

D R A F T

FOR DISCUSSION ONLY

WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR
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WAGE GARNISHMENT ACT

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 4, 2015

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WAGE GARNISHMENT ACT

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1 **WAGE GARNISHMENT ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Wage Garnishment Act.

3 **SECTION 2. DEFINITIONS.** In this [act]:

4 (1) “Creditor” means a person that has an enforceable money judgment against a debtor.

5 The term includes a successor in interest.

6 (2) “Debtor” means an individual against whom a creditor has an enforceable money
7 judgment, but only under and to the extent of the judgment.

8 (3) “Disposable wages” means wages remaining after withholdings required by law. The
9 term does not include an involuntary withholding.

10 (4) “Electronic” means relating to technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities.

12 (5) “Employee” means an individual treated by an employer as an employee for federal
13 income tax purposes. The term includes a former employee who is owed wages.

14 (6) “Employer” means a person that owes or will owe wages to an employee.

15 (7) “Garnishee” means an employer served with a [complaint][motion] in a garnishment
16 action.

17 (8) “Involuntary withholding” means an act by an employer to withhold some part of the
18 wages of an employee for delivery to another person. The term includes a wage garnishment; a
19 support order; an order to recover federal, state, or local taxes; and an administrative order issued
20 by a federal [or state] agency. The term does not include withholding wages with the consent of
21 the employee or for current tax obligations.

22 (9) “Original creditor” means a person to which a debtor originally owed the obligation
23 for which a wage garnishment is sought.

1 (10) "Person" means an individual, estate, business or nonprofit entity, public
2 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
3 entity.

4 (11) "Record" means information that is inscribed on a tangible medium or that is stored
5 in an electronic or other medium and is retrievable in perceivable form.

6 (12) "Regular payday" means a day on which an employer pays wages to an employee
7 subject to wage garnishment for a pay period. If a regular payday is uncertain or less often than
8 once a month, the term means any day on which an employer pays or expects to pay wages to the
9 employee.

10 (13) "Send" means:

11 (A) deposit a record in the mail with a proper address and with first-class postage
12 provided;

13 (B) deliver a record by any other usual means of communication to a proper
14 address and with the cost of transmission provided; or

15 (C) cause a record to be received in any other way within the time it would have
16 arrived under paragraph (A).

17 (14) "Sign" means, with present intent to authenticate a record:

18 (A) to execute or adopt a tangible symbol; or

19 (B) to attach to or logically associate with the record an electronic symbol, sound,
20 or process.

21 (15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
23 the United States.

1 (16) “Support order” means a judgment, decree, order, decision, or directive, whether
2 temporary, final, or subject to modification, issued in a state or foreign country for the benefit of
3 a child, spouse, or former spouse, which provides for monetary support, health care, arrearages,
4 retroactive support, or reimbursement for financial assistance provided to an individual creditor
5 in place of child support. The term may include related costs and fees, interest, income
6 withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

7 (17) “Wage garnishment” means an involuntary withholding for delivery to a creditor
8 pursuant to a wage garnishment action.

9 (18) “Wage garnishment action” means a legal proceeding for a wage garnishment.

10 (19) “Wages” means

11 **Alternative A**

12 compensation owed by an employer to an employee for personal services. The term includes
13 salary, commissions, bonuses, profit-sharing distributions, severance payments, and periodic
14 pension and disability payments.

15 **Alternative B**

16 the total wages, tips, and other compensation subject to federal income tax owed by an employer
17 to an employee plus any amount the employee earns but is not owed because the employee
18 elected to contribute the amount to a retirement account providing for deferred taxation.

19 **End of Alternatives**

20 **Reporter’s Notes**

21
22 “Disposable wages” is the same substantively as the definition of “disposable earnings” in the
23 federal Consumer Credit Protection Act (CCPA), 15 U.S.C. § 1671-1677. (It has been modified a
24 bit to have the language conform better to ULC drafting standards; we have changed “earnings”
25 to the more commonly understood “wages.”) The types of deductions permitted are well-
26 understood under the CCPA (federal, state, and local withholding taxes; social security and
27 Medicare taxes; mandatory deductions for state disability or unemployment insurance;

1 mandatory contributions to a state employee pension plan; and mandatory contributions under
2 the Railroad Retirement Act). The vast majority of states currently follow the CCPA definition
3 of disposable earnings. A few states, however, permit other things to be deducted from
4 disposable earnings (such as union dues and initiation fees and insurance contributions). This Act
5 is officially neutral on these other deductions. The calculation worksheet in Section 7 below
6 includes a line to accommodate them, but is silent otherwise. However, we should consider
7 encouraging all states to adopt the standard CCPA definition. The reasons for this are: (1) this
8 will ease administration and further the ULC’s goals in uniformity; (2) if a state wants its statute
9 to be more protective of worker income, placing that generosity in the minimum exemption or
10 the withholding limit would be broader-based and easier to administer; and (3) these particular
11 types of additional deductions, while intended to help protect workers, are not well-targeted to
12 the most needy workers.

13
14 “Electronic” is a standard ULC definition.

15
16 “Employee” defers to federal income tax law to determine who is an employee under the Act.
17 See I.R.C. § 3121(d)(“any individual who, under the usual common law rules applicable in
18 determining the employer/employee relationship, has the status of an employee”); Rev. Rul. 87-
19 41 (setting out a 20-factor test for making the determination). One function of this deferral is to
20 establish the boundaries of this Act. It means, for example, that the Act simply does not apply to
21 attempted garnishments of distributions to partners or LLC members since they are not
22 “employees.” The creditor representative on the drafting committee said that this exclusion is
23 acceptable since charging orders are available. Although not protected under this Act, if partners
24 or LLC members want to claim protection against charging orders under other law (including the
25 Consumer Credit Protection Act), this Act would not prevent that. The deferral to federal tax law
26 has several advantages: (1) the determination of employee status is one employers will have to
27 make for other reasons; (2) the rule is relatively easy for employers to apply; (3) it will largely
28 remove debates (and litigation) about proper classification from wage garnishment proceedings;
29 (4) it avoids the need to analyze how workers who are not treated as employees by an employer
30 would have been compensated had they been treated as employees (e.g., to determine their
31 disposable earnings); and (5) it should not skew employer classification decisions as they are
32 likely to be driven by issues other than wage garnishment. For all these reasons, this deferral
33 should improve the uniformity and efficiency of the Act. Having said all that, the drafting
34 committee will discuss at its next meeting whether to expand the reach of the Act by extending
35 its processes and protections to others, such as independent contractors, partners, and LLC
36 members.

37
38 “Garnishee.” For an explanation of the “[complaint][motion]” construction, see the first note
39 after Section 5.

40
41 “Involuntary withholding” is a term that encompasses both wage garnishments under this Act
42 (which are limited to debt garnishments) and “garnishments” for other purposes, such as child
43 support and federal or state taxes.

44
45 “Original creditor.” See the note after Section 6 on the use of this term.

46

1 “Person” is a standard ULC definition.

2
3 “Record” is a standard ULC definition.

4
5 “Sign” is a standard ULC definition.

6
7 “State” is a standard ULC definition.

8
9 “Support order.” This definition follows the definitions that define the coverage of the Uniform
10 Interstate Family Support Act (UIFSA). An alternative would be to define “support order” to
11 mean an order enforceable under UIFSA, which every State has adopted. This would perhaps be
12 even clearer about the intent (which is to exclude support orders governed by UIFSA). But the
13 Joint Editorial Board for Uniform Family Laws has expressed its support for this definition, so
14 that is the one we included.

15
16 For “wages,” we provide two alternative definitions. Alternative A closely tracks the definition
17 of “earnings” in the CCPA. (Again, we have changed the word “earnings” as used in the CCPA
18 and most state garnishment laws to the more commonly understood “wages.”) This has the
19 advantage of tracking the CCPA and, thereby, avoids any claim that this Act is less protective
20 than the CCPA. On the other hand, this definition will also have the effect of capturing the many
21 decisions interpreting this language under state law and the CCPA, and those cases are not
22 perfectly consistent. Thus, using the language will lead to inconsistent application and lack of
23 uniformity. It will also be more difficult for employers to determine the proper amount than
24 Alternative B. Alternative B closely tracks the definition of wages under the federal income tax.
25 The first part of the definition will capture all of the income included in Box 1 of the standard
26 W-2 form, while the second part will capture additional income that would be included in Box
27 12 of the W-2 form for elective deferrals under various provisions of the Internal Revenue Code
28 (such as §§ 401(k), 403(b), 408(k), and 457(b) deferrals) and for designated deductible Roth
29 contributions. This would have the advantage of calling on a large, nationally consistent body of
30 law for making the earnings/non-earnings distinction and it would be efficient since employers
31 need to make these categorizations for other reasons. On the other hand, it would be a significant
32 change from the current way of thinking about the issue and, as a result, may be startling.

33
34 **SECTION 3. SCOPE.**

35 (a) This [act] applies only to a wage garnishment action.

36 (b) This [act] does not apply to any other remedy that might be available to a creditor
37 under law other than this [act].

38 (c) This [act] does not apply to an involuntary withholding that is not a wage
39 garnishment, including an involuntary withholding pursuant to:

- 1 (1) an order of a bankruptcy court;
- 2 (2) a debt due for a federal, state, or local tax; [or]
- 3 (3) a support order[.]; or
- 4 [(4) other specified involuntary withholdings.]

5 (d) This [act] is subject to any law that prohibits or limits wage garnishment for a
6 particular class of individuals or in a particular circumstance.

7 **Reporter's Notes**

8
9 Subsection (c)(4) permits states to narrow the applicability of the Act. At the extreme, the option
10 could be used to preclude most forms of debt garnishment. Even with such an expansive
11 exclusion, however, a State might be interested in enacting the Act to provide a fair process for
12 enforcing wage garnishments that arrive from other states. Texas, for example, has a
13 constitutional prohibition on debt garnishment which prohibits Texas courts from issuing wage
14 garnishment orders themselves. But Texas courts do enforce wage garnishment orders that come
15 from other states. See *Knighton v. IBM Corp.*, 856 S.W.2d 210 (Tex. App. 1993).

16
17 This section permits states to incorporate state-specific restrictions on wage garnishment. Some
18 states have such restrictions in their current law. For example, South Carolina does not permit
19 wage garnishments for debts arising from consumer credit sales, consumer leases, consumer
20 loans, or consumer rental-purchase agreements. S.C. Code Ann. § 37-5-104. Thus, South
21 Carolina could narrow the Act here so that it does not apply to those types of debts. Similarly,
22 several states prohibit wage garnishment for people who receive public assistance.

23 **SECTION 4. FORUM; CHOICE OF LAW.**

24
25 (a) Subject to subsection (b), a [court] shall dismiss or stay a wage garnishment action if
26 the debtor's principal place of employment is not in this state.

27 (b) A [court] may hear a wage garnishment action if the employer is subject to personal
28 jurisdiction in this state but would not be subject to personal jurisdiction in the state of the
29 debtor's principal place of employment.

30 [(c) A [court] hearing a wage garnishment action pursuant to subsection (b) shall apply
31 this [act] except that the debtor is entitled to the exemptions from and limits on wage
32 garnishment provided by the law of the jurisdiction of the debtor's principal place of

1 employment.]

2 **Reporter's Notes**

3
4 The primary goal of the forum selection rules is convenience for the debtor and employers. In the
5 absence of forum selection rules, jurisdiction would lie based on whether the *employer* was
6 subject to personal jurisdiction. This would permit a creditor to file a wage garnishment action in
7 a State quite inconvenient to the debtor. For example, a creditor could sue a national corporation
8 in California where it has operations even though the employee is employed by that corporation
9 in Nebraska. As this example illustrates, a secondary goal of the forum selection rules is to limit
10 forum shopping.

11
12 **SECTION 5. PROCEDURES.**

13 (a) A creditor may commence a wage garnishment action by serving a
14 [complaint][motion] on a garnishee pursuant to [the normal procedures for service of process in
15 this state]. If the garnishee has a registered agent that can be served with reasonable diligence
16 under [cite state law on registered agents], the [complaint][motion] must be served on the
17 registered agent. The [complaint][motion] must [be accompanied by an administrative fee of
18 \$[X] payable to the garnishee and must] include:

- 19 (1) the name of the debtor;
- 20 (2) the physical and mailing addresses, date of birth, and last four digits of the
21 social security number of the debtor, or a statement that the information is not known;
- 22 (3) information sufficient to identify the judgment on which the wage
23 garnishment action is based and the total amount the creditor claims is owed by the debtor;
- 24 (4) a completed notice form that satisfies Section 6;
- 25 (5) the name of and contact information for the individual to whom the garnishee
26 is required by subsection (b) or (c)(1)(A) to send information; and
- 27 (6) reasonable instructions on how to remit to the creditor any amount withheld
28 from the wages of the debtor.

1 (b) If the debtor named in a [complaint][motion] served under subsection (a) is not an
2 employee of the garnishee, the garnishee shall within [15] business days after being served send
3 that information to the individual named in the [complaint][motion] pursuant to subsection
4 (a)(5). The creditor must then promptly [seek dismissal of the complaint][withdraw the motion]
5 or seek a prompt hearing to determine whether the debtor is an employee of the garnishee.

6 (c) If the debtor named in a [complaint][motion] served under subsection (a) is an
7 employee of the garnishee, the garnishee shall within [15] business days after being served:

8 (1) send to the individual named in the [complaint][motion] pursuant to
9 subsection (a)(5):

10 (A) a statement that the named debtor is an employee;

11 (B) the pay frequency and the date of the next regular payday; and

12 (C) if the debtor's wages are subject to other involuntary withholdings, the
13 number of the involuntary withholdings and the priority of each involuntary withholding,
14 including the priority of the wage garnishment sought by the [complaint][motion]; and

15 (2) send to the debtor a copy of the notice form provided to the garnishee pursuant
16 to subsection (a)(4) .

17 (d) If wage garnishment is required, it must commence with the first regular payday that
18 occurs at least [30] days after the debtor has been sent the notice form pursuant to subsection
19 (c)(2).

20 (e) A garnishee promptly shall remit to the creditor the amount withheld from the wages
21 of the debtor in the manner specified by the creditor pursuant to subsection (a)(6).

22 (f) A garnishee must notify a debtor of any amount withheld from wages pursuant to a
23 wage garnishment action in the same manner as it notifies the debtor of other withholdings from

1 wages.

2 (g) For each regular payday on which a garnishee withholds an amount from an
3 employee's wages pursuant to a wage garnishment action, the garnishee shall maintain a record
4 containing information sufficient to prepare a calculation worksheet for the payday. At any time,
5 an employee or creditor may request in a record a completed calculation worksheet that satisfies
6 Section 7. On receipt of a request, the garnishee must send, within [seven] business days and
7 without charge, a calculation worksheet for the most recent regular payday. The garnishee is not
8 required to provide more than one calculation worksheet to an employee for any regular payday,
9 nor more than four calculation worksheets to a creditor during a calendar year.

10 (h)(1) A creditor must petition the [court] for dismissal of a wage garnishment action not
11 later than [15] business days after:

12 (A) the debt is paid in full; or

13 (B) the creditor is notified that the debtor is no longer an employee of the
14 garnishee.

15 (2) A garnishee must notify the creditor as soon as practicable if a debtor is no longer an
16 employee of the garnishee.

17 (i) A garnishee, creditor, or debtor may request a hearing at any time to determine
18 whether a wage garnishment should commence or, if it has already commenced, whether it
19 should be continued or revised. A debtor may request a hearing at any time to claim an
20 exemption or limit under law other than this [act]. If a hearing is requested, the [court] shall
21 schedule the hearing promptly and may enjoin, suspend, revise, or continue the wage
22 garnishment until the hearing.

Reporter's Notes

1
2
3 **General comment on structure.** In general, wage garnishment can commence in one of two
4 ways: (1) as a method of execution on a judgment that is part of the original action against the
5 debtor (so it would begin with something called a motion or a writ to implead the employer) or
6 (2) as an independent action against the employer to collect on a prior judgment (so it would
7 begin with a complaint). Our Act is neutral on which method a state uses and is intended to
8 accommodate either. Hence, the bracketed “[complaint][motion]” construction.
9

10 One reason for the extra-judicial nature of most of this procedure is a professional responsibility
11 issue. Professional responsibility rules prohibit non-attorneys from responding in court to
12 garnishment proceedings. Thus, when garnishment enters a court, employers have to retain a
13 lawyer, which greatly increases the cost of garnishment for employers. (For a time, this was a
14 contentious issue in Georgia.) The solution here is a procedure which permits the
15 garnishee/employer to respond and comply outside of court. Consequently, in a normal,
16 uncomplicated wage garnishment, an employer would be able to have non-lawyer employees and
17 agents manage the process and avoid the need for an attorney.
18

19 This extra-judicial procedure is analogous to a normal interrogatory process. In most states,
20 interrogatories can be served with a complaint and the responses do not need to be filed in court.
21 As a result, a procedure like this should not be unfamiliar in most states.
22

23 **Comment on bracketed section of subsection (a) on administrative fees.** The drafting
24 committee has not yet had a robust discussion on administrative fees for employers. In general,
25 there are two issues. First, should the Act provide for administrative fees at all? On the one hand,
26 employers are largely neutral parties in these proceedings and they do incur costs. Administrative
27 fees help to defray those costs. Currently, most states provide for administrative fees (31 states),
28 although a substantial minority do not (19 states). Drafting committee observers representing
29 employers and payroll processing entities are strongly in favor of fees. On the other hand, some
30 members of the committee feel strongly that the Act will create efficiencies that will reduce costs
31 significantly and that most of those savings will accrue to employers. Consequently, the view of
32 these committee members is that removing the complications of fees from the Act is a fair trade-
33 off to employers for those significant benefits.
34

35 The second issue is, if administrative fees are included, how should they be structured? The basic
36 options are (1) a lump-sum fee early in the process; (2) a fee that is paid with each payment to a
37 creditor; or (3) both. Again, the committee has not discussed this issue robustly, so the bracketed
38 language of (a) is basically a place-holder to ensure future discussion. But the provision currently
39 opts for a lump-sum payment only. Ten states use this approach currently and the amount ranges
40 from \$10 to \$35. (The amount seems to depend some on how long ago the fee was set, which
41 itself would be an issue to consider.) This approach is straight-forward and easy-to-administer,
42 but of course it only does rough justice across the full range of garnishment possibilities.

1 **SECTION 6. NOTICE FORM.** A notice form must be in substantially the following
2 form:

3 Money will be Deducted from your Wages, Unless You Act
4
5 [Insert name of creditor that filed the wage garnishment action; a shortened name to be
6 used later in the form can also be listed here] has begun a legal process to require your employer
7 to deduct money from your wages and pay it to them. This is called a wage garnishment.

8 This notice was prepared by [insert name or shortened name of creditor that filed the
9 wage garnishment action] and the law requires your employer to provide it to you.

10 [Insert name or shortened name of creditor that filed the wage garnishment action] says
11 that you owe it \$[insert amount of the claimed debt]. [If the creditor filing the wage garnishment
12 action is not the original creditor insert the following sentence: This amount comes from a debt
13 you originally owed to [insert name of original creditor]]. There is more information about the
14 debt at the end of this notice.

15 Your employer will soon be required by law to begin to make a deduction from your pay
16 and send it to [insert name or shortened name of creditor that filed the wage garnishment action]
17 to pay this debt. Your employer will continue making the deduction until the debt is paid in full.
18 The amount deducted from your pay may be as high as [X%] of your wages, but it could be less
19 (or even nothing) depending on things like how much money you make and whether you have
20 other garnishments that need to be deducted from your pay first. You can ask your employer at
21 any time for a calculation worksheet that tells you how your employer decided how much it was
22 required to deduct from your pay, but you must do that in writing.

23 You can take any or all of the following actions in response to this claim:
24

- 1 1. You should consider getting a lawyer to represent you. A lawyer could explain
 2 this process to you and help you decide what to do.
- 3 2. You can contact [insert name or shortened name of creditor that filed the wage
 4 garnishment action] to discuss the debt and this garnishment with them.
 5 Information about how to contact them is on the next page.
- 6 3. You can ask the Court to hold a hearing to permit you to challenge any aspect of
 7 this proceeding. For example, you could challenge whether you really owe the
 8 amount claimed or you could claim that a deduction should not be made because
 9 you fit within an exception in the law. Such a request should be sent in writing to
 10 the Clerk of the Court:

11 [Insert name and address of court].

12 Again, if you do not act, your employer will soon be required to begin deducting money
 13 from your pay.

14 [Insert a page break]

15 Information Form

16 Those Claiming You Owe Them Money

17 Current Creditor Name:
 18 Current Creditor Contact Information:
 19 (If Different) Original Creditor Name:

20 Basis for the Debt

21 Court Name:
 22 Case No:
 23 Date of Judgment:

24 Amount of Debt:

25 Judgment Amount \$_____

1 Current Amount Owed* \$ _____
2

3 * The Current Amount Owed may be different from the Judgment Amount because it
4 may include accrued interest and court costs and it may grant credit for amounts you have
5 already paid.
6

7 Reporter's Notes 8

9 **General Note on Style.** For now, for Sections 6 and 7, we have presented this information only
10 as forms. If necessary, we can convert the forms to statutory language later. But for now, we
11 thought a substantive discussion would be facilitated best by presenting them only as forms.
12

13 **Original Creditor Name.** The notice form requires the name of the creditor that filed the wage
14 garnishment action throughout most of the notice, but it also requires the name of the "original
15 creditor" if the "creditor" and "original creditor" are different. The federal Fair Debt Collection
16 Practices Act requires "debt collectors" (which is a long defined term in the Act) to disclose the
17 name of the "creditor" (which is also a defined term in the Act) when they initiate contact with a
18 debtor. 15 U.S.C. §§ 1692-1692o. Our distinction is slightly different than the one in the
19 FDCPA, but providing the two pieces of information should be familiar to those in the field, and
20 it provides useful information to the debtor. The creditor representative on our drafting
21 committee did not think this would be burdensome to creditors.
22

23 SECTION 7. CALCULATION WORKSHEET. A calculation worksheet must be in

24 substantially the following form:

25 Employee:

26 Creditor:

27 For Wages Paid on:

28
29 Disposable Wages:

30
31 1. Gross Wages Paid to Employee \$ _____
32

33 2. Amounts Withheld:

34
35 a. Federal social security tax (FICA): \$ _____

36 b. Federal income tax: \$ _____

37 c. State income tax: \$ _____

38 d. Railroad retirement tax: \$ _____

39 e. Other: \$ _____
40

41 3. Total Amounts Withheld \$ _____
42 (Sum of items in line 2)
43

1 4. Disposable Wages \$ _____
2 (Line 1 minus line 3)
3

4 Wage Garnishment Calculation:
5

6 5. [X%] of Disposable Wages ([X%] of line 4) \$ _____
7

8 6. Exemption Amount \$ _____
9

10 [Description of Exemption Amount will be here. See the note
11 below.]
12

13 7. Line 4 minus line 6 (if less than \$0, enter \$0) \$ _____
14

15 8. Enter smaller of line 5 or line 7 \$ _____
16

17 9. Amounts of Other Current Garnishments with Higher
18 Priority (if none, enter \$0) \$ _____
19

20 10. Subtract line 9 from line 8 (if less than \$0, enter \$0) \$ _____
21

22 11. Enter the number of Other Current Garnishments
23 with the Same Priority, plus one _____
24

25 12. Divide line 10 by line 11 \$ _____
26

27 The amount on line 12 is the wage garnishment amount.
28

29 Statement of Amount Due and Paid
30

31 13. Total Amount Claimed by Creditor: \$ _____
32

33 14. Amounts Paid Through Garnishment:
34

35 a. Prior Garnishments \$ _____
36

37 b. This Garnishment \$ _____
38 (Line 12)
39

40 c. Total Garnishments \$ _____
41

42
43 15. Net Amount Owed After \$ _____
44 Garnishments to Date
45 (Line 13 minus Line 14.c.)
46

1 **Reporter’s Notes**

2
3 **Exemption Amount.** The description of exemption amount will be non-uniform for two reasons.
4 First, as signaled in Section 8 below, we intend to permit States to provide varying levels of
5 protection to debtor/employees under the standard exemption provision. Second, States currently
6 have a variety of other exemptions. At present, we do not anticipate suggesting to states that they
7 eliminate these other exemptions.
8

9 **SECTION 8. EXEMPTIONS AND LIMITS.**

10 **Alternative A**

11
12 (a) The maximum amount subject to wage garnishment may not exceed the lesser of:

13 (1) [X] percent of disposable wages for a workweek; or

14 (2) the amount by which disposable wages for a workweek exceed [state multiple]
15 times the federal minimum wage required by Section 6(a) of the federal Fair Labor Standards
16 Act, 29 U.S.C. § 206(a).

17 (b) For a pay period greater than one week, the amount in subsection (a)(2) shall be
18 adjusted to be the appropriate multiple of [state multiple] times the federal minimum wage. For
19 the purpose of this subsection, a pay period of one calendar month is deemed to be four and one-
20 third weeks.

21 **Alternative B**

22
23 (a) The maximum amount subject to wage garnishment may not exceed the lesser of:

24 (1) [X] percent of disposable wages for a pay period; or

25 (2) the amount by which disposable wages for a workweek exceed [state dollar
26 amount] plus any amount added by the annual adjustments specified in subsections (b)(1) and
27 (2), or the amount specified by subsection (b)(3).

28 (b) Beginning on December 31, [2XXX], and on [every, every even-numbered, or every
29 third] December 31 thereafter:

1 (1) the amount in subsection (a)(2) shall be increased by any unadjusted twelve-
2 month percentage increase in the United States Department of Labor’s Consumer Price Index for
3 All Urban Consumers for the period ending on September 30 of that year;

4 (2) any increase under subsection (b)(1) which does not result in a number which
5 is a multiple of five dollars shall be rounded to the next [lower][higher] number which is a
6 multiple of five dollars; and

7 (3) if [same dollar amount entered in subsection (a)(2)] plus any amount added by
8 the annual adjustment specified by subsections (b)(1) and (2) is lower than [state multiple which
9 must not be less than 30] times the federal minimum wage required by Section 6(a) of the federal
10 Fair Labor Standards Act, 29 U.S.C. § 206(a), the amount shall be adjusted to be [state multiple
11 which must not be less than 30] times the federal minimum wage.

12 (c) Beginning on December 1, [2XXX – same year as in subsection (b)] and on [every,
13 every even-numbered, or every third] December 1 thereafter, the [a designated state
14 administrative agency, probably the Department of Labor] shall publish in the same manner as
15 [rules] under the [state administrative procedure act] the number computed under subsection (b)
16 and a notice that this number is the new amount to be applied under subsection (a)(2).

17 (d) For a pay period greater than one week, the amount in subsection (a)(2) shall be
18 adjusted to be the appropriate multiple of the amount specified by subsection (a)(2). For the
19 purpose of this subsection, a pay period of one calendar month is deemed to be four and one-
20 third weeks.

21 **End of Alternatives**

22 **Reporter’s Notes**

23 *Bracketed numbers.* We would provide guidance to States on the bracketed “X” for percentages
24 and “state amount” for the exemption. First, States cannot make the bracketed percentage more
25
26

1 than 25%, nor can they decrease the bracketed multiple below 30 times the federal minimum
2 wage. Federal law requires at least these levels of protection. On the other hand, federal law does
3 permit state garnishment law to provide greater protection for debtor/employees. So, for
4 example, if a State wants to permit only 20 percent of disposable earnings to be subject to
5 garnishment or wants to limit garnishment to amounts above 40 times the federal minimum
6 wage, those adjustments would be permissible. Second, we would encourage States to use
7 adjustments to these numbers as the main way to calibrate the level of protection for
8 debtor/employees. The other main alternatives used in some States to calibrate the level of
9 protection are (1) to increase the protection for certain categories of debtors (such as heads of
10 households) or (2) to narrow the definitions of earnings and disposable earnings. We think it
11 would be preferable to calibrate the level of protection through adjustments to these numbers
12 rather than through these other alternatives. Making the adjustments in this way would enhance
13 uniformity and ease administration.

14
15 **Alternative B.** The inflation adjustment language here is based loosely on IRC § 415(d). Several
16 comments. First, this alternative responds to policy concerns about using a multiple of the
17 minimum wage as a yardstick. For example, the minimum wage is a lumpy measure (that is, it
18 changes infrequently, unpredictably, and in relatively large amounts when it does change) and its
19 level is not based on policies relating directly to wage garnishment. Alternative B provides for a
20 smoother adjustment of the number based directly on the policies affecting wage garnishment.
21 Second, the number in (a)(1) cannot be more than 25 and the number in (a)(2) cannot be less
22 than \$217.50. But States could make the (a)(1) number smaller than 25 and/or the (a)(2) number
23 more than \$217.50. Again, we would encourage states to adjust these if they want to increase
24 protections for debtor/employees, rather than to use other alternatives. Third, (b)(2) has a
25 rounding provision. We could make it \$1 instead of \$5. We don't mean to indicate by the
26 brackets that we should give states an option of higher or lower; we should decide. Fourth, the
27 Consumer Price Index for All Urban Consumers is the most widely-used CPI number. Fifth, note
28 that (b)(1) contemplates adjustments only for increases in the CPI. No adjustments would occur
29 in the event of a decrease. Finally, as a general matter, this construction of the limit probably
30 makes more sense from a policy perspective since it is less lumpy and more tied to what a
31 legislature would want this limit to be. But it would be a significant change and it may create
32 more concern than we want to stir up.

33
34 **Subsection (b) in Alternative A and Subsection (d) in Alternative B.** The four-and-one-third
35 calculation is the one specified by the Department of Labor under the Consumer Credit
36 Protection Act, 29 CFR §870.10(c)(2).

37
38 **SECTION 9. MULTIPLE INVOLUNTARY WITHHOLDINGS.** If more than one
39 involuntary withholding is in effect against an employee of a garnishee, the following rules
40 apply:

41 (1) An involuntary withholding with a higher priority than a wage garnishment under law
42 other than this [act] must be paid to the maximum amount available for that involuntary

1 withholding before withholding is made for a wage garnishment.

2 (2) A wage garnishment must be paid to the maximum amount available for wage
3 garnishment before withholding is made for an involuntary withholding with a lower priority
4 than the wage garnishment under law other than this [act].

5 (3) If the total amount of all involuntary withholdings in effect with equal priority as a
6 wage garnishment under law other than this [act] reaches the maximum amount subject to
7 involuntary withholding, the amount available must be divided equally among the involuntary
8 withholdings without regard to the time an involuntary withholding became effective, the
9 amount of an involuntary withholding, or any other factor.

10 **SECTION 10. ENFORCEMENT.**

11 (a) A garnishee that fails to comply with Section 5(b) is liable to the creditor for [state
12 dollar amount] for each day beginning [16] business days after service of the
13 [complaint][motion] and continuing until the garnishee sends the information required by that
14 subsection.

15 (b) A garnishee that fails to comply with Section 5(c)(1) is liable to the creditor for [state
16 dollar amount] for each day beginning [16] business days after service of the
17 [complaint][motion] and continuing until the garnishee sends the information required by that
18 subsection or until wage garnishment would be required to begin under Section 5(d), whichever
19 is earlier.

20 (c) A garnishee that fails to comply with Section 5(c)(2) is liable to the creditor for [state
21 dollar amount] for each day beginning [16] business days after service of the
22 [complaint][motion] and continuing until the garnishee sends the information required by that
23 subsection or until wage garnishment begins, whichever is earlier.

1 (d) A garnishee that fails to comply with Section 5(d) is liable to the creditor for the
2 greater of the amount that should have been sent to the creditor pursuant to that subsection or
3 [state dollar amounts for weekly, biweekly, and monthly pay periods] for each regular payday on
4 which an amount should have been sent.

5 (e) A garnishee that fails to comply with Section 5(e) is liable to the creditor for:

6 (1) any amount withheld from the wages of an employee which the creditor did
7 not receive because of the garnishee's failure to remit the amount in the proper manner; and

8 (2) [state dollar amount] for each day beginning [five] business days after a
9 regular payday on which an amount has been or should have been withheld from an employee's
10 wages and ending on the day the amount is remitted to the creditor.

11 (f) A garnishee is liable to the creditor for [state dollar amount] for each regular payday
12 on which amounts are withheld from an employee's wages without providing a notice pursuant
13 to Section 5(f).

14 (g) A garnishee that fails to comply with a request for a calculation worksheet under
15 Section 5(g) is liable to the creditor for [state dollar amount] for each day beginning [eight]
16 business days after the request and continuing until the garnishee sends the information required
17 by that subsection.

18 (h) A garnishee that fails to comply with Section 5(h)(2) is liable to the creditor for [state
19 dollar amount] for each violation.

20 (i) A creditor must apply any amount paid by a garnishee to a creditor pursuant to
21 subsections (a) through (h) towards payment of the debtor's obligation to the creditor. The
22 maximum amount of payments made by the garnishee pursuant to subsection (a) through (h) may
23 not exceed the total amount of the debtor's obligation to the creditor.

1 (j) A garnishee is not liable for any amount under subsections (a) through (h) unless:

2 (1) the debtor or creditor notifies the [court] and the garnishee of the failure to
3 comply; and

4 (2) the garnishee fails:

5 (i) to send the information required by section 5(b), (c)(1), (c)(2), (f), (g),
6 or (h)(2), as applicable, not later than [10] business days after receipt of the notice;

7 (ii) to begin wage garnishment under Section 5(d) not later than [15]
8 business days after receipt of the notice or, if no regular payday occurs between [six] and [15]
9 business days after receipt of the notice, on the next regular payday subsequent to [15] days after
10 receipt of the notice; or

11 (iii) to remit to the creditor the amount that should have been withheld
12 from the wages of the debtor pursuant to section 5(e) not later than [five] business days after
13 receipt of the notice.

14 (k) A creditor or debtor may request a hearing at any time to determine whether any of
15 the sanctions of subsections (a) through (h) should be imposed. If a hearing is requested, the
16 [court] shall schedule the hearing promptly. For good cause, the [court] may waive all or any
17 portion of the sanctions.

18 **Reporter's Notes**

19
20 **Amounts.** We've left all the amounts blank at this point. The drafting committee has not yet
21 discussed this issue robustly. On the one hand, the need for uniformity is weak with respect to
22 these dollar amounts. On the other hand, we are probably in a better position to think about the
23 optimum level of these amounts than others.

24
25 **Subsection (i).** The drafting committee has not reached a consensus about what to do when the
26 sanction exceeds the debt. There are two basic issues: (1) whether to require a payment at all in
27 this circumstance. On the one hand, the debt seems like a reasonable limit on the scope of the
28 garnishee's liability. On the other hand, these penalties are intended to encourage garnishees to
29 follow the rules. If they're waived if they exceed the amount of the debt, the penalties would not

1 provide much of an incentive for small debts or at the end of the life of a garnishment. (2) If we
2 decide that an amount ought to be paid even if it exceeds the amount of the debt (to create the
3 proper set of incentives), then we would need to decide who would get the money. Since the
4 money would be to incentivize the garnishee rather than to compensate someone for an injury,
5 the amount would be a windfall for whoever received it.

6
7 **Remedies against creditors.** The drafting committee has not reached a consensus about whether
8 to include remedies against creditors for seeking garnishments improperly or abusively. In
9 general, three types of costs can be relied on to encourage creditors to act with proper care: (1)
10 The filing fee itself (it was reported to the committee that commencing a wage garnishment
11 action probably costs in the range of \$150-\$300); (2) an administrative fee, such as the one
12 suggested by Section 5(a); and/or (3) an explicit penalty for creditors who act improperly. An
13 explicit penalty would be the most targeted way to encourage creditors to act properly, but it
14 would also be problematic. For example, it would require some sort of standard for when the
15 penalty would apply, such as bad faith or lack of proper diligence; it would apply only rarely;
16 and it would be expensive to enforce when applied. Finally, since situations where creditor
17 penalties might apply would involve the judicial process, the courts may have inherent power to
18 deal with them even in the absence of specific penalties in the Act. Indeed, it's possible that
19 penalties in the Act would constrain rather than expand judicial authority or willingness to deal
20 with creditor abuse.

21
22 **[RESERVED SECTION: PROTECTION OF GARNISHED EMPLOYEE.]**

23 (a) An employer may not discharge or otherwise discriminate against an employee
24 because of an actual or attempted wage garnishment.

25 (b) Subsection (a) is enforceable by the powers, remedies, and procedures used to enforce
26 [the state's fair employment practices law].

27 **Reporter's Notes**

28
29 This provision may not be within the scope of the charge of the drafting committee, but it is a
30 common provision in state garnishment statutes.

31
32 Subsection (a) is based on the language used in statutes that prohibit employment discrimination.
33 See Title VII § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1). It is broader than the language in the
34 Consumer Credit Protection Act (CCPA) in several respects. It provides protection regardless of
35 the number of actual or potential garnishments (the CCPA provides protection for only one
36 garnishment); it provides protection for both actual and attempted garnishment; and it provides
37 protection for all adverse employment actions, not just discharges. Compare CCPA, 15 U.S.C. §
38 1674(a). The employer representatives on the drafting committee have expressed support for this
39 expansion.

40
41 Subsection (b) is based on the enforcement provisions of the Americans with Disabilities Act

1 (ADA) which uses similar language to incorporate the powers, remedies and procedures of Title
2 VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117. I do not know of any major issues
3 arising from this sort of cross-reference from the ADA to Title VII.
4

5 There are two main advantages of using a cross-reference to define these enforcement
6 procedures. First, it means this language can be short and sweet for a provision that is not likely
7 to be used very often. Second, it means that procedural issues that might arise under this statute
8 are likely to have already been well ventilated under the state's fair employment practices
9 statute. Because Title VII defers to state discrimination procedures, all states (except Alabama)
10 have state procedures that cover the types of discrimination prohibited by Title VII. Alabama has
11 discrimination statutes that prohibit other types of employment discrimination (age and
12 disability). Thus, every state will have procedures to which reference could be made under this
13 section.
14

15 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

16 applying and construing this uniform act, consideration must be given to the need to promote
17 uniformity of the law with respect to its subject matter among states that enact it.

18 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

19 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
20 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
21 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
22 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
23 Section 7003(b).

24 **SECTION 13. SAVINGS CLAUSE.** This [act] does not affect the validity or effect of
25 a wage garnishment filed on or before [the effective date of this [act]].

26 **SECTION 14. SEVERABILITY.** If any provision of this [act] or its application to any
27 person or circumstance is held invalid, the invalidity does not affect other provisions or
28 applications of this [act] which can be given effect without the invalid provision or application,
29 and to this end the provisions of this [act] are severable.

30 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
31 *decision by the highest court of this state stating a general rule of severability.*

1 **SECTION 15. REPEALS; CONFORMING AMENDMENTS.**

2 (a)

3 (b)

4 (c)

5 *Legislative Note: Include in this section repeal of current state law regarding wage garnishment*
6 *and any conforming amendments to general garnishment law and other creditor-remedy statutes.*

7
8 **SECTION 16. EFFECTIVE DATE.** This [act] takes effect