



Van H. Wanggaard

Wisconsin State Senator

October 26, 2017

Testimony on Senate Bill 397

Thank you Chairman Nass and committee members for hearing Senate Bill 397 (SB 397) which eliminates the requirement that a victim re-file for wage garnishment every 13 weeks in both civil and criminal cases.

Last session the legislature took steps to ensure that victims receive their full restitution by passing 2015 Wisconsin Act 355 (Act 355) with wide bipartisan support. Prior to Act 355, victims had to undergo the strenuous process of re-filing every 13 weeks to receive their restitution through garnishment of wages. Unfortunately, despite our best efforts, we discovered because of a technicality, we had failed in our efforts to eliminate this cumbersome process.

Upon further analysis it became apparent that the provision only applied to criminal convictions. Senate Bill 397 corrects this oversight by removing the 13-week re-filing period for both criminal and civil cases. This change helps prevent victims from reliving their trauma every 13 weeks and creates a standard process for all wage garnishment cases. Streamlining this process will help free up limited court resources by removing unnecessary filings.

Senate Amendment 1 to SB 397 clarifies that if more than one garnishment is filed against an individual, criminal wage garnishments are prioritized over civil garnishments and debt collections. It also specifies that garnishments from an individual paying multiple claims would be divided equally from the allowable garnishment amount. If the debtor owed more than could be garnished, this change prevents situations where payments go to a single entity until the amount is received in whole before applying to the next aggrieved entity. These changes were suggested by the Department of Justice.

As a victim myself, I can attest to how confusing and emotionally distressing the process can be. Passing SB 397 will affirm our dedication to victims' rights and provide them with some peace of mind. I encourage you to support its passage.

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Rob Hutton

STATE REPRESENTATIVE • 13TH ASSEMBLY DISTRICT

October 26, 2017

To: The Senate Committee on Labor and Regulatory Reform
From: Rep. Rob Hutton
Re: Senate Bill 397

Testimony of Rep. Rob Hutton in Support of Senate Bill 397

Mr. Chairman and members of the committee, thank you for giving Senate Bill 397 a public hearing. This legislation comes as a result of one of my constituents bringing an issue to my attention that we thought had been resolved in previous legislation. Last session, 2015 WI Act 355, which was the result of a bill that I authored, was signed into law. This Act dealt with the prioritization of restitution payments and made changes to processes that would ease the burden on victims collecting restitution. One of these changes involved the process of wage garnishment. Prior to 2015 WI Act 355 if a victim filed to garnish the wages of an offender who owed them restitution they would have to refile every 13 weeks. This is a time consuming and paper work intensive process that also requires the victim to have to serve the offender with papers, every 13 weeks. The previous process led to victims having to choose between receiving what is rightfully owed to them or confronting their offender every 13 weeks. In order to make this friendlier to the victim and streamline the process of collecting restitution 2015 WI Act 355 eliminated the need to refile once every 13 weeks. Now someone who files will receive the wage garnishment until they receive their full amount owed.

Our intention was to have the 13 week refiling period eliminated across the board. However, Gerritt Holgerson, a constituent of mine, contacted my office earlier this year and inquired why he had to refile every 13 weeks. The previous legislation only affected wage garnishments of criminal restitution cases and not those in civil cases. SB 397, corrects this and eliminates the 13 week refiling period for all wage garnishments. I will also be introducing an amendment after discussion with DOJ that will prioritize criminal restitution wage garnishments over civil wage garnishments and debt collection, if more than one garnishment is filed, to maintain our commitment to helping victims become whole. Additionally, if multiple civil garnishments are filed on the same person this amendment would pay each entity equally based on the total amount that can be garnished. This will allow multiple entities to collect their owed garnishments, up to the total allowable percentage of garnished wages, instead of just a sole entity. This will prevent scenarios where one entity that is owed a large sum is the sole receiver of wage garnishments for an extended period of time while others who are owed receive nothing.

Thank you again for hearing SB 397 today. I believe this is an important change to ensure our commitment to helping make whole those who are victims of crimes and those who seek recourse through our civil justice system. I am happy to answer any questions that you may have.



To: Members of the Senate Committee on Labor and Regulatory Reform
From: Sarah Orr, University of Wisconsin Law School Consumer Law Litigation Clinic
Re: 2017 SB 397, eliminating the 13-week limit on garnishment of earnings of certain debtors.
Date: October 26, 2017

I have been the Director of the U.W. Law School's Consumer Law Litigation Clinic for ten years. I am here with my students Sam Bach and Hannah Clayshulte. The Clinic is dedicated to educating future lawyers as well as advocating for Wisconsin consumers in the courts and in the legislature. Every day we assist people across Wisconsin with issues ranging from contractor fraud to unfair debt collection practices, including post-judgment collection. Most of our clients work but struggle to make ends meet for themselves and their families.

Thank you for the opportunity to testify about Senate Bill 397. We oppose the bill because eliminating the 13-week garnishment period not only will harm debtors but also will create problems in a process that runs smoothly when all parties are aware of their rights and responsibilities.

As a quick review, a creditor can seek payment on a court judgment by garnishing up to 20% of the disposable earnings of the debtor and the debtor's spouse. Disposable earnings are earnings minus Social Security, state, and federal taxes.

As an educator I find that people learn in different ways, and visual aids often help. To that end, I have provided an illustration of the garnishment process for the committee's reference. The process begins when the creditor files an action in circuit court and pays a court fee to obtain the court's stamp on notices which the creditor sends to the debtor and to the garnishee (the employer). The filing fees are \$0.00 for restitution claims, \$92.50 for money judgments of \$10,000.00 or less, and \$210.50 for judgments greater than \$10,000.00. These costs are passed onto the debtor.

The statute dictates the content of the notices. They are not merely reminders. They are documents explaining legal rights and responsibilities. The creditor typically sends the notices by first class or certified U.S. Mail. Personal service by a process server or the sheriff is not required.

The creditor's notice to the employer is very likely to reach its destination by mail. However, the notice to the debtor may not reach him or her because the creditor sends it to the address that relates to the original lawsuit, which may have finished years before. Garnishment can begin up to five years after the judgment was entered, and between five and twenty years with court approval. (Post-judgment interest accrues.) The debtor may not receive the initial garnishment

notice if she moved after the court entered judgment and before the creditor pursues garnishment. The notice explains her legal rights, including the right to file an answer to the garnishment action and to seek a lower garnishment depending on her circumstances. Consequently, without the notice, she realizes that wages are being garnished only when it is reflected in her paycheck.

Currently, a creditor must renew a garnishment every 13 weeks (quarterly) until the judgment is paid. This quarterly renewal protects debtors because it increases the likelihood that they will receive the notice and act on their rights. For example, continued garnishment of 20% of a debtor's earnings may jeopardize his household's financial stability because he has begun paying child support or back taxes, or his income has fallen to the poverty line since the initial garnishment was filed. The notice will inform him that he can seek a lower garnishment amount because of these changes in his situation.

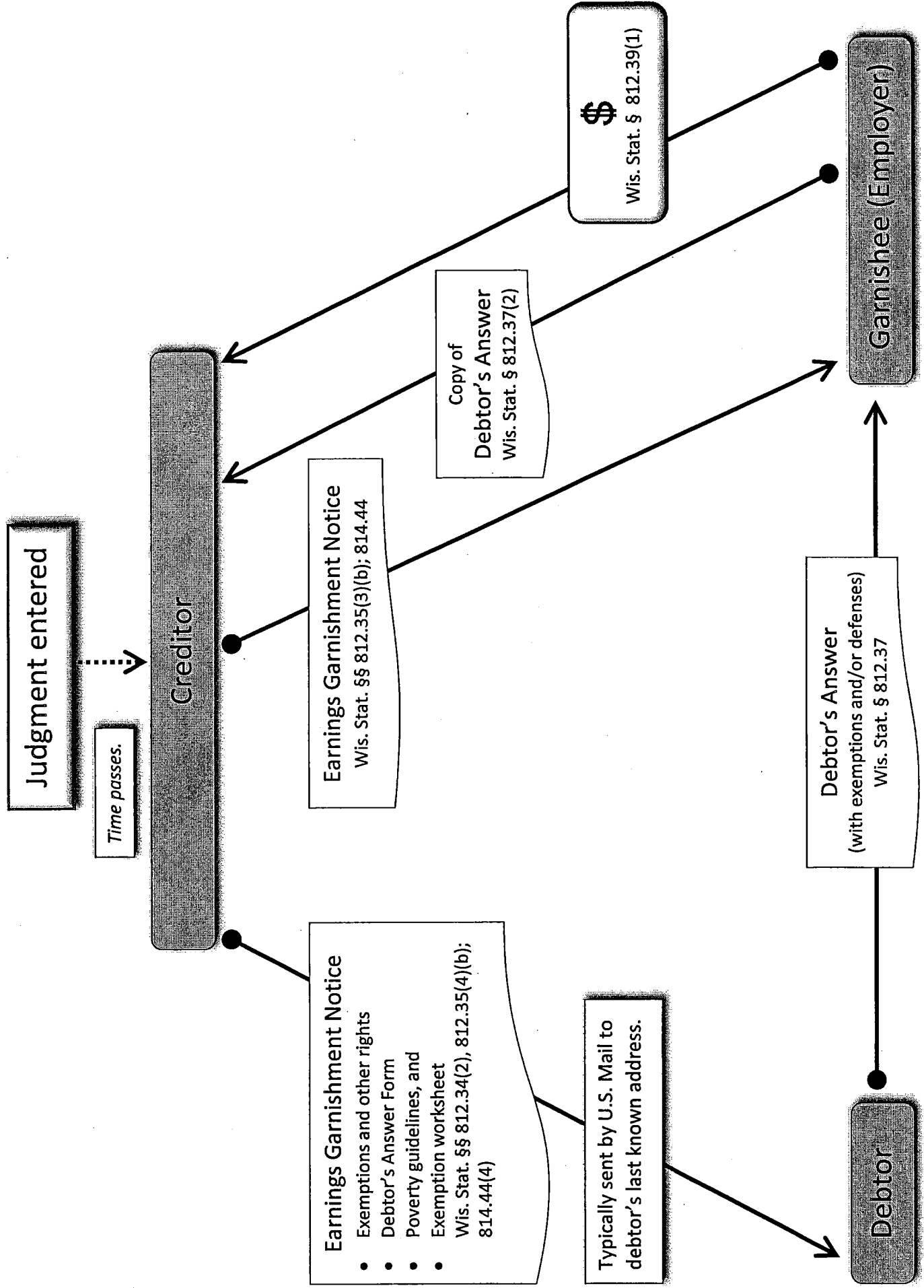
The quarterly renewal helps the garnishment process run smoothly for creditors and employers. First, it is in judgment creditors' interests for debtors to continue working so they can pay off what they owe. A debtor who is unaware of her rights to seek exemptions or limits may endure a 20% garnishment for awhile but may file for bankruptcy if the garnishment becomes untenable. If she files for bankruptcy, the judgment creditor (and other creditors) will not receive anything.

In addition, the quarterly renewal ensures that the debtor can keep the employer up-to-date about the correct exemptions. Employers serve as the primary points of contact for both creditors and debtors. (The creditor does not communicate regularly with the debtor.) The employer also is responsible for garnishing the correct amount of earnings based upon information from the debtor. If the employer garnishes too much, it may have to repay the debtor. If the employer garnishes too little, it may have to repay the creditor. The quarterly renewal keeps the three parties "on the same page," and helps avoid overpayments and underpayments to creditors. With minimal paperwork, the process is accurate and efficient.

We oppose the proposed changes because the current statutory procedure balances the costs to all parties with the critical function of notifying debtors of their rights. However, we would support a proposal to retain the quarterly notices but waive the court fee after the initial garnishment action. Another alternative is to extend the renewal period to a longer time such as 26 weeks. Finally, if a renewal period is eliminated altogether, we suggest that creditors should be required to personally serve garnishment papers on debtors to ensure that they receive notice of their rights.

Thank you again for your time today. Please don't hesitate to contact me if you would like to discuss this legislation in more detail. I can be reached at sarah.orr@wisc.edu or (608) 890-2454.

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Richard G. Chandler
Secretary of Revenue

October 26, 2017

Testimony to the Senate Committee on Labor and Regulatory Reform on SB 397

Chairman Nass and members of the committee, thank you for the opportunity to testify on Senate Bill 397, which eliminates the 13 week limit on the garnishment of earnings of certain debtors. Senate Amendment 1 would allow multiple creditors to collect concurrently and provides a method of calculation to determine the amount each creditor is entitled.

Currently, earnings garnishments are 13 weeks in duration, with ability to renew the garnishment at the end of the 13 week period. However, child support and court ordered restitution are not subject to the 13 week limitation. In some circumstances, the Department of Revenue (DOR) may file an earnings garnishments for delinquent taxes. If another creditor's garnishment is already in place at the time we send a garnishment to an employer, we wait until the end of that creditor's 13 week period before we start to collect. Then, at the end of our 13 week period, another creditor could start receiving payments. Therefore all creditors have the ability to receive some payment in a reasonable amount of time. If the 13 week limit was eliminated the first creditor to file an earnings garnishment would be able to collect on their debt until that creditor is paid in full. All subsequent creditors with garnishments would have to wait until the first creditor is paid in order to have a chance of collecting their debt. This may result in decreased collections to the Department.

Under the proposed amendment to this bill, multiple creditors can collect concurrently however child support comes first and restitution comes second. If there is any amount available after these two garnishments, all other creditors split the difference. In all cases where there are child support and/or restitution garnishments, all other creditors with an earnings garnishment

split whatever is left. This process may increase complexity for the creditors and employers; the employer could be issuing payments to several creditors each month and figuring out who is supposed to be paid what amount could be confusing.

Thank you again for the opportunity to discuss SB 397.