

1969 Senate Bill 315

Date published:
August 8, 1969

CHAPTER 127, LAWS OF 1969

AN ACT to repeal 304.20 to 304.41; to amend 267.04 (2) (2nd and 4th unnumbered pars.), 267.05 (1) and (2), 267.11 (6), 267.13 (1), 267.18 (1) and 267.23 (1) (a), (3) and (4); to repeal and recreate 267.02 (2) and (3), 267.18 (2) and 267.23 (5); and to create 267.01 (5) to (7), 267.02 (2m), 267.18 (1) (b) and (3), 267.235 and 270.69 (4) of the statutes, relating to garnishment of earnings and providing penalties.

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

SECTION 1. 267.01 (5) to (7) of the statutes are created to read:

267.01 (5) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments received pursuant to a pension or retirement program.

(6) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(7) "Federal minimum hourly wage" means that wage prescribed by sec. 6 (a) (1) of the fair labor standards act of 1938, as amended.

SECTION 2. 267.02 (2) and (3) of the statutes are repealed and recreated to read:

267.02 (2) (a) Plaintiff may not commence any garnishment action affecting the earnings of the principal defendant prior to judgment in the principal action.

(b) If the plaintiff in the principal action is unable to obtain personal service on a defendant and has filed the summons and return of service from the sheriff with the clerk of court, the judge of the court in which the principal action is pending may grant an order permitting the plaintiff to make substituted service on the defendant's employer if the plaintiff shows:

1. The defendant's present place of employment; and
2. That a cause of action exists; and
3. That a reasonable effort has been made to obtain personal service on the defendant.

(c) Before taking judgment in an action commenced under par. (b), the plaintiff shall present an affidavit from the defendant's employer stating that the defendant received the summons of that action.

(3) Except under sub. (2) (a), the plaintiff may in like manner, subsequently proceed against other garnishees and, if he has reason to believe they have subsequently become liable, against the same garnishee more than once.

SECTION 3. 267.02 (2m) of the statutes is created to read:

267.02 (2m) Any garnishment action shall be subject to the limitations of s. 270.69 (4).

SECTION 4. 267.04 (2) (2nd and 4th unnumbered pars.) of the statutes are amended to read:

267.04 (2) (2nd par.) ~~YOU ARE ORDERED TO RETAIN SUCH PROPERTY AND MAKE NO PAYMENT, EXCEPT FOR SUBSISTENCE ALLOWANCE IF ANY, TO THE PRINCIPAL DEFENDANT PENDING THE FURTHER ORDER OF THE COURT. IF YOU ARE INDEBTED TO THE DEFENDANT, YOU ARE ORDERED TO PAY THE PRESCRIBED SUBSISTENCE ALLOWANCE TO THE DEFENDANT IF EARNINGS ARE THE SUBJECT MATTER OF THIS GARNISHMENT ACTION. YOU ARE ORDERED TO RETAIN FROM THE BALANCE THE AMOUNT OF PLAINTIFF'S CLAIM AND DISBURSEMENTS, NOT TO EXCEED \$15 FOR A SMALL CLAIMS ACTION OR \$30 FOR ALL OTHER ACTIONS, AS STATED IN THE ANNEXED COMPLAINT PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU HAVE PROPERTY OR EARNINGS BELONGING TO THE DEFENDANT AND THE AMOUNT OF INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND DISBURSEMENTS, NOT TO EXCEED \$15 FOR A SMALL CLAIMS ACTION OR \$30 FOR ALL OTHER ACTIONS, YOU ARE TO RETAIN THE PROPERTY OR EARNINGS PENDING THE FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN S. 267.18 (3).~~

(4th par.) If ~~wages or salary earnings~~ are the subject matter of this garnishment action, you are required ~~as provided in~~ *under* s. 267.18 (2) to pay over to the principal defendant, on the date when the ~~wages or salary earnings~~ subject to the garnishment action ~~is~~ *are* normally payable, a subsistence allowance, out of the ~~wages or salary earnings~~ then owing, in the sum of ~~\$25 in the case of an individual without dependents or \$40 in the case of an individual with dependents, but in no event in excess of 50 percent of the wages or salary owing either 75% of the defendant's disposable earnings or 30 times the federal minimum hourly wage in effect at the time the earnings are payable, whichever is greater.~~

SECTION 5. 267.05 (1) and (2) of the statutes are amended to read:

267.05 (1) The garnishee complaint in a garnishment action before judgment must allege the existence of one of the grounds for garnishment mentioned in s. 267.02 (1) (a), the amount of the plaintiff's claim against the defendant ~~and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions, above all offsets, known to the plaintiff,~~

and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control, *other than earnings*, belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(2) The garnishee complaint in a garnishment action after judgment must allege the existence of the grounds for garnishment mentioned in s. 267.02 (1) (b), and the name and location of the court, case number, if any, date of entry and amount of the judgment on which the garnishment action is based, the amount of the plaintiff's claim against the defendant *and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions*, above all offsets known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

SECTION 6. 267.11 (6) of the statutes is amended to read:

267.11 (6) In addition to the requirements of sub. (1), if the garnishee is indebted to or under any liability to the defendant for ~~wages or salary earnings~~, the garnishee answer shall state the amount of the subsistence allowance paid over or to be paid over to the principal defendant and the balance held by the garnishee. ~~For the purpose of pleading exemptions and of determining the amount of the subsistence allowance due the principal defendant, the garnishee shall be entitled to rely on the records in its possession at the time of the garnishment. The garnishee shall not be liable to any plaintiff if his determination of the amount of the subsistence allowance due the principal defendant is made in good faith and is based on such records.~~

SECTION 7. 267.13 (1) of the statutes is amended to read:

267.13 (1) If the answer shows a debt due to the defendant, the garnishee may pay the same or sufficient thereof to cover the *plaintiff's claim of the plaintiff, as stated in the garnishee complaint, with interest and costs, and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions*, to the clerk of the court. If prior to so doing, the plaintiff in writing requests the garnishee to pay such sum to such clerk, the garnishee shall, within 5 days after receipt of such request, pay the sum to the clerk. The clerk shall give his receipt therefor to the garnishee. ~~Such~~ The payment shall discharge the garnishee of all liability for the amount ~~so~~ paid.

SECTION 8. 267.18 (1) of the statutes is amended to read:

267.18 (1) (a) From the time of the service of the summons and complaint upon the garnishee he shall stand liable to the plaintiff for the property *and earnings* then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution *or the amount of the subsistence allowance due the defendant under sub. (2) if earnings are the subject matter of the garnishment action*, but not in excess of the amount of the plaintiff's claims as disclosed by his garnishee complaint ~~together with 25% of the amount claimed in the garnishee complaint but not less than \$25 nor more than \$500 to secure costs and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions.~~

SECTION 9. 267.18 (1) (b) of the statutes is created to read:

267.18 (1) (b) When earnings are the subject of the garnishment action, the amount owed the principal defendant on the payday for the pay period in which the garnishment summons was served on the garnishee is subject to the garnishment.

SECTION 10. 267.18 (2) of the statutes is repealed and recreated to read:

267.18 (2) (a) When earnings are the subject of a garnishment action, the garnishee shall pay over to the principal defendant on the date when the earnings would normally be payable the greater of the following:

1. A subsistence allowance of 75% of the defendant's disposable earnings, then due and owing; or
2. An amount equal to 30 times the federal minimum hourly wage for each full week of the pay period; or
3. In the case of earnings for a period other than a week, the defendant shall receive a subsistence allowance computed so that it is equivalent to that in subd. 2 using a multiple of the federal minimum hourly wage prescribed by rule of the industry, labor and human relations commission.

(b) The restrictions of par. (a) do not apply in the case of:

1. An order of any court for the support of any person.
2. An order of any court of bankruptcy under chapter XIII of the bankruptcy act.
3. Any debt due for any state or federal tax.
4. An order of a court under s. 128.21.

(c) No court in this state may make, execute or enforce any order or process in violation of this section.

SECTION 11. 267.18 (3) of the statutes is created to read:

267.18 (3) If the garnishee holds subject to the garnishment or pays pursuant to s. 267.13, moneys owed the principal defendant equal to the amount of the plaintiff's claim as set forth in the garnishee complaint and disbursements, then any excess moneys owed the defendant, and any garnished property in the garnishee's possession or control, shall no longer be subject to the garnishment. If the moneys owed by the garnishee to the defendant and so held are less than the amount claimed and disbursements, all property subject to the garnishment shall be held pending the further order of the court, subject to any rights of disposition that the garnishee may have, and all proceeds therefrom to which defendant would be entitled shall likewise be retained. The defendant may, on notice, petition the court for an order to release, from the garnishment, all property or its proceeds not reasonably required to assure payment of the plaintiff's claim and disbursements.

SECTION 12. 267.23 (1) (a), (3) and (4) of the statutes are amended to read:

267.23 GARNISHMENT OF EARNINGS OF PUBLIC OFFICERS AND EMPLOYEES. (1) (a) Only a judgment creditor may maintain a garnishment action against the state or any political subdivision thereof, ~~as provided in~~ under this section, to reach the ~~unexempt wages or salary~~ disposable earnings of the judgment debtor.

(3) The complaint must contain an allegation that the plaintiff believes that the garnishee is indebted to the defendant for ~~wages or salary earnings~~ and that ~~such~~ the debt is not exempt under s. 272.18.

(4) Within 20 days after ~~such~~ service upon him, ~~and~~ the department or the secretary or clerk of the garnishee shall answer the complaint by delivering or mailing to the court his certificate of the amount owed by the garnishee to the judgment debtor for ~~wages and salary earnings~~ at the time of ~~such~~ service; and his answer as to the amount owing ~~shall be~~ is conclusive in the garnishment action.

SECTION 13. 267.23 (5) of the statutes is repealed and recreated to read:

267.23 (5) (a) The judgment debtor shall receive the subsistence allowance specified in s. 267.18 (2) on the date his check or voucher is normally paid. The balance of the earnings due shall be delivered to the court until the amount demanded in the garnishee complaint, together

with disbursements, has been paid into court, unless sooner terminated by order of the court.

(b) The clerk shall hold the earnings paid into the court and disburse them as the court orders.

(c) The earnings remaining in the custody of the court after the judgment is satisfied, shall be paid to the judgment debtor.

(d) Other judgment creditors of the judgment debtor may intervene in the garnishment action.

SECTION 14. 267.235 of the statutes is created to read:

267.235 RESTRICTION ON DISCHARGE FROM EMPLOYMENT BY REASON OF GARNISHMENT. No employer may discharge any employe by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness or because of compliance with any provision of this chapter. Whoever wilfully violates this section may be fined not more than \$1,000 or imprisoned not more than one year or both.

SECTION 15. 270.69 (4) of the statutes is created to read:

270.69 (4) There shall be no garnishment of earnings based on a judgment without action.

SECTION 16. 304.20 to 304.41 of the statutes are repealed.

Approved July 29, 1969.
