

CHAPTER 571

GARNISHMENT

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571.41 GARNISHEE SUMMONS; EXCEPTIONS.

[For text of subs 1 to 4, see M.S.1982]

Subd. 5. **Prior notice required.** If the garnishee summons is to be used to garnish the earnings of an individual to enforce a judgment, or to garnish earnings prior to entry of judgment pursuant to subdivision 2, clause (a), prior to the first garnishment on any debt, the creditor shall serve upon the debtor, no less than ten days prior to the service of the garnishee summons, a notice that a summons may be issued. If the garnishee summons has not been served within one year after service of the notice, the judgment creditor shall serve another notice upon the judgment debtor prior to serving the garnishee summons on his employer. If more than one year has passed since service of the judgment creditor's most recent garnishee summons, the judgment creditor shall no less than ten days prior to service of a subsequent garnishee summons serve notice that another garnishee summons may be served. The notice shall (1) be substantially in the form set out in this chapter; (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 garnishee summons may be served on the debtor's employer in 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 wage garnishment exemptions contained in section 550.37, subdivision 14; and (5) advise the debtor of the relief set forth in this chapter to which he may be entitled if a creditor in bad faith disregards a valid claim and the fee, costs, and penalty which 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. If no statement of exemption is received by the creditor within ten days from the service of the notice, he may proceed with the garnishment. Failure of the debtor to serve a statement does not constitute a waiver of any right he may have to an exemption. If the statement of exemption is received by the creditor, he may still cause a garnishee summons to be issued. If the debtor subsequently asserts his claim of exemption successfully to the court having jurisdiction over the action, and the court finds that the creditor disregarded the claim of exemption in bad faith, the debtor shall be entitled to costs, reasonable attorney fees, actual damages, and an amount not to exceed \$100. If in subsequent proceedings which may be brought by the debtor or creditor, the claim is not upheld, and the court finds that it was asserted in bad faith, or if the court finds that the debtor has in bad faith taken action to frustrate the garnishment process, the debtor shall be assessed costs and reasonable attorney fees resulting from the additional proceedings, and an amount not to exceed \$100.

Subd. 5a. **Exemption notice.** If the garnishee summons is used to garnish funds of a judgment debtor who is a natural person and if the funds to be garnished are held on deposit at any financial institution, the judgment creditor shall serve with the garnishee summons two copies of an exemption notice. The

notice shall be substantially in the form set out in subdivision 7. Failure of the judgment creditor to send the exemption notice shall render the garnishment void, and the financial institution shall take no action.

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

Subd. 5c. Subsequent proceedings; bad faith claims. If in subsequent proceedings brought by the judgment debtor or the judgment creditor, the claim of exemption is not upheld, and the court finds that it was asserted in bad faith, the judgment creditor shall be awarded actual damages, costs, and 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 judgment creditor disregarded the claim of exemption in bad faith, the judgment debtor shall be

awarded costs, reasonable attorney fees, actual damages, 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 his attorney for fees, the attorney's fee award shall be made directly to the attorney and an appropriate judgment in favor of the attorney shall be entered. 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. No garnishee shall be liable for damages for complying with this section. Both copies of an exemption claim or an objection to an exemption claim shall 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.

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

STATE OF MINNESOTA)

County of)

) ss

..... Court

..... (Judgment Creditor)

..... (Judgment Debtor)

Garnishment Exemption Notice

The State of Minnesota

To the above named Judgment Debtor:

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

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

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

PENALTIES

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

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

3. If after receipt of this notice, you in bad faith take action to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the

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

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

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

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

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

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

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

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

.....
Correctional Institution Location

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

.....
Judgment Debtor
Address

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

EXEMPTION NOTICE

STATE OF MINNESOTA
COUNTY OF

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

To.....(Judgment Debtor):

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

Your account balance is \$.....

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

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

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

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

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

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

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

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

The following funds are also exempt:

(7) All wages of a person in category (1).

(8) All wages of a person who has received relief based on need, or who has been an inmate of a correctional institution, within the last six months.

(9) Seventy-five percent of every wage earner's after tax earnings.

(10) All of a wage earner's after tax earnings below 40 times the federal minimum wage (this equals \$134 for a 40-hour week).

TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:

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

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

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

TO CLAIM AN EXEMPTION:

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

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

IF YOU CLAIM AN EXEMPTION:

(1) Nonexempt money can be turned over to the creditor or sheriff;

(2) The financial institution will keep holding the money claimed to be exempt; and

(3) Seven days after receiving your exemption claim, the financial institution will release the money to you unless before then it receives an objection to your exemption claim.

IF THE CREDITOR OBJECTS TO YOUR EXEMPTION CLAIM:

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

MOTION TO DETERMINE EXEMPTION:

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

PENALTIES:

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

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

EXEMPTION:

(a) Amount of exemption claim.

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

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

(b) Basis for exemption.

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

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

case number:

county:

Dated: Judgment Debtor Address

Subd. 8. Form of motion: (1) A motion to determine the validity of an exemption claim may be brought by either the judgment creditor or the judgment debtor by filing with the clerk of court out of which the attachment, garnishment, or execution issued a Request for Hearing which shall be in substantially the following form:

STATE OF MINNESOTA COURT
COUNTY OF

..... Plaintiff(s),

v.

REQUEST FOR HEARING ON EXEMPTION CLAIM.

..... Defendant(s).

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 (not) exempt because

DATED:

 Judgment (Debtor, Creditor)

 Address

Hearing date: Time:
 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.)

(2) The court shall provide Request for Hearing forms and clerical assistance to help with the writing and filing of a Request for Hearing by any person not represented by counsel. The clerk may charge a fee of \$1.00 for the filing of a Request for Hearing.

(3) 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 clerk 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.

History: 1983 c 235 s 12-18

571.42 EFFECT OF SERVICE OF SUMMONS.

Subdivision 1. **Attach for judgment.** Except as provided in sections 571.43 and 571.50, service of the garnishee summons upon the garnishee shall attach and bind, to respond to final judgment in the action, all personal property of the judgment debtor in his possession or under his control and all indebtedness owing by him to the judgment debtor at the time of service and all nonexempt disposable earnings earned or to be earned within that pay period and within 30 days thereafter.

Subd. 2. **Property attached.** Subject to the provisions of sections 550.37 and 571.55 all moneys, all nonexempt disposable earnings earned or to be earned within that pay period and within 30 days thereafter and other personal property including property of any kind due from or in the hands of an executor, administrator, receiver or trustee and all written evidences of indebtedness whether negotiable or not or under or overdue may be attached by garnishment, and money or any other thing due or belonging to the judgment debtor may be attached by this process before it has become payable if its payment or delivery does not depend upon any contingency, but the garnishee shall not be compelled to pay or deliver it before the time appointed by the contract.

History: 1983 c 235 s 19

571.50 EFFECT OF DISCLOSURE.

Subject to the provisions of sections 571.51 and 571.52, the disclosure shall be conclusive against the judgment creditor as to all property of the judgment debtor. If the garnishee denies that he is indebted to the judgment debtor or has any property of the judgment debtor in his possession, the filing in court of a copy of the denial shall operate as a full discharge of the garnishee at the end of 20 days from the date of service of the disclosure, in the absence of further proceedings as provided for in sections 571.51 and 571.52. The filing of objections to the disclosure or the filing of any motion or other proceedings shall operate as a stay of the discharge. The court may, upon proper showing, relieve the judgment

creditor from the operation of the discharge after the expiration of 20 days. The garnishee may apply to the court to be discharged as to any property or indebtedness in excess of the amount which may be required to satisfy judgment creditor's judgment.

History: 1983 c 359 s 79

571.58 MINIMUM JUDGMENT.

No judgment shall be rendered against a garnishee in a county or municipal court where the judgment against the judgment debtor is less than \$10, exclusive of costs, or in the district court where the judgment against the judgment debtor is less than \$25, exclusive of costs.

History: 1983 c 359 s 80

571.64 APPEAL.

Any party to a garnishment proceeding deeming himself aggrieved by any order or final judgment may appeal as in other civil cases.

History: 1983 c 247 s 192

571.65 IMPLIED REPEALS.

The purpose of this chapter is to provide a uniform system of garnishment disclosure in all district, municipal and county courts, and all laws inconsistent with this chapter are superseded.

History: 1983 c 359 s 81

571.67 PENALTY IN CERTAIN GARNISHMENT PROCEEDINGS.

A party who serves or causes to be served a garnishment summons prior to judgment in the main action, except where garnishment prior to entry of judgment is permitted, is liable to the debtor named in the garnishment proceedings in the amount of \$100 plus reasonable attorneys fees and costs. Action by a judgment creditor in violation of section 550.041, 550.14, 550.141, or 571.41, causing any third party or garnishee in possession of funds owing to the judgment debtor to hold or deliver the funds to satisfy a garnishment, attachment, or levy of execution shall render the garnishment, attachment, or levy of execution void and the judgment creditor liable to the judgment debtor named in the garnishment, attachment, or execution in the amount of \$100, actual damages, and reasonable attorney fees and costs.

History: 1983 c 235 s 20