

## 2007 ASSEMBLY BILL 34

January 24, 2007 – Introduced by Representatives OWENS, HAHN, JESKEWITZ, MUSSER, TOWNSEND and VOS, cosponsored by Senators OLSEN, ROESSLER, SCHULTZ and GROTHMAN. Referred to Committee on Children and Family Law.

1     **AN ACT to amend** 812.30 (8), 812.35 (5), 812.35 (6), 812.40, 812.44 (3) (form),  
2             812.44 (4) (form) and 812.44 (5) (form); and **to create** 812.30 (7m), 812.34 (2)  
3             (b) 3. and 812.35 (7) of the statutes; **relating to:** garnishment of the income of  
4             a minor.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may order a juvenile who has committed an act resulting in damage to the property of another or in actual physical injury to another, excluding pain and suffering, and a parent who has custody of the juvenile to make reasonable restitution for that damage or injury. Current law also permits the juvenile court to order a juvenile who has committed a delinquent act or who has violated a civil law or ordinance and the parent of that juvenile to pay a forfeiture, plus certain costs and surcharges. If a juvenile or a parent with custody of the juvenile fails to pay restitution, costs, a forfeiture, or a surcharge as ordered, the juvenile court may order that the amount of the unpaid restitution, costs, forfeiture, or surcharge be entered and docketed as a judgment against the juvenile and parent.

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

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claim an exemption from the garnishment or may assert a defense against the garnishment.

Under current law, 80 percent 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.

Under this bill, if a debtor is an unemancipated minor who owes juvenile—court ordered restitution, costs, a forfeiture, or a surcharge, "household income" of the debtor includes the monthly unearned and disposable earnings of the debtor, the debtor's parents, and the parents' dependents, minus any of the earnings of the debtor and parent 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 juvenile court.

Under current law, an earnings garnishment lasts for 13 weeks or until the debt is collected through the garnishment, whichever is less, except that for public employees, the garnishment continues until the debt is paid in full. This bill provides that the garnishment of a minor debtor who is not emancipated continues until the debt is paid in full.

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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 (7m) of the statutes is created to read:

2           812.30 (7m) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

3           **SECTION 2.** 812.30 (8) of the statutes is amended to read:

4           812.30 (8) "Household income" means the disposable earnings of the debtor  
5 and dependents during any month in which the garnishment is in effect, plus  
6 unearned income received by the debtor and dependents in that month, less any of  
7 the debtor's earnings assigned by court order under ch. 767. If the debtor is a minor,  
8 other than an emancipated minor, "household income" means the disposable

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1 earnings of the debtor, of the parent that the debtor resides with for at least 50  
2 percent of the month, and of the parent's dependents during any month in which the  
3 garnishment is in effect, plus unearned income received by the debtor, the parent,  
4 and the parent's dependents in that month, less any of the debtor's and the parent's  
5 earnings assigned by court order under ch. 767.

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

7 812.34 (2) (b) 3. The debtor is a minor, other than an emancipated minor, and  
8 the judgment that the creditor is seeking to satisfy is not a judgment for unpaid  
9 restitution, costs, a forfeiture, or a surcharge entered under s. 895.035 (2m) (a) or (b)  
10 by the court assigned to exercise jurisdiction under chs. 48 and 938.

11 **SECTION 4.** 812.35 (5) of the statutes is amended to read:

12 812.35 (5) Upon Except as provided in sub. (7), after being served, the  
13 garnishee shall determine whether the garnishee may become obligated to the  
14 debtor for earnings earned within pay periods beginning within 13 weeks after the  
15 date of service. If it is unlikely that the garnishee will become so obligated, the  
16 garnishee shall send a statement of that fact to the creditor by the end of the 7th  
17 business day after receiving the earnings garnishment form under sub. (3). The  
18 creditor shall send a copy of this statement to the court within 7 business days after  
19 receipt of the statement.

20 **SECTION 5.** 812.35 (6) of the statutes is amended to read:

21 812.35 (6) If Except as provided in sub. (7), if the garnishee may become  
22 obligated to the debtor for earnings earned within pay periods beginning within 13  
23 weeks after the date of service, but one or more earnings garnishments against the  
24 debtor have already been served on the garnishee and not terminated, the garnishee  
25 shall retain the earnings garnishment form and place the garnishment into effect the

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1 pay period after the last of any prior earnings garnishments terminates. The  
2 garnishee shall notify the debtor of the amount of the garnishment and shall notify  
3 the creditor of the amount owed on the pending garnishments by the end of the 7th  
4 business day after receipt of the garnishment form under sub. (3). If, before the  
5 earnings garnishment takes effect, the garnishee determines that it is unlikely that  
6 the garnishee will continue to be obligated to the debtor for earnings, the garnishee  
7 shall notify the creditor and court under sub. (5) within 7 business days after making  
8 that determination.

9 **SECTION 6.** 812.35 (7) of the statutes is created to read:

10 812.35 (7) (a) If the debtor is a minor, other than an emancipated minor, the  
11 garnishment shall continue until the amount that the creditor is seeking in the  
12 garnishment is paid in full. The garnishee shall determine whether the garnishee  
13 may become obligated to the debtor for earnings earned after the date of service. If  
14 it is unlikely that the garnishee will become so obligated, the garnishee shall send  
15 a statement of that fact to the creditor by the end of the 7th business day after  
16 receiving the earnings garnishment form under sub. (3). The creditor shall send a  
17 copy of this statement to the court within 7 business days after receipt of the  
18 statement.

19 (b) If the garnishee may become obligated to the debtor for earnings earned  
20 within pay periods beginning after the date of service, but one or more earnings  
21 garnishments against the debtor have already been served on the garnishee and not  
22 terminated, the garnishee shall retain the earnings garnishment form and place the  
23 garnishment into effect the pay period after the last of any prior earnings  
24 garnishments terminates. The garnishee shall notify the debtor of the amount of the  
25 garnishment and shall notify the creditor of the amount owed on the pending

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1 garnishments by the end of the 7th business day after receipt of the garnishment  
2 form under sub. (3). If before the earnings garnishment takes effect the garnishee  
3 determines that it is unlikely that the garnishee will continue to be obligated to the  
4 debtor for earnings, the garnishee shall notify the creditor and court under par. (a)  
5 within 7 business days after making that determination.

6 **SECTION 7.** 812.40 of the statutes is amended to read:

7 **812.40 Stipulated extension.** At any time while an earnings garnishment  
8 is in effect, the debtor and creditor, if the debtor is an adult or an emancipated minor,  
9 may stipulate in writing to an extension of the earnings garnishment for additional  
10 pay periods. The extension may commence on the first day after the earnings  
11 garnishment ends and shall end within 13 weeks after the last day of the last pay  
12 period affected by the earnings garnishment. The garnishee shall be bound by the  
13 extension if a copy of the stipulation is delivered or mailed to the garnishee, together  
14 with an additional garnishee fee under s. 812.33, before the last day of the last pay  
15 period affected by the earnings garnishment or any prior stipulated extension of the  
16 earnings garnishment. A stipulated extension is void and the garnishee fee shall be  
17 refunded if, prior to the last day of the last pay period affected by the earnings  
18 garnishment, the garnishee is served under s. 812.35 (3) by a creditor seeking to  
19 satisfy a different judgment against the debtor.

20 **SECTION 8.** 812.44 (3) (form) of the statutes is amended to read:

21 **812.44 (3) (form)**

22 STATE OF WISCONSIN

23 CIRCUIT COURT:.... County

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1

A.B., Creditor

3

vs.

File or Reference Number...

4

C.D., Debtor

EARNINGS

5

and

GARNISHMENT

6

E.F., Garnishee

7

8

THE STATE OF WISCONSIN, To the garnishee:

9

The creditor has been awarded a court judgment that has not been paid. As a

10

result, the creditor claims that a total of \$... is owed by the debtor, as follows:

11

A. Unpaid balance on judgment \$....

12

B. Unpaid postjudgment interest \$....

13

C. Costs of this earnings garnishment

14

(estimated) \$....

15

TOTAL \$....

16

The creditor believes that you will owe the debtor for earnings within the next

17

13 weeks, or if the debtor is an unemancipated minor, within any time. If the \$15

18

fee is tendered with these papers, you are directed by the court to do the following:

19

DETERMINE WHETHER YOU WILL

20

OWE THE DEBTOR EARNINGS

21

1. Determine if you are likely to owe the debtor for earnings in pay periods

22

beginning within the next 13 weeks, or if the debtor is an unemancipated minor,

23

within any time.

24

2. If you are not likely to owe the debtor for earnings in pay periods beginning

25

within the next 13 weeks, or if the debtor is an unemancipated minor, within any

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1 time, send a statement stating that fact to the creditor by the end of the 7th business  
2 day after receiving the earnings garnishment forms.

3 **IF THE DEBTOR SENDS YOU AN ANSWER**

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

11 **MULTIPLE EARNINGS GARNISHMENTS**

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.

20 **EARNINGS GARNISHMENTS LAST 13 WEEKS,**

21 **EXCEPT FOR PUBLIC EMPLOYEES**

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

**ASSEMBLY BILL 34****SECTION 8**

1 unless the debtor's earnings are already being garnisheed. If this earnings  
2 garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings  
3 for all pay periods beginning within 13 weeks after the first day of the pay period that  
4 you put this earnings garnishment into effect. If the amount claimed by the creditor  
5 is fully paid before the end of the 13 weeks, this earnings garnishment will terminate  
6 at that 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 weeks after this  
24 earnings garnishment would otherwise terminate if the debtor is an adult or an  
25 emancipated minor. If you receive a written extension stipulation, and an additional

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

5 **SECTION 9.** 812.44 (4) (form) of the statutes is amended to read:

6 812.44 (4) (form)

7 STATE OF WISCONSIN

8 CIRCUIT COURT:.... County

9 \_\_\_\_\_

10 A.B., Creditor

11 vs.

File or Reference Number....

12 C.D., Debtor

EXEMPTION NOTICE

13 and

EARNINGS GARNISHMENT

14 E.F., Garnishee

15 \_\_\_\_\_

16 To the debtor:

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

23 The total amount of the creditor’s claim is as follows:

24 Unpaid balance on judgment \$....

25 Unpaid postjudgment interest \$....

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

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

9 Your earnings are completely exempt from garnishment if:

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

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

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

19 4. You are a minor, other than an emancipated minor, and the judgment that  
20 the creditor is seeking to satisfy is not a judgment for unpaid restitution, costs, a  
21 forfeiture, or a surcharge entered under section 895.035 (2m) (a) or (b) of the  
22 Wisconsin Statutes by the court assigned to exercise jurisdiction under chapters 48  
23 and 938 of the Wisconsin Statutes.





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

3 ... 4m. I am not an emancipated minor and the judgment that the creditor is seeking  
4 to satisfy is not a judgment for unpaid restitution, costs, a forfeiture, or a surcharge  
5 entered under section 895.035 (2m) (a) or (b) of the Wisconsin Statutes by the court  
6 assigned to exercise jurisdiction under chapters 48 and 938 of the Wisconsin  
7 Statutes.

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

9 .....  
10 .....

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

13 DATE .... Signature of Debtor ....  
14 Address ....  
15 Telephone Number ....  
16 Date Received by Garnishee ....

17 (END)