



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4035/1
TKK:klm&wlj

2017 SENATE BILL 397

August 31, 2017 - Introduced by Senators WANGGAARD, STROEBEL, NASS and KAPENGA, cosponsored by Representatives HUTTON, TUSLER, ALLEN, BALLWEG, GANNON, HORLACHER, JARCHOW, KUGLITSCH, MURPHY, QUINN, ROHRKASTE and SPIROS. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT to repeal** 812.40, 812.405 and 812.42 (2) (b); **to amend** 812.33 (1), 812.35
2 (5), 812.35 (6), 812.38 (2), 812.44 (3) and 812.44 (4); and **to create** 812.395 of
3 the statutes; **relating to:** eliminating the 13-week limit on the garnishment
4 of earnings of certain debtors.

Analysis by the Legislative Reference Bureau

This bill eliminates the 13-week limit imposed on the garnishment of earnings of certain debtors. Under current law, a creditor may file a garnishment notice with a court and pay a fee to a garnishee for the purpose of collecting an unsatisfied judgment for money damages from earnings owed to the debtor by the garnishee. Current law limits the number of weeks in which the earnings of a debtor, other than a debtor who is an employee of the state or a political subdivision of the state, may be garnished to 13 weeks.

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

5 **SECTION 1.** 812.33 (1) of the statutes is amended to read:

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

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

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

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

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

25 **SECTION 4.** 812.38 (2) of the statutes is amended to read:

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1 812.38 (2) A motion or petition under sub. (1) may be made at any time during
2 the pendency of the earnings garnishment. Within 5 business days after a motion
3 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
4 to be held as promptly as practicable. The court shall notify the parties of the time
5 and place of the hearing. Upon conclusion of the hearing, the court shall make
6 findings of fact and conclusions of law. The court shall make such order as required
7 by these findings and conclusions. ~~If the order permits the garnishment to proceed,~~
8 ~~the date on which the order is served upon the garnishee shall substitute for the~~
9 ~~original date of service of the garnishment upon the garnishee under s. 812.35 (3) for~~
10 ~~the purpose of determining any 13-week period under s. 812.35 (5) or (6).~~ A court
11 order shall bind the garnishee from the time the order is served upon him or her.

12 **SECTION 5.** 812.395 of the statutes is created to read:

13 **812.395 Garnishment of earnings remains in effect.** A garnishment of
14 earnings payable to a debtor, including a debtor who owes victim restitution ordered
15 under s. 973.20 (1r), remains valid and effective until the judgment is satisfied,
16 unless sooner terminated by order of the court.

17 **SECTION 6.** 812.40 of the statutes is repealed.

18 **SECTION 7.** 812.405 of the statutes is repealed.

19 **SECTION 8.** 812.42 (2) (b) of the statutes is repealed.

20 **SECTION 9.** 812.44 (3) of the statutes is amended to read:

21 812.44 (3) The earnings garnishment form issued by the clerk under s. 812.35
22 (2) shall be in substantially the following form:

23 STATE OF WISCONSIN

24 CIRCUIT COURT: County

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A.B., Creditor

vs.

File or Reference Number

C.D., Debtor

EARNINGS

and

GARNISHMENT

E.F., Garnishee

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~~ after the date on which you receive this form. 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~~ earned on or after the date on which you receive this form.

2. If you are not likely to owe the debtor for earnings ~~in pay periods beginning within the next 13 weeks~~ earned on or after the date on which you receive this form,

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1 send a statement stating that fact to the creditor by the end of the 7th business day
2 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 of
5 the answer form to the creditor by the end of the 3rd business day after receipt of that
6 form. Include the date you received the answer form on the copy sent to the creditor.

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

10 **MULTIPLE EARNINGS GARNISHMENTS**

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

19 **~~EARNINGS GARNISHMENTS LAST 13 WEEKS,~~**

20 **~~EXCEPT FOR PUBLIC EMPLOYEES~~**

21 **~~AND EXCEPT FOR GARNISHMENTS TO~~**

22 **~~SATISFY AN ORDER FOR VICTIM RESTITUTION~~**

23 **REMAIN IN EFFECT UNTIL THE JUDGMENT IS SATISFIED**

24 6. The garnishment of the earnings of employees of the state of Wisconsin and
25 its political subdivisions, and a garnishment to satisfy an order for victim restitution

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1 under s. 973.20 (1r) for victim restitution remains in effect until the judgment is
2 satisfied. ~~The garnishment of earnings of other employees will affect the debtor's~~
3 ~~earnings for all pay periods beginning within 13 weeks after you receive it, unless~~
4 ~~the debtor's earnings are already being garnisheed. If this earnings garnishment is~~
5 ~~delayed under paragraph 5, above, it will affect the debtor's earnings for all pay~~
6 ~~periods beginning within 13 weeks after the first day of the pay period that you put~~
7 ~~this earnings garnishment into effect. If the amount claimed by the creditor is fully~~
8 ~~paid before the end of the 13 weeks, this earnings garnishment will terminate at that~~
9 ~~point.~~

PAYING THE CREDITOR

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

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

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

EXTENSIONS

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~~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.~~

SECTION 10. 812.44 (4) of the statutes is amended to read:

812.44 (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.

File or Reference Number

C.D., Debtor

EXEMPTION NOTICE

and

EARNINGS GARNISHMENT

E.F., Garnishee

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, (year) 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

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1 some of your earnings to satisfy part or all of the judgment against you or your
2 spouse.

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

4 Unpaid balance on judgment

\$....

5 Unpaid postjudgment interest

\$....

6 Costs:

7 a. Garnishment filing fee

\$....

8 b. Garnishee fee

\$....

9 c. Service of process (estimate)

\$....

10 TOTAL

\$....

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

14 Your earnings are completely exempt from garnishment if:

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

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

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1 or veterans benefits based on need under ~~38 USC 501 to 562~~ 38 USC 1501 to 1562
2 or section 45.351 (1) of the Wisconsin Statutes, or have received these benefits within
3 the past 6 months.

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

6 If the garnishment of 20% of your disposable income would result in the income
7 of your household being below the poverty line, the garnishment is limited to the
8 amount of your household's income in excess of the poverty line.

9 If you qualify for a complete exemption or for a limit on the amount of the
10 garnishment to the amount that your household's income exceeds the poverty line,
11 you must give or mail a copy of the enclosed debtor's answer form to the garnishee
12 in order to receive that increased exemption.

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

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

19 IF YOU NEED ASSISTANCE

20 CONSULT AN ATTORNEY

21 If you have earnings that are being garnisheed that are exempt or subject to a
22 defense, the sooner you file your answer or seek relief from the court, the sooner such
23 relief can be provided. This earnings garnishment affects your earnings in pay
24 periods beginning ~~within 13 weeks~~ after it was served on the garnishee. ~~You may~~

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SECTION 10

1 ~~agree in writing with the creditor to extend it for additional 13-week periods until~~
2 ~~the debt is paid.~~

3 **PENALTIES**

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

7 **SECTION 11. Initial applicability.**

8 (1) This act first applies to an earnings garnishment proceeding commenced on
9 the effective date of this act.

10 **(END)**