

CHAPTER 571

GARNISHMENT

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- 571.60 [Repealed, 1990 c 606 art 3 s 39]
- 571.61 [Repealed, 1990 c 606 art 3 s 39]
- 571.62 [Repealed, 1990 c 606 art 3 s 39]
- 571.63 [Repealed, 1990 c 606 art 3 s 39]

571.64 [Repealed, 1990 c 606 art 3 s 39]

571.65 [Repealed, 1990 c 606 art 3 s 39]

571.66 Subdivision 1. [Renumbered 181.063]

Subd. 2. [Repealed, 1953 c 110 s 4; 1990 c 606 art 3 s 39]

Subd. 3. [Repealed, 1953 c 110 s 4; 1990 c 606 art 3 s 39]

571.67 [Repealed, 1990 c 606 art 3 s 39]

571.68 [Repealed, 1990 c 606 art 3 s 39]

571.69 [Repealed, 1990 c 606 art 3 s 39]

571.71 GARNISHMENT; WHEN AUTHORIZED.

As an ancillary proceeding to a civil action for the recovery of money, a creditor may issue a garnishment summons as provided in this chapter against any third party in the following instances:

(1) at the time the civil action is commenced or at any time after the commencement of the civil action, but before the entry of a judgment, if the court orders the issuance of the garnishment summons pursuant to section 571.93;

(2) at any time 40 days or more after service of the summons and complaint upon the debtor in the civil action when a judgment by default could have, but has not, been entered pursuant to Rule 55.01(a) of the Minnesota Rules of Civil Procedure for the District Courts. No filing of a pleading or other documents by the creditor is required to issue a garnishment summons under this clause; however, the creditor must comply with the service requirement of section 571.72, subdivision 4; or

(3) at any time after entry of a money judgment in the civil action.

History: 1990 c 606 art 3 s 1

571.711 SCOPE OF GENERAL AND SPECIFIC PROVISIONS.

General provisions and definitions relating to all garnishment proceedings, as authorized in this chapter, are set forth in sections 571.71 to 571.90. Specific provisions relating to garnishments involving financial institutions are set forth in sections 571.911 to 571.915. Specific provisions relating to the garnishment of earnings are set forth in sections 571.92 to 571.927. When a garnishment summons is issued against either earnings or funds in a financial institution, the applicable provisions cited in this chapter must be complied with in addition to the general provisions and definitions relating to all garnishment proceedings. Provisions contained in the statutory forms are incorporated in this chapter and have the same force of law as any other provision in this chapter.

History: 1990 c 606 art 3 s 2

571.712 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. (a) "Creditor" means the party who has a claim for the recovery of money in the civil action whether that party is the plaintiff, defendant, or other party in the civil action and who is issuing or requesting the issuance of a garnishment summons.

(b) "Debtor" means a party against whom the creditor has a claim for the recovery of money in the civil action whether that party is the plaintiff, defendant, or other party in the civil action.

(c) "Garnishee" means the third party upon whom the garnishment summons is served.

(d) "Claim" means the unpaid balance of the creditor's judgment against the debtor or, in a prejudgment garnishment proceeding, the unpaid balance of the creditor's claim against the debtor and all lawful interest and costs and disbursements paid or incurred in the civil action or in the garnishment proceedings.

Subd. 3. Designation of parties. Each pleading or other document in the ancillary proceeding of garnishment must designate each party as creditor or debtor or garnishee.

History: 1990 c 606 art 3 s 3

571.72 GENERAL GARNISHMENT PROVISIONS.

Subdivision 1. Rules of civil procedure. Unless this chapter specifically provides otherwise, the Rules of Civil Procedure for the District Courts shall apply in all proceedings under this chapter.

Subd. 2. Service of a garnishment summons. To enforce a claim asserted in a civil action venued in a court of record, a garnishment summons may be issued by a creditor and served upon the garnishee in the same manner as other summons in that court of record, except that service may not be made by publication. Service of a garnishment summons on the garnishee may also be made by certified mail, return receipt requested. The effective date of service by certified mail is the time of receipt by the garnishee. A single garnishment summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

The garnishment summons must state:

(1) the full name of the debtor, the debtor's last known mailing address, and the amount of the claim that remains unpaid;

(2) the date of the entry of judgment against the debtor or that the debtor is in default pursuant to Rule 55.01 of the Minnesota Rules of Civil Procedure for the District Courts. Where there is a prejudgment garnishment pursuant to section 571.93, the garnishment summons must include a copy of the court order;

(3) if the garnishment is on any indebtedness, money, or property other than earnings, the garnishee shall serve upon the creditor and upon the debtor within 20 days after service of the garnishment summons, a written disclosure, of the garnishee's indebtedness, money, or other property owing to the debtor and answers to all written interrogatories that are served with the garnishment summons. The garnishment summons shall also state that if the garnishment is on earnings and the debtor has garnishable earnings, the garnishee shall serve the disclosure within ten days of the last payday to occur within the 70 days after the date of service of the garnishment summons;

(4) that the creditor shall not require disclosure of the disposable earnings, indebtedness, money, or property of debtor in the garnishee's possession or under the garnishee's control in excess of 110 percent of the amount of the claim that remains unpaid;

(5) that the garnishee shall retain disposable earnings, indebtedness, money, or property of the debtor in the garnishee's possession or under the garnishee's control not in excess of 110 percent of the amount of the claim that remains unpaid, until the creditor causes a writ of execution to be served upon the garnishee, until the debtor authorizes release to the creditor, until the creditor authorizes release to the debtor, upon court order, or by operation of law;

(6) that after the expiration of the period of time specified in section 571.79 from the date of service of the garnishment summons, the garnishee's retention obligation automatically expires;

(7) that an assignment of wages made by the debtor within ten days before the service of the first garnishment summons on a debt is void and that any indebtedness to the garnishee incurred with ten days before the service of the first garnishment summons on a debt may not be set off against amounts otherwise subject to the garnishment.

Subd. 3. Representation by an attorney. Whenever a creditor is represented by an attorney, a responsive pleading or document from the garnishee or debtor under this chapter must be served on the creditor's attorney.

Subd. 4. Service of garnishment summons on debtor. A copy of the garnishment summons and copies of all other papers served on the garnishee must be served by mail at the last known mailing address of the debtor not later than five days after the service

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is made upon the garnishee. The first time a garnishment summons is served on the debtor pursuant to section 571.71, clause (2), the creditor shall also serve a copy of the affidavit of service of the original summons and complaint. Service of the garnishment documents on the debtor is effective upon mailing.

Subd. 5. Garnishment disclosure form. The creditor shall serve with the garnishment summons the applicable garnishment disclosure form substantially in the form set forth in section 571.75. The creditor may also serve written interrogatories with the garnishment summons.

Subd. 6. Bad faith claim. If, in a proceeding brought under section 571.91, or a similar proceeding under this chapter to determine a claim of exemption, the claim of exemption is not upheld, and the court finds that it was asserted in bad faith, the creditor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed \$100. If the claim of exemption is upheld, and the court finds that the creditor disregarded the claim of exemption in bad faith, the debtor shall be awarded actual damages, costs, reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed \$100. The underlying judgment shall be modified to reflect assessment of damages, costs, and attorney fees. However, if the party in whose favor a penalty assessment is made is not actually indebted to that party's attorney for fees, the attorney's fee award shall be made directly to the attorney and if not paid an appropriate judgment in favor of the attorney shall be entered.

Subd. 7. Forms. No creditor shall use a form that contains alterations or changes from the statutory forms that mislead debtors as to their rights and the garnishment procedure generally. If a court finds that a creditor has used a misleading form, the debtor shall be awarded actual damages, costs, reasonable attorney's fees resulting from additional proceedings, and an amount not to exceed \$100. All forms must be clearly legible and printed in not less than the equivalent of 10-point type. A form that uses both sides of a sheet must clearly indicate on the front side that there is additional information on the back side of the sheet.

Subd. 8. Exemption notice. In every garnishment where the debtor is a natural person, the debtor shall be provided with a garnishment exemption notice. If the creditor is garnishing earnings, the earnings exemption notice provided in section 571.924 must be served ten or more days before the service of the first garnishment summons. If the creditor is garnishing funds in a financial institution, the exemption notice provided in section 571.912 must be served with the garnishment summons. In all other cases, the exemption notice must be in the following form and served on the debtor with a copy of the garnishment summons.

STATE OF MINNESOTA
COUNTY OF

.....(Creditor)

against

.....(Debtor)

and

.....(Garnishee)

DISTRICT COURT
.....JUDICIAL DISTRICT

EXEMPTION NOTICE

A Garnishment Summons is being served upon you. Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37 of the Minnesota Statutes and other state and federal laws. The dollar amounts contained in this list are subject to the provisions of section 550.37, subdivision 4a, at the time of garnishment. If you have questions about an exemption, you should obtain legal advice.

- (1) a homestead or the proceeds from the sale of a homestead;
- (2) household furniture, appliances, phonographs, radios, and televisions up to a total current value of \$5,850;
- (3) a manufactured (mobile) home used as your home;

(4) one motor vehicle currently worth less than \$2,600 after deducting any security interest;

(5) farm machinery used by an individual principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to \$13,000;

(6) relief based on need. This includes:

(i) Aid to Families with Dependent Children (AFDC);

(ii) AFDC-Emergency Assistance (AFDC-EA);

(iii) Medical Assistance (MA);

(iv) General Assistance (GA);

(v) General Assistance Medical Care (GAMC);

(vi) Emergency General Assistance (EGA);

(vii) Work Readiness, Minnesota Supplemental AID (MSA);

(viii) MSA-Emergency Assistance (MSA-EA);

(ix) Supplemental Security Income (SSI); and

(x) Energy Assistance;

(7) social security benefits;

(8) unemployment compensation, workers' compensation, or veteran's benefits;

(9) an accident, disability, or retirement pension or annuity;

(10) life insurance proceeds;

(11) earnings of your minor child; and

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

Subd. 9. Motion to determine objections. Upon motion of any party in interest, on notice, the court shall determine the validity of any claim of exemption and may make any order necessary to protect the rights of those interested.

History: 1990 c 606 art 3 s 4

571.73 PROPERTY ATTACHABLE BY GARNISHMENT; GOOD FAITH REQUIREMENT.

Subdivision 1. Retention obligation. Except as provided in subdivision 4 and section 571.79, service of the garnishment summons upon the garnishee shall obligate the garnishee to retain possession and control of the disposable earnings, indebtedness, money, and property of the debtor specified in subdivision 3, except that the garnishee shall not retain possession and control of disposable earnings, indebtedness, money, or property of the debtor in the garnishee's possession or under the garnishee's control in excess of 110 percent of the amount claimed by the creditor in the garnishment summons.

Subd. 2. Garnishee good faith requirement. The garnishee is not liable to the debtor, creditor, or other person for wrongful retention if the garnishee retains disposable earnings, indebtedness, money, or property of the debtor or any other person, pending the garnishee's disclosure or consistent with the disclosure the garnishee makes, if the garnishee has a good faith belief that the property retained is subject to the garnishment summons. In addition, the garnishee may, at any time before or after disclosure, proceed under Rule 67 of the Minnesota Rules of Civil Procedure for the District Courts to make deposit into court. No garnishee is liable for damages if the garnishee complies with the provisions of this chapter.

Subd. 3. Property attachable. Subject to the exemptions provided by sections 550.37 and 571.922 and any other applicable statute, the service of a garnishment summons under this chapter attaches:

(1) all unpaid nonexempt disposable earnings owed or to be owed by the garnishee

and earned or to be earned by the debtor within the pay period in which the garnishment summons is served and within all subsequent pay periods whose paydays occur within the 70 days after the date of service of the garnishment summons. "Payday" means the day upon which the garnishee pays earnings to the debtor in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month;

(2) all other nonexempt indebtedness, money, or other property due or belonging to the debtor and owing by the garnishee or in the possession or under the control of the garnishee at the time of service of the garnishment summons, whether or not the same has become payable. The garnishee shall not be compelled to pay or deliver the same before the time specified by any agreement unless the agreement was fraudulently contracted to defeat a garnishment or other collection remedy; and

(3) all other nonexempt intangible or tangible personal property of the debtor in the possession or under the control of the garnishee at the time of service of the garnishment summons, including property of any kind due from or in the hands of an executor, administrator, personal representative, receiver, or trustee, and all written evidences of indebtedness whether or not negotiable or not yet underdue or overdue.

Subd. 4. **Property not attachable.** The following property is not subject to attachment by garnishment:

(1) any indebtedness, money, or other property due to the debtor, unless at the time of the garnishment summons the same is due absolutely or does not depend upon any contingency;

(2) any judgment in favor of the debtor against the garnishee, if the garnishee or the garnishee's property is liable on an execution levy upon the judgment;

(3) any debt owed by the garnishee to the debtor for which any negotiable instrument has been issued or endorsed by the garnishee;

(4) any indebtedness, money, or other property due to the debtor where the debtor is a bank, savings bank, trust company, credit union, savings and loan association, or industrial loan and thrift companies with deposit liabilities;

(5) any indebtedness, money, or other property due to the debtor with a cumulative value of less than \$10; and

(6) any disposable earnings, indebtedness, money, or property that is exempt under Minnesota or federal law.

History: 1990 c 606 art 3 s 5

571.74 GARNISHMENT SUMMONS AND NOTICE TO DEBTOR.

The garnishment summons and notice to debtor must be substantially in the following form. The notice to debtor must be in no smaller than 14-point type.

GARNISHMENT SUMMONS

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT
.....JUDICIAL DISTRICT

.....(Creditor)
.....(Debtor)
.....(Debtor's Address)
.....(Garnishee)

UNPAID BALANCE.....

GARNISHMENT SUMMONS

The State of Minnesota
To the Garnishee named above:

You are hereby summoned and required to serve upon the creditor's attorney (or the creditor if not represented by an attorney) and on the debtor within 20 days after

service of this garnishment summons upon you, a written disclosure, of the indebtedness, money, or other property that you owe to the debtor and answers to all written interrogatories that are served with the garnishment summons. However, if the garnishment is on earnings and the debtor has garnishable earnings, you shall serve the completed disclosure form on the creditor's attorney, or the creditor if not represented by an attorney, within ten days of the last payday to occur within the 70 days after the date of the service of this garnishment summons. "Payday" means the day which you pay earnings in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month.

Your disclosure need not exceed 110 percent of the amount of the creditor's claim that remains unpaid.

You shall retain garnishable earnings, other indebtedness, money, or other property in your possession in an amount not to exceed 110 percent of the creditor's claim until such time as the creditor causes a writ of execution to be served upon you, until the debtor authorizes you in writing to release the property to the creditor, or until the expiration of days from the date of service of this garnishment summons upon you, at which time you shall return the disposable earnings, other indebtedness, money, or other property to the debtor.

EARNINGS

In the event you are summoned as a garnishee because you owe "earnings" (as defined on the Earnings Garnishment Disclosure form attached to this Garnishment Summons, if applicable) to the debtor, then you are required to serve upon the creditor's attorney, or the creditor if not represented by an attorney, a written earnings disclosure form within the time limit set forth above.

In the case of earnings you are further required to retain in your possession all unpaid nonexempt disposable earnings owed or to be owed by you and earned or to be earned to the debtor within the pay period in which this garnishment summons is served and within all subsequent pay periods whose paydays (defined above) occur within the 70 days after the date of service of this garnishment summons.

Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.

You are prohibited by law from discharging or disciplining the debtor because the debtor's earnings have been subject to garnishment.

This Garnishment Summons includes:

(check applicable box)

- Earnings garnishment
(see attached Earnings Disclosure Form)
- Nonearnings garnishment
(see attached Nonearnings Disclosure Form)
- Both Earnings and Nonearnings garnishment
(see both attached Earnings and Nonearnings Disclosure Form)

NOTICE TO DEBTOR

A Garnishment Summons, Earnings Garnishment Disclosure form, Nonwage Garnishment Disclosure form, Garnishment Exemption Notices and/or written Interrogatories (strike out if not applicable), copies of which are hereby served on you, were served upon the Garnishee by delivering copies to the Garnishee. The Garnishee was paid \$15.

Dated:

.....
 Attorney for Creditor
 (or creditor)

.....
 Address

.....
 Telephone

.....
 Attorney I.D. No.

History: 1990 c 606 art 3 s 6

571.75 GARNISHEE DISCLOSURE.

Subdivision 1. Garnishee to disclose. The garnishee shall serve on both the creditor and the debtor, within 20 days after service of the garnishment summons, a written disclosure of the garnishee's indebtedness, money, or other property owing to the debtor. However, if the garnishment is on earnings and the debtor has garnishable earnings, the garnishee shall serve the disclosure and earnings disclosure worksheet within ten days after the last payday to occur within the 70 days after the date of the service of this garnishment summons. "Payday" means the day upon which the garnishee pays earnings to the debtor in the ordinary course of business. If the debtor has no regular paydays, "payday" means the 15th day and the last day of each month. The amount of the garnishee's disclosure need not exceed 110 percent of the amount of the creditor's claim that remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownership claims, or other interests. The answers to the garnishment disclosure form may be served personally or by first class mail. If the disclosure is by a corporation, it shall be made by an officer, managing agent, or other authorized person having knowledge of the facts.

Subd. 2. Contents of disclosure. The disclosure must state:

- (a) If an earnings garnishment disclosure, the amount of disposable earnings earned by the debtor within the debtor's pay periods as specified in section 571.921.
- (b) If a nonearnings garnishment disclosure, a description of any personal property or any instrument or papers relating to this property belonging to the judgment debtor or in which the debtor is interested or other indebtedness of the garnishee to the debtor.
- (c) If the garnishee asserts any setoff, defense, claim, or lien on disposable earnings, other indebtedness, money, or property, the garnishee shall disclose the amount and the facts concerning the same.
- (d) Whether the debtor asserts any exemption, or any other objection, known to the garnishee against the right of the creditor to garnish the disposable earnings, other indebtedness, money, or property disclosed.
- (e) If other persons assert claims to any disposable earnings, other indebtedness, money, or property disclosed, the garnishee shall disclose the names and addresses of these claimants and, so far as known by the garnishee, the nature of their claims.
- (f) The garnishment disclosure forms and earnings disclosure worksheet must be the same or substantially similar to the following forms. If the garnishment affects earnings of the debtor, the creditor shall use the earnings garnishment disclosure form. If the garnishment affects any indebtedness, money, or property of the debtor, other than earnings, the creditor shall use the nonearnings garnishment disclosure form. Nothing contained in this paragraph limits the simultaneous use of the earnings and nonearnings garnishment disclosure forms.

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EARNINGS DISCLOSURE FORM AND WORKSHEET

STATE OF MINNESOTA

COUNTY OF

.....(Creditor)

.....(Debtor)

.....(Garnishee)

DISTRICT COURT

..... JUDICIAL DISTRICT

GARNISHMENT

EARNINGS DISCLOSURE

DEFINITIONS

"EARNINGS": For the purpose of garnishment, "earnings" means compensation paid or payable to an employee for personal services or compensation paid or payable to the producer for the sale of agricultural 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.

"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. (Amounts required by law to be withheld do not include items such as health insurance, charitable contributions, or other voluntary wage deductions.)

"PAYDAY": For the purpose of garnishment, "payday(s)" means the date(s) upon which the employer pays earnings to the debtor in the ordinary course of business. If the debtor has no regular payday, payday(s) means the fifteenth and the last day of each month.

THE GARNISHEE MUST ANSWER THE FOLLOWING QUESTIONS:

1. Do you now owe, or within 70 days from the date the garnishment summons was served on you, will you or do you expect to owe money to the debtor for earnings?

Yes

No

2. Does the debtor earn more than \$..... per week? (This amount is the federal minimum wage per week.)

Yes

No

INSTRUCTIONS FOR COMPLETING THE EARNINGS DISCLOSURE

A. If your answer to either question 1 or 2 is "No," then you must sign the affirmation on Page 2 and return this disclosure to the creditor's attorney (or the creditor if not represented by an attorney) within 20 days after it was served on you, and you do not need to answer the remaining questions.

B. If your answers to both questions 1 and 2 are "Yes," you must complete this form and the Earnings Disclosure Worksheet as follows:

For each payday that falls within 70 days from the date the garnishment summons was served on you, YOU MUST calculate the amount of earnings to be retained by completing Steps 3 through 11, and enter the amounts on the Earnings Disclosure Worksheet. UPON REQUEST, THE EMPLOYER MUST PROVIDE THE DEBTOR WITH INFORMATION AS TO HOW THE CALCULATIONS REQUIRED BY THIS DISCLOSURE WERE MADE.

Each payday, you must retain the amount of earnings listed in Column I on the Earnings Disclosure Worksheet.

You must return this Earnings Disclosure Form and the Earnings Disclosure Worksheet to the creditor's attorney (or the creditor if not represented by an attorney) and deliver a copy to the debtor within ten days after the last payday that falls within the 70-day period.

If the claim is wholly satisfied or if the debtor's employment ends before

the expiration of the 70-day period, your disclosure should be made within ten days after the last payday for which earnings were attached.

For Steps 3 through 11, "Columns" refers to columns on the Earnings Disclosure Worksheet.

3. COLUMN A. Enter the date of debtor's payday.
4. COLUMN B. Enter debtor's gross earnings for each payday.
5. COLUMN C. Enter debtor's disposable earnings for each payday.
6. COLUMN D. Enter 25 percent of disposable earnings. (Multiply Column C by .25.)
7. COLUMN E. Enter here 40 times the hourly federal minimum wage (\$....) times the number of work weeks included in each payday. (Note: If a pay period includes days in excess of whole work weeks, the additional days should be counted as a fraction of a work week equal to the number of work days in excess of a whole work week divided by the number of work days in a normal work week.)
8. COLUMN F. Subtract the amount in Column E from the amount in Column C, and enter here.
9. COLUMN G. Enter here the lesser of the amount in Column D and the amount in Column F.
10. COLUMN H. Enter here any amount claimed by you as a setoff, defense, lien, or claim, or any amount claimed by any other person as an exemption or adverse interest which would reduce the amount of earnings owing to the debtor. (Note: Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment. Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void.)

You must also describe your claim(s) and the claims of others, if known, in the space provided below the worksheet and state the name(s) and address(es) of these persons.

- Enter zero in Column H if there are no claims by you or others which would reduce the amount of earnings owing to the debtor.
11. COLUMN I. Subtract the amount in Column H from the amount in Column G and enter here. This is the amount of earnings that you must retain for the payday for which the calculations were made.

AFFIRMATION

I, (person signing Affirmation), am the garnishee or I am authorized

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by the garnishee to complete this earnings disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

.....
Signature

.....
Title

.....
Telephone Number

EARNINGS DISCLOSURE WORKSHEET

.....
Debtor's Name

| | | |
|-----------|---------------|------------|
| A | B | C |
| Payday | Gross | Disposable |
| Date | Earnings | Earnings |
| 1. | \$..... | \$..... |
| 2. .... | ..... | ..... |
| 3. .... | ..... | ..... |
| 4. .... | ..... | ..... |
| 5. .... | ..... | ..... |
| 6. .... | ..... | ..... |
| 7. .... | ..... | ..... |
| 8. .... | ..... | ..... |
| 9. .... | ..... | ..... |
| 10. .... | ..... | ..... |
| D | E | F |
| 25% of | 40 X Min. | Column C |
| Column C | Wage | minus |
| | | Column E |
| 1. .... | ..... | ..... |
| 2. .... | ..... | ..... |
| 3. .... | ..... | ..... |
| 4. .... | ..... | ..... |
| 5. .... | ..... | ..... |
| 6. .... | ..... | ..... |
| 7. .... | ..... | ..... |
| 8. .... | ..... | ..... |
| 9. .... | ..... | ..... |
| 10. .... | ..... | ..... |
| G | H | I |
| Lesser of | Setoff, Lien, | Column G |
| Column D | Adverse | minus |
| and | Interest, or | Column H |
| Column F | Other Claims | |
| 1. .... | ..... | ..... |
| 2. .... | ..... | ..... |
| 3. .... | ..... | ..... |
| 4. .... | ..... | ..... |
| 5. .... | ..... | ..... |
| 6. .... | ..... | ..... |
| 7. .... | ..... | ..... |
| 8. .... | ..... | ..... |
| 9. .... | ..... | ..... |
| 10. .... | ..... | ..... |

TOTAL OF COLUMN I \$.....

*If you entered any amount in Column H for any payday(s), you must describe

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below either your claims, or the claims of others. For amounts claimed by others you must both state the names and addresses of these persons, and the nature of their claim, if known.

.....
.....
.....

AFFIRMATION

I, (person signing Affirmation), am the third party or I am authorized by the third party to complete this earnings disclosure worksheet, and have done so truthfully and to the best of my knowledge.

Dated:

Signature

Title

Telephone Number (...).....

EARNINGS DISCLOSURE FORM AND WORKSHEET FOR CHILD SUPPORT DEBTOR

STATE OF MINNESOTA
COUNTY OF

.....(Creditor)

.....(Debtor)

.....(Garnishee)

DISTRICT COURT
..... JUDICIAL DISTRICT

GARNISHMENT
EARNINGS DISCLOSURE

DEFINITIONS

"EARNINGS": For the purpose of execution, "earnings" means compensation paid or payable to an employee for personal services or compensation paid or payable to the producer for the sale of agricultural 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, workers' compensation, or unemployment compensation.

"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. (Amounts required by law to be withheld do not include items such as health insurance, charitable contributions, or other voluntary wage deductions.)

"PAYDAY": For the purpose of execution, "payday(s)" means the date(s) upon which the employer pays earnings to the debtor in the ordinary course of business. If the judgment debtor has no regular payday, payday(s) means the 15th and the last day of each month.

THE GARNISHEE MUST ANSWER THE FOLLOWING QUESTION:

(1) Do you now owe, or within 70 days from the date the execution levy was served on you, will you or may you owe money to the debtor for earnings?

.....
Yes No

INSTRUCTIONS FOR COMPLETING THE EARNINGS DISCLOSURE

A. If your answer to question 1 is "No," then you must sign the affirmation below and return this disclosure to the creditor's attorney (or the creditor if not represented by an attorney) within 20 days after it was served on you, and you do not need to answer the remaining questions.

B. If your answer to question 1 is "Yes," you must complete this form and the Earnings Disclosure Worksheet as follows:

For each payday that falls within 70 days from the date the garnishment summons was served on you, YOU MUST calculate the amount of earnings to be retained by completing steps 2 through 8 on page 2, and enter the amounts on the Earnings Disclosure Worksheet. UPON REQUEST, THE EMPLOYER MUST PROVIDE THE DEBTOR WITH INFORMATION AS TO HOW THE CALCULATIONS REQUIRED BY THIS DISCLOSURE WERE MADE.

Each payday, you must retain the amount of earnings listed in column G on the Earnings Disclosure Worksheet.

You must pay the attached earnings and return this earnings disclosure form and the Earnings Disclosure Worksheet to the creditor's attorney (or the creditor if not represented by an attorney) and deliver a copy to the debtor within ten days after the last payday that falls within the 70-day period. If the claim is wholly satisfied or if the debtor's employment ends before the expiration of the 70-day period, your disclosure should be made within ten days after the last payday for which earnings were attached.

For steps 2 through 8, "columns" refers to columns on the Earnings Disclosure Worksheet.

(2) COLUMN A. Enter the date of debtor's payday.

(3) COLUMN B. Enter debtor's gross earnings for each payday.

(4) COLUMN C. Enter debtor's disposable earnings for each payday.

(5) COLUMN D. Enter either 50, 55, 60, or 65 percent of disposable earnings, based on which of the following descriptions fits the child support judgment debtor:

(a) 50 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child;

(b) 55 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the execution levy is received);

(c) 60 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child; or

(d) 65 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the execution levy is received). (Multiply column C by .50, .55, .60, or .65, as appropriate.)

(6) COLUMN E. Subtract the amount in column D from the amount in column C, and enter here.

(7) COLUMN F. Enter here any amount claimed by you as a setoff, defense, lien, or claim, or any amount claimed by any other person as an exemption or adverse interest that would reduce the amount of earnings owing to the debtor. (Note: Any assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.)

You must also describe your claim(s) and the claims of others, if known, in the space provided below the worksheet and state the name(s) and address(es) of these persons.

Enter zero in column F if there are no claims by you or others that would reduce the amount of earnings owing to the judgment debtor.

(8) COLUMN G. Subtract the amount in column F from the amount in column E and enter here. This is the amount of earnings that you must remit for the payday for which the calculations were made.

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AFFIRMATION

I, (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this earnings disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

.....
Signature

.....
Title

.....
Telephone Number

EARNINGS DISCLOSURE WORKSHEET

.....
Debtor's Name

| A Payday Date | B Gross Earnings | C Disposable Earnings | |
|--|------------------------------------|---|--|
| 1. | \$..... | \$..... | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| D Either 50, 55, 60, or 65% of Column C | E Column C minus Column D | F Setoff, Lien, Adverse Interest, or Other Claims | |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| | | G Column E minus Column F | |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |

TOTAL OF COLUMN G \$.....

*If you entered any amount in column F for any payday(s), you must describe below either your claims, or the claims of others. For amounts claimed by others, you must both state the names and addresses of such persons, and the nature of their claim, if known.

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AFFIRMATION

I, (person signing Affirmation), am the third party or I am authorized by the third party to complete this earnings disclosure worksheet, and have done so truthfully and to the best of my knowledge.

Dated: Signature
..... Title
..... Phone Number

NONEARNINGS DISCLOSURE FORM

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT
..... JUDICIAL DISTRICT

.....(Creditor)
against

.....(Debtor)
and

NONEARNINGS DISCLOSURE

.....(Garnishee)

On the day of, 19.., the time of service of garnishment summons herein, there was due and owing the debtor from the garnishee the following:

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

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

(3) Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines (1) and (2) above. State the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.)

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

(5) Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the debtor's property.

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

(7) Enter on the line below the difference obtained (never less than zero) when line (6) is subtracted from the sum of lines (1) and (2).

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

(9) Enter on the line below the lesser of line (8) and line (9). Retain this amount only if it is \$10 or more.

.....

AFFIRMATION

I, (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this nonearnings garnishment disclosure, and have done so truthfully and to the best of my knowledge.

Dated:

.....
Signature

.....
Title

.....
Telephone Number

Subd. 3. Oral disclosure. Before or after the service of a written disclosure by a garnishee under subdivision 1, upon a showing by affidavit upon information and belief that an oral examination of the garnishee would provide a complete disclosure of relevant facts, any party to the garnishment proceedings may obtain an ex parte order requiring the garnishee, or a representative of the garnishee designated by name or by title, to appear for oral examination before the court or a referee appointed by the court. Notice of the examination must be given to all parties.

Subd. 4. Supplemental complaint. If a garnishee holds property, money, or other indebtedness by a title that is void as to the debtor's creditors, the property may be garnished although the debtor would be barred from maintaining an action to recover the property, money, or indebtedness. In this and all other cases where the garnishee denies liability, the creditor may move the court at any time before the garnishee is discharged, on notice to both the debtor and the garnishee for an order making the garnishee a party to the civil action and granting the creditor leave to file a supplemental complaint against the garnishee and the debtor. The supplemental complaint shall set forth the facts upon which the creditor claims to charge the garnishee. If probable cause is shown, the motion shall be granted. The supplemental complaint shall be served upon the garnishee and the debtor and any other parties. The parties served shall answer or respond pursuant to the Minnesota Rules of Civil Procedure for the District Courts, and if they fail to do so, judgment by default may be rendered against them pursuant to section 571.82.

History: 1990 c 606 art 3 s 7

571.76 GARNISHEE FEES.

A garnishee shall be paid a \$15 fee by the creditor at the time of service of a garnishment summons. Failure to pay the fee renders the garnishment void, and the garnishee shall take no action. If a garnishee is required to appear and submit to oral examination, the garnishee shall be tendered, in advance of the examination, fees and mileage for attendance at the rate allowed by law to a witness. These fees may be recovered by the creditor as an allowable disbursement. In extraordinary cases, the garnishee may be allowed additional sums the court considers reasonable for attorneys fees and other necessary expenses. The court shall then determine which party bears the burden of this expense. If specific articles of personal property are garnished, the garnishee is not required to deliver the property to any person until payment of the garnishee's reasonable charges for storage.

History: 1990 c 606 art 3 s 8

571.77 SALARY OF PUBLIC SERVANTS.

The salary or wages of an official or employee of a county, town, city, or school district, or any department of these bodies, is subject to garnishment. The garnishment summons shall be served upon the auditor, treasurer, or clerk of the body, or head of the department of the body of which that person is an official or employee. The disclosure shall be made by the officer or person so served, or by some person designated by

that person having knowledge of the facts. If payment is made by the county, town, city, or school district, or any department of these bodies pursuant to a judgment against it as garnishee, a certified copy of the judgment with a certificate of satisfaction to the extent of the payment endorsed on it shall be delivered to the treasurer as a voucher for the payment.

History: 1990 c 606 art 3 s 9

571.78 DUTIES OF A GARNISHEE.

A garnishee shall:

(1) complete the garnishment disclosure form and return it to the creditor, and serve a copy on the debtor as required by section 571.75;

(2) retain nonexempt disposable earnings, indebtedness, money, or other property belonging to the debtor up to 110 percent of the amount claimed in the garnishment summons, as required by section 571.73, except as limited by section 571.922;

(3)(a) remit and deliver the garnished nonexempt disposable earnings, indebtedness, money, or other property to the creditor upon levy, written authorization of the debtor, court order, or operation of law. However, the garnishee shall not be compelled to deliver the nonexempt earnings, indebtedness, money, or other property at any time or place other than as stipulated in the contract between the garnishee and the debtor; or

(b) return the garnished nonexempt disposable earnings, indebtedness, money, or other property to the debtor when the garnishment retention period expires as set forth in section 571.79.

History: 1990 c 606 art 3 s 10

571.79 DISCHARGE OF A GARNISHEE.

Subject to sections 571.78 and 571.80, the garnishee, after disclosure, shall be discharged of any further obligation to the creditor when one of the following conditions are met:

(a) The garnishee discloses that the garnishee is not indebted to the debtor or does not possess any money or other property belonging to the debtor that is attachable as defined in section 571.73, subdivision 3. The disclosure is conclusive against the creditor and discharges the garnishee from any further obligation to the creditor other than to retain all nonexempt disposable earnings, indebtedness, money, and property of the debtor which was disclosed.

(b) The garnishee discloses that the garnishee is indebted to the debtor as indicated on the garnishment disclosure form. The disclosure is conclusive against the creditor and discharges the garnishee from any further obligation to the creditor other than to retain all nonexempt disposable earnings, indebtedness, money, and property of the debtor that was disclosed.

(c) If the garnishee was served with a garnishment summons before entry of judgment against the debtor by the creditor in the civil action, 270 days after the garnishment summons is served the garnishee is discharged and the garnishee shall return any disposable earnings, indebtedness, money, and property to the debtor.

(d) If the garnishee was served with a garnishment summons after entry of judgment against the debtor by the creditor in the civil action, 180 days after the garnishment summons is served the garnishee is discharged and the garnishee shall return any disposable earnings, other indebtedness, money, and property to the debtor.

(e) If the garnished indebtedness, money, or other property is destroyed without any negligence of the garnishee, the garnishee is discharged of any liability to the creditor for nondelivery of the garnished indebtedness, money, and other property.

(f) The court may, upon motion of an interested person, discharge the garnishee as to any disposable earnings, other indebtedness, money, and property in excess of the amount that may be required to satisfy the creditor's claim.

History: 1990 c 606 art 3 s 11

571.80 EXCEPTIONS TO DISCHARGE OF A GARNISHEE.

The garnishee is not discharged if:

(a) Within 20 days of the service of the garnishee's disclosure, an interested person serves a motion relating to the garnishment. The hearing on the motion must be scheduled to be heard within 30 days of the service of the motion.

(b) The creditor moves the court for leave to file a supplemental complaint against the garnishee, as provided for in section 571.75, subdivision 4, and the court upon proper showing, vacates the discharge of the garnishee.

History: 1990 c 606 art 3 s 12

571.81 GARNISHMENT LIEN; PRIORITIES OF CREDITORS.

Subdivision 1. **Garnishment lien.** From the time of service of a garnishment summons upon a garnishee, either before or after judgment, the creditor has a perfected lien upon all disposable earnings, indebtedness, money, or other property of the debtor that is attached by garnishment pursuant to section 571.73, subdivision 3.

Subd. 2. **Priorities of creditors.** Except as provided in this subdivision or in section 518.611, subdivision 6, a perfected lien by garnishment is subordinate to a preexisting voluntary or involuntary transfer, setoff, security interest, lien, or other encumbrance that is perfected, but a lien perfected by garnishment is superior to such interests subsequently perfected. Priorities of creditors relating to multiple wage garnishments are set forth in section 571.923. An assignment of earnings made by the debtor to any party within ten days before the receipt of the first garnishment on a debt is void. Any indebtedness to you incurred by the debtor within the ten days before the receipt of the first garnishment on a debt may not be set off against amounts otherwise subject to the garnishment.

Subd. 3. **Continuity of garnishment lien.** When a lien by garnishment is perfected in disposable earnings, indebtedness, money, or property, neither that lien nor the date and priority of that lien is lost for any purpose when the creditor: (1) obtains the debtor's assignment of the same to the creditor; (2) levies execution upon the same or against the garnishee whether or not a release of garnishment accompanies the levy; or (3) obtains a court-ordered sale of the same.

History: 1990 c 606 art 3 s 13

571.82 JUDGMENT AGAINST GARNISHEE.

Subdivision 1. **Judgment upon failure to disclose.** If a garnishee fails to serve a disclosure as required in this chapter, the court may render judgment against the garnishee, upon motion by the creditor, for an amount not exceeding the creditor's claim against the debtor or 110 percent of the amount claimed in the garnishment summons, whichever is less. The motion shall be supported by an affidavit of the facts and shall be served upon both the debtor and the garnishee. The court upon good cause shown may remove the default and permit the garnishee to disclose on just terms.

Subd. 2. **Limitation of liability.** Judgment against a garnishee shall be rendered, if at all, for the amount due to the debtor, or as much as may be necessary to satisfy the creditor's claim against the debtor, with costs taxed and allowed in the proceeding against the garnishee but not to exceed 110 percent of the amount claimed in the garnishment summons. This judgment discharges the garnishee from all claims of all parties named in the process in and to the property or money paid, delivered, or accounted for by the garnishee by force of the judgment.

History: 1990 c 606 art 3 s 14

571.83 JOINDER AND INTERVENTION BY PERSONS IN INTEREST.

If it appears that a person, who is not a party to the action, has or claims an interest in any of the disposable earnings, other indebtedness, money, or other property, the court shall permit that person to intervene or join in the garnishment proceeding. If that

person does not appear, the court may summon that person to appear or order the claim barred. The person so appearing or summoned shall be joined as a party and be bound by the judgment.

History: 1990 c 606 art 3 s 15

571.84 VALUATION AND DISPOSITION OF PROPERTY IN HANDS OF THE GARNISHEE.

On motion of a person in interest the court may: (1) determine the value of property of the debtor in the hands of the garnishee; (2) make an order relative to the keeping, delivery, or sale of the property that is necessary to protect the rights of those interested; or (3) require the property to be delivered to a receiver or other person appointed by the court. If the garnishee refuses or neglects to comply with an order of the court, the garnishee may be held in contempt of court, and is also liable to the creditor for the value of the property, less the amount of a lien.

History: 1990 c 606 art 3 s 16

571.85 LIEN OF GARNISHEE.

If it appears that the garnishee has a security interest or lien on the indebtedness or property, the creditor, on motion, may be permitted to pay the amount of the lien or security interest, and the amount that is paid shall be repaid to the creditor, with interest, out of the proceeds from the sale of the indebtedness or property. The garnishee may sell the property to satisfy the lien, if a sale is authorized by the contract between the debtor and garnishee, at any time before the payment or tender.

History: 1990 c 606 art 3 s 17

571.86 DISCHARGE NOT A BAR.

If a person summoned as a garnishee is discharged pursuant to section 571.79, or released by the creditor, the discharge is no bar to an action brought against the garnishee by the debtor or other claimants.

History: 1990 c 606 art 3 s 18

571.87 TRANSFER TO ANOTHER COURT.

In case of a change in venue or removal to a United States District Court, whether before or after full disclosure, the garnishment proceeding must be changed to the county or court to which the action is transferred. Written notice of the transfer, specifying the court to which the transfer is made, shall be served by the creditor on the garnishee. The transfer carries with it all pending proceedings and any disclosure made in those proceedings.

History: 1990 c 606 art 3 s 19

571.88 APPEAL.

A party to a garnishment proceeding aggrieved by an order or final judgment may appeal as in other civil cases.

History: 1990 c 606 art 3 s 20

571.90 PENALTY IN CERTAIN GARNISHMENT PROCEEDINGS.

A creditor who serves or causes to be served a garnishment summons before entry of judgment in the main action, except when garnishment before entry of judgment is permitted under this chapter, is liable to the debtor named in the garnishment proceedings in the amount of \$100, plus actual damages, plus reasonable attorney's fees and costs. Any action by a creditor made in bad faith and in violation of this chapter renders the garnishment void and the creditor liable to the debtor named in the garnishment in the amount of \$100, actual damages, and reasonable attorney's fees and costs.

History: 1990 c 606 art 3 s 21

571.91 GARNISHMENT OF FUNDS AT A FINANCIAL INSTITUTION.

Sections 571.911 to 571.915 relate to the garnishment of funds at a financial institution.

History: 1990 c 606 art 3 s 22

571.911 EXEMPTION NOTICE; DUTY OF FINANCIAL INSTITUTION.

If the garnishment summons is used to garnish funds of a debtor who is a natural person and if the funds to be garnished are held on deposit at a financial institution, the creditor shall serve with the garnishee summons two copies of an exemption notice. The notice must be substantially in the form set forth in section 571.912. Failure of the creditor to send the exemption notice renders the garnishment void, and the financial institution shall take no action. Upon receipt of the garnishment summons and exemption notices, the financial institution shall retain as much of the amount under section 571.73 as the financial institution has on deposit owing to the debtor, but not more than 110 percent of the creditor's claim.

History: 1990 c 606 art 3 s 23

571.912 FORM OF EXEMPTION NOTICE.

The notice informing a debtor that an order for attachment, garnishment summons, or levy by execution has been used to attach funds of the debtor to satisfy a claim must be substantially in the following form:

STATE OF MINNESOTA

COUNTY OF

.....(Creditor)

.....(Debtor)

TO: Debtor

DISTRICT COURT
.....JUDICIAL DISTRICT

EXEMPTION NOTICE

An order for attachment, garnishment 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, all or a portion of 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: Aid to Families with Dependent Children (AFDC), AFDC-Emergency Assistance (AFDC-EA), Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Work Readiness, Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance;

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

(3) unemployment compensation, workers' compensation, or veterans' benefits;

(4) an accident, disability, or retirement pension or annuity;

(5) life insurance proceeds;

(6) the earnings of your minor child; or

(7) 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:

(8) all earnings of a person in category (1);

(9) 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;

(10) 75 percent of every debtor's after tax earnings; and

(11) all of a debtor's after tax earnings below 40 times the federal minimum wage.

TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:

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Categories (10) and (11): 20 days

Categories (8) and (9): 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 the attached exemption claim form to the institution which sent you this notice and mail or deliver one copy to the creditor's attorney. In the event that there is no attorney for the creditor, then such notice shall be sent directly to the creditor. The address for the creditor's attorney or the creditor is set forth below. Both copies must be mailed or delivered on the same day.

If they do not 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 held 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:

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 TEN 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 held, 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.

.....
.....
.....

.....
Name and address of (Attorney
for) Judgment Creditor

EXEMPTION:

(If you claim an exemption complete the following):

(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 eleven 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:)

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 its attorney only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institute within the last six months.

I have mailed or delivered a copy of the exemption notice to the creditor's attorney.

DATED:

.....
 DEBTOR

.....
 DEBTOR ADDRESS

History: 1990 c 606 art 3 s 24

571.913 EFFECT OF EXEMPTION NOTICE.

Within two business days after receipt of the garnishment summons and exemption notices, the financial institution shall serve upon the 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 debtor. If no claim of exemption is received by the financial institution within 14 days after the exemption notices are mailed to the debtor, the funds remain subject to the garnishment summons. If the debtor elects to claim an exemption, the debtor shall complete the exemption notice, sign it under penalty of perjury, and deliver one copy to the financial institution and one copy to the attorney for the creditor within 14 days of the date postmarked on the correspondence mailed to the debtor containing the exemption notices. In the event that there is no attorney for the creditor, then the notice must be sent directly to the creditor. Failure of the debtor to deliver the executed exemption notice does not constitute a waiver of a claimed right to an exemption. Upon timely receipt of a claim of exemption, funds not claimed to be exempt by the debtor remain subject to the garnishment summons. All money claimed to be exempt shall be released to the debtor upon the expiration of seven days after the date postmarked on the envelope containing the executed exemption notice mailed to the financial institution, or the date of personal delivery of the executed exemption notice to the financial institution, unless within that time the creditor interposes an objection to the exemption.

History: 1990 c 606 art 3 s 25

571.914 OBJECTION TO EXEMPTION CLAIM.

Subdivision 1. Objections. An 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 debtor. A Request for Hearing and Notice of Hearing form must accompany each copy of the written objection.

Both copies of an objection to an exemption claim must be mailed or delivered on the same date. The financial institution may rely on the date of mailing or delivery of a notice to it in computing any time periods in this section.

The written objection, and Request for Hearing and Notice of Hearing, must be substantially in the forms set out in subdivisions 2 and 3.

The court shall provide clerical assistance to help with the writing and filing of a Request for Hearing by any person not represented by counsel. The court administrator may charge a fee of \$1 for the filing of a Request for Hearing. Upon the filing of a Request for Hearing, the clerk shall schedule the matter for hearing no later than five business days from the date of filing. The court administrator shall immediately send a completed copy of the request, including the hearing date, time, and place to the adverse party and to the financial institution by first class mail.

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An order stating whether the debtor's funds are exempt shall be issued by the court within three days of the date of the hearing.

Subd. 2. **Notice of objection.** (a) The written objection to the debtor must be in substantially the following form:

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT
.....JUDICIAL DISTRICT

.....(Creditor)

.....(Debtor)

.....(Garnishee)

CREDITOR'S OBJECTION
TO EXEMPTION CLAIM

The creditor objects to your claim for exemption from garnishment, levy of execution, order for attachment (strike inapplicable language) for the following reason(s):
.....

Because of this objection, your financial institution will retain the funds you claimed to be exempt for an additional ten days. If you wish to request a hearing on your exemption claim, you should do so within ten days of your receipt of this objection. You may request a hearing by completing the attached form and filing it with the court administrator.

1. The court shall provide clerical assistance to help with the writing and filing of a Request for Hearing by any person not represented by counsel. The court administrator may charge a fee of \$1 for the filing of a Request for Hearing.

2. Upon the filing of a Request for Hearing, the clerk shall schedule the matter for a hearing no later than five business days from the date of filing. The court administrator shall forthwith send a completed copy of the request, including the hearing date, time, and place to the adverse party and to the financial institution by first class mail.

3. If it is possible that the financial institution might not receive the request mailed from the court administrator within ten days, then you may want to personally deliver a copy of the request to the financial institution after you have filed your request with the court.

4. An order stating whether your funds are exempt shall be issued by the court within three days of the date of the hearing.

If you do not file a Request for Hearing within ten days of the date you receive this objection, your financial institution may turn your funds over to your creditor.

If you file a Request for Hearing and your financial institution receives it within ten days of the date it received this objection, your financial institution will retain your funds claimed to be exempt until otherwise ordered by the court, or until the garnishment lapses pursuant to Minnesota Statutes, section 571.79.

.....
(CREDITOR OR CREDITOR'S ATTORNEY.)

Subd. 3. **Request for hearing and notice for hearing.** The request for hearing accompanying the objection notice must be in substantially the following form:

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT
.....JUDICIAL DISTRICT

.....(Creditor)

.....(Debtor)

REQUEST FOR HEARING
AND NOTICE FOR HEARING

.....(Garnishee)

I hereby request a hearing to resolve the exemption claim which has been made in this case regarding funds in the account of (Debtor) at the (Financial Institution).

I believe the property being held is exempt because

.....
.....

Dated:

(DEBTOR)

.....
(ADDRESS)

HEARING DATE:

TIME:

HEARING PLACE:

(Note to both parties: Bring with you to the hearing all documents and materials relevant to the exemption claim. Failure to do so could delay the court's decision.)

Subd. 4. Duties of financial institution if objection is made to exemption claim. Upon receipt of a written objection from the creditor within the specified seven-day period, the financial institution shall retain the funds claimed to be exempt. Unless the financial institution receives a request for hearing from the debtor asserting exemption rights within ten days after receipt of the written objection to the exemption, the funds remain subject to the garnishment summons as if no claim of exemption had been made. 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 571.79.

History: 1990 c 606 art 3 s 26

571.915 RELEASE OF FUNDS.

At any time the debtor or the creditor may, by a writing dated after the service of the garnishment summons, 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.

History: 1990 c 606 art 3 s 27

571.92 GARNISHMENT OF EARNINGS.

Sections 571.921 to 571.926 relate to the garnishment of earnings.

History: 1990 c 606 art 3 s 28

571.921 DEFINITIONS.

For purposes of sections 571.921 to 571.926, the following terms have the meanings given them:

(a) "Earnings" means:

(1) compensation paid or payable to an employee for personal service whether denominated as wages, salary, commissions, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program; or

(2) 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.

(b) "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.

(c) "Employee" means an individual who performs services subject to the right of the employer to control both what is done and how it is done.

(d) "Employer" means a person for whom an individual performs services as an employee.

History: 1990 c 606 art 3 s 29

571.922 LIMITATION ON WAGE GARNISHMENT.

Unless the judgment is for child support, the maximum part of the aggregate dis-

possible earnings of an individual for any pay period subjected to garnishment may not exceed the lesser of:

- (1) 25 percent of the debtor's disposable earnings; or
- (2) the amount by which the debtor's disposable earnings exceed the following product: 40 times the federal minimum hourly wages prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, United States Code, title 29, section 206(a)(1), in effect at the time the earnings are payable, times the number of work weeks in the pay period. When a pay period consists of other than a whole number of work weeks, each day of that 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 excess work days divided by the number of days in the normal work week.

If the judgment is for child support, the garnishment may not exceed:

- (1) 50 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child;
- (2) 55 percent of the judgment debtor's disposable income, if the judgment debtor is supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the garnishment summons is received);
- (3) 60 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child; or
- (4) 65 percent of the judgment debtor's disposable income, if the judgment debtor is not supporting a spouse or dependent child, and the judgment is over 12 weeks old (12 weeks to be calculated to the beginning of the work week in which the garnishment summons is received).

No court may make, execute, or enforce an order or any process in violation of this section.

History: 1990 c 606 art 3 s 30

571.923 MULTIPLE EARNINGS GARNISHMENTS.

Except as otherwise provided in this chapter or section 518.611, subdivision 6, the priority of multiple earnings garnishments shall be determined by the order in which the garnishment summonses were served on the employer. If the employer is served with two or more garnishment summonses at the same time on the same day, the garnishment summons issued pursuant to the first judgment entered has priority. If two or more garnishment summonses are served on the same day and are based on judgments entered on the same day or if there are two or more garnishment summonses based on prejudgment garnishment pursuant to section 571.93, then the employer shall select the priority of the earnings garnishments. However, in all cases garnishments shall be effective no longer than 70 days from the date of the service of the garnishment summons.

History: 1990 c 606 art 3 s 31

571.924 GARNISHMENT EXEMPTION NOTICE.

Subdivision 1. Requirement. The creditor shall serve upon the debtor, no less than ten days before the service of the garnishment summons, a notice that a summons may be issued. The notice shall: (1) be substantially in the form set out in section 571.925; (2) be served personally, in the manner of a summons and complaint, or by first class mail to the last known address of the debtor; (3) inform the debtor that a garnishment summons may be served on the debtor's employer after ten days, and that the debtor may, within that time, cause to be served on the creditor a signed statement under penalties of perjury asserting an entitlement to an exemption from garnishment; (4) inform the debtor of the earnings garnishment exemptions contained in section 550.37, subdivision 14; and (5) advise the debtor of the relief set forth in this chapter to which the debtor may be entitled if a creditor in bad faith disregards a valid claim and the fee, costs, and penalty that may be assessed against a debtor who in bad faith falsely claims an exemption or in bad faith takes action to frustrate the garnishment process.

Subd. 2. Additional notices. If the garnishment summons has not been served within one year after service of the notice, the creditor shall serve another notice upon the debtor before serving the garnishment summons on the debtor's employer. If more than one year has passed since the service of the creditor's most recent garnishment summons, the creditor shall, no less than ten days before service of another garnishment summons, serve notice that another garnishment summons may be served.

History: 1990 c 606 art 3 s 32

571.925 FORM OF NOTICE.

The ten-day notice informing a debtor that a garnishment summons may be used to garnish the earnings of an individual must be substantially in the following form:

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT
.....JUDICIAL DISTRICT

.....(Creditor)
against

.....(Debtor)
and

GARNISHMENT EXEMPTION
NOTICE AND NOTICE OF
INTENT TO GARNISH EARNINGS
WITHIN TEN DAYS

.....(Garnishee)

THE STATE OF MINNESOTA
TO THE ABOVE NAMED DEBTOR

PLEASE TAKE NOTICE that a garnishment summons or levy 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. Some or all of your earnings are exempt from garnishment. If your earnings are garnished, your employer must show you how the amount that is garnished from your earnings was calculated. You have the right to request a hearing if you claim the garnishment is incorrect.

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 Aid to Families with Dependent Children (AFDC), AFDC-Emergency Assistance (AFDC-EA), Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Work Readiness, Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.

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

You may wish to contact the attorney for the creditor in order to arrange for a settlement of the debt or contact an attorney to advise you about exemptions or other rights.

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

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the problem, you will be liable to the creditor for costs and reasonable attorney's fees plus an amount not to exceed \$100.

DATED:

.....
(Attorney for) Creditor

.....
Address

.....
Telephone

DEBTOR'S EXEMPTION CLAIM NOTICE

I hereby claim 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 only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institution within the last six months. I have mailed or delivered a copy of this form to the creditor or creditor's attorney.

.....
Date Debtor

.....
Address

History: 1990 c 606 art 3 s 33

571.926 PROCEEDINGS IF NO EXEMPTION STATEMENT IS RECEIVED.

If no statement of exemption is received by the creditor on an earnings garnishment within ten days from the service of the notice, the creditor may proceed with the garnishment. Failure of the debtor to serve a statement does not constitute a waiver of any right the debtor may have to an exemption. If the statement of exemption is received by the creditor, the creditor may still cause a garnishment summons to be issued subject to sanctions provided in section 571.72, subdivision 6.

History: 1990 c 606 art 3 s 34

571.927 PENALTY FOR RETALIATION FOR GARNISHMENT.

Subdivision 1. **Prohibition.** An employer shall not discharge or otherwise discipline an employee as a result of an earnings garnishment authorized by this chapter.

Subd. 2. **Remedy.** If an employer violates this section, a court may order the reinstatement of an aggrieved party who demonstrates a violation of this section, and other relief the court considers appropriate. The aggrieved party may bring a civil action within 90 days of the date of the prohibited action. If an employer-employee relationship existed before the violation of this section, the employee shall recover twice the wages lost as a result of this violation.

Subd. 3. **Nonwaiver.** The rights guaranteed by this section may not be waived or altered by employment contract.

History: 1990 c 606 art 3 s 35

571.93 GARNISHMENT BEFORE JUDGMENT OR DEFAULT.

Subdivision 1. Grounds. The court may order the issuance of a garnishment summons before judgment or default in the civil action, if a summons and complaint, or copies of these documents, are filed with the appropriate court, and if, upon application to the court, it appears that any of the following grounds exist:

(1) the debtor has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the debtor's nonexempt property, with intent to delay or defraud any of debtor's creditors;

(2) the debtor has removed, or is about to remove, any of the debtor's nonexempt property from this state, with intent to delay or defraud any of debtor's creditors;

(3) the debtor has converted or is about to convert any of the debtor's nonexempt property into money or credits, for the purpose of placing the property beyond the reach of any of debtor's creditors;

(4) the debtor has committed an intentional fraud giving rise to the claim upon which the civil action is brought;

(5) the debtor has committed any act or omission, for which the debtor has been convicted of a felony, giving rise to the claim upon which the civil action is brought; or

(6) the purpose of the garnishment is to establish quasi in rem jurisdiction and

(i) debtor is a resident individual having left the state with intent to defraud creditors, or to avoid service; or

(ii) a judgment had previously been obtained in another state consistent with due process; or

(iii) the claim in the civil action is directly related to and arises from the property sought to be attached; or

(iv) no forum is available to obtain a personal judgment against the debtor in the United States or elsewhere; or

(7) the creditor has been unable to serve upon the debtor the summons and complaint in the civil action because the debtor has been inaccessible due to residence and employment in a building where access is restricted.

Subd. 2. Notice and hearing requirements. If the garnishment is before notice and hearing, the requirements of section 571.931 must be met. If the garnishment is after notice and hearing, the requirements of section 571.932 must be met.

History: 1990 c 606 art 3 s 36

571.931 PREJUDGMENT GARNISHMENT BEFORE NOTICE AND HEARING.

Subdivision 1. Written application. A creditor seeking a prejudgment garnishment order in extraordinary circumstances to secure property before the hearing specified in section 571.932 shall proceed by written application. The application must be accompanied by affidavits or by oral testimony, or both, setting forth in detail:

(1) the basis and the amount of the claim in the civil action;

(2) the facts which constitute the conditions for prejudgment garnishment as specified in section 571.93, subdivision 1; and

(3) a good faith estimate, based on facts known to the creditor, of any harm that would be suffered by the debtor if a prejudgment garnishment order is entered without notice and hearing.

Subd. 2. Conditions. A prejudgment garnishment order may be issued before the hearing specified in subdivision 4 only if the following conditions are met:

(1) the creditor has made a good faith effort to inform the debtor of the application for a prejudgment garnishment order or that informing the debtor would endanger the ability of the creditor to recover upon a judgment subsequently awarded;

(2) the creditor has demonstrated the probability of success on the merits;

(3) the creditor has demonstrated the existence of one or more of the grounds specified in section 571.93, subdivision 1; and

(4) due to extraordinary circumstances, the creditor's interests cannot be protected pending a hearing by an appropriate order of the court, other than by directing a prehearing seizure of property.

Subd. 3. Order. All prejudgment garnishment orders must:

(1) state the names and addresses of all persons whose affidavits were submitted to the court and of all witnesses who gave oral testimony;

(2) contain specific findings of fact, based upon competent evidence presented either in the form of affidavits or oral testimony, supporting the conclusion that each of the conditions in subdivision 1 have been met;

(3) be narrowly drafted to minimize any harm to the debtor as a result of the seizure of the debtor's property; and

(4) provide for the bond required by section 571.932, subdivision 6.

Subd. 4. Subsequent hearing. If the court issues a prejudgment garnishment order, the order must establish a date for a hearing at which the debtor may be heard. The subsequent hearing must be conducted at the earliest practicable time. At the hearing, the burden of proof is on the creditor to establish the grounds justifying the prejudgment garnishment order.

Subd. 5. Standards at subsequent hearing. The hearing held pursuant to subdivision 4 must be conducted in accordance with the standards established in section 571.932. In addition, if the court finds that the motion for a prejudgment garnishment order was made in bad faith, the court shall award debtor the actual damages, costs, and reasonable attorney's fees, suffered by reason of the prejudgment garnishment.

Subd. 6. Notice. The debtor shall be served with a copy of the prejudgment garnishment order issued pursuant to this section together with a copy of all pleadings and other documents not previously served, including any affidavits upon which the claimant intends to rely at the subsequent hearing and a transcript of any oral testimony given at the prejudgment garnishment hearing upon which the creditor intends to rely and a notice of hearing. Service must be in the manner prescribed for personal service of a summons unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the debtor.

The notice of hearing served upon the debtor must be signed by the creditor or the attorney for the creditor and must be accompanied by an exemption notice. The notice of hearing must be accompanied by an exemption notice, and both notices must provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

TO: (the debtor)

The (insert the name of court) Court has ordered the prejudgment garnishment of some of your property in the possession or control of a third party. Some of your property may be exempt from seizure. See the exemption notice below.

The Court issued this Order based upon the claim of (insert name of creditor) that (insert name of creditor) is entitled to a court order for garnishment of your property to secure your payment of any money judgment that (insert name of creditor) may later be obtained against you and that immediate action was necessary.

You have the legal right to challenge (insert name of creditor) claims at a court hearing before a judge. The hearing will be held at the (insert place) on (insert date) at (insert time). You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide what should be done with your property until the lawsuit against you is finally decided.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER GARNISHMENT OF YOUR PROPERTY.

EXEMPTION NOTICE

Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. If you have questions about an exemption, you should obtain competent legal advice.

- (1) A homestead or the proceeds from the sale of a homestead.
- (2) Household furniture, appliances, phonographs, radios, and televisions up to a total current value of \$4,500 at the time of attachment.
- (3) A manufactured (mobile) home used as your home.
- (4) One motor vehicle currently worth less than \$2,000 after deducting any security interests.
- (5) Farm machinery used by someone principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to \$10,000.
- (6) Relief based on need. This includes: Aid to Families with Dependent Children (AFDC), AFDC-Emergency Assistance (AFDC-EA), Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Work Readiness, Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.
- (7) Social Security benefits.
- (8) Unemployment compensation, workers' compensation, or veterans' benefits.
- (9) An accident, disability or retirement pension or annuity.
- (10) Life insurance proceeds.
- (11) The earnings of your minor child.
- (12) Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

History: 1990 c 606 art 3 s 37

571.932 PREJUDGMENT GARNISHMENT AFTER NOTICE AND HEARING.

Subdivision 1. Motion. A creditor seeking to obtain an order of garnishment in other than extraordinary circumstances shall proceed by motion. The motion must be accompanied by an affidavit setting forth in detail:

- (1) the basis and amount of the claim in the civil action; and
- (2) the facts that constitute one or more of the grounds for garnishment as specified in section 571.93, subdivision 1.

Subd. 2. Service. The creditor's motion to obtain an order of garnishment together with the creditor's affidavit and notice of hearing must be served in the manner prescribed for service of a summons in a civil action in district court unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the debtor. If the debtor has already appeared in the action, the motion must be served in the manner prescribed for service of pleadings subsequent to the summons. The date of the hearing must be fixed in accordance with Rule 6 of the Minnesota Rules of Civil Procedure for the District Courts, unless a different date is fixed by order of the court.

The notice of hearing served upon the debtor shall be signed by the creditor or the attorney for the creditor and shall provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

TO: (the debtor)

A hearing will be held (insert place) on (insert date) at (insert time) to determine whether nonexempt property belonging to you will be garnished to secure a judgment that may be entered against you.

You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide whether your property should be garnished until the lawsuit which has been commenced against you is finally decided.

If the court directs the issuance of a garnishment summons while the lawsuit is pending, you may still keep the property until the lawsuit is decided if you file a bond in an amount set by the court.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER YOUR NONEXEMPT PROPERTY TO BE GARNISHED.

EXEMPTION NOTICE

Some of your property may be exempt and cannot be garnished. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. The dollar amounts contained in this list are subject to the provisions of section 550.37, subdivision 4a, at the time of the garnishment. If you have questions about an exemption, you should obtain competent legal advice.

- (1) A homestead or the proceeds from the sale of a homestead.
- (2) Household furniture, appliances, phonographs, radios, and televisions up to a total current value of \$5,850.
- (3) A manufactured (mobile) home used as your home.
- (4) One motor vehicle currently worth less than \$2,600 after deducting any security interests.
- (5) Farm machinery used by an individual principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to \$13,000.
- (6) Relief based on need. This includes: Aid to Families with Dependent Children (AFDC), AFDC-Emergency Assistance (AFDC-EA), Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Work Readiness, Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance.
- (7) Social Security benefits.
- (8) Unemployment compensation, workers' compensation, or veterans' benefits.
- (9) An accident, disability or retirement pension or annuity.
- (10) Life insurance proceeds.
- (11) The earnings of your minor child.
- (12) Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

Subd. 3. Standards for order. An order for prejudgment garnishment may be issued only if the creditor has demonstrated the probability of success on the merits, and the creditor has stated facts that show the existence of at least one of the grounds stated in section 571.93, subdivision 1. However, even if those standards are met, the order may not be issued if:

- (1) the circumstances do not constitute a risk to collectibility of any judgment that may be entered; or

(2)(i) the debtor has raised a defense to the merits of the creditor's claim or has raised a counterclaim in an amount equal to or greater than the claim and the defense or counterclaim is not frivolous; and

(ii) the interests of the debtor cannot be adequately protected by a bond filed by the creditor pursuant to section 571.932, subdivision 6, if property is garnished; and

(iii) the harm suffered by the debtor as a result of garnishment would be greater than the harm that would be suffered by the creditor if property is not attached.

Subd. 4. Protection of creditor. If the creditor makes the showing prescribed by subdivision 3 but the court nevertheless determines that an order of garnishment should not be issued for the reasons set forth in subdivision 3, clause (2), the court shall enter a further order protecting the rights of the creditor to the extent possible. The order may require that the debtor post a bond in an amount set by the court, that the debtor make the property available for inspection from time to time, that the debtor be restrained from certain activities, including, but not limited to, selling, disposing, or otherwise encumbering property, or any other provision the court considers appropriate.

Subd. 5. Stay of order. An order permitting prejudgment garnishment of property may be stayed up to three days to allow the debtor time to post a bond.

Subd. 6. Bonding requirement. (a) Before issuing an order of garnishment, the court shall require the creditor to post a bond in the penal sum of at least \$500, conditioned that if judgment be given for the debtor or if the order is vacated, the creditor will pay all costs that may be awarded against the creditor and all damages caused by the garnishment. Damages may be awarded in a sum in excess of the bond only if, before the issuance of the order establishing the amount of the bond, the debtor specifically notified the creditor and the court of the likelihood that the debtor would suffer the specific damages, or the court finds that the creditor acted in bad faith in bringing or pursuing the garnishment proceeding. In establishing the amount of the bond, the court shall consider the value and nature of the property garnished, the method of retention or storage of the property, the potential harm to the debtor or any party, and other factors that the court considers appropriate. Nothing in this section modifies or restricts the application of section 549.20 or 549.21.

(b) The court may at any time modify the amount of the bond upon its own motion or upon the motion of a party based on the value of the property garnished, the nature of the property attached, the methods of retention or storage of the property, the potential harm to the debtor or a party, or other factor that the court considers appropriate.

(c) In lieu of filing a bond, either the creditor or the debtor may satisfy the bonding requirements by depositing cash, an irrevocable letter of credit, a cashier's check, or a certified check with the court.

Subd. 7. Requirements of order. An order for prejudgment garnishment after notice and hearing must:

(1) contain the findings required by section 571.932, subdivision 3;

(2) state with particularity the facts upon which the findings are made;

(3) state that a debtor who attended the hearing was offered an opportunity to identify exempt property, without waiver of the right to claim exemption in property not identified at the hearing;

(4) direct the issuance of a garnishment summons; and

(5) specify the amount of the bond.

History: 1990 c 606 art 3 s 38