



2003 ASSEMBLY BILL 789

February 2, 2004 – Introduced by Representatives KRUSICK, AINSWORTH, ALBERS, NASS, OWENS and STONE, cosponsored by Senator ZIEN. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 812.40 and 812.42 (2) (b); and *to amend* 812.33, 812.35 (5),
2 812.35 (6), 812.44 (3) (form) and 812.44 (4) (form) of the statutes; **relating to:**
3 continuous garnishment of earnings.

Analysis by the Legislative Reference Bureau

Under current law, unless a garnishee is the state or a political subdivision of the state, a garnishment of earnings affects the debtor's earnings for all pay periods beginning within 13 weeks after the garnishment summons is served on the garnishee. The debtor and creditor may stipulate to successive 13-week extensions if no other creditors are attempting to garnish the debtor's earning and if the garnishee is paid an additional garnishee fee. If the garnishee is the state or a political subdivision, the garnishment stays in effect until the judgment is satisfied.

This bill provides that all garnishments of earnings stay in effect until the judgment is satisfied.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

4 **SECTION 1.** 812.33 of the statutes is amended to read:

ASSEMBLY BILL 789

1 **812.33 Garnishee fee.** The creditor shall pay a \$15 fee to the garnishee for
2 each earnings garnishment ~~or each stipulated extension of that earnings~~
3 ~~garnishment~~. This fee shall be included as a cost in the creditor's claim in the
4 earnings garnishment.

5 **SECTION 2.** 812.35 (5) of the statutes is amended to read:

6 812.35 (5) Upon being served, the garnishee shall determine whether the
7 garnishee may become obligated to the debtor for earnings earned within pay periods
8 beginning ~~within 13 weeks~~ after the date of service. If it is unlikely that the
9 garnishee will become so obligated, the garnishee shall send a statement of that fact
10 to the creditor by the end of the 7th business day after receiving the earnings
11 garnishment form under sub. (3). The creditor shall send a copy of this statement
12 to the court within 7 business days after receipt of the statement.

13 **SECTION 3.** 812.35 (6) of the statutes is amended to read:

14 812.35 (6) If the garnishee may become obligated to the debtor for earnings
15 earned within pay periods beginning ~~within 13 weeks~~ after the date of service, but
16 one or more earnings garnishments against the debtor have already been served on
17 the garnishee and not terminated, the garnishee shall retain the earnings
18 garnishment form and place the garnishment into effect the pay period after the last
19 of any prior earnings garnishments terminates. The garnishee shall notify the
20 debtor of the amount of the garnishment and shall notify the creditor of the amount
21 owed on the pending garnishments by the end of the 7th business day after receipt
22 of the garnishment form under sub. (3). If, before the earnings garnishment takes
23 effect, the garnishee determines that it is unlikely that the garnishee will continue
24 to be obligated to the debtor for earnings, the garnishee shall notify the creditor and
25 court under sub. (5) within 7 business days after making that determination.

ASSEMBLY BILL 789

1 DETERMINE WHETHER YOU WILL

2 OWE THE DEBTOR EARNINGS

3 1. Determine if you are likely to owe the debtor for earnings in pay periods
4 beginning ~~within the next 13 weeks~~ after the date of service.

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

9 IF THE DEBTOR SENDS

10 YOU AN ANSWER

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

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

18 MULTIPLE EARNINGS

19 GARNISHMENTS

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

ASSEMBLY BILL 789

1 earnings, place this earnings garnishment into effect the pay period after you receive
2 it.

EARNINGS GARNISHMENTS**LAST 13 WEEKS,****EXCEPT FOR PUBLIC EMPLOYEES**

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

PAYING THE CREDITOR

16
17 7. Between 5 and 10 business days after each payday of a pay period affected
18 by this earnings garnishment, pay the creditor 20% of the debtor's disposable
19 earnings for that pay period. Payment is complete upon mailing.

EFFECT OF COURT-ORDERED**ASSIGNMENTS FOR SUPPORT**

20
21
22 8. If the debtor has assigned his or her earnings for support by court order, those
23 support payments take priority over this earnings garnishment. If 25% or more of
24 the debtor's disposable earnings is assigned for support by court order, do not pay any
25 part of the debtor's earnings to the creditor. Instead, send the creditor a statement

ASSEMBLY BILL 789

1 of that fact by the end of the 7th business day after you receive these forms. If less
 2 than 25% of the debtor's earnings is assigned for support by court order, the amount
 3 the creditor must be paid is reduced so that the total of earnings assigned and
 4 garnisheed does not exceed 25% of the debtor's disposable earnings.

EXTENSIONS

5
 6 ~~9. The debtor and creditor may agree in writing to extend this earnings~~
 7 ~~garnishment for additional pay periods beginning within 13 weeks after this~~
 8 ~~earnings garnishment would otherwise terminate. If you receive a written extension~~
 9 ~~stipulation, and an additional garnishee fee for each extension, you must honor it~~
 10 ~~unless a different garnishment against this debtor's earnings is served upon you~~
 11 ~~before the extension takes effect. In that case, the extension is void and you must~~
 12 ~~return the extension fee to the party who paid it to you.~~

SECTION 7. 812.44 (4) (form) of the statutes is amended to read:

812.44 (4) (form)

STATE OF WISCONSIN

CIRCUIT COURT:.... County

A.B., Creditor

vs.

File or Reference Number....

C.D., Debtor

EXEMPTION NOTICE

and

EARNINGS GARNISHMENT

E.F., Garnishee

ASSEMBLY BILL 789

1 To the debtor:

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

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

9	Unpaid balance on judgment	\$....
10	Unpaid postjudgment interest	\$....
11	Costs:	
12	a. Garnishment filing fee	\$....
13	b. Garnishee fee	\$....
14	c. Service of process (estimate)	\$....
15	TOTAL	\$....

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

19 Your earnings are completely exempt from garnishment if:

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

23 2. You receive aid to families with dependent children, relief funded by a relief
24 block grant under ch. 49, relief provided by counties under section s. 59.53 (21) of the
25 Wisconsin Statutes, medical assistance, supplemental security income, food stamps,

ASSEMBLY BILL 789**SECTION 7**

1 or veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of
2 the Wisconsin Statutes, or have received these benefits within the past 6 months.

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

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

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

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

14 **IF YOU NEED ASSISTANCE**

15 **CONSULT AN ATTORNEY**

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

22 **PENALTIES**

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

