belonging to the creditor's debtor after securing a judgment against the debtor in a court of competent jurisdiction, in the cases, upon the conditions, and in the manner prescribed in this chapter. A garnishment action brought pursuant to this chapter is the exclusive procedure which may be used to execute on earnings of a debtor while those earnings are held by a third-party employer.

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

1. 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:
   a. Twenty-five percent of disposable earnings for that week.
   b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Within ten days after receipt of the garnishment summons, the garnishment debtor shall provide to the employer a list, signed under penalty of perjury by the garnishment debtor, of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is presumed that the garnishment debtor claims no dependents, but the garnishment debtor may provide the list at a later date, in which case the exemptions claimed will be in effect for amounts subject to garnishment after the date the list is provided.
3. The restrictions of subsection 1 do not apply in the case of:
   a. Any order of any court for the support of any person.
   b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
   c. Any debt due for any state or federal tax.

4. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person may not exceed:
   a. If such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, fifty percent of the individual's disposable earnings for that week; and
   b. If such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

   except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a must be deemed to be fifty-five percent and the sixty percent specified in subdivision b must be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.
5. No court of this state may make, execute, or enforce any order or process in violation of this section.

32-09.1-04. Notice before garnishment of earnings - Notice of renewal of garnishment of earnings.

1. At least ten days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

   To: _____ Date: _____
   Debtor

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

   _____
   Judgment Creditor
   Address

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

   To: _____ Date: _____
   Debtor

   Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer without any further court proceedings or notice to you. This action is a renewal of the current garnishment order for this case. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by

twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a list signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is $ _____.

_____
Judgment Creditor
Address

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

To: Garnishee

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

Name	Social Security Number
_____	_____
_____	_____
_____	_____

Dated this _____ day of _____ , _____.

_____
Garnishment Debtor

32-09.1-05. Service on office of management and budget - Fees.

Service upon the state of North Dakota, or any state institution, department, or agency, as garnishee, may be made upon the director of the office of management and budget, or the director's authorized designee, in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of twenty-five dollars. The fee must be deposited in the state treasury.

32-09.1-06. Garnishee summons.

In any action in a court of record for the recovery of money, at any time after judgment, a garnishee summons may be issued against any third person as provided in this chapter. The plaintiff and defendant shall be designated. The person against whom the summons is issued shall be designated garnishee.

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

1. The garnishee summons must state:
   a. That the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons:
      (1) A written disclosure, under oath, of indebtedness to the defendant; and
      (2) Answers, under oath, to all written interrogatories that are served with the garnishee summons.
   b. The full name of the defendant, 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. 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.
   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.

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.

e. That an employer may not discharge an employee because the employee's property, earnings, or money are subject to garnishment.

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.

g. That the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a 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.

h. That failure of the defendant to provide a 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

_____
Defendant

and

_____
Garnishee

Garnishee Summons and
Notice to Defendant

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 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 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 retention amount.)

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)

32-09.1-08. Service.

1. The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal.
2. Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.
3. A plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant in accordance with the North Dakota Rules of Civil Procedure for personal service or served by first-class mail not later than ten days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

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 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 an officer, a manager, or an agent having knowledge of the facts.
2. Disclosure must state:
   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.

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.

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.

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.

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) In _____ Court
) ss.
County of _____) _____

_____
Plaintiff

vs.

_____
Defendant

and Garnishment Disclosure

_____
Garnishee

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.)

5. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed after receipt of the garnishee summons.)
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) _____

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

32-09.1-10. Disclosure fees.

In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of twenty-five dollars as the fee for making an affidavit of disclosure.

32-09.1-11. Effect of disclosure.

Subject to the provisions of sections 32-09.1-12 and 32-09.1-13, the disclosure is conclusive as to all property of the defendant. If the garnishee denies having any indebtedness to the defendant or having any property of the defendant in possession, the filing in court of a copy of the disclosure operates as a full discharge of the garnishee at the end of twenty days from the date of service of the disclosure, in the absence of further proceedings as provided for in sections 32-09.1-12 and 32-09.1-13. The filing of objections to the disclosure or the filing of any motion or other proceedings operates as a stay of the discharge. The court may, upon proper showing, relieve the plaintiff from the operation of the discharge after the expiration of twenty days. The garnishee may be discharged where the value of the property of the defendant held or indebtedness owing to the defendant is less than ten dollars, and the garnishee may apply to the court to be discharged as to any property or indebtedness in excess of the amount which may be required to satisfy the plaintiff's judgment.

32-09.1-12. Oral disclosure - Supplemental complaint.

Either before or after written disclosure, any party to the garnishment proceedings may obtain an ex parte order requiring oral disclosure. The order may be obtained upon affidavit showing, upon information and belief, facts justifying the order, and the court shall require the garnishee to appear for oral examination before the court. If the garnishee holds the garnished property by a title that is void as to the defendant's creditors, the garnishee may be charged for the property although the defendant could not have maintained an action against the garnishee for it; but in this, and in all other cases in which the garnishee denies liability, the plaintiff may move the court at any time before the garnishee is discharged, on notice to both the defendant and the garnishee, for leave to file a supplemental complaint making the garnishee a party to the action, and setting forth the facts upon which the plaintiff claims to charge the garnishee. If probable cause is shown, the motion shall be granted. The supplemental complaint must be served upon both defendant and garnishee, either or both of whom may answer, and the plaintiff may reply. The issues must be brought to trial and tried as in other actions.

32-09.1-13. Third party may intervene.

If it appears that any person not a party to the action has or claims an interest in any of the garnished property antedating the garnishment, the court may permit that person to appear and maintain that person's rights. If the person does not appear, the court may direct that the person be notified to appear or be barred of the claim. The notice may be served in a manner as the court directs, and the person appearing or notified shall be joined as a party and is bound by judgment against the garnishee.

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 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.

32-09.1-15. Judgment against garnishee.

Judgment against a garnishee 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 the retention amount defined under section 32-09.1-07. The judgment 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 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 of the property as may be necessary, to the officer holding execution, and the property must be sold and the proceeds accounted for in the same manner as if the property had been taken on execution against the defendant. The garnishee may not be compelled to deliver any specific articles at any time or place other than as stipulated in the contract with the defendant.

32-09.1-16. Minimum judgment.

No judgment may be rendered against a garnishee if the judgment against the defendant is less than twenty-five dollars, exclusive of costs, rather, the garnishee shall be discharged.

32-09.1-17. Discharge not a bar.

If any person summoned as a garnishee is discharged, the judgment is no bar to an action brought by the defendant or other claimants against the garnishee for the same demand.

32-09.1-18. Discharge from employment for garnishment or execution prohibited.

No employer may discharge any employee by reason of the fact that earnings have been subjected to garnishment or execution. If an employer discharges an employee in violation of this section, the employee may within ninety days of discharge bring a civil action for recovery of twice the wages lost as a result of the violation and for an order requiring reinstatement.

32-09.1-19. Garnishments - Minimal amount - Disclosure.

If the amount required to be retained by the garnishee is less than ten dollars, the garnishee may not retain the sum but shall make the disclosures otherwise required, except as provided in section 32-09.1-21.

32-09.1-20. Termination of garnishment.

A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of three hundred sixty days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects that the garnishee has been retaining pursuant to the garnishment must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

32-09.1-21. Continuing lien on wages.

A plaintiff may obtain a two hundred seventy-day continuing lien on wages by garnishment. A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons. Each garnishment disclosure form must provide the garnishee will continue to hold the nonexempt portion of the defendant's earnings as the earnings accrue through the last payroll period ending on or before two hundred seventy days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

If the garnishee's answers to a garnishment disclosure form provide the amount withheld is less than ten dollars, the garnishee is not required to return subsequent forms to the plaintiff until the amount withheld is ten dollars or more. For any pay period in which the garnishee is not required under this section to return the form to the plaintiff, the garnishee's answers from the previous form remain in effect. At the expected termination of the lien, the plaintiff shall mail the garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

32-09.1-22. Claim of exemptions - How made.

When the defendant claims that the indebtedness or property, or a part thereof, is exempt from garnishment or from execution, the defendant, at or before twenty days after the service of the garnishee summons, shall file a schedule of all personal property subscribed and sworn to as provided in section 28-22-07.

32-09.1-23. Claim of exemptions - When heard.

In all cases when the defendant claims the debt or property garnished to be exempt, the claim of exemptions may be heard and determined by the court at any time after the claim is made, on three days' notice to the plaintiff.