



2005 ASSEMBLY BILL 354

April 22, 2005 - Introduced by Representatives OWENS, JESKEWITZ, AINSWORTH, NASS, HUNDERTMARK, VAN ROY, ALBERS and HAHN, cosponsored by Senators ROESSLER, OLSEN and GROTHMAN. Referred to Committee on Judiciary.

1 **AN ACT to amend** 812.30 (8), 812.35 (5), 812.35 (6), 812.40, 812.44 (3) (form),
2 812.44 (4) (form) and 812.44 (5) (form); and **to create** 812.30 (7m), 812.34 (2)
3 (b) 3. and 812.35 (7) of the statutes; **relating to:** garnishment of the income of
4 a minor.

Analysis by the Legislative Reference Bureau

Under current law, a person who has a civil judgment for a debt may bring an action in circuit court to garnish the earnings of the person who owes the debt. The creditor is required to comply with specified court procedures when bringing the action, including serving one earnings garnishment form upon the debtor and the other form upon the person who is the debtor's employer. Currently, the debtor may claim an exemption from the garnishment or may assert a defense against the garnishment.

Under current law, 80 percent of the debtor's disposable earnings (earnings left after deducting social security, federal, and state taxes) are exempt from garnishment. In addition, if the debtor's household income is below the poverty level or if the debtor is receiving needs-based public assistance, all of the debtor's earnings are exempt from garnishment. Currently, "household income" for purposes of this exemption is defined to mean the disposable income of the debtor and the debtor's dependents during the month in which the garnishment is in effect, plus any unearned income received that month by the debtor and the debtor's dependents, minus any of the debtor's earnings assigned by a family court order. The family court

ASSEMBLY BILL 354

may order the assignment of a person's earnings for the payment of child support, family support, or maintenance.

Under this bill, if the debtor is a minor other than an emancipated minor, the monthly disposable earnings of the debtor, of the parents of the debtor with whom the debtor lives for at least 50 percent of the month, and of those parents' dependents, plus the unearned income of the debtor, parents, and dependents, minus any of the earnings of the debtor and parents that are assigned by a family court, are considered the debtor's household income for purposes of a garnishment action. The bill, however, exempts from garnishment all of an unemancipated minor's earnings if the judgment that the creditor is seeking to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge entered by the court assigned to exercise jurisdiction under the juvenile justice code.

Under current law, an earnings garnishment lasts for 13 weeks or until the debt is collected through the garnishment, whichever is less, except that for public employees, the garnishment continues until the debt is paid in full. This bill provides that the garnishment of a minor debtor who is not emancipated continues until the debt is paid in full.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 812.30 (7m) of the statutes is created to read:

2 812.30 (7m) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

3 **SECTION 2.** 812.30 (8) of the statutes is amended to read:

4 812.30 (8) "Household income" means the disposable earnings of the debtor
5 and dependents during any month in which the garnishment is in effect, plus
6 unearned income received by the debtor and dependents in that month, less any of
7 the debtor's earnings assigned by court order under ch. 767. If the debtor is a minor,
8 other than an emancipated minor, "household income" means the disposable
9 earnings of the debtor, of the parent that the debtor resides with for at least 50
10 percent of the month, and of the parent's dependents during any month in which the
11 garnishment is in effect, plus unearned income received by the debtor, the parent,
12 and the parent's dependents in that month, less any of the debtor's and the parent's
13 earnings assigned by court order under ch. 767.

ASSEMBLY BILL 354

1 **SECTION 3.** 812.34 (2) (b) 3. of the statutes is created to read:

2 812.34 **(2)** (b) 3. The debtor is a minor, other than an emancipated minor, and
3 the judgment that the creditor is seeking to satisfy is not a judgment for unpaid
4 restitution, costs, a forfeiture, or a surcharge entered by the juvenile court under s.
5 895.035 (2m) (a) or (b).

6 **SECTION 4.** 812.35 (5) of the statutes is amended to read:

7 812.35 **(5)** ~~Upon~~ Except as provided in sub. (7), after being served, the
8 garnishee shall determine whether the garnishee may become obligated to the
9 debtor for earnings earned within pay periods beginning within 13 weeks after the
10 date of service. If it is unlikely that the garnishee will become so obligated, the
11 garnishee shall send a statement of that fact to the creditor by the end of the 7th
12 business day after receiving the earnings garnishment form under sub. (3). The
13 creditor shall send a copy of this statement to the court within 7 business days after
14 receipt of the statement.

15 **SECTION 5.** 812.35 (6) of the statutes is amended to read:

16 812.35 **(6)** ~~If~~ Except as provided in sub. (7), if the garnishee may become
17 obligated to the debtor for earnings earned within pay periods beginning within 13
18 weeks after the date of service, but one or more earnings garnishments against the
19 debtor have already been served on the garnishee and not terminated, the garnishee
20 shall retain the earnings garnishment form and place the garnishment into effect the
21 pay period after the last of any prior earnings garnishments terminates. The
22 garnishee shall notify the debtor of the amount of the garnishment and shall notify
23 the creditor of the amount owed on the pending garnishments by the end of the 7th
24 business day after receipt of the garnishment form under sub. (3). If, before the
25 earnings garnishment takes effect, the garnishee determines that it is unlikely that

ASSEMBLY BILL 354**SECTION 5**

1 the garnishee will continue to be obligated to the debtor for earnings, the garnishee
2 shall notify the creditor and court under sub. (5) within 7 business days after making
3 that determination.

4 **SECTION 6.** 812.35 (7) of the statutes is created to read:

5 812.35 (7) (a) If the debtor is a minor, other than an emancipated minor, the
6 garnishment shall continue until the amount that the creditor is seeking in the
7 garnishment is paid in full. The garnishee shall determine whether the garnishee
8 may become obligated to the debtor for earnings earned after the date of service. If
9 it is unlikely that the garnishee will become so obligated, the garnishee shall send
10 a statement of that fact to the creditor by the end of the 7th business day after
11 receiving the earnings garnishment form under sub. (3). The creditor shall send a
12 copy of this statement to the court within 7 business days after receipt of the
13 statement.

14 (b) If the garnishee may become obligated to the debtor for earnings earned
15 within pay periods beginning after the date of service, but one or more earnings
16 garnishments against the debtor have already been served on the garnishee and not
17 terminated, the garnishee shall retain the earnings garnishment form and place the
18 garnishment into effect the pay period after the last of any prior earnings
19 garnishments terminates. The garnishee shall notify the debtor of the amount of the
20 garnishment and shall notify the creditor of the amount owed on the pending
21 garnishments by the end of the 7th business day after receipt of the garnishment
22 form under sub. (3). If before the earnings garnishment takes effect the garnishee
23 determines that it is unlikely that the garnishee will continue to be obligated to the
24 debtor for earnings, the garnishee shall notify the creditor and court under par. (a)
25 within 7 business days after making that determination.

ASSEMBLY BILL 354

1 **SECTION 7.** 812.40 of the statutes is amended to read:

2 **812.40 Stipulated extension.** At any time while an earnings garnishment
3 is in effect, the debtor and creditor, if the debtor is an adult or emancipated minor,
4 may stipulate in writing to an extension of the earnings garnishment for additional
5 pay periods. The extension may commence on the first day after the earnings
6 garnishment ends and shall end within 13 weeks after the last day of the last pay
7 period affected by the earnings garnishment. The garnishee shall be bound by the
8 extension if a copy of the stipulation is delivered or mailed to the garnishee, together
9 with an additional garnishee fee under s. 812.33, before the last day of the last pay
10 period affected by the earnings garnishment or any prior stipulated extension of the
11 earnings garnishment. A stipulated extension is void and the garnishee fee shall be
12 refunded if, prior to the last day of the last pay period affected by the earnings
13 garnishment, the garnishee is served under s. 812.35 (3) by a creditor seeking to
14 satisfy a different judgment against the debtor.

15 **SECTION 8.** 812.44 (3) (form) of the statutes is amended to read:

16 812.44 (3) (form)

17 STATE OF WISCONSIN

18 CIRCUIT COURT:.... County

19 _____

20 A.B., Creditor

21 vs.

File or Reference Number....

22 C.D., Debtor

EARNINGS

23 and

GARNISHMENT

24 E.F., Garnishee

25 _____

ASSEMBLY BILL 354

1 THE STATE OF WISCONSIN, To the garnishee:

2 The creditor has been awarded a court judgment that has not been paid. As a
3 result, the creditor claims that a total of \$... is owed by the debtor, as follows:

- 4 A. Unpaid balance on judgment \$....
- 5 B. Unpaid postjudgment interest \$....
- 6 C. Costs of this earnings garnishment
- 7 (estimated) \$....
- 8 TOTAL \$....

9 The creditor believes that you will owe the debtor for earnings within the next
10 13 weeks, or if the debtor is an unemancipated minor, within any time. If the \$15
11 fee is tendered with these papers, you are directed by the court to do the following:

12 DETERMINE WHETHER YOU WILL

13 OWE THE DEBTOR EARNINGS

14 1. Determine if you are likely to owe the debtor for earnings in pay periods
15 beginning within the next 13 weeks, or if the debtor is an unemancipated minor,
16 within any time.

17 2. If you are not likely to owe the debtor for earnings in pay periods beginning
18 within the next 13 weeks, or if the debtor is an unemancipated minor, within any
19 time, send a statement stating that fact to the creditor by the end of the 7th business
20 day after receiving the earnings garnishment forms.

21 IF THE DEBTOR SENDS YOU AN ANSWER

22 3. Whenever you receive a debtor's answer form from the debtor, mail a copy
23 of the answer form to the creditor by the end of the 3rd business day after receipt of
24 that form. Include the date you received the answer form on the copy sent to the
25 creditor.

ASSEMBLY BILL 354

1 4. If the debtor's answer form claims a complete exemption or defense, do not
2 withhold or pay to the creditor any part of the debtor's earnings under this
3 garnishment unless you receive an order of the court directing you to do so.

MULTIPLE EARNINGS GARNISHMENTS

4
5 5. If the debtor's earnings are already being garnisheed when you receive this
6 earnings garnishment, place this earnings garnishment into effect the pay period
7 after the last of any prior earnings garnishments terminates. Notify the debtor of
8 the amount of the garnishment and notify the creditor of the amount owed on the
9 pending garnishments by the end of the 7th business day after you receive these
10 forms. If there are no prior pending earnings garnishments against the debtor's
11 earnings, place this earnings garnishment into effect the pay period after you receive
12 it.

EARNINGS GARNISHMENTS LAST 13 WEEKS,**EXCEPT FOR PUBLIC EMPLOYEES**

13
14
15 6. The garnishment of the earnings of employees of the state of Wisconsin and
16 its political subdivisions and of unemancipated minors remain in effect until the
17 judgment is satisfied. The garnishment of earnings of other employees will affect the
18 debtor's earnings for all pay periods beginning within 13 weeks after you receive it,
19 unless the debtor's earnings are already being garnisheed. If this earnings
20 garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings
21 for all pay periods beginning within 13 weeks after the first day of the pay period that
22 you put this earnings garnishment into effect. If the amount claimed by the creditor
23 is fully paid before the end of the 13 weeks, this earnings garnishment will terminate
24 at that point.

PAYING THE CREDITOR

ASSEMBLY BILL 354**SECTION 8**

1 7. Between 5 and 10 business days after each payday of a pay period affected
2 by this earnings garnishment, pay the creditor 20% of the debtor's disposable
3 earnings for that pay period. Payment is complete upon mailing.

EFFECT OF COURT-ORDERED**ASSIGNMENTS FOR SUPPORT**

6 8. If the debtor has assigned his or her earnings for support by court order, those
7 support payments take priority over this earnings garnishment. If 25% or more of
8 the debtor's disposable earnings is assigned for support by court order, do not pay any
9 part of the debtor's earnings to the creditor. Instead, send the creditor a statement
10 of that fact by the end of the 7th business day after you receive these forms. If less
11 than 25% of the debtor's earnings is assigned for support by court order, the amount
12 the creditor must be paid is reduced so that the total of earnings assigned and
13 garnisheed does not exceed 25% of the debtor's disposable earnings.

EXTENSIONS

14 9. The debtor and creditor may agree in writing to extend this earnings
15 garnishment for additional pay periods beginning within 13 weeks after this
16 earnings garnishment would otherwise terminate if the debtor is an adult or an
17 emancipated minor. If you receive a written extension stipulation, and an additional
18 garnishee fee for each extension, you must honor it unless a different garnishment
19 against this debtor's earnings is served upon you before the extension takes effect.
20 In that case, the extension is void and you must return the extension fee to the party
21 who paid it to you.

22 **SECTION 9.** 812.44 (4) (form) of the statutes is amended to read:

23 812.44 (4) (form)

24 STATE OF WISCONSIN

25

ASSEMBLY BILL 354**SECTION 9**

1 By law, you are entitled to an exemption of not less than 80% of your disposable
2 earnings. Your "disposable earnings" are those remaining after social security and
3 federal and state income taxes are withheld.

4 Your earnings are completely exempt from garnishment if:

5 1. Your household income is below the federal poverty level. See the enclosed
6 schedules and worksheet to determine if you qualify for this exemption.

7 2. You receive aid to families with dependent children, relief funded by a relief
8 block grant under ch. 49, relief provided by counties under section s. 59.53 (21) of the
9 Wisconsin Statutes, medical assistance, supplemental security income, food stamps,
10 or veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of
11 the Wisconsin Statutes, or have received these benefits within the past 6 months.

12 3. At least 25% of your disposable earnings are assigned by court order for
13 support.

14 4. You are a minor, other than an emancipated minor, and the judgment that
15 the creditor is seeking to satisfy is not a judgment for unpaid restitution, costs, a
16 forfeiture, or a surcharge entered by the juvenile court under section 895.035 (2m)
17 (a) or (b) of the Wisconsin Statutes.

18 If the garnishment of 20% of your disposable income would result in the income
19 of your household being below the poverty line, the garnishment is limited to the
20 amount of your household's income in excess of the poverty line.

21 If you qualify for a complete exemption or for a limit on the amount of the
22 garnishment to the amount that your household's income exceeds the poverty line,
23 you must give or mail a copy of the enclosed debtor's answer form to the garnishee
24 in order to receive that increased exemption.

ASSEMBLY BILL 354

1 If your circumstances change while the garnishment is in effect, you may file
2 a new answer at any time.

3 If you do not qualify for a complete exemption, but you will not be able to acquire
4 the necessities of life for yourself and your dependents if your earnings are reduced
5 by this earnings garnishment, you may ask the court in which this earnings
6 garnishment was filed to increase your exemption or grant you other relief.

7 **IF YOU NEED ASSISTANCE**

8 **CONSULT AN ATTORNEY**

9 If you have earnings that are being garnisheed that are exempt or subject to a
10 defense, the sooner you file your answer or seek relief from the court, the sooner such
11 relief can be provided. This If you are an adult or an emancipated minor, this
12 earnings garnishment affects your earnings in pay periods beginning within 13
13 weeks after it was served on the garnishee. You may agree in writing with the
14 creditor to extend it for additional 13-week periods until the debt is paid. If you are
15 an unemancipated minor, this earnings garnishment affects your earnings after it
16 was served on the garnishee and until the amount that the creditor is seeking in the
17 garnishment is paid in full.

18 **PENALTIES**

19 If you wrongly claim an exemption or defense in bad faith, or if the creditor
20 wrongly objects to your claim in bad faith, the court may order the person who acted
21 in bad faith to pay court costs, actual damages and reasonable attorney fees.

22 **SECTION 10.** 812.44 (5) (form) of the statutes is amended to read:

23 812.44 (5) (form)

24 STATE OF WISCONSIN

25 CIRCUIT COURT:.... County

ASSEMBLY BILL 354

SECTION 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A.B., Creditor
vs.
C.D., Debtor
and
E.F., Garnishee

File or Reference Number...
EARNINGS GARNISHMENT
DEBTOR'S ANSWER

To the garnishee:

My earnings are COMPLETELY EXEMPT from earnings garnishment because:

... 1. The judgment has been paid or is void.

... 2. ~~(5) (form) paragraph 2.~~ I receive, am eligible for, or have within 6 months received, aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under section 59.53 (21) of the Wisconsin Statutes, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of the Wisconsin Statutes.

... 3. At least 25% of my disposable earnings are assigned for support by court order.

... 4. My household income is less than the poverty line, or this garnishment would cause that to happen.

... 4m. I am not an emancipated minor and the judgment that the creditor is seeking to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge entered by the juvenile court under section 895.035 (2m) (a) or (b) of the Wisconsin Statutes.

... 5. I have another defense to this earnings garnishment (explain briefly).

.....

ASSEMBLY BILL 354

1
2

I understand that if I claim a complete exemption or defense in bad faith, I may
3 be held liable to the creditor for actual damages, costs and reasonable attorney fees.

4 DATE Signature of Debtor

5 Address

6 Telephone Number

7 Date Received by Garnishee

8 (END)