

AN ACT

ENTITLED, An Act to revise provisions related to the garnishment of debts and property.

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

Section 1. That § 21-18-2.1 be amended to read:

21-18-2.1. The term, earnings, as used in this chapter means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments.

Section 2. That § 21-18-3 be amended to read:

21-18-3. In any action where garnishment is permitted, the plaintiff, or some person on the plaintiff's behalf, may make an affidavit stating that the plaintiff believes that a named person is indebted to, or has property, real or personal, in the person's possession or under the person's control belonging to the defendant, or either or any of the defendants in the action, naming him, and that such defendant has no property in this state other than property subject to garnishment under this chapter sufficient to satisfy the plaintiff's demand, and that the indebtedness or property mentioned in such affidavit is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt, and the amount of the claim sued upon.

Section 3. That § 21-18-3.1 be amended to read:

21-18-3.1. Garnishment prior to obtaining final judgment in the principal action is prohibited.

Section 4. That § 21-18-7 be amended to read:

21-18-7. The garnishee summons, affidavit, and garnishment disclosure shall be served on each of the several garnishees named, in the manner provided for service of a summons in an action, by certified mail, or by registered mail pursuant to § 21-18-11.

Section 5. That § 21-18-9 be amended to read:

21-18-9. If a garnishee summons, affidavit, and garnishment disclosure is served, the garnishee

shall be paid the sum of fifteen dollars to reimburse the garnishee for the expense of preparing the garnishment disclosure which sum shall be taxed as a part of plaintiff's costs. If the garnishee is not paid, the garnishment proceeding is void. The return of service of the garnishee summons shall include a statement that the sum was paid. The garnishment disclosure shall be returned to the plaintiff and filed with the court.

Section 6. That § 21-18-10 be amended to read:

21-18-10. The garnishee summons and affidavit shall also be served on the defendant to the action, either before or within thirty days after service on a garnishee, unless service of the summons in the action is made without the state or by publication, or by registered mail pursuant to § 21-18-11. If the defendant appears in the action by attorney, service may be made upon the attorney or upon the defendant.

Section 7. That § 21-18-11 be amended to read:

21-18-11. Such garnishee summons, affidavit, and garnishment disclosure may be served by certified mail, return receipt requested, or personally by the sheriff of the county where any garnishee or defendant may be found, or by any other person not a party to the action. The person subscribing such garnishee summons may, at his option, by an endorsement thereon fix a time for the service thereof, and the service shall then be made accordingly. The service shall be made and the same returned, with proof of the service, to the person whose name is subscribed thereto, with reasonable diligence. If, after reasonable diligence, service by certified mail or personal service by the sheriff is unsuccessful within the time period provided for in § 21-18-10, the plaintiff may file an affidavit stating that fact and may serve such garnishee summons, affidavit, and garnishment disclosure on the defendant by mailing a copy of the documents, together with a copy to the garnishee, to the defendant's last known address by registered mail. The garnishee may proceed by complying with either § 21-18-32 or 21-18-33 and, by such compliance, is exonerated from any further liability to

any party to the garnishment.

Section 8. That § 21-18-12 be amended to read:

21-18-12. From the time of the service of the summons upon the garnishee, the garnishee is liable to the plaintiff to the amount of the property, money, credits, and effects in the garnishee's possession or under the garnishee's control belonging to the defendant, or in which the garnishee is interested, to the extent of the garnishee's right or interest therein, and of all debts due to the defendant, except such as may be by law exempt from execution.

Section 9. That § 21-18-14.1 be amended to read:

21-18-14.1. The plaintiff may obtain a one hundred twenty-day continuing lien on wages by garnishment. If a lien is to be obtained, the plaintiff shall mark on the caption of the garnishee summons "continuing lien" and all disclosure forms shall include the following:

Garnishee will continue to withhold the nonexempt portion of the defendant's earnings as they accrue through the last payroll period ending on or before one hundred twenty days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

At the time of the expected termination of the lien, the plaintiff shall mail to garnishee an additional copy of the disclosure form upon which the garnishee within ten days shall make further disclosure.

Section 10. 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, social security taxes, and child support). 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. 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 _____, 19__.

Notary Public

Section 11. That § 21-18-28 be amended to read:

21-18-28. In all cases in which the State of South Dakota is made garnishee defendant, it is not necessary for the state to file a formal disclosure, but it is a sufficient disclosure for the state auditor to notify the plaintiff or the plaintiff's attorney stating what amount, if any, is due to the principal defendant at the time of the service of summons in garnishment upon the state auditor. It is the duty of the state auditor to notify the plaintiff or the plaintiff's attorney within the time for making a return in garnishment and the state auditor shall mail a copy of the notice to the clerk of courts of the county in which the action was pending. No taking of issue is permitted on any return or disclosure made by the state auditor.

Section 12. That § 21-18-34 be amended to read:

21-18-34. The state auditor may, in the state auditor's discretion, at any time, pay to the clerk of courts of the county in which the action is brought any moneys that may be due to the principal defendant or the part thereof as was determined or due at the time of the service of the summons in garnishment upon the state. Upon the payment of any money to the clerk of courts, or upon notification by the state auditor to the plaintiff or the plaintiff's attorney of the amount, if any, due the defendant, the state auditor or any other state official and the state is absolutely exonerated from all liability.

Section 13. That § 21-18-37 be amended to read:

21-18-37. When an adverse claimant is made a garnishee defendant by notice as provided in this chapter and sets up an affirmative claim to the fund or property involved, any of the other parties to the garnishment may answer the same within thirty days after service thereof.

Section 14. That § 21-18-39 be amended to read:

21-18-39. If any garnishee, except the state, is summoned and fails to answer as required by this chapter, the court may render judgment against the garnishee for the amount of any judgment, including costs, which the plaintiff has recovered in the principal action, together with the costs of the garnishee action.

Section 15. That § 21-18-43 be amended to read:

21-18-43. The garnishee may defend the defendant if the latter does not, but is under no obligation so to do.

Section 16. That § 21-18-49 be amended to read:

21-18-49. In case of the trial of an issue between the plaintiff and any garnishee, costs are awarded to the plaintiff and against the garnishee in addition to the garnishee's liability if the plaintiff recovers more than the garnishee admitted by the garnishee's answer; and if the plaintiff does not, the garnishee shall recover costs of the plaintiff. In all other cases under this chapter not expressly provided for, the court may award costs in favor of or against any party in its discretion. When no issue is tried the costs of the garnishee action shall be taxed for the plaintiff in the garnishment action.

Section 17. That § 21-18-51 be amended to read:

21-18-51. The maximum part of the aggregate disposable earnings of a wage earner for any workweek which is subject to garnishment may not exceed the lesser of:

- (1) Twenty percent of disposable earnings for that week;
- (2) The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) as amended and in effect on July 24, 2009, or applicable state minimum wage if greater, or any equivalent multiple thereof prescribed by regulation by the secretary of labor and regulation in case of

earnings for any pay period other than a week, in effect at the time the earnings are payable less twenty-five dollars per week for each dependent family member residing with the garnishment debtor other than the garnishment debtor himself or herself.

The restrictions of subdivisions (1) and (2) do not apply in the case of any order of any court for the support of any person or any order of any court of bankruptcy under Title 11 of the United States Code.

Section 18. That § 21-18-5 be repealed.

Section 19. That § 21-18-14 be repealed.

Section 20. That § 21-18-20 be repealed.

Section 21. That § 21-18-21 be repealed.

Section 22. That § 21-18-22 be repealed.

Section 23. That § 21-18-45 be repealed.

An Act to revise provisions related to the garnishment of debts and property.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1059

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1059

File No. _____

Chapter No. _____

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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