

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB391)

Received: 07/13/99

Received By: nelsorp1

Wanted: 07/15/99

Identical to LRB:

For: Scott Gunderson (608) 266-3363

By/Representing: Mike

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - garn/injunct

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Earning exempt from execution

Instructions:

See Attached letter from Michael Best

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 07/13/99	ygeller 07/13/99	mclark 07/13/99	_____	lrb_docadmin 07/13/99	lrb_docadmin 07/13/99	

FE Sent For:

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1?	nelsorp1	1 7/13 jg	MRC 7/13	MRC/KM 7/13			

FE Sent For:

<END>

■ KIRT J.E. LUDWIG ■
Attorney at Law
Court Commissioner
Telephone: (414) 763-5046

217 East Jefferson Street
P.O. Box 190
Burlington, WI 53105

FAX: (414) 763-2493

March 12, 1999

Scott Gunderson
State Representative, 83rd District
State Capitol
P.O. Box 8952
Madison, WI 53708

In re: Amending Section 1. 812.34(1)(a) of the Statutes

Dear Scott:

I am in receipt of your letter dated March 9, 1999, relative to the above entitled matter together with a copy of the draft of legislation that you have prepared.

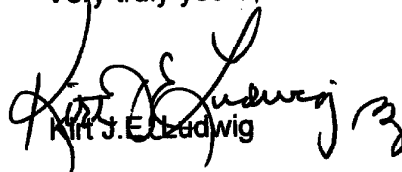
It might be advisable to make the legislation consistent with the Federal Code Section 1673(b)(1)(B) which reads as follows:

"Any Order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code (11USCS §§ 1301 et seq.)"

Thereby, Section 812.34(1)(a) would read as follows:

"Was ordered by a court under s. 128.21 or was ordered by any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code (11USCS §§ 1301 et seq.)"

Very truly yours,


Kirt J.E. Ludwig

KJEL:sz

Code



-CITE-

15 USC Sec. 1673

01/26/98

-EXPCITE-

TITLE 15 - COMMERCE AND TRADE

CHAPTER 41 - CONSUMER CREDIT PROTECTION

SUBCHAPTER II - RESTRICTIONS ON **GARNISHMENT**

-HEAD-

Sec. 1673. Restriction on **garnishment**

-STATUTE-

(a) Maximum allowable **garnishment**

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to **garnishment** may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords

substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to **garnishment** to enforce any order for the support of any person shall not exceed -

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to **garnishment** to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of **garnishment** order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

-SOURCE-

(Pub. L. 90-321, title III, Sec. 303, May 29, 1968, 82 Stat. 163; Pub. L. 95-30, title V, Sec. 501(e)(1)-(3), May 23, 1977, 91 Stat. 161, 162; Pub. L. 95-598, title III, Sec. 312(a), Nov. 6, 1978, 92 Stat. 2676.)

July 9, 1999

HAND DELIVERED

Rep. Scott Gunderson
7 West
State Capitol Building
Madison, WI 53703

*Mike - call this
attorney & work it
out*

Re: Assembly Bill 391

Dear Rep. Gunderson:

I am the chair-elect of the Bankruptcy, Insolvency & Creditors Rights Section of the State Bar of Wisconsin, although I am not writing on behalf of the Section. I received a copy of Assembly Bill 391, and spoke to an aid in your office before it was introduced. I understand that a constituent called you about the "bankruptcy problem" in the garnishment law. I may have been the one who directed your constituent to you, as I recall talking to someone about this issue, and suggesting that he contact his state legislator. At any rate, unfortunately, I don't think that the language you have proposed corrects the problem. I did explain this to your aid, but apparently, I did not make the point clear enough.

The problem in present law is that exemptions do not apply to judgments issued by courts of bankruptcy. Thus, if a bankruptcy court issues a judgment, the judgment creditor can garnish 100% of the debtor's wages. What the legislature intended (based on prior law) is that if a bankruptcy court issued a "wage order" under Chapter 13 of the Bankruptcy Code, an employer would not apply any exemptions to that order. (This is probably a solution without a problem, as the vast majority of wage orders state that \$x is to be deducted per pay period and sent to the chapter 13 trustee, and no calculations or percentages are required. I have spoken to the chapter 13 trustee in Madison, and learned that no employer has ever applied exemptions to a wage order. The standard wage orders (which are entered by the Clerk, not the Judge) provide that no exemptions are to be deducted.)

Assembly Bill 391 attempts to solve the potential problem by stating that no exemptions apply to a judgment debt ordered "by any court of the United States having jurisdiction over cases under 11 U.S.C. 1301 to 1330." As with the present statute, the focus of the exclusion is on the type of court not the type of order (i.e. a chapter 13 wage order). Moreover, the only courts with jurisdiction over cases under 11 U.S.C. § 1301 to 1330 are bankruptcy courts, and I

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interpret the language of AB 391 exactly the same as present law: there will be no garnishment exemptions for judgments of bankruptcy courts.

The Bankruptcy Section attempted to change this law several years ago. (See, e.g., 1997 Assembly Bill 840). The language we formulated was "by a court of bankruptcy under 11 U.S.C. § 1301 et seq." The bankruptcy court judgment would have to be issued *under* chapter 13 to qualify for the exclusion. By contrast, AB 391 states that the judgment would be issued by a court *having jurisdiction over* chapter 13. The former focuses on the type of judgment, the latter on the type of court. Since it is only certain orders of the Bankruptcy Court that qualify for the exclusion, the Bankruptcy Section language seems to be the correct focus.

In summary, AB 391 does not correct the bankruptcy mistake in the present earnings garnishment statute. The language continues to exclude all bankruptcy court judgments from the 80% exemption. To correct the problem, you need to change the language from "having jurisdiction over" to "under" or "pursuant to." Alternatively, since the problem never arises, you could simply eliminate the bankruptcy court judgment language from the statute.

Please feel free to call upon me if I can explain this problem further or assist in any way. I would appreciate knowing when hearings might be scheduled on AB 391. Thank you for your attention to this matter.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP



Susan V. Kelley

cc: Jennifer Boese

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7/15 2pm
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0552/1

RPN...:.....
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jlq

**ASSEMBLY AMENDMENT ,
TO 1999 ASSEMBLY BILL 391**

1

At the locations indicated, amend the bill as follows:

2

1. Page 2, line ²: delete "having jurisdiction over cases". ✓

3

(END)