

**2003 DRAFTING REQUEST**

**Bill**

Received: **11/15/2002**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**

By/Representing: **Linda N**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - garn/injunct**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Owens@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

garnishment of the income of a minor

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**Instructions:**

See Attached

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**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>
/?	rnelson2 11/22/2002	chanaman 12/26/2002		_____			
/1			pgreensl 01/02/2003	_____	amentkow 01/02/2003	amentkow 02/04/2003	

FE Sent For:

<END>

↳ Not  
Needed

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State of Wisconsin  
2001 - 2002 LEGISLATURE

0740/1  
LRB-3000/2

RPN:rs&js:hmh  
cmh

3  
2001 ASSEMBLY BILL

LPS -  
please proof  
amended  
Sections  
w/ state folio

regu  
cat

1 AN ACT to amend 812.30 (8), 812.44 (4) (form) and 812.44 (5) (form); and to  
2 create 812.34 (2) (b) 3. of the statutes; relating to: garnishment of the income  
3 of a minor.

**Analysis by the Legislative Reference Bureau**

Under current law, a person who has a civil judgment for a debt may bring an action in circuit court to garnish the earnings of the person who owes the debt. The creditor is required to comply with specified court procedures when bringing the action, including serving one earnings garnishment form upon the debtor and the other form upon the person who is the debtor's employer. Currently, the debtor may claim an exemption from the garnishment or may assert a defense against the garnishment.

Under current law, 80% of the debtor's disposable earnings (earnings left after deducting social security, federal, and state taxes) are exempt from garnishment. In addition, if the debtor's household income is below the poverty level or if the debtor is receiving needs-based public assistance, all of the debtor's earnings are exempt from garnishment. Currently, "household income" for purposes of this exemption is defined to mean the disposable income of the debtor and the debtor's dependents during the month in which the garnishment is in effect, plus any unearned income received that month by the debtor and the debtor's dependents, minus any of the debtor's earnings assigned by a family court order. The family court may order the assignment of a person's earnings for the payment of child support, family support, or maintenance.

**ASSEMBLY BILL**

This bill includes in the definition of "household income," if the debtor is a minor other than an emancipated minor, the monthly disposable earnings of the debtor, of the parents of the debtor that the debtor lives with for at least 50% of the month, and of those parents' dependents, plus the unearned income of the debtor, parents, and dependents, minus any of the earnings of the debtor and parents that are assigned by a family court. The bill, however, exempts from garnishment all of an unemancipated minor's earnings if the judgment that the creditor is seeking to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge entered by the court assigned to exercise jurisdiction under the juvenile justice code.

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

1           **SECTION 1.** 812.30 (8) of the statutes is amended to read:

2           812.30 (8) "Household income" means the disposable earnings of the debtor  
3 and dependents during any month in which the garnishment is in effect, plus  
4 unearned income received by the debtor and dependents in that month, less any of  
5 the debtor's earnings assigned by court order under ch. 767. If the debtor is a minor,  
6 other than an emancipated minor, as defined in s. 48.375 (2) (e), "household income"  
7 means the disposable earnings of the debtor, of the parent that the debtor resides  
8 with for at least 50% of the month, and of the parent's dependents during any month  
9 in which the garnishment is in effect, plus unearned income received by the debtor,  
10 the parent, and the parent's dependents in that month, less any of the debtor's and  
11 the parent's earnings assigned by court order under ch. 767.

12           **SECTION 2.** 812.34 (2) (b) 3. of the statutes is created to read:

13           812.34 (2) (b) 3. The debtor is a minor, other than an emancipated minor, as  
14 defined in s. 48.375 (2) (e), and the judgment that the creditor is seeking to satisfy  
15 is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge entered  
16 by the juvenile court under s. 895.035 (2m) (a) or (b).

ASSEMBLY BILL

1 SECTION 3. 812.44 (4) (form) of the statutes *as affected by 2001 Wisconsin Act*

2 *39* is amended to read:

3 812.44 (4) (form)

4 STATE OF WISCONSIN

5 CIRCUIT COURT:.... County

6 \_\_\_\_\_

7 A.B., Creditor

8 vs. File or Reference Number....

9 C.D., Debtor EXEMPTION NOTICE

10 and EARNINGS GARNISHMENT

11 E.F., Garnishee

12 \_\_\_\_\_

13 *To* To the debtor: *(LRS line up w/ next paragraph)*

*Proof*

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

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

21	Unpaid balance on judgment	\$....
22	Unpaid postjudgment interest	\$....
23	Costs:	
24	a. Garnishment filing fee	\$....
25	b. Garnishee fee	\$....

ASSEMBLY BILL

1 c. Service of process (estimate) \$....

2 TOTAL \$....

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

6 Your earnings are completely exempt from garnishment if:

7 1. Your household income is below the federal poverty level, or this  
8 garnishment would cause that to happen. See the enclosed schedules and worksheet  
9 to determine if you qualify for this exemption.

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

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

17 4. You are an unemancipated minor and the judgment that the creditor is  
18 seeking to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a  
19 surcharge entered by the juvenile court under <sup>section</sup> 895.035 (2m) (a) or (b) <sup>of the Wisconsin</sup>  
statutes

20 If you qualify for a complete exemption, you must give or mail a copy of the  
21 enclosed debtor's answer form to the garnishcc in order to receive that increased  
22 exemption.

23 If your circumstances change while the garnishment is in effect, you may file  
24 a new answer at any time.

**ASSEMBLY BILL**

1 If you do not qualify for a complete exemption, but you will not be able to acquire  
2 the necessities of life for yourself and your dependents if your earnings are reduced  
3 by this earnings garnishment, you may ask the court in which this earnings  
4 garnishment was filed to increase your exemption or grant you other relief.

**IF YOU NEED ASSISTANCE**

**CONSULT AN ATTORNEY**

7 If you have earnings that are being garnisheed that are exempt or subject to a  
8 defense, the sooner you file your answer or seek relief from the court, the sooner such  
9 relief can be provided. This earnings garnishment affects your earnings in pay  
10 periods beginning within 13 weeks after it was served on the garnishee. You may  
11 agree in writing with the creditor to extend it for additional 13-week periods until  
12 the debt is paid.

**PENALTIES**

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

17 **SECTION 4. 812.44 (5) (form) of the statutes, as affected by 2001 Wisconsin Act**  
18 ~~18~~ is amended to read:

19 812.44 (5) (form)

20 STATE OF WISCONSIN

21 CIRCUIT COURT:.... County

23 A.B., Creditor

24 vs.

25 C.D., Debtor

File or Reference Number....

**EARNINGS GARNISHMENT**

Handwritten notes and markings on the left margin, including a large bracket and the word "A0001" written vertically.

ASSEMBLY BILL

DEBTOR'S ANSWER

1 and  
2 E.F., Garnishee

3  
4 To the garnishee:

5 My earnings are COMPLETELY EXEMPT from earnings garnishment because:

6 ... 1. The judgment has been paid or is void.

7 ... 2. ~~(5) (form) paragraph 2.~~ I receive, am eligible for, or have within 6 months  
8 received, aid to families with dependent children, relief funded by a relief block grant  
9 under ch. 49, relief provided by counties under section 59.53 (21) of the Wisconsin  
10 Statutes, medical assistance, supplemental security income, food stamps, or  
11 veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of the  
12 Wisconsin Statutes.

13 ... 3. At least 25% of my disposable earnings are assigned for support by court order.

14 ... 4. My household income is less than the poverty line, or this garnishment would  
15 cause that to happen.

16 ... 4m. I am an unemancipated minor and the judgment that the creditor is seeking  
17 to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge

18 entered by the juvenile court under s/ <sup>ection</sup> 895.035 (2m) (a) or (b) of the Wisconsin Statutes

19 ... 5. I have another defense to this earnings garnishment (explain briefly).

20 .....  
21 .....

22 I understand that if I claim a complete exemption or defense in bad faith, I may  
23 be held liable to the creditor for actual damages, costs and reasonable attorney fees.

24 DATE ....

Signature of Debtor ....

25 Address ....

**ASSEMBLY BILL**

*Recess*  
1  
2

3

Telephone Number ....

Date Received by Garnishee ....

(END)

**Mentkowski, Annie**

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**From:** Cekosh, Nick  
**Sent:** Tuesday, February 04, 2003 1:15 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-0740/1 Topic: garnishment of the income of a minor

It has been requested by <Cekosh, Nick> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0740/1 Topic: garnishment of the income of a minor