

CHAPTER 571

GARNISHMENT

571.41 Garnishee summons; exceptions.
571.42 Effect of service of summons.

571.495 Disclosure.
571.55 Limitation on garnishment.

571.41 GARNISHEE SUMMONS; EXCEPTIONS.

[For text of subs 1 to 5a, see M.S.1984]

Subd. 5b. **Duty of financial institution; exemption; objection.** Upon receipt of the garnishee summons and exemption notices, the financial institution shall attach and bind as much of the amount due under section 571.471 as the financial institution has on deposit owing to the judgment debtor. Within two business days after receipt of the garnishee summons and exemption notices, the financial institution shall serve upon the judgment debtor two copies of the exemption notice. The financial institution shall serve the notice by first class mail to the last known address of the judgment debtor. If no claim of exemption is received by the financial institution within 14 days after the exemption notices are mailed to the judgment debtor, the funds shall remain subject to the garnishment summons. If the judgment debtor elects to claim an exemption, he shall complete the exemption notice, affix his signature under penalty of perjury, and deliver one copy to the financial institution and one copy to the judgment creditor within 14 days of the date postmarked on the correspondence mailed to the judgment debtor containing the exemption notices. Failure of the judgment debtor to serve the executed exemption notice does not constitute a waiver of any right he may have to an exemption. Upon timely receipt of a claim of exemption, funds not claimed to be exempt by the judgment debtor shall remain subject to the garnishment summons. All money claimed to be exempt shall be released to the judgment debtor upon the expiration of seven days after the date postmarked on the correspondence containing the executed exemption notice mailed to the judgment creditor, or the date of personal delivery of the executed exemption notice to the judgment creditor, unless within that time the judgment creditor interposes an objection to the exemption. Objection shall be interposed by mailing or delivering one copy of the written objection to the financial institution and one copy of the written objection to the judgment debtor. Upon receipt of a written objection from the judgment creditor within the specified seven-day period, the financial institution shall retain the funds claimed to be exempt. Unless the financial institution receives a notice of motion and motion from the judgment debtor asserting exemption rights within ten days after receipt of the written objection to the exemption, the funds shall remain subject to the garnishment summons as if no claim of exemption has been made. Either the judgment creditor or the judgment debtor may bring a motion to determine the validity of an exemption claim by following the procedure set out in subdivision 7. If a notice of motion and motion to determine the validity of a claim of exemption is received by the financial institution within the period provided, the financial institution shall retain the funds claimed to be exempt until otherwise ordered by the court, or until the garnishment lapses pursuant to section 571.69. However, at any time during the procedure specified in this subdivision, the judgment debtor or the judgment creditor may, by a writing dated subsequent to the service of the execution, direct the financial institution to release the funds in question to the other party. Upon receipt of a release, the financial institution shall release the funds as directed.

[For text of subd 5c, see M.S.1984]

Subd. 6. **Form of notice.** The ten-day notice informing a judgment debtor that a garnishee summons may be used to garnish the earnings of an individual to enforce a judgment, shall be substantially in the following form:

STATE OF MINNESOTA)
) ss
County of)
..... Court
..... (Judgment Creditor)
..... (Judgment Debtor)

Garnishment Exemption Notice

The State of Minnesota

To the above named Judgment Debtor:

Please take notice that a Garnishment Summons may be served upon your employer or other third parties, without any further court proceedings or notice to you, ten days or more from the date hereof. Your earnings are completely exempt from garnishment if you are now a recipient of relief based on need, if you have been a recipient of relief within the last six months, or if you have been an inmate of a correctional institution in the last six months. Relief based on need includes, only AFDC, general assistance medical care, supplemental security income, medical assistance, Minnesota supplemental assistance, and general assistance.

If you wish to claim an exemption, you should fill out the appropriate form below, sign it, and send it to the judgment creditor's attorney and the garnishee.

You may wish to contact the attorney for the Judgment Creditor in order to arrange for a settlement of the debt.

PENALTIES

1. Be advised that even if you claim an exemption, a Garnishment Summons may still be served on your employer. If your earnings are garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorney fees, actual damages, and an amount not to exceed \$100.

2. **HOWEVER, BE WARNED** if you claim an exemption, the creditor can also petition the court for a determination of your exemption, and if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable attorney's fees plus an amount not to exceed \$100.

3. If after receipt of this notice, you in bad faith take action to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the problem, you will be liable to the creditor for costs and reasonable attorney fees plus an amount not to exceed \$100.

Dated:

.....
(Attorney for) Judgment Creditor
Address
Telephone

I hereby claim under penalty of perjury that my earnings are exempt from garnishment because:

(1) I am presently a recipient of relief based on need. (Specify the program, case number, and the county from which relief is being received.)

.....
Program	Case Number (if known)	County

(2) I am not now receiving relief based on need, but I have received relief based on need within the last six months. (Specify the program, case number, and the county from which relief has been received.)

.....
Program	Case Number (if known)	County

(3) I have been an inmate of a correctional institution within the last six months. (Specify the correctional institution and location.)

.....
Correctional Institution	Location

I hereby authorize any agency that has distributed relief to me or any correctional institution in which I was an inmate to disclose to the above-named creditor or his attorney whether or not I was a recipient of relief based on need or an inmate of a correctional institution within the last six months.

.....
Judgment Debtor
Address

Subd. 7. **Form of exemption notice.** The notice informing a judgment debtor that a writ of attachment, garnishee summons, or levy of execution has been used to attach and bind funds of the judgment debtor to satisfy a claim shall be substantially in the following form:

EXEMPTION NOTICE

STATE OF MINNESOTA
COUNTY OF

.....Court
.....	(Judgment Creditor)
.....	(Judgment Debtor)

To.....(Judgment Debtor):

A writ of attachment, garnishee summons, or levy of execution (strike inapplicable language) has been served on(Bank or other Financial Institution).....
...where you have an account.

Your account balance is \$.....

The amount being held is \$.....

However, the funds in your account will normally be exempt from creditors' claims if they are in one of the following categories:

(1) Relief based on need. This includes AFDC, Medical Assistance, Supplemental Security Income (SSI), Minnesota Supplemental Assistance, General Assistance, and General Assistance Medical Care.

(2) Social Security benefits (Old Age, Survivors, or Disability Insurance).

(3) Unemployment compensation, workers' compensation, or veteran's benefits.

(4) An accident, disability, or retirement pension or annuity.

(5) Life insurance proceeds, or the earnings of your minor child.

(6) Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a mobile home, or a car).

The following funds are also exempt:

- (7) All earnings of a person in category (1).
- (8) All earnings of a person who has received relief based on need, or who has been an inmate of a correctional institution, within the last six months.
- (9) Seventy-five percent of every debtor's after tax earnings.
- (10) All of a debtor's after tax earnings below 40 times the federal minimum wage (this equals \$134 for a 40-hour week).

TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:

Categories (9) and (10): 20 days.

Categories (7) and (8): 60 days.

All others: no time limit, as long as funds are traceable to the exempt source. (In tracing funds, the first-in, first-out method is used. This means money deposited first is spent first.) The money being sought by the creditor is being held in your account to give you a chance to claim an exemption.

TO CLAIM AN EXEMPTION:

Fill out, sign, and mail or deliver one copy of this exemption claim form to the institution which sent you this notice, and one copy to the judgment creditor. Both copies must be mailed or delivered on the same day.

If they don't get the exemption claim back from you within 14 days of the date they mailed or gave it to you, they will be free to turn the money over to the sheriff or the creditor. If you are going to claim an exemption, do so as soon as possible, because your money may be frozen until it is decided.

IF YOU CLAIM AN EXEMPTION:

- (1) Nonexempt money can be turned over to the creditor or sheriff;
- (2) The financial institution will keep holding the money claimed to be exempt; and
- (3) Seven days after receiving your exemption claim, the financial institution will release the money to you unless before then it receives an objection to your exemption claim.

IF THE CREDITOR OBJECTS TO YOUR EXEMPTION CLAIM:

- (1) The institution will hold the money until a court decides if your exemption claim is valid, **BUT ONLY IF** the institution gets a copy of your court motion papers asserting the exemption **WITHIN 10 DAYS** after the objection is mailed or given to you. You may wish to consult an attorney at once if the creditor objects to your exemption claim.

MOTION TO DETERMINE EXEMPTION:

At any time after your funds have been frozen, you may ask for a court decision on the validity of your exemption claim by filing a request for hearing which may be obtained at the office of the clerk of the above court.

PENALTIES:

If you claim an exemption in bad faith, or if the creditor wrongly objects to an exemption in bad faith, the court may order the person who acted in bad faith to pay costs, actual damages, attorney fees, and an additional amount of up to \$100.

.....
Date

.....
(Attorney for) Judgment Creditor
Address

EXEMPTION:

(a) Amount of exemption claim.

/ / I claim ALL the funds being held are exempt.

/ / I claim **SOME** of the funds being held are exempt. The exempt amount is \$.....

(b) **Basis for exemption.**

Of the ten categories listed above, I am in category number (If more than one category applies, you may fill in as many as apply.) The source of the exempt funds is the following:

(If the source is a type of relief based on need, list the case number and county:

case number:

county:)

Dated:

Judgment Debtor

Address

[For text of subd 8, see M.S.1984]

History: 1985 c 248 s 67; 1985 c 306 s 10,11

571.42 EFFECT OF SERVICE OF SUMMONS.

Subdivision 1. Attach for judgment. Except as provided in sections 571.43 and 571.50, service of the garnishee summons upon the garnishee shall attach and bind, to respond to final judgment in the action, all personal property of the judgment debtor in his possession or under his control and all indebtedness owing by him to the judgment debtor at the time of service and all nonexempt disposable earnings earned or to be earned within that pay period and within 60 days thereafter.

Subd. 2. Property attached. Subject to the provisions of sections 550.37 and 571.55 all money, all nonexempt disposable earnings earned or to be earned within that pay period and within 60 days thereafter and other personal property including property of any kind due from or in the hands of an executor, administrator, receiver or trustee and all written evidences of indebtedness whether negotiable or not or under or overdue may be attached by garnishment, and money or any other thing due or belonging to the judgment debtor may be attached by this process before it has become payable if its payment or delivery does not depend upon any contingency, but the garnishee shall not be compelled to pay or deliver it before the time appointed by the contract.

History: 1985 c 306 s 12

571.495 DISCLOSURE.

[For text of subds 1 and 2, see M.S.1984]

Subd. 3. Form of disclosure. A garnishment disclosure form must be served upon the garnishee. The disclosure shall be substantially in the following form:

STATE OF MINNESOTA)

) SS

County of.....) Court

.....

Judgment Creditor

vs.

.....
 Judgment Debtor
 and

.....
 Garnishee

I am the of the garnishee herein, and duly authorized to disclose for said garnishee.

On the day of, 19.., the time of service of garnishee summons herein on said garnishee, there was due and owing the judgment debtor above named from said garnishee the following:

(1) Earnings. For the purposes of garnishment, "earnings" means compensation paid or payable for personal service or compensation paid or payable to the producer for the sale of agricultural products; livestock or livestock products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. "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 that past pay period and the current pay period.

(a) Enter on the line below the amount of disposable earnings earned or to be earned by the judgment debtor within the judgment debtor's pay periods which may be subject to garnishment.

.....

(b) Enter on the line below 40 times the hourly federal minimum wage times the number of work weeks within the judgment debtor's pay periods which may be subject to garnishment. When such pay periods consists of other than a whole number of work weeks, each day of a pay period in excess of the number of completed work weeks shall be counted as a fraction of a work week equal to the number of work days divided by the number of work days in the normal work week.

.....

(c) Enter on the line below the difference obtained (never less than zero) when line (b) is subtracted from line (a).

.....

(d) Enter on the line below 25 percent of line (a).

.....

(e) Enter on the line below the lesser of line (c) and line (d).

.....

(2) Money. Enter on the line below any amounts due and owing the judgment debtor, except earnings, from the garnishee.

.....

(3) Property. Describe on the line below any personal property, instruments or papers belonging to the judgment debtor and in the possession of the garnishee.

.....

(4) Set-off. Enter on the line below the amount of any set-off, defense, lien or claim which the garnishee claims against the amount set forth on lines (1)(e), (2) and

(3) above. Allege the facts by which such set-off, defense, lien or claim is claimed. (Any indebtedness to a garnishee incurred by the judgment debtor within 10 days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

.....
(5) Exemption. Enter on the line below any amounts or property claimed by the judgment debtor to be exempt from execution.

.....
(6) Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the judgment debtor's property. (Any assignment of wages made by the judgment debtor within 10 days prior to the receipt of the first garnishment on a debt is void and should be disregarded. State the names and addresses of such persons and the nature of their claim, if known.)

.....
(7) Enter on the line below the total of lines (4), (5) and (6).

.....
(8) Enter on the line below the difference obtained (never less than zero) when line (7) is subtracted from the sum of lines (1)(e), (2) and (3).

.....
(9) Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

.....
(10) Enter on the line below the lesser of line (8) and line (9). As garnishee, you are hereby instructed to retain this amount only if it is \$10 or more.

.....
Authorized Representative of Garnishee

.....
Title

Subscribed and sworn to before me
Thisday of, 19...

.....
Notary Public
..... County, Minnesota.

History: 1985 c 306 s 13

571.55 LIMITATION ON GARNISHMENT.

Subdivision 1. For the purposes of this section, "earnings" means compensation paid or payable for personal service or compensation paid or payable to the producer for the sale of agricultural products; livestock or livestock products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2, whether denominated as wages, salary, commissions, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "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.

[For text of subds 2 and 3, see M.S.1984]

History: 1985 c 306 s 14