



1997 ASSEMBLY BILL 840

March 2, 1998 - Introduced by Representatives GREEN, AINSWORTH, HANSON, GOETSCH, MUSSER and STASKUNAS, cosponsored by Senators FARROW, HUELSMAN and FITZGERALD. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 812.34 (1) (a), 812.34 (2) (b) (intro.) and 1., 812.37 (1), 812.37
2 (2), 812.38 (1) (b) and 812.38 (2); and **to create** 812.34 (2) (c) of the statutes;
3 **relating to:** garnishment of earnings.

Analysis by the Legislative Reference Bureau

Under current law, a person who owes a debt may have part of his or her earnings garnished (set aside by his or her employer) to pay that debt if the creditor commences an action and follows certain procedures. Current law exempts all of a debtor's earnings from garnishment if the disposable income of the debtor and his or her dependents is below the poverty line or if the garnishment would cause the disposable income of the debtor and his or her dependents to be below the poverty line. Under this bill, the debtor's earnings are exempt from garnishment if the disposable income of the debtor is below the poverty line. In addition, if the garnishment would cause the disposable income of the debtor and his or her dependents to be below the poverty line, this bill limits the garnishment to the income in excess of the poverty line.

Currently, debtors are given schedules and worksheets to assist them in determining if they can claim any exemptions from garnishment, such as having insufficient income or being in receipt of an aid program such as food stamps or medical assistance. The debtor currently may answer the garnishment by claiming an exemption or asserting a defense. This bill requires the debtor to include with that answer the completed schedules and worksheets provided to the debtor by the creditor. If the debtor fails to provide the schedules and worksheets and the creditor

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requests a court hearing in response to the debtor's answer, the bill requires the court to award the creditor his or her costs related to the motion requesting the hearing in an amount of not less than \$50.

Under current law, the debtor may file a petition with the court for relief from an earnings garnishment. The bill requires the debtor to include in that petition specific grounds for the relief and any additional information necessary to support the petition.

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

1 **SECTION 1.** 812.34 (1) (a) of the statutes is amended to read:

2 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
3 under Title 11, USC 1301 et seq.

4 **SECTION 2.** 812.34 (2) (b) (intro.) and 1. of the statutes are amended to read:

5 812.34 (2) (b) (intro.) The debtor's earnings are ~~totally~~ exempt from
6 garnishment under this subchapter if:

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

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

10 812.34 (2) (c) If a garnishment under this subchapter would result in the
11 debtor's household income being below the poverty line, the amount of the
12 garnishment is limited to the debtor's household income in excess of the poverty line
13 before the garnishment is in effect.

14 **SECTION 4.** 812.37 (1) of the statutes is amended to read:

15 812.37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert
16 any defense to the earnings garnishment, by completing the answer form, schedules
17 and worksheets provided under s. 812.35 (4) (b) and delivering or mailing it them to
18 the garnishee. The debtor or debtor's spouse may file an answer or an amended

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1 answer with the schedules and worksheets at any time before or during the effective
2 period of the earnings garnishment.

3 **SECTION 5.** 812.37 (2) of the statutes is amended to read:

4 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
5 answer, schedules and worksheets, the garnishee shall mail a copy of the answer,
6 schedules and worksheets to the creditor by the end of the 3rd business day after
7 receiving the debtor's answer, schedules and worksheets, writing on that copy the
8 date of receipt of the answer, schedules and worksheets by the garnishee.

9 **SECTION 6.** 812.38 (1) (b) of the statutes is amended to read:

10 812.38 (1) (b) The debtor may file with the court a written petition for relief
11 from the earnings garnishment if the exemption percentage under s. 812.34 is
12 insufficient for the debtor to acquire the necessities of life for the debtor and his or
13 her dependents. The petition shall state with reasonable specificity the grounds for
14 the relief requested and shall include any additional information necessary to
15 support the petition.

16 **SECTION 7.** 812.38 (2) of the statutes is amended to read:

17 812.38 (2) A motion or petition under sub. (1) may be made at any time during
18 the pendency of the earnings garnishment. Within 5 business days after a motion
19 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
20 to be held as promptly as practicable. The court shall notify the parties of the time
21 and place of the hearing. Upon conclusion of the hearing, the court shall make
22 findings of fact and conclusions of law. If the debtor has failed to produce the
23 schedules and worksheets necessary to support a claim for exemptions or other
24 defenses, the court shall award the creditor his or her costs related to the motion in
25 an amount of not less than \$50. An award under this subsection may not substitute

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1 for or replace an award made under sub. (3). The court shall make such order as
2 required by these findings and conclusions. If the order permits the garnishment to
3 proceed, the date on which the order is served upon the garnishee shall substitute
4 for the original date of service of the garnishment upon the garnishee under s. 812.35
5 (3) for the purpose of determining any 13-week period under s. 812.35 (5) or (6). A
6 court order shall bind the garnishee from the time the order is served upon him or
7 her.

SECTION 8. Initial applicability.

8
9 (1) This act first applies to earnings garnishments commenced on the effective
10 date of this subsection.

SECTION 9. Effective date.

11
12 (1) This act takes effect on the first day of the 4th month beginning after
13 publication.

14 (END)