

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2194

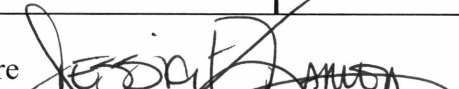
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2194

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/19/99

Tape Number	Side A	Side B	Meter #
2	X		1,530-2690
Committee Clerk Signature 			

Minutes:

Senator Mutch called meeting to order. Roll call was taken, all were present.

Senator Mutch opened hearing on SB 2194.

Senator Wardner introduced the bill. It is about garnishment, it extends the time period from 90 days to 180 days, I support the bill because it not only is going to provide relief for the collection agency but the person who is having their wages garnished is going to mean a savings for them, and that's my big concern.

Kim Rau from ND American Collector's Association spoke in favor of the bill.. Testimony enclosed.

Senator Krebsbach: You can renew it for another 180 days which would bring it to 360 days.

Kim Rau: We would have to redo the whole process again.

Senator Sand: The person who necessitated the action pays all the cost?

Kim Rau: If we can recover them yes.

Senator Thompson: Are you in favor of the amendment?

Kim Rau: The amendment is necessary so yes.

Mike Lefor from the DCI Credit Service, Inc. spoke in favor of the bill. Two points to mention, one- debtors bills would be paid off sooner because there is less paperwork and hassle and it is less cumbersome.

Senator Sand: Is there a formula for how much you can take?

Kim Rau: Yes, the most you can take out of an employees wages is 25%, they are allowed minimum wage, so you cannot take that out. Plus there are exceptions for dependents, they are allowed \$20 a week for dependents.

Senator Mutch closed the hearing on SB 2194.

Discussion was held.

Senator Sand made the motion for a Do Pass on the amendment.

Senator Mathern seconded.

ROLL CALL: 6 YES, 0 NO, 1 ABSENT AND NOT VOTING

Motion carried.

Senator Sand made the motion for a Do Pass As Amended on SB 2194.

Senator Mathern seconded.

ROLL CALL: 6 YES, 0 NO, 1 ABSENT AND NOT VOTING

Motion carried.

CARRIER: Senator Mathern

PROPOSED AMENDMENTS TO SENATE BILL NO. 2194

Page 1, line 1, replace "section" with "sections 32-09.1-07, 32-09.1-20, and"

Page 1, after line 3, insert:

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

**32-09.1-07. Form of summons and notice.** The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

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

State of North Dakota	)	In _____ Court
	) ss.	
County of _____	)	_____
_____		
	Plaintiff	
against		Garnishee Summons and
_____		Notice to Defendant
	Defendant	
and		
_____		
	Garnishee	

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

You must serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, \_\_\_\_\_ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$\_\_\_\_\_. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was \_\_\_\_\_ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$\_\_\_\_\_.

The defendant must provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$\_\_\_\_\_. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of ~~180~~ 270 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within ~~180~~ 270 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated (this \_\_\_\_ day of) \_\_\_\_\_, ~~19 20~~ 20.

By: \_\_\_\_\_

NOTICE TO DEFENDANT

To: \_\_\_\_\_

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon \_\_\_\_\_, the garnishee.

\_\_\_\_\_  
Attorneys for Plaintiff)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

**SECTION 2. AMENDMENT.** Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-20. Termination of garnishment.** A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~one hundred eighty~~ two hundred seventy days after the service of the summons, or a longer period of time

either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects ~~which~~ that the garnishee has been retaining pursuant to the garnishment ~~shall~~ must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them."

~~Page 1, line 4, replace "1" with "3"~~

Renumber accordingly

Date: 1/19/99 Click here to type Date  
Roll Call Vote #:                      Click here to type Roll Call Vote #

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2194**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass to Amend \_\_\_\_\_

Motion Made By Sand Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent Senator Heitkamp

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1/19/99 to type Date  
Roll Call Vote #: Click here to type Roll Call Vote #

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2194**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Sand Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent Senator Heitkamp

Floor Assignment Senator Mathern

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2194: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2194 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 32-09.1-07, 32-09.1-20, and"

Page 1, after line 3, insert:

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

**32-09.1-07. Form of summons and notice.** The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

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

State of North Dakota	)	In _____ Court
	) ss.	
County of _____	)	_____
_____		
		Plaintiff
against		
_____		
		Defendant
and		
_____		
		Garnishee

Garnishee Summons and  
Notice to Defendant

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

You must serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, \_\_\_\_\_ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$\_\_\_\_\_. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was \_\_\_\_\_ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$\_\_\_\_\_.

The defendant must provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$\_\_\_\_\_. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of ~~180~~ 270 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within ~~180~~ 270 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

By: \_\_\_\_\_

NOTICE TO DEFENDANT

To: \_\_\_\_\_

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon \_\_\_\_\_, the garnishee.

\_\_\_\_\_  
(Attorneys for Plaintiff)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

**SECTION 2. AMENDMENT.** Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-20. Termination of garnishment.** A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~one hundred eighty~~ two hundred seventy days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects ~~which~~ that the garnishee has been retaining pursuant to the garnishment ~~shall~~ must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them."

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2194

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2194

House Industry, Business, and Labor Committee

Conference Committee

Hearing Date February 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		7.2-28.5
1	x		28.5-41.0
Committee Clerk Signature			

Minutes:

CHAIRMAN BERG OPENED THE HEARING ON SB 2194; A BILL RELATING TO GARNISHMENT OF WAGES

SENATOR RICH WARDNER, Dist. 37, introduced SB 2194. He said that the bill simply changes the time of redoing garnishments. It eliminates going through procedures every 90 days.

The three main points of the bill if passed are that it will cost less for the person having their wages garnished, it will cost less for the companies doing the garnishing, and it will cost less for the courts proceedings. Mostly, it is a good bill that goes in the right direction.

KIM RAU, Bismarck, testified in support of SB 2194 on behalf of North Dakota Chapter of American Collector's Association. (See written testimony).

CHAIRMAN BERG questioned the amount of the sheriff's fee.

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House Industry, Business, and Labor Committee

Bill/Resolution Number Sb 2194

Hearing Date February 8, 1999

KIM said that it ranges from \$10.00 to 90.00 depending on how far they have to go or if it is necessary to serve the debtor at the place of employment. She said that when set up, 110% of the garnishment is withheld from the employee's paycheck. If 10% is overcost, then a refund is done.

CHAIRMAN BERG noted that it really is not a savings to the debtor, but that they might be entitled to more of a refund, right?

KIM said yes, and that most garnishments will be paid in 180 days.

REP. KEISER questioned the rationale for the time limit?

KIM said that since they are all in competition - this makes it possible for everyone to get in for a while. You can only be garnished once and this makes that possible.

MIKE LEFOR, Dickinson, testified in support of SB 2194 on behalf of ACB of North Dakota. He said that debts will be paid off sooner with the passage of this bill. 20% will be paid in 90 days while the other 75% will be paid in 180 days.

CHAIRMAN BERG asked about the extended time line. Is there a chance that the judge might extend it?

MIKE said that there is that chance, but the main part of the bill is to reduce the paperwork.

CHAIRMAN BERG CLOSED THE HEARING ON HB 22

COMMITTEE ACTION

REP. KLEIN moved a DO PASS on SB 2194. REP. BREKKE seconded the motion. The motion carried.

ROLL CALL - 15 YEA, 0 NAE, 0 ABSENT AND NOT VOTING

FLOOR ASSIGNMENT - REP. KOPPANG

Date: 2/18  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2194**

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep Klein Seconded By Rep Brekke

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	✓		Rep. Thorpe	✓	
Vice Chair - Kempenich	✓				
Rep. Brekke	✓				
Rep. Eckstrom	✓				
Rep. Froseth	✓				
Rep. Glassheim	✓				
Rep. Johnson	✓				
Rep. Keiser	✓				
Rep. Klein	✓				
Rep. Koppang	✓				
Rep. Lemieux	✓				
Rep. Martinson	✓				
Rep. Severson	✓				
Rep. Stefonowicz	✓				

Total (Yes) 15 No 0

Absent \_\_\_\_\_

Floor Assignment Rep Koppang

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
**February 24, 1999 2:54 p.m.**

**Module No: HR-33-3491**  
**Carrier: Koppang**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2194: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2194 was placed on the Fourteenth order on the calendar.



1999 TESTIMONY

SB 2194

## TESTIMONY FOR SENATE BILL NO.2194

Testimony of Kim Rau, lobbyist for the North Dakota Unit of American Collector's Association, in support of Senate Bill No. 2194.

Senate Bill 2194 is a bill that changes the period in which garnishment of wages can take place. Currently the garnishment of a debtor's wages is for a continuous period of 90 days. This 90-day period is not generally enough time to fully satisfy a judgment, therefore once the 90-day period is over, the process of garnishment must start again.

*Sheriff's fee  
\$10 to 90*

Each time the service of the garnishee summons papers takes place, there are additional costs involved, which the debtor gets added on to his already existing debt. There are the sheriff or process server's fees for the delivery of the garnishee summons to the debtor and the employer.

This bill simply extends the garnishment period from 90-180 days which will allow a continuous garnishment of wages for 180 days. This 180 day period should be ample time to satisfy a judgment on the majority of our judgments. After the 180 days, if there still remains a balance on the judgment, we will start the garnishment process over for another 180 days, or until the bill is paid, which ever comes first.

The amendment agreed to by the Senate was to change the number of days to issue a writ of execution to release the garnishment monies from 180 days to 270 days. This amendment was necessary to allow time to prepare the execution and for the sheriff to deliver the execution to release the garnishment monies that have been withheld.

The number of days after the garnishment period has ended will still give the same amount of time to execute – which is 90 days.

This bill is a win-win bill. SB 2194 accomplishes three things:

- (1) Reduces the cost to the debtor
- (2) Reduces the paperwork for the collection agency's attorney.
- (3) Reduces the paperwork for the employer.

**The North Dakota ACA Chapter asks that you give this bill a favorable recommendation.**