



2005 SENATE BILL 319

September 7, 2005 - Introduced by Senator ELLIS, cosponsored by Representative HAHN, by request of Ken Tschantz. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT to amend** 812.04 (2), 812.05 (1), 812.05 (2) and 812.13 (1) of the statutes;
2 **relating to:** recovery of costs in nonearnings garnishments.

Analysis by the Legislative Reference Bureau

Current law permits a creditor in a garnishment of earnings to recover all costs associated with the action, but permits a creditor to recover not more than \$40 of costs in a nonearnings garnishment. This bill removes this \$40 limit on the recovery of costs in a nonearnings garnishment.

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

3 **SECTION 1.** 812.04 (2) of the statutes is amended to read:
4 812.04 (2) The garnishee summons shall be substantially in the following form:
5 STATE OF WISCONSIN
6 COURT
7 COUNTY
8 A. B., Plaintiff

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1 vs.

2 C. D., Defendant

3 and

4 E. F., Garnishee

5 The State of Wisconsin, to the garnishee:

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

10 IF YOU ARE INDEBTED TO THE DEFENDANT FOR PAYMENT FOR THE
11 SALE OF AGRICULTURAL PRODUCTS, YOU ARE ORDERED TO PAY THE
12 PRESCRIBED AMOUNT TO THE DEFENDANT. YOU ARE ORDERED TO
13 RETAIN FROM THE BALANCE THE AMOUNT OF THE PLAINTIFF'S CLAIM
14 AND DISBURSEMENTS, AS STATED IN THE ANNEXED COMPLAINT
15 PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS
16 INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU
17 HAVE PROPERTY BELONGING TO THE DEFENDANT AND THE AMOUNT OF
18 INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND
19 DISBURSEMENTS, YOU ARE TO RETAIN THE PROPERTY PENDING THE
20 FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN SECTION
21 812.18 (3) OF THE WISCONSIN STATUTES. ~~THE AMOUNT RETAINED BY YOU~~
22 ~~FOR THE PLAINTIFF'S DISBURSEMENTS MAY NOT EXCEED \$40.~~

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

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

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

8 Dated this day of, (year)

9 Clerk of Court

10 (Seal)

11 Attorney for Plaintiff:

12

13 P. O. Address

14

15

16 **SECTION 2.** 812.05 (1) of the statutes is amended to read:

17 812.05 (1) The garnishee complaint in a garnishment action before judgment
18 must allege the existence of one of the grounds for garnishment mentioned in s.
19 812.02 (1) (a), the amount of the plaintiff's claim against the defendant and
20 disbursements, ~~not to exceed \$40,~~ above all offsets, known to the plaintiff, and that
21 plaintiff believes that the named garnishee is indebted to or has property in his or
22 her possession or under his or her control, other than earnings, as defined under s.
23 812.30 (7), belonging to the defendant (naming him or her) and that the indebtedness
24 or property is, to the best of plaintiff's knowledge and belief, not exempt from
25 execution.

SENATE BILL 319**SECTION 3**

1 **SECTION 3.** 812.05 (2) of the statutes is amended to read:

2 812.05 (2) The garnishee complaint in a garnishment action after judgment
3 must allege the existence of the grounds for garnishment mentioned in s. 812.02 (1)
4 (b), and the name and location of the court, case number, if any, date of entry and
5 amount of the judgment on which the garnishment action is based, the amount of the
6 plaintiff's claim against the defendant and disbursements, ~~not to exceed \$40~~, above
7 all offsets known to the plaintiff, and that plaintiff believes that the named garnishee
8 is indebted to or has property in his or her possession or under his or her control
9 belonging to the defendant (naming him or her) and that the indebtedness or
10 property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

11 **SECTION 4.** 812.13 (1) of the statutes is amended to read:

12 812.13 (1) If the answer shows a debt due to the defendant, the garnishee may
13 pay the debt or an amount sufficient to cover the plaintiff's claim, as stated in the
14 garnishee complaint, and disbursements, ~~not to exceed \$40~~, to the clerk of the court.
15 If prior to so doing, the plaintiff in writing requests the garnishee to pay the sum to
16 the clerk, the garnishee shall, within 5 days after receipt of the request, pay the sum
17 to the clerk. The clerk shall give a receipt for payment to the garnishee. The payment
18 shall discharge the garnishee of all liability for the amount paid.

19 **SECTION 5. Initial applicability.**

20 (1) This act first applies to a garnishment action commenced on the effective
21 date of this section.

22 **SECTION 6. Effective date.**

23 (1) This act takes effect on the first day of the 4th month beginning after
24 publication.

25

(END)