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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy
(AC-JPP)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Assembly

Record of Committee Proceedings

Committee on Judiciary and Personal Privacy

Assembly Bill 391

Relating to: disposable earning exempt from garnishment.

By Representatives Gunderson, Musser, Townsend, Turner, Sykora, Hahn, Petrowski, Hundertmark, Spillner, Gronemus, Kelso, Albers and Powers; cosponsored by Senator Darling.

June 24, 1999 Referred to committee on Judiciary and Personal Privacy.

July 20, 1999 **PUBLIC HEARING HELD**

Present: (8) Representatives Huebsch, Gundrum, Walker,
Grothman, Sherman, Colon, Hebl and
Staskunas.

Excused: (1) Representative Suder.

Appearances for

- Representative Scott Gunderson, 83rd Assembly District
- Susan Kelley, State Bar of Wisconsin-Bankruptcy Section

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- None.

Registrations against

- None.

September 14, 1999 **EXECUTIVE SESSION**

Present: (9) Representatives Huebsch, Gundrum, Walker,
Suder, Grothman, Sherman, Colon, Hebl and
Staskunas.

Excused: (0) None.

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Assembly Amendment 1** be recommended for introduction and adoption.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 9,
Noes 0, Excused 0

Moved by Representative Grothman, seconded by Representative Staskunas, that **Assembly Bill 391** be recommended for passage as amended.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 9, Noes 0,
Excused 0



Robert Delaporte
Committee Clerk

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 9-14-99
 Moved by: (Grothman) Seconded by: Stask.
 AB: 391 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ SR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage *as amend*
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 9 _____

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 9-14-99
Moved by: _____
AB: 391 _____
AB: _____ SB: _____
AJR: _____ SJR: _____
A: _____ SR: _____

Seconded by: _____
Clearinghouse Rule: _____
Appointment: _____
Other: _____

A/S Amdt: _____
A/S Amdt: 1 _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>9</u>	_____	_____	_____

Motion Carried

Motion Failed





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: September 13, 1999
TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY
FROM: Don Dyke, Senior Staff Attorney
SUBJECT: 1999 Assembly Bill 391, Relating to Disposable Earnings Exempt From
Garnishment

This memorandum, prepared at your request, describes the above-captioned bill and Assembly Amendment 1 to the bill. A public hearing on the proposal was held on July 20, 1999. Assembly Bill 391 corrects a cross-reference in the state's earnings garnishment law to federal bankruptcy law, thereby making the disposable earnings exemption under the garnishment law applicable to certain types of bankruptcy judgment debts.

A. CURRENT LAW

Current garnishment law generally exempts from garnishment 80% of the debtor's "disposable earnings" (generally, earnings remaining after deducting Social Security and income taxes). [s. 812.34 (2) (a), Stats.] Current law exempts 100% of a debtor's disposable earnings from garnishment if the debtor's household income is below, or the garnishment would make it below, the federal poverty line or if the debtor receives, is eligible to receive or, within the last six months, has received needs-based public assistance. [s. 812.34 (2) (b), Stats.]

The disposable income exemptions under the garnishment law do *not* apply if the judgment debt: (1) was ordered by a court under s. 128.21, Stats. (a voluntary state procedure to obtain a court order for paying off debts), or by a bankruptcy court under federal bankruptcy law; (2) is for the support of any person; or (3) is for unpaid taxes. [s. 812.34 (1), Stats.] Further, the general 80% disposable earnings exemption does not apply if a garnishment proceeding proceeds to a contested court hearing and the court issues an order for garnishment. [s. 812.34 (2) (a), Stats.] (Note, also, that the garnishment law authorizes the debtor to petition for relief if the disposable earnings exemption is insufficient for the debtor to acquire the necessities of life for the debtor and his or her dependents.) [s. 812.38 (1) (b), Stats.]

B. 1993 WISCONSIN ACT 80

Wisconsin law on garnishment of earnings was comprehensively revised by 1993 Wisconsin Act 80. The legislation that was enacted as Act 80 was drafted by and introduced at the request of the Wisconsin Judicial Council.

According to Judicial Council notes contained in 1993 Wisconsin Act 80, the provisions of current s. 812.34 (1), Stats., which specify when the disposable earnings garnishment exemptions do not apply to a judgment debt were based on s. 812.18 (2) (b), 1991-92 Stats., repealed by Act 80. In pertinent part, s. 812.18 (2) (b), 1991-92 Stats., provided that the then disposable earnings exemption did not apply to: "An order of any court of bankruptcy under Chapter XIII of the bankruptcy act." [s. 812.18 (2) (b) 2., 1991-92 Stats.]

Note that the repealed provision cited above refers to an order of a bankruptcy court "under Chapter XIII" of the bankruptcy act. Under federal bankruptcy law, there are four primary types of proceedings: ch. 7 (where the debtor's nonexempt assets are liquidated and proceeds paid to creditors) [11 U.S.C. ss. 701 to 766]; ch. 11 (where the debtor reorganizes a business and pays debts over a period of time pursuant to a court approved reorganization plan) [11 U.S.C. ss. 1101 to 1174]; ch. 12 (where a family farmer debtor reorganizes a farm) [11 U.S.C. ss. 1201 to 1231]; and ch. 13 (where an individual debtor with regular income pays creditors pursuant to a court approved plan) [11 U.S.C. ss. 1301 to 1330].

Because the statutes prior to 1993 Wisconsin Act 80 only referenced an order of a bankruptcy court under ch. 13 of federal bankruptcy law, judgment debts arising out of other types of bankruptcy proceedings were subject to the disposable earnings exemption from garnishment. There is no need for the exemption to apply to orders under ch. 13 because earnings subject to garnishment under ch. 13 proceedings are designated as part of the court-approved plan. Act 80 apparently inadvertently revised the cross-reference to federal bankruptcy law to include the *entire* bankruptcy law: thus, under current law, the disposable earnings garnishment exemptions do not apply to a judgment debt ordered by a court of bankruptcy under Title 11, U.S.C. (i.e., the entire Bankruptcy Code). [s. 812.34 (1) (a), Stats.]

C. ASSEMBLY BILL 391

Assembly Bill 391 revises the cross-reference to federal bankruptcy law in s. 812.34 (1) (a), Stats., to limit the reference to court orders under ch. 13 of the bankruptcy law (i.e., 11 U.S.C. ss. 1301 to 1330). Thus, under Assembly Bill 391, the disposable earnings garnishment exemptions do not apply to a judgment debt that was ordered under a *ch. 13* bankruptcy proceeding; in contrast, the current statute refers to an order under any type of bankruptcy proceeding. Consequently, the bill restores the provision to its pre-1993 Wisconsin Act 80 status.

D. ASSEMBLY AMENDMENT 1

The apparent intent of Assembly Amendment 1 is to ensure that only judgment debts ordered under ch. 13 of federal bankruptcy law are not covered by the disposable earnings exemption from garnishment.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:wu:tlu:rv;ksm



Date?

I had Assembly Bill 391 drafted in response to a constituent's problem. My constituent and his attorney brought to my attention that 1993 Wisconsin Act 80 contained a mistake that could be misinterpreted, and as a result individuals could have 100% of their wages garnished in a bankruptcy proceeding.

Assembly Bill 391 corrects a cross-reference mistake in Wisconsin's earnings garnishment law to the federal bankruptcy law. 1993 Wisconsin Act 80 inadvertently, according to correspondences with the drafter, revised the cross-reference to federal bankruptcy law to include the entire bankruptcy code.

Act 80 was intended to only reference Chapter 13 of the bankruptcy code as the statute, s 812.18 (2) (b) of Wisconsin Statutes did prior to Act 80's inadvertent revision. Thus, under current Wisconsin bankruptcy law, the disposable earnings garnishment exemptions do not apply to a judgement of debt ordered by a court of bankruptcy under Title 11 of the U.S.C.

Under current garnishment law, if a person's earnings are garnished in this state, generally 80% of the person's disposable earnings are exempted from that garnishment. There are certain exceptions to the 80 % garnishment exemptions such as if the household is under the poverty line or the judgement would put the household under the poverty line, then 100% of their wages are exempt.

When Act 80 became law, our state created a law that was contrary to the U.S. Code because of the cross-reference mistake. It allowed 100% of a person's salary to be subject to garnishment, when the federal Garnishment Act prohibits it. If we allow the courts to garnish 100% of a person's wages, they are not going to continue to work. These people will quite simply quit their jobs and vanish from the payrolls.

Assembly Bill 391 revises the cross-reference to federal bankruptcy law in 812.34 (1) (a) of Wisconsin Statutes, to limit the reference to court orders under Chapter 13 of the federal bankruptcy law. As a result, Assembly Bill 391 limits the bankruptcy court judgements to the 80% wage exemptions to

those judgements ordered by a federal court under a voluntary wage earner plan approved under Chapter 13 of the federal bankruptcy law.

I think the most important thing to remember is that 1993 Wisconsin Act 80 made a reference mistake, and this bill corrects that mistake and brings our statutes back to what was in fact intended.