



## 2007 ASSEMBLY BILL 236

April 10, 2007 - Introduced by Representatives SHERIDAN, KRUSICK, STASKUNAS, NASS and ALBERS, cosponsored by Senators COGGS, LASSA, OLSEN and ROESSLER. Referred to Committee on Corrections and Courts.

1     **AN ACT to amend** 812.35 (5), 812.35 (6), 812.38 (2), 812.40, 812.44 (3) (form) and  
2             812.44 (4) (form) of the statutes; **relating to:** extending the period of wage  
3             garnishment.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a wage garnishment for public employees is in effect until the garnishment is paid while for nonpublic employees the wage garnishment is in effect for wages earned within pay periods beginning within 13 weeks after the date of service of the garnishment on the wage earner's employer. If the debt is satisfied before the end of that period, the garnishment ends. Current law allows the nonpublic employee debtor and creditor to agree in writing to an extension of the garnishment for an additional 13-week period. If another creditor serves a garnishment action on the debtor before the end of the first 13-week period, any agreed-upon extension of the first garnishment is void.

This bill increases the effect of an original wage garnishment for nonpublic employees to 52 weeks with the right to extend the garnishment for another 26 weeks, subject to any intervening garnishment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1           **SECTION 1.** 812.35 (5) of the statutes is amended to read:

2           812.35 (5) Upon being served, the garnishee shall determine whether the  
3 garnishee may become obligated to the debtor for earnings earned within pay periods  
4 beginning within ~~13~~ 52 weeks after the date of service. If it is unlikely that the  
5 garnishee will become so obligated, the garnishee shall send a statement of that fact  
6 to the creditor by the end of the 7th business day after receiving the earnings  
7 garnishment form under sub. (3). The creditor shall send a copy of this statement  
8 to the court within 7 business days after receipt of the statement.

9           **SECTION 2.** 812.35 (6) of the statutes is amended to read:

10          812.35 (6) If the garnishee may become obligated to the debtor for earnings  
11 earned within pay periods beginning within ~~13~~ 52 weeks after the date of service, but  
12 one or more earnings garnishments against the debtor have already been served on  
13 the garnishee and not terminated, the garnishee shall retain the earnings  
14 garnishment form and place the garnishment into effect the pay period after the last  
15 of any prior earnings garnishments terminates. The garnishee shall notify the  
16 debtor of the amount of the garnishment and shall notify the creditor of the amount  
17 owed on the pending garnishments by the end of the 7th business day after receipt  
18 of the garnishment form under sub. (3). If, before the earnings garnishment takes  
19 effect, the garnishee determines that it is unlikely that the garnishee will continue  
20 to be obligated to the debtor for earnings, the garnishee shall notify the creditor and  
21 court under sub. (5) within 7 business days after making that determination.

22          **SECTION 3.** 812.38 (2) of the statutes is amended to read:

23          812.38 (2) A motion or petition under sub. (1) may be made at any time during  
24 the pendency of the earnings garnishment. Within 5 business days after a motion  
25 or petition is filed under sub. (1), the court shall schedule the matter for a hearing

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1 to be held as promptly as practicable. The court shall notify the parties of the time  
2 and place of the hearing. Upon conclusion of the hearing, the court shall make  
3 findings of fact and conclusions of law. The court shall make such order as required  
4 by these findings and conclusions. If the order permits the garnishment to proceed,  
5 the date on which the order is served upon the garnishee shall substitute for the  
6 original date of service of the garnishment upon the garnishee under s. 812.35 (3) for  
7 the purpose of determining any ~~13-week~~ 52-week period under s. 812.35 (5) or (6).  
8 A court order shall bind the garnishee from the time the order is served upon him or  
9 her.

10 **SECTION 4.** 812.40 of the statutes is amended to read:

11 **812.40 Stipulated extension.** At any time while an earnings garnishment  
12 is in effect, the debtor and creditor may stipulate in writing to an extension of the  
13 earnings garnishment for additional pay periods. The extension may commence on  
14 the first day after the earnings garnishment ends and shall end within ~~13~~ 26 weeks  
15 after the last day of the last pay period affected by the earnings garnishment. The  
16 garnishee shall be bound by the extension if a copy of the stipulation is delivered or  
17 mailed to the garnishee, together with an additional garnishee fee under s. 812.33,  
18 before the last day of the last pay period affected by the earnings garnishment or any  
19 prior stipulated extension of the earnings garnishment. A stipulated extension is  
20 void and the garnishee fee shall be refunded if, prior to the last day of the last pay  
21 period affected by the earnings garnishment, the garnishee is served under s. 812.35  
22 (3) by a creditor seeking to satisfy a different judgment against the debtor.

23 **SECTION 5.** 812.44 (3) (form) of the statutes is amended to read:

24 812.44 (3) (form)

25 STATE OF WISCONSIN

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1 CIRCUIT COURT:.... County

2

3 A.B., Creditor

4 vs.

File or Reference Number....

5 C.D., Debtor

EARNINGS

6 and

GARNISHMENT

7 E.F., Garnishee

8

9 THE STATE OF WISCONSIN, To the garnishee:

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

12	A. Unpaid balance on judgment	\$...
13	B. Unpaid postjudgment interest	\$...
14	C. Costs of this earnings garnishment	
15	(estimated)	\$...
16	TOTAL	\$...

17 The creditor believes that you will owe the debtor for earnings within the next  
18 ~~13~~ 52 weeks. If the \$15 fee is tendered with these papers, you are directed by the  
19 court to do the following:

20 DETERMINE WHETHER YOU WILL

21 OWE THE DEBTOR EARNINGS

22 1. Determine if you are likely to owe the debtor for earnings in pay periods  
23 beginning within the next ~~13~~ 52 weeks.

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1           2. If you are not likely to owe the debtor for earnings in pay periods beginning  
2 within the next 13 52 weeks, send a statement stating that fact to the creditor by the  
3 end of the 7th business day after receiving the earnings garnishment forms.

**IF THE DEBTOR SENDS YOU AN ANSWER**

4  
5           3. Whenever you receive a debtor's answer form from the debtor, mail a copy of  
6 the answer form to the creditor by the end of the 3rd business day after receipt of that  
7 form. Include the date you received the answer form on the copy sent to the creditor.

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

**MULTIPLE EARNINGS GARNISHMENTS**

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

**EARNINGS GARNISHMENTS LAST 13 52 WEEKS,****EXCEPT FOR PUBLIC EMPLOYEES**

20  
21  
22           6. The garnishment of the earnings of employees of the state of Wisconsin and  
23 its political subdivisions remain in effect until the judgment is satisfied. The  
24 garnishment of earnings of other employees will affect the debtor's earnings for all  
25 pay periods beginning within 13 52 weeks after you receive it, unless the debtor's

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1 earnings are already being garnisheed. If this earnings garnishment is delayed  
2 under paragraph 5, above, it will affect the debtor's earnings for all pay periods  
3 beginning within ~~13~~ 52 weeks after the first day of the pay period that you put this  
4 earnings garnishment into effect. If the amount claimed by the creditor is fully paid  
5 before the end of the ~~13~~ 52 weeks, this earnings garnishment will terminate at that  
6 point.

**PAYING THE CREDITOR**

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

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

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

**EXTENSIONS**

21  
22 9. The debtor and creditor may agree in writing to extend this earnings  
23 garnishment for additional pay periods beginning within ~~13~~ 26 weeks after this  
24 earnings garnishment would otherwise terminate. If you receive a written extension  
25 stipulation, and an additional garnishee fee for each extension, you must honor it

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1 unless a different garnishment against this debtor's earnings is served upon you  
2 before the extension takes effect. In that case, the extension is void and you must  
3 return the extension fee to the party who paid it to you.

4 **SECTION 6.** 812.44 (4) (form) of the statutes is amended to read:

5 812.44 (4) (form)

6 STATE OF WISCONSIN

7 CIRCUIT COURT:.... County

8 \_\_\_\_\_

9 A.B., Creditor

10 vs.

File or Reference Number....

11 C.D., Debtor

EARNINGS

12 and

GARNISHMENT

13 E.F., Garnishee

14 \_\_\_\_\_

15 To the debtor:

16 The creditor was awarded a judgment against you or your spouse by... (County  
17 Circuit or Federal District) Court on the.... day of..., .... (year) That judgment not  
18 having been fully paid, the creditor has now filed a garnishment proceeding against  
19 your earnings from the garnishee. This means that the creditor is seeking to take  
20 some of your earnings to satisfy part or all of the judgment against you or your  
21 spouse.

22 The total amount of the creditor's claim is as follows:

23 Unpaid balance on judgment \$....

24 Unpaid postjudgment interest \$....

25 Costs:

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1	a. Garnishment filing fee	\$....
2	b. Garnishee fee	\$....
3	c. Service of process (estimate)	\$....
4	TOTAL	\$....

5 By law, you are entitled to an exemption of not less than 80% of your disposable  
6 earnings. Your “disposable earnings” are those remaining after social security and  
7 federal and state income taxes are withheld.

8 Your earnings are completely exempt from garnishment if:

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

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

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

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.



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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 earnings garnishment affects your earnings in pay  
12 periods beginning within ~~13~~ 52 weeks after it was served on the garnishee. You may  
13 agree in writing with the creditor to extend it for additional ~~13-week~~ 26-week  
14 periods until the debt is paid.

15                                        PENALTIES

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

19        **SECTION 7. Initial applicability.**

20        (1) This act first applies to garnishment actions commenced on the effective  
21 date of this subsection.

22        **SECTION 8. Effective date.**

23        (1) This act takes effect on the first day of the 4th month after publication.

24                                        (END)