

1993 Assembly Bill 570

Date of enactment: **November 24, 1993**Date of publication*: **December 8, 1993**

1993 WISCONSIN ACT 80

AN ACT to repeal 812.01 (5) to (7), 812.02 (2) (a), 812.11 (6), 812.18 (1) (b) and (2), 812.23 and 812.235; to renumber ch. 812; to renumber and amend 812.18 (1) (a); to amend 16.53 (1) (d) 4, 39.32 (11) (a), 428.103 (1) (c) 2, 779.155 (1), 799.01 (1) (d) 2, 799.05 (3) (b), 799.26 (1), 812.01 (title) and (1), 812.02 (title), 812.02 (3), 812.04 (2), 812.05 (1), 812.07 (4), 812.18 (title) and 812.19 (5); to repeal and recreate 425.106 (1) (a) and 812.01 (2); and to create subch. I (title) of ch. 812 and subch. II of ch. 812 of the statutes, relating to: the garnishment of earnings.

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

PREFATORY NOTE: This bill was drafted by the Judicial Council Garnishment Committee, whose members are listed in the last paragraph of this note.

This bill revises the procedure for garnishment of the earnings of a judgment debtor. Earnings are defined as compensation payable for personal services, including wages, commissions, bonuses and periodic pension or retirement payments. A garnishment is a lawsuit to collect an unsatisfied civil judgment for money damages plus statutory interest and costs, from earnings payable by the garnishee to the debtor.

Duration of garnishment. Under present s. 812.23, stats., if the garnishee is the state or any political subdivision thereof, the garnishment stays in effect until the judgment debt is satisfied. Under present s. 812.18 (1) (b), stats., for all other garnishees, a garnishment affects only those earnings of the debtor for the pay period in which the summons is served on the garnishee.

Under this bill, when the garnishee is not the state or a political subdivision, the garnishment will affect the earnings of the debtor for all pay periods beginning within 13 weeks after the summons is served on the garnishee. The debtor and creditor may stipulate in writing to successive 13-week extensions if there are not other creditors attempting to garnish the debtor's earnings and if the garnishee is paid an additional garnishee fee (increased by the bill from \$3 to \$15) for each stipulated extension.

Exemption. Under present s. 812.18 (2) (a), stats., the debtor is entitled to a "subsistence allowance" of 75% of "disposable" earnings, that is, after withholding of payroll taxes, or 30 times the federal minimum hourly wage, whichever is greater. If the debt arose from a consumer credit transaction, s. 425.106 (1) (a), stats., exempts 75% of the debtor's dispos-

able earnings, or 40 times the federal minimum hourly wage plus \$15 per dependent per week, whichever is greater. This bill repeals these exemptions and substitutes an exemption of 80% of the debtor's disposable earnings. The bill also exempts from garnishment the earnings of debtors whose household income is below the federal poverty level, or who are eligible for aid to families with dependent children, general relief, medical assistance, supplemental security income, food stamps, or other need-based public assistance. A debtor may obtain relief from an earnings garnishment upon a showing to the court that the statutory exemption is insufficient for the debtor to acquire the necessities of life for the debtor and his or her dependents.

The bill prohibits garnishees from taking retaliatory actions against debtors due to garnishment unless specifically authorized by a collective bargaining agreement. The bill permits debtors to seek judicial relief for violations of this provision, including reinstatement, back wages, restoration of seniority and reasonable attorney fees.

The Judicial Council Garnishment Committee consisted of: Eric Schulenburg, Senator Lynn S. Adelman, Judge Michael J. Barron, Commissioner Audrey Y. Brooks, John Greene, Professor Stuart Gullickson, Thomas Haag, Earnest O. Hanson, Don R. Herrling, John M. Heuer, James D. Jeffries, Janet A. Jenkins, Judge Michael T. Kirchman, John C. Metcalf, B. Ann Neviasser, Thomas Rhorer, Mary Schlingen, Justice Donald W. Steinmetz, Steven A. Taterka, Bernard O. Westler, Vera Wicklund, Stephen Willett and Randy J. Wynn. James L. Fullin, Jr., was committee reporter.

SECTION 1. 16.53 (1) (d) 4. of the statutes is amended to read:

16.53 (1) (d) 4. The secretary may promulgate rules pertaining to the administration of earnings garnishment actions under s. ~~812.23, including rules superseding s.~~

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812.18 (1)(b) 812.42 whenever the state is the garnishee in such actions. In any earnings garnishment action where the judgment debtor is employed by the university of Wisconsin system, the secretary may require the appropriate payroll processing center for the university of Wisconsin system to directly process necessary forms, papers, deductions and checks, share drafts or other drafts in connection with such action.

SECTION 2. 39.32 (11) (a) of the statutes is amended to read:

39.32 (11) (a) In lieu of the procedure under ch. 812, the board, on behalf of the corporation under s. 39.33, or the corporation, on its own behalf, may certify the department of administration to deduct money from a state employe's earnings. The board shall specify an amount, not to exceed 25% of the employe's disposable earnings, as defined in s. ~~812.01~~ 812.30 (6), to be deducted on a continuing basis until the amount certified by the board or corporation has been paid. The department of administration shall remit moneys deducted to the board or the corporation.

SECTION 3. 425.106 (1) (a) of the statutes is repealed and recreated to read:

425.106 (1) (a) Unpaid earnings to the extent provided in s. 812.34.

NOTE: Merges consumer credit earnings exemption into general earnings exemption.

SECTION 4. 428.103 (1) (c) 2. of the statutes is amended to read:

428.103 (1) (c) 2. The exemptions specified in s. 425.106 (1) (a) and (b), with respect to ~~wages~~ earnings and personal clothing and furnishings except as to fixtures, shall apply.

SECTION 5. 779.155 (1) of the statutes is amended to read:

779.155 (1) LIMITATIONS. This section does not apply to cases covered by s. ~~812.23~~ 812.42. Demands covered by s. 779.15 have priority over judgments filed under this section. The remedies afforded by s. 779.15 and by this section are complementary.

SECTION 6. 799.01 (1) (d) 2. of the statutes is amended to read:

799.01 (1) (d) 2. For attachment ~~or garnishment~~ under ~~chs. ch.~~ 811 and garnishment under subch. I of ch. 812, except that ~~ss. s.~~ 811.09 and ~~812.01 (2)~~ shall does not apply to proceedings under this chapter; or

SECTION 7. 799.05 (3) (b) of the statutes is amended to read:

799.05 (3) (b) Except in eviction actions ~~and garnishment actions under s. 812.23~~, the return date for a summons served upon a resident of this state shall be not less than 8 days nor more than 30 days from the issue date, and service shall be made not less than 8 days prior to the return date. In eviction actions, the return date for a summons served upon a resident of this state shall be not less than 5 days nor more than 30 days from the issue date, and

service shall be made not less than 5 days prior to the return date. ~~In garnishment actions under s. 812.23, the return date shall be the date specified under s. 812.23 (4).~~

SECTION 8. 799.26 (1) of the statutes is amended to read:

799.26 (1) When a judgment for money damages is entered under this chapter, the court or court commissioner shall order the judgment debtor to execute under penalty of contempt a disclosure statement and to mail or deliver that statement to the judgment creditor or to the clerk of circuit court in the county where the judgment is entered within 15 days of entry of judgment unless the judgment is sooner satisfied. The statement shall disclose, as of the date of judgment, the debtor's name, residence address, employers and their addresses, any real property interests owned by the debtor, cash on hand, financial institutions in which the judgment debtor has funds on deposit, whether the debtor's earnings are totally exempt from garnishment under s. 812.34 (2) (b), and such other information as required by the schedules adopted under sub. (3).

SECTION 9. Chapter 812 of the statutes is renumbered subchapter I of chapter 812.

SECTION 10. Subchapter I (title) [precedes 812.01] of chapter 812 of the statutes is created to read:

CHAPTER 812**SUBCHAPTER I****GARNISHMENT OF PROPERTY
OTHER THAN EARNINGS**

SECTION 11. 812.01 (title) and (1) of the statutes are amended to read:

812.01 (title) Commencement of garnishment. (1) Any creditor may proceed against any person who is indebted to or has any property in his or her possession or under his or her control belonging to such creditor's debtor or which is subject to satisfaction of an obligation described under s. 766.55 (2), as prescribed in this ~~chapter~~ subchapter. "Plaintiff" as used in this ~~chapter~~ subchapter includes a judgment creditor and "defendant", a judgment debtor or the spouse or former spouse of a judgment debtor if the judgment is rendered in connection with an obligation described under s. 766.55 (2).

SECTION 12. 812.01 (2) of the statutes is repealed and recreated to read:

812.01 (2) The procedures in this subchapter govern all garnishments except the garnishment of earnings. Except as otherwise provided in this subchapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 apply to actions under this subchapter.

SECTION 13. 812.01 (5) to (7) of the statutes are repealed.

SECTION 14. 812.02 (title) of the statutes is amended to read:

812.02 (title) Garnishment before and after judgment.

SECTION 15. 812.02 (2) (a) of the statutes is repealed.

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SECTION 16. 812.02 (3) of the statutes is amended to read:

812.02 (3) ~~Except under sub. (2)(a), the~~ The plaintiff may in like manner, subsequently proceed against other garnishees and, if he has reason to believe they have subsequently become liable, against the same garnishee more than once.

SECTION 17. 812.04 (2) of the statutes is amended to read:

812.04 (2) The garnishee summons shall be substantially in the following form:

STATE OF WISCONSIN

.... COURT

.... COUNTY

A. B., Plaintiff

vs.

C. D., Defendant

and

E. F., Garnishee

The State of Wisconsin, to the garnishee:

You are hereby summoned, as garnishee of the defendant, C. D., and required, within 20 days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer, whether you are indebted to or have in your possession or under your control any property belonging to the defendant.

~~IF YOU ARE INDEBTED TO THE DEFENDANT, YOU ARE ORDERED TO PAY THE PRESCRIBED SUBSISTENCE ALLOWANCE TO THE DEFENDANT IF EARNINGS ARE THE SUBJECT MATTER OF THIS GARNISHMENT ACTION. IF YOU ARE INDEBTED TO THE DEFENDANT FOR PAYMENT FOR THE SALE OF AGRICULTURAL PRODUCTS, YOU ARE ORDERED TO PAY THE PRESCRIBED AMOUNT TO THE DEFENDANT. YOU ARE ORDERED TO RETAIN FROM THE BALANCE THE AMOUNT OF THE PLAINTIFF'S CLAIM AND DISBURSEMENTS, AS STATED IN THE ANNEXED COMPLAINT PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU HAVE PROPERTY OR EARNINGS BELONGING TO THE DEFENDANT AND THE AMOUNT OF INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND DISBURSEMENTS, YOU ARE TO RETAIN THE PROPERTY OR EARNINGS PENDING THE FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN SECTION 812.18 (3) OF THE WISCONSIN STATUTES. THE AMOUNT RETAINED BY YOU FOR THE PLAINTIFF'S DISBURSEMENTS MAY NOT EXCEED \$40.~~

You are further required to serve a copy of your answer to the garnishee complaint on the undersigned attorney and to file your original answer with the clerk of this court, within the 20-day period. In case of your fail-

ure to answer, judgment will be entered against you for the amount of plaintiff's judgment against the defendant and costs, of which the defendant will also take notice.

~~If earnings are the subject matter of this garnishment action, you are required under section 812.18 (2) of the Wisconsin Statutes to pay over to the principal defendant, on the date when the earnings subject to the garnishment action are normally payable, a subsistence allowance, out of the earnings then owing, in the sum of either 75% of the defendant's disposable earnings or 30 times the federal minimum hourly wage in effect at the time the earnings are payable, whichever is greater.~~

If the property which is the subject of this garnishment action is the proceeds from the sale of crops, live-stock, dairy products or another product grown or produced by a person or by his or her minor children, you must pay over to the principal defendant the appropriate amount under section 812.18 (2m) (b) of the Wisconsin Statutes.

Dated this day of, 19

Clerk of Court
(Seal)

Attorney for Plaintiff:

....

P. O. Address

....

....

SECTION 18. 812.05 (1) of the statutes is amended to read:

812.05 (1) The garnishee complaint in a garnishment action before judgment must allege the existence of one of the grounds for garnishment mentioned in s. 812.02 (1) (a), the amount of the plaintiff's claim against the defendant and disbursements, not to exceed \$40, above all off-sets, known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his or her possession or under his or her control, other than earnings, as defined under s. 812.30 (7), belonging to the defendant (naming him or her) and that the indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

SECTION 19. 812.07 (4) of the statutes is amended to read:

812.07 (4) Form of notice.

State of Wisconsin

.... Court

.... County

TO:

.....

.....

You are notified that an action has been commenced against you by on a claim of \$.... and that your (property)-(wages) in the hands of (has)-(have) been garnished to satisfy that claim.

Unless you demand a complaint as provided in the attached summons, or answer the garnishment com-

plaint, a copy of which can be obtained from the undersigned, judgment will be taken against you and your (property)-(wages) applied to pay the debt as provided by law.

Dated this day of 19

Plaintiff by:
Plaintiff's attorney
Address

SECTION 20. 812.11 (6) of the statutes is repealed.

SECTION 21. 812.18 (title) of the statutes is amended to read:

812.18 (title) **Liability of garnishee.**

SECTION 22. 812.18 (1) (a) of the statutes is renumbered 812.18 (1) and amended to read:

812.18 (1) From the time of the service of the summons and complaint upon the garnishee, the garnishee shall be liable to the plaintiff creditor for the property and earnings then in his or her the garnishee's possession or under his or her control belonging to the defendant debtor or in which he or she the debtor is interested to the extent of his or her right or interest therein and for all his or her the garnishee's debts due or to become due to the defendant debtor, except such as are exempt from execution, all sums or are required by a court to be paid by the defendant debtor as restitution under s. 973.20 or the amount of the subsistence allowance due the defendant under sub. (2) if earnings are the subject matter of the garnishment action, but not in excess of the amount of the plaintiff's claims as disclosed by the garnishee complaint and disbursements, not to exceed \$40 creditor's claim.

SECTION 23. 812.18 (1) (b) and (2) of the statutes are repealed.

NOTE: The duration of an earnings garnishment is now specified by ss. 812.35 and 812.40. The exemption is now specified by s. 812.34.

SECTION 24. 812.19 (5) of the statutes is amended to read:

812.19 (5) Property in a safe deposit box in any bank or safe deposit company is not property in the possession or control of such bank or safe deposit company within the meaning of this chapter subchapter.

SECTION 25. 812.23 of the statutes is repealed.

NOTE: See s. 812.42.

SECTION 26. 812.235 of the statutes is repealed.

NOTE: See s. 812.43.

SECTION 27. Subchapter II of chapter 812 of the statutes is created to read:

CHAPTER 812
SUBCHAPTER II
EARNINGS GARNISHMENT

812.30 Definitions. In this subchapter:

(1) "Business day" has the meaning given in s. 421.301 (6).

(2) "Court" includes a court commissioner assigned to preside at a proceeding under this subchapter.

(3) "Creditor" means a person who has a claim against a debtor.

(4) "Debtor" means the person whose earnings are subject to the garnishment and who is either the judgment debtor or the judgment debtor's spouse whose earnings are marital property.

(5) "Dependent" means the debtor's spouse if living in the debtor's household and any other individual whom the debtor is legally required to support and to whom the debtor provides substantial support or maintenance.

(6) "Disposable earnings" means that part of the earnings of the debtor remaining after deducting social security taxes and federal and state income taxes listed on the person's wage statement.

(7) "Earnings" means compensation paid or payable by the garnishee for personal services, whether designated as wages, salary, commission, bonus or otherwise, and includes periodic payments under a pension or retirement program.

(8) "Household income" means the disposable earnings of the debtor and dependents during any month in which the garnishment is in effect, plus unearned income received by the debtor and dependents in that month, less any of the debtor's earnings assigned by court order under ch. 767.

(9) "Need-based public assistance" means aid to families with dependent children, general relief, relief to needy Indian persons, medical assistance, supplemental security income, food stamps, or benefits received by veterans under s. 45.351 (1) or under 38 USC 501 to 562.

(10) "Poverty line" means the income guideline established under 42 USC 9902 (2).

NOTE: Subsection (6) is based on s. 815.18 (15) (a), 1987 stats. The definition in repealed s. 812.01 (6) was based on section 302 (b) of the consumer credit protection act. Court-ordered wage assignments for family support are not "amounts required by law to be withheld" for purposes of that definition. *Marshall v. District Court*, 444 F. Supp. 1110 (E.D. Mich., 1978). The new definition is intended to avoid confusion on that issue.

Subsection (7) is based on repealed s. 812.01 (5).

812.31 Procedure. (1) The procedures in this subchapter govern the garnishment of earnings, regardless of the amount of the judgment debt. Except as otherwise provided in this subchapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions under this subchapter. Section 799.06 (2) shall apply to actions under this subchapter.

(2) Venue for earnings garnishment is prescribed by s. 801.50; the garnishee shall be deemed a defendant for purposes of that statute.

(3) An earnings garnishment action may not be commenced in a county other than the county where the judgment is entered unless the judgment is docketed in that county.

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(4) Each pleading or other document in an earnings garnishment proceeding shall designate each party as creditor, debtor or garnishee.

NOTE: Under prior law, garnishments for \$2,000 or less were brought under ch. 799, stats., procedures. It is intended that this subchapter govern earnings garnishment procedure, regardless of the amount of the judgment.

812.32 Earnings garnishment generally. Earnings garnishment is an action to collect an unsatisfied civil judgment for money damages plus statutory interest and costs, from earnings payable by the garnishee to the debtor.

812.33 Garnishee fee. The creditor shall pay a \$15 fee to the garnishee for each earnings garnishment or each stipulated extension of that earnings garnishment. This fee shall be included as a cost in the creditor's claim in the earnings garnishment.

NOTE: The garnishee fee is increased from \$3 to \$15.

812.34 Exemption. (1) The exemptions provided in this section do not apply if the judgment debt meets one of the following conditions:

(a) Was ordered by a court under s. 128.21 or by a court of bankruptcy under Title 11, USC.

(b) Is for the support of any person.

(c) Is for unpaid taxes.

(2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) applies, 80% of the debtor's disposable earnings are exempt from garnishment under this subchapter.

(b) The debtor's earnings are totally exempt from garnishment under this subchapter if:

1. The debtor's household income is below the poverty line, or the garnishment would cause that result; or

2. The debtor receives need-based public assistance, has received such assistance within 6 months prior to service of the earnings garnishment forms upon the garnishee or has been determined eligible to receive need-based assistance although actual receipt of benefits has not commenced.

(3) The judicial conference shall adopt and make available schedules and worksheets to assist debtors in computing their eligibility for exemption under sub. (2)

(b) 1. The schedules shall divide the annual poverty line for families of various sizes by 12, rounding to the nearest dollar, and the worksheets shall assist debtors to compute their household incomes. The judicial conference shall develop separate schedules for debtors paid on a weekly, biweekly, semimonthly and monthly basis by dividing the annual poverty line by 52, 26, 24 and 12, respectively, and rounding to the nearest dollar. The judicial conference shall revise those schedules annually to reflect changes in the poverty line. The revised schedules shall take effect July 1 for earnings garnishments or extensions commencing thereafter.

NOTE: Subsection (1) is based on repealed s. 812.18 (2)

(b).

Subsection (2) is new. The exemption is generally increased from 75% to 80% of disposable earnings, and to 100% for debtors whose household incomes are below the federal poverty line. The exemption of earnings of recipients of need-based public assistance is based on Minnesota law and intended to promote the transition from welfare dependency to self-sufficiency. Basing the exemption on the federal poverty line allows for consideration of the needs of the debtor's dependents, as prior s. 425.106 (1) (a) 2., stats., did in limited cases, without periodic adjustment. The committee believes this exemption scheme is superior to the subsistence allowance of repealed s. 812.18 (2) in implementing article I, section 17, of the Wisconsin constitution.

Subsection (3) requires the judicial conference to adopt and annually revise schedules reflecting the federal poverty line for various family sizes, to assist debtors in determining eligibility for a complete exemption.

812.35 Commencement of action. (1) To commence an earnings garnishment proceeding, the judgment creditor shall file with the clerk of courts a garnishment notice under s. 812.44 (2).

(2) Upon receipt of the notice under sub. (1) and payment of the fee under s. 814.62 (1), the clerk of courts shall issue 2 earnings garnishment forms under s. 812.44 (3) for each garnishee. Blank earnings garnishment forms may be issued, but they shall carry the court seal. A circuit court may permit, by rule, the clerk to issue earnings garnishment forms after payment of the fee but before the filing of the notice under sub. (1). That circuit court rule shall require the notice to be filed with the court at a later time, but no later than 5 business days after the date the garnishee is served under sub. (3).

(3) (a) Within 60 days after filing the notice under sub. (1) and as specified under sub. (4) (c), the creditor shall serve one of the 2 earnings garnishment forms upon the debtor by one of the following means:

1. First class mail.

2. Certified mail, return receipt requested.

3. Any means permissible for the service of a summons in a civil action, other than publication.

(b) Within 60 days after filing the notice under sub. (1), the creditor shall serve one of the 2 earnings garnishment forms upon the garnishee by one of the means listed under par. (a) 1. to 3., or by other means if the garnishee signs an admission of service.

(4) (a) The creditor shall tender the garnishee fee under s. 812.33 to the garnishee at the time that the earnings garnishment form is served.

(b) The creditor shall serve all of the following on the debtor at the time that the earnings garnishment form is served:

1. An exemption notice under s. 812.44 (4).

2. An answer form under s. 812.44 (5).

3. The schedules and worksheets adopted under s. 812.34 (3).

(c) Service on the debtor shall be made within 7 business days after the date of service on the garnishee and at least 3 business days before the payday of the first pay

period affected by the garnishment. Service by mail is complete upon mailing.

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

(6) If the garnishee may become obligated to the debtor for earnings earned within pay periods beginning within 13 weeks after the date of service, but one or more earnings garnishments against the debtor have already been served on the garnishee and not terminated, the garnishee shall retain the earnings garnishment form and place the garnishment into effect the pay period after the last of any prior earnings garnishments terminates. The garnishee shall notify the debtor of the amount of the garnishment and shall notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after receipt of the garnishment form under sub. (3). If, before the earnings garnishment takes effect, the garnishee determines that it is unlikely that the garnishee will continue to be obligated to the debtor for earnings, the garnishee shall notify the creditor and court under sub. (5) within 7 business days after making that determination.

NOTE: This section governs the commencement of earnings garnishment actions.

Subsections (1) and (2) require a notice to be filed in court and a fee paid to the clerk of court, since garnishment is a judicial action.

Subsections (3) and (4) require service upon the garnishee and debtor to be accomplished within 60 days after filing. First class or certified mail is permitted for service. Under repealed s. 812.18 (1) (b), a garnishment affected earnings for the pay period in which served. Under this revision, unless a prior earnings garnishment is in effect, an earnings garnishment affects only earnings earned in pay periods beginning within 13 weeks *after* service upon the garnishee.

If multiple earnings garnishments are brought against the same garnishee and debtor, their priority is determined by the order of service upon the garnishee. The first affects pay periods beginning within 13 weeks after service on the garnishee, whereupon the 2nd is placed into operation and affects pay periods beginning within 13 weeks after it takes effect. To simplify administration by the garnishee, the bill allows only one earnings garnishment to affect any pay period, even if nonexempt earnings remain after the first judgment is satisfied. If the earnings garnishment expires before the judgment (including interest and costs) is satisfied, the creditor may file another earnings garnishment, but only after the first has expired. Likewise, the debtor and creditor may stipulate to an extension of the earnings garnishment to pay periods beginning within 13 weeks after the stipulation is served on the garnishee, but the stipulation is valid only if no other creditor serves an earnings garnishment before the earnings garnishment expires. See s. 812.40.

812.37 Debtor's answer. (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert any defense to the earnings garnishment, by completing the answer form and delivering or mailing it to the garnishee. The debtor or debtor's spouse may file an answer or an amended answer at any time before or during the effective period of the earnings garnishment.

(2) Whenever the garnishee receives a debtor's answer or amended answer, the garnishee shall mail a copy of the answer to the creditor by the end of the 3rd business day after receiving the debtor's answer, writing on that copy the date of receipt of the answer by the garnishee.

(3) Unless served with an order of the court directing otherwise, in determining whether to pay any part of the debtor's earnings to the creditor, the garnishee shall accept as true and binding any exemption claimed in the debtor's answer or any amended answer received before payment is made to the creditor under s. 812.39 (1).

NOTE: This section allows the debtor to assert a defense to the earnings garnishment, or to claim a complete exemption, by delivering or mailing an answer to the garnishee at any time before or during the effective period of the earnings garnishment. The garnishee must promptly send a copy of the answer to the creditor, and treat the debtor's answer as true until otherwise ordered by the court.

812.38 Judicial hearing. (1) (a) The creditor may file with the court a motion for a hearing and a written objection to the debtor's answer.

(b) The debtor may file with the court a written petition for relief from the earnings garnishment if the exemption percentage under s. 812.34 is insufficient for the debtor to acquire the necessities of life for the debtor and his or her dependents.

(c) Any party to the earnings garnishment may move the court to order any other party to comply with the provisions of this subchapter, or for other equitable relief.

(2) A motion or petition under sub. (1) may be made at any time during the pendency of the earnings garnishment. Within 5 business days after a motion or petition is filed under sub. (1), the court shall schedule the matter for a hearing to be held as promptly as practicable. The court shall notify the parties of the time and place of the hearing. Upon conclusion of the hearing, the court shall make findings of fact and conclusions of law. The court shall make such order as required by these findings and conclusions. If the order permits the garnishment to proceed, the date on which the order is served upon the garnishee shall substitute for the original date of service of the garnishment upon the garnishee under s. 812.35 (3) for the purpose of determining any 13-week period under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the order is served upon him or her.

(3) (a) If the court finds that the debtor's answer was asserted in bad faith, the court shall award the creditor actual damages, costs and reasonable attorney fees resulting from the additional proceedings.

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(b) If the court finds that the creditor objected to the debtor’s answer in bad faith, the court shall award the debtor actual damages, costs and reasonable attorney fees resulting from the additional proceedings.

(c) The court may order judgment for damages, costs and attorney fees assessed under this subsection. If the party in whose favor an attorney fee award is made is not indebted to his or her attorney for fees, the court shall award the attorney fee directly to the attorney and enter judgment in favor of the attorney. Upon motion of any party in interest, on notice, the court may make any order necessary to protect the rights of those interested.

NOTE: Subsection (1) allows for recourse to a judicial forum in various circumstances. Paragraph (a) permits the creditor to challenge the debtor’s claim of exemption or defense, which is otherwise binding on the garnishee. See s. 812.37 (3). Paragraph (b) allows the debtor to seek relief if the exemption under s. 812.34 is not adequate, in the debtor’s particular circumstances, to protect the debtor’s right to acquire the necessities of life for himself or herself and dependents. See article I, section 17, of the Wisconsin constitution. Paragraph (c) is a catch-all provision aimed at allowing judicial resolution of disputes relating to procedural irregularities, arithmetic calculations, priorities, etc.

Subsection (2) requires hearings under this section to be expedited, and authorizes the court to fashion appropriate relief on a prospective basis.

Subsection (3) allows the court to award actual damages, costs and attorney fees if it finds that the debtor or creditor has acted in bad faith.

812.39 Payment to creditor. (1) Between 5 and 10 business days after the payday of each pay period in which the debtor’s earnings are subject to the earnings garnishment, the garnishee shall pay the creditor that portion of the debtor’s nonexempt disposable earnings to which the creditor is entitled.

(2) Court-ordered assignments of the debtor’s earnings for support or maintenance under ch. 767, regardless of the date the garnishee first receives notice of the assignment, take priority over an earnings garnishment under this subchapter. If the debtor’s earnings are subject to assignment under s. 767.265, the creditor shall not be entitled to an amount greater than 25% of the debtor’s disposable earnings less the amount assigned under s. 767.265.

(3) The garnishee shall provide written notice to the debtor of any amounts paid to a creditor under this subchapter, at the time that the debtor’s earnings are paid to the creditor.

NOTE: Subsection (2) is mandated by 15 USC 1673 as construed in *Marshall v. District Court*, 444 F. Supp. 1110 (E.D. Mich. 1978). It may be illustrated as follows:

Debtor’s gross earnings	\$800
Less social security and tax withholding	<u>200</u>
Debtor’s disposable earnings	600
Amount due creditor under s. 812.34	120
25% disposable earnings	150
Debtor claims one dependent	

17% court-ordered wage assignment	136
Creditor’s payment	14

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

NOTE: This section permits the debtor and creditor to stipulate to an extension of an earnings garnishment. Debtors might agree to such extensions to minimize filing and service fees taxable against them if the creditor files additional earnings garnishment actions. The garnishee fee must be paid for each such extension, however. If other earnings garnishments are pending against the debtor, such extensions are void. The first garnishing creditor may file a new earnings garnishment when the first one expires, but this will not take effect until after any earnings garnishments filed while the first one was effective have expired.

812.41 Garnishee liability. (1) If the garnishee fails to pay over funds to which the creditor is entitled under this subchapter within the time required under s. 812.39, the creditor may, upon notice to all of the parties, move the court for judgment against the garnishee in the amount of the unsatisfied judgment plus interest and costs. The garnishee may assert the affirmative defense that the amount of the debtor’s nonexempt disposable earnings that the creditor should have been paid is less than the amount of the unsatisfied judgment balance. If the garnishee proves that defense, the garnishee’s liability is limited to the amount the creditor should have been paid or \$100, whichever is greater.

(2) The debtor may move the court for judgment against the garnishee for the debtor’s actual damages if the garnishee deducts more from the debtor’s earnings than is authorized by this subchapter.

(3) In any proceeding under sub. (2), the garnishee may assert the affirmative defense that the wrongful conduct of the garnishee was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. If the garnishee proves that defense, liability of the garnishee is limited to the return to the debtor of any exempt disposable earnings paid to the creditor.

NOTE: Subsection (1) allows the garnishee to limit liability of the garnishee to the greater of \$100 or the amount that the creditor would be paid had the garnishee performed.

Subsection (2) allows the debtor to recover actual damages from a garnishee who wrongfully overwithholds from the debtor's earnings.

Subsection (3) allows the garnishee to avoid liability for actual damages (other than return of improperly paid exempt earnings) by proving that the garnishee's dereliction was not intentional and due to a bona fide error notwithstanding the maintenance of procedures reasonably adapted to prevent any such error. Based on s. 425.301 (3), stats., sub. (3) recognizes that garnishees provide a public service by processing earnings garnishment actions and should not bear the risk of tort liability unless they fail to adopt reasonable procedures to ensure the proper processing thereof.

812.42 Garnishment of earnings of public officers and employees. (1) (a) This section does not apply or extend to money due to an officer or employe for reimbursement for expenditures made by him or her in the discharge of his or her duties.

(b) Actions under this section are subject to rules promulgated under s. 16.53 (1) (d) 4.

(2) (a) Except as provided in this section, the procedures in earnings garnishment actions brought against the state or a political subdivision of the state shall be as provided in this subchapter. The creditor shall serve the earnings garnishment forms under s. 812.35 upon the department of administration if the state is the garnishee; upon the city treasurer if a 1st class city is the garnishee; and upon the secretary or clerk if any other political subdivision is the garnishee.

(b) Notwithstanding ss. 812.35 and 812.40, a garnishment of earnings payable to a debtor by the state or a political subdivision of the state shall remain valid and effective until the judgment is satisfied, unless sooner terminated by order of the court.

(c) In addition to the \$15 garnishee fee, the garnishee shall receive a \$3 fee for each payment delivered to the creditor under s. 812.39 after the first payment. That additional fee shall be deducted from the moneys delivered to the creditor. Those fees become part of the funds of the state if the department of administration is the garnishee, or funds of the appropriate governmental subdivision if any other governmental entity is the garnishee. The judgment creditor shall pay the initial garnishee fee

(2) The notice filed by the creditor to initiate an earnings garnishment under s. 812.35 (1) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

to the treasurer of the state or other governmental subdivision, as applicable.

NOTE: This provision preserves the rule that earnings garnishments against employes of the state and its political subdivisions remain in effect until the judgment is satisfied or a court otherwise orders. The same agents for service and garnishee fees are prescribed as under current law; otherwise, the procedure is that specified in subch. II.

812.43 Retaliation by garnishee for earnings garnishment forbidden. Unless permitted under any applicable collective bargaining agreement, a garnishee shall not impose any fee or take any adverse action against a debtor by reason of the garnishment of the debtor's earnings. If a garnishee violates this section, the debtor may bring an action for reinstatement, back wages and benefits, restoration of seniority, other relief allowed by law and reasonable attorney fees incurred in bringing this action.

NOTE: The prohibitions in s. 812.235, stats., against discharging a debtor garnished for "any one indebtedness" is broadened to include other adverse actions taken by reason of a garnishment. A civil remedy is created in lieu of the current criminal penalty in s. 812.235, stats.

812.44 Forms. (1) (a) The judicial conference shall review the forms in this subchapter and may periodically revise those forms. Those revisions may not alter the rights of the parties under this subchapter. The judicial conference shall notify the clerks of court and any interested person of any forms revised under this subsection.

(b) No party may use a form substantially different from those in this subchapter as revised under this subsection. No party may alter those forms in a manner that may mislead any other party. If the court finds that a party has used a misleading form, the court shall award the aggrieved party actual damages, costs and reasonable attorney fees resulting from the additional proceeding.

(c) No garnishee is required to act as requested by any form in this subchapter that does not identify the parties as required by s. 812.31 (4) or that is illegibly completed or otherwise unintelligible. No garnishee is liable to any person for refusing to so act. The garnishee shall mail that form back to the sending party, if known, within 3 days after receipt. The garnishee shall include with the returned form a statement specifying the defect in the form and that the garnishee is not acting as requested by the form under the authority of this paragraph.

A.B., Creditor
vs.
C.D., Debtor
and

File or Reference Number
EARNINGS
GARNISHMENT
NOTICE

1993 Assembly Bill 570

E.F., Garnishee

To the Clerk of Circuit Court:

Please take and file notice that the creditor has today commenced an earnings garnishment action under subchapter II of chapter 812 of the Wisconsin Statutes against the debtor and the garnishee to collect an unsatisfied civil judgment. The judgment was entered on the day of, 19.., by (County Circuit or Federal District) Court. The case number of the action in which the judgment is entered is [and a transcript of the judgment was docketed in this county in file number]. The creditor's total claim for the unsatisfied portion of this judgment plus statutory interest and costs is \$....

The names and addresses last known to the creditor of the parties to this proceeding are as follows:

Debtor

Name:

Address:

Garnishee

Name:

Address:

Creditor

Name:

Address:

Creditor's Attorney

Name:

Address:

Signature of Creditor or Creditor's Attorney:

Date:

(3) The earnings garnishment form issued by the clerk under s. 812.35 (2) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

A.B., Creditor
vs.
C.D., Debtor
and
E.F., Garnishee

File or Reference Number ...
EARNINGS
GARNISHMENT

THE STATE OF WISCONSIN, To the garnishee:

The creditor has been awarded a court judgment that has not been paid. As a result, the creditor claims that a total of \$... is owed by the debtor, as follows:

- A. Unpaid balance on judgment \$....
- B. Unpaid postjudgment interest \$....
- C. Costs of this earnings garnishment (estimated) \$....
- TOTAL \$....

The creditor believes that you will owe the debtor for earnings within the next 13 weeks. If the \$15 fee is tendered with these papers, you are directed by the court to do the following:

DETERMINE WHETHER YOU
WILL OWE THE DEBTOR EARNINGS

1. Determine if you are likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks.
2. If you are not likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms.

IF THE DEBTOR SENDS YOU AN ANSWER

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

4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

MULTIPLE EARNINGS GARNISHMENTS

5. If the debtor's earnings are already being garnished when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

EARNINGS GARNISHMENTS LAST 13 WEEKS, EXCEPT FOR PUBLIC EMPLOYEES

6. The garnishment of the earnings of employes of the state of Wisconsin and its political subdivisions remain in effect until the judgment is satisfied. The garnishment of earnings of other employes will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnished. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.

PAYING THE CREDITOR

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. Payment is complete upon mailing.

EFFECT OF COURT-ORDERED ASSIGNMENTS FOR SUPPORT

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtor's disposable earnings is assigned for support by court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned and garnished does not exceed 25% of the debtor's disposable earnings.

EXTENSIONS

9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.

(4) The notice of exemption served upon the garnishee under s. 812.35 (4) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

A.B., Creditor vs. C.D., Debtor and E.F., Garnishee	File or Reference Number EXEMPTION NOTICE EARNINGS GARNISHMENT
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To the debtor:

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

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

- Unpaid balance on judgment \$....
- Unpaid postjudgment interest \$....
- Costs:
- a. Garnishment filing fee \$....
- b. Garnishee fee \$....

1993 Assembly Bill 570

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

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

Your earnings are completely exempt from garnishment if:

- 1. Your household income is below the federal poverty level, or this garnishment would cause that to happen. See the enclosed schedules and worksheet to determine if you qualify for this exemption.
2. You receive aid to families with dependent children, general relief, relief to needy Indian persons, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under USC 501 to 562 or section 45.351 (1) of the Wisconsin Statutes, or have received these benefits within the past 6 months.
3. At least 25% of your disposable earnings are assigned by court order for support.

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

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

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

IF YOU NEED ASSISTANCE
CONSULT AN ATTORNEY

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

PENALTIES

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

(5) The debtor's answer form under s. 812.37 shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

A.B., Creditor
vs.
C.D., Debtor
and
E.F., Garnishee

File or Reference Number
EARNINGS GARNISHMENT
DEBTOR'S ANSWER

To the garnishee:

My earnings are COMPLETELY EXEMPT from earnings garnishment because:

- 1. The judgment has been paid or is void.
.... 2. I receive, am eligible for, or have within 6 months received, aid to families with dependent children, general relief, relief to needy Indian persons, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of the Wisconsin Statutes.
.... 3. At least 25% of my disposable earnings are assigned for support by court order.
.... 4. My household income is less than the poverty line, or this garnishment would cause that to happen.
.... 5. I have another defense to this earnings garnishment (explain briefly).

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

DATE

Signature of Debtor

Address
Telephone Number
Date Received by Garnishee

(6) The creditor's objection to the debtor's answer and demand for hearing shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

A.B., Creditor	File or Reference Number
vs.	OBJECTION TO
C.D., Debtor	DEBTOR'S ANSWER
and	AND DEMAND FOR HEARING
E.F., Garnishee	EARNINGS GARNISHMENT

To the Clerk of Circuit Court:

I hereby object to the debtor's answer and demand a hearing to resolve the issues in controversy. By statute, this hearing must be held as soon as practicable after this objection and demand are filed. I object to the debtor's answer for the following reasons (explain briefly):

.....
.....

Please schedule this hearing and notify all parties.

To the best of my knowledge, the debtor's current address:

.... is the same as that stated in the notice I filed to commence this earnings garnishment.

.... is now

I understand that if I object to the debtor's answer in bad faith, I may be held liable to the debtor for actual damages, costs and reasonable attorney fees.

Date:

Creditor or Creditor's Attorney:

Address:

SECTION 28. Initial applicability. This act first applies to garnishment actions filed under chapter 812 of the statutes on the effective date of this SECTION.

SECTION 29. Effective date. This act takes effect on the first day of the 4th month beginning after publication.
