

AN ACT

ENTITLED, An Act to revise certain provisions regarding garnishment disclosure forms.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 21-18-27.1 be amended to read:

21-18-27.1. A garnishment disclosure form shall be served upon the garnishee. The disclosure shall be substantially in the following form:

State of South Dakota) **In** _____ **Court**

) **ss.**

County of _____) _____

Plaintiff

vs.

Defendant

and Garnishment Disclosure

Garnishee

I am the _____ of the garnishee and duly authorized to disclose for the garnishee.

On the _____ day of _____, 20____, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus or otherwise, and includes periodic payments. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment

to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld (such as FICA, Medicare, and income tax withholding). If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.

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

- b. Enter on the line below forty times the hourly federal minimum wage (or state minimum wage, if greater) times the number of workweeks within the defendant's pay periods which may be subject to garnishment plus twenty-five dollars per week for each dependent family member residing with the garnishment debtor other than the garnishment debtor himself or herself. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks shall be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

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

- d. Enter on the line below twenty percent (1/5) of line a.

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

2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.

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

4. 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(e), 2 and 3. Allege the facts by which the setoff, defense, lien or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property (such as child support, federal wage garnishments, and other creditor garnishments). State the names and addresses of the persons and the nature of their claim, if known. (Any assignment of wages made by the defendant within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

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

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of line 1(e), 2 and 3.

8. Enter on the line below one hundred five percent of the amount set forth in the Affidavit of Garnishment.

9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$25.00 or more. The balance shall be remitted to the debtor in a timely manner.

Signature _____

Authorized Representative of Garnishee

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

An Act to revise certain provisions regarding garnishment disclosure forms.

=====
I certify that the attached Act
originated in the
HOUSE as Bill No. 1084

Chief Clerk
=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1084
File No. _____
Chapter No. _____

=====
Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State