

D R A F T
FOR DISCUSSION ONLY

WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

March 20 – 21, 2015 Committee Meeting

WITH REPORTER'S NOTES AND QUESTIONS

Copyright © 2014
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporters' notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

March 2, 2015

DRAFTING COMMITTEE ON WAGE GARNISHMENT ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, 101 Paul W. Bryant Dr. E., Tuscaloosa, AL 35487-0382, *Chair*

DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105

CARL S. BJERRE, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403-1221

JOHN M. CARY, 3704 S. Ridgeway Pl., Seattle, WA 98144

JACK DAVIES, 1201 Yale Pl., Unit #2004, Minneapolis, MN 55403-1961

LORIE FOWLKE, 2696 N. University Ave., #220, Provo, UT 84604

BRIAN G. GOSCH, 1575 N. LaCrosse St., Suite K, Rapid City, SD 57701

PATRICK A GUIDA, One Financial Plaza, 18th Floor, Providence, RI 02903-2419

LAWRENCE R. KLEMIN, 1709 Montego Dr., Bismark, ND 58503-0856

JAMES G. MANN, House Republican Legal Staff, Room B-6, Main Capitol Bldg., P.O. Box 202228, Harrisburg, PA 17120

ANNE L. McGIHON, 837 Sherman St., Denver, CO 80203

NEAL OSSEN, 500 Mountain Rd., West Hartford, CT 06117

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065

STEVEN L. WILLBORN, University of Nebraska College of Law, Ross McCollum Hall, 42 & Fair St., P.O. Box 830902, Lincoln, NE 68583-0902, *Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl, St. Paul, MN 55102, *President*

LANE SHETTERLY, 189 S.W. Academy St., P.O. Box 105, Dallas, OR 97338, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

SABA B. HASHEM, 401 Andover St., Suite 202, North Andover, MA 01845-5076, *ABA Advisor*

GARTH JACOBSON, 520 Pike St., Suite 985, Seattle, WA 98101, *ABA Advisor*

DENISE M. CLARK, 1250 Connecticut Ave., NW, Suite 200, Washington, DC, 20036, *ABA Section Advisor*

ROBYN B. KLINGER, One Technology Place, Rockland, MA 02370, *ABA Section Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
(312) 450-6600/www.uniformlaws.org

WAGE GARNISHMENT ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.	1
SECTION 3. SCOPE.	5
SECTION 4. FORUM AND CHOICE OF LAW.	6
SECTION 5. PROCEDURES.	7
SECTION 6. NOTICE FORM.	12
SECTION 7. INFORMATION FORM.	16
SECTION 8. CALCULATION WORKSHEET.	17
SECTION 9. STATEMENT OF AMOUNT DUE AND PAID.	18
SECTION 10. EXEMPTIONS AND LIMITS.	19
SECTION 11. MULTIPLE LEVIES.	22
SECTION 12. ENFORCEMENT.	23
SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	25
SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	25
SECTION 15. SAVINGS CLAUSE.	26
SECTION 16. SEVERABILITY.	26
SECTION 17. REPEALS; CONFORMING AMENDMENTS.	26
SECTION 18. EFFECTIVE DATE.	26
[RESERVED SECTION: PROTECTION FROM DISCRIMINATION.]	26

1 **WAGE GARNISHMENT ACT**

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

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

5 (1) “Calculation worksheet” means the form [provided in][required by] Section 8.

6 (2) “Creditor” means a person that holds a money judgment against a debtor from
7 a court of competent jurisdiction. The term includes a successor in interest.

8 (3) “Current employee” means an employee who is currently employed by the
9 employer and an employee to whom an employer owes earnings even if not currently
10 employed.

11 (4) “Debtor” means an employee who owes money to a creditor.

12 (5) “Disposable earnings” means that part of earnings remaining after deductions
13 required by law.

14 (6) “Earnings” means compensation owed by an employer to an employee for
15 personal services. The term includes wages, salary, commissions, bonuses, profit-sharing
16 distributions, severance payments, reimbursements, and periodic pension and disability
17 payments. [See discussion in Issues Memo.]

18 (7) “Electronic” means relating to technology having electrical, digital, magnetic,
19 wireless, optical, electromagnetic, or similar capabilities.

20 (8) “Employee” means an individual who is treated by an employer as an
21 employee for federal tax purposes. [See discussion in Issues Memo].

22 (9) “Employer” means a person that owes earnings to an employee. [See
23 discussion about the definition of “employee” in the Issues Memo.]

1 (10) “Garnishee” means an employer that is served with a complaint in a
2 garnishment action.

3 (11) “Garnishment action” means a lawsuit seeking to garnish earnings of an
4 employee.

5 (12) “Garnishment” means a levy for the benefit of a creditor obtained pursuant to
6 a garnishment action.

7 (13) “Information form” means the form [provided in][required by] Section 7.

8 (14) “Levy” means an act by an employer to withhold some part of the earnings
9 of an employee and to deliver the withheld earnings to a third person. The term includes
10 a garnishment; a support order; an order to recover federal, state or local taxes; and an
11 administrative order issued by a federal [or State] agency. The term does not include the
12 act of withholding earnings with the consent of the employee or for current tax
13 obligations.

14 (15) “Notice form” means the form [provided in][required by] Section 6.

15 (16) “Original creditor” means a person to whom a debtor originally owed the
16 money that is the subject of a garnishment action. An original creditor may be a creditor,
17 but the term does not include a successor in interest.

18 (17) “Person” means an individual, estate, business or nonprofit entity, public
19 corporation, government or governmental subdivision, agency, or instrumentality, or
20 other legal entity.

21 (18) “Record” means information that is inscribed on a tangible medium or that is
22 stored in an electronic or other medium and is retrievable in perceivable form.

23 (19) “Regular payday” means a day on which an employer pays earnings to a

1 debtor subject to a garnishment for personal services performed over a regular interval of
2 time. If a regular payday is uncertain or longer than one month, the term means any day
3 on which an employer pays or expects to pay earnings to a debtor subject to a
4 garnishment.

5 (20) “Send” means:

6 (A) to deposit a record in the mail with a proper address and with first-
7 class postage provided;

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

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

12 (21) “Sign means, with present intent to authenticate a record:

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

14 (B) to attach to or logically associate with the record an electronic symbol
15 sound or process.

16 (22) “State” means a state of the United States, the District of Columbia, Puerto
17 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
18 jurisdiction of the United States.

19 (23) “Statement of amount due and paid” means the form [provided in][required
20 by] Section 9.

21 (24) “Support order” [see Alternatives A & B].

22 **Alternative A**

23 [“Support order” means an order enforceable under the Uniform Interstate Family

1 Support Act.]

2 **Alternative B**

3 ["Support order" means a judgment, decree, order, decision, or directive, whether
4 temporary, final, or subject to modification, issued in a State or foreign country for the
5 benefit of a child, a spouse, or a former spouse, which provides for monetary support,
6 health care, arrearages, retroactive support, or reimbursement for financial assistance
7 provided to an individual creditor in place of child support. The term may include related
8 costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's
9 fees, and other relief.]

10 **End of Alternatives**

11

12 **Reporter's Notes and Questions**

13

14 *Note to Committee:* I thought about including a definition for "business day" which we
15 use in the Act. However, when I looked through other Uniform Acts, it appears that we
16 generally do not include such a definition. So in other Acts, we have decided to rely on
17 general definitions of that term elsewhere in state law. Do we think that's ok? Or do we
18 want a definition?

19

20 *Note to Committee:* "Creditor" and "debtor" are our definitions and crafted to be
21 applicable to this Act in particular. For example, the definition of "debtor" refers to an
22 employee owing money to a creditor under a money judgment, rather than to debtors
23 more generally. Other Uniform Acts define these terms in different and broader ways.
24 For example, the Uniform Voidable Transactions Act defines "creditor" as a person who
25 has a claim and "debtor" as a person who is liable on a claim. "Claim" is also defined, but
26 probably in a broader way than we would want: "a right to payment, whether or not the
27 right is reduced to judgment, liquidated, unliquidated..."). We might want to consider if
28 we want to call on other Uniform Acts for these definitions.

29

30 *Note to Committee:* The "creditor" definition, as written, permits garnishment only by
31 money-judgment creditors or successors in interest. Another possibility would be to
32 permit garnishment based on a debt that is not reduced to a judgment and permit the
33 debtor to challenge the debt as part of the garnishment action. This will have implications
34 for what we say in the notice form.

35

36 "Disposable earnings" is the same substantively as the definition in the federal Consumer
37 Credit Protection Act (CCPA). (It has been modified a bit to have the language conform

1 better to ULC drafting standards.) The types of deductions permitted are well-understood
2 under the CCPA (federal, state, and local withholding taxes; social security and Medicare
3 taxes; mandatory deductions for state disability or unemployment insurance; mandatory
4 contributions to a state employee pension plan; and mandatory contributions under the
5 Railroad Retirement Act). The vast majority of states currently follow the CCPA
6 definition of disposable earnings. A few states, however, permit some other things to be
7 exempted from disposable earnings (such as union dues and initiation fees and insurance
8 contributions). I think we should encourage all states to adopt the standard CCPA
9 definition. The reasons for this are: (1) this will ease administration and further the
10 ULC’s goals in uniformity; (2) if a state wants its statute to be more protective of worker
11 income, placing that generosity in the minimum exemption or the withholding limit
12 would be broader-based and easier to administer; and (3) these particular types of
13 additional exclusions, while intended to help protect workers, are not well-targeted to the
14 most needy workers.

15
16 “Electronic” is a standard ULC definition.

17
18 “Levy” is a term that encompasses both garnishments under this Act (which are limited to
19 debt garnishments) and “garnishments” for other purposes, such as child support and
20 federal or state taxes. This broader definition is required by Section 11 which discusses
21 priorities among all levies.

22
23 “Original Creditor.” See the note to the committee after Section 7.

24
25 “Person” is a standard ULC definition.

26
27 “Record” is a standard ULC definition.

28
29 “Sign” is a standard ULC definition.

30
31 “State” is a standard ULC definition.

32
33 “Support order.” Alternative A should do the trick if the State has adopted the Uniform
34 Interstate Family Support Act, as I think every State has. Alternative B is basically the
35 definition from UIFSA of what UIFSA covers. Maybe, probably, we do not need
36 Alternative B?

37
38 **SECTION 3. SCOPE.**

39 (a) This [Act] applies only to a garnishment action.

40 (b) This [Act] does not apply to any other levy, including a levy relating to:

41 (1) An order of a court of bankruptcy under federal bankruptcy law,

42 (2) A debt due for any federal, state, or local tax, or

1 (3) A support order[.]; or

2 [(4) Other specified levies.]

3 **Reporter's Notes and Questions**

4
5 *Note to Committee:* At our last meeting, we agreed to exclude support orders from the
6 Act. The federal Consumer Credit Protection Act also excludes (1) and (2) above from
7 the withholding exemptions and limits of that Act. This provision does something a bit
8 more than that; it excludes those categories from coverage of the Act entirely.

9
10 The question here is (a) whether it makes sense to exclude (1) and (2) from the Act
11 entirely or (b) whether we should stick closer to the CCPA model and exclude them only
12 from the exemptions and limits of Section 8. My intuition on that is that we might as well
13 exclude them from the Act entirely, but perhaps there are reasons to follow the CCPA
14 more closely. If so, that would be easy to do by including only item (3) here and re-
15 inserting items (1) and (2) into Section 10 as it was in the last draft.

16
17 *Note to Committee:* Subsection (b)(4) permits states to narrow the applicability of the
18 Act. At the extreme, the option could be used to preclude most forms of debt
19 garnishment. Even with such a large exclusion, a State might be interested in enacting the
20 Act to provide a fair process for enforcing garnishments that arrive from other states.
21 Texas, for example, has a constitutional prohibition on debt garnishment which prohibits
22 Texas courts from issuing garnishment orders themselves. But it does permit Texas
23 courts to enforce garnishment orders that come from other states. See *Knighon v. IBM*
24 *Corp.*, 856 S.W.2d 210 (Tex. App. 1993).

25
26 Other states have restrictions on garnishments that could be incorporated into the Act
27 here. For example, South Carolina does not permit garnishments for debts arising from
28 consumer credit sales, consumer leases, consumer loans, or consumer rental-purchase
29 agreements. So South Carolina could narrow the Act here so that it does not apply to
30 those types of debts.

31
32 **SECTION 4. FORUM AND CHOICE OF LAW.**

33
34 (a) Subject to subsection (b), a [court] shall dismiss or stay a garnishment action,
35 as appropriate, if the debtor's principal place of employment is not in this State.

36 (b) A [court] may hear a garnishment action if the employer is subject to personal
37 jurisdiction in this State, but would not be subject to personal jurisdiction in the State of
38 the debtor's principal place of employment.

39 (c) [Reserved section for choice of law. See Issues Memo.]

1 **Reporter’s Notes and Questions**

2
3 The primary goal of the forum selection rules is convenience for the debtor and
4 employers. In the absence of forum selection rules, jurisdiction would lie based on
5 whether the *employer* was subject to personal jurisdiction. This would permit a creditor
6 to file a garnishment action in a State quite inconvenient to the debtor. For example, a
7 creditor could sue a national corporation in California, where it has operations, even
8 though the employee is employed by that corporation in Nebraska. As this example
9 illustrates, a secondary goal of the forum selection rules is to limit forum shopping.

10
11 *Note to Committee: Subsection (c), Choice of Law.* First, in most cases, this will not be
12 an issue since the case has to be filed in the State of the debtor’s principal place of
13 employment. So no choice of law issue will be presented. But under paragraph (b),
14 sometimes the action will not be filed in the debtor’s principal place of employment. In
15 that circumstance, the two possibilities for the applicable law are (1) the state of the
16 debtor’s principal place of employment or (2) the state where the action is filed. The first
17 option is likely to make administration easier for employers; this rule will ensure that the
18 garnishment rules for all of an employer’s employees in a particular location will be the
19 same. The second option would be somewhat easier for courts; they could apply their
20 own state’s law in every case and not have to attend to foreign law. This section opts for
21 the first option for three principal reasons. First, it limits forum-shopping opportunities.
22 Second, ease of administration for employers is a principal goal of this project. Third, this
23 choice-of-law option is the rule adopted by the Uniform Interstate Family Support Act,
24 §§ 502(d), 503 (UIFSA) in analogous circumstances.

25
26 *Note to Committee:* Jack Davies raises the issue of whether we should attend to
27 circumstances in which a debtor’s place of employment is ambiguous, for example, an
28 employee who travels across several states as part of his job. I have not attended to that in
29 this draft. One option would be to permit cases to be heard in any state in which a debtor
30 is principally employed and then to have the choice of law rule be the state where the
31 action is filed. This would attend to Jack’s situation. The issues would be (1) whether this
32 situation is common enough to worry about (note: it is not attended to in the analogous
33 section 504(d) of UIFSA, so either they didn’t think about it or didn’t think it was worth
34 worrying about) and (2) whether we want to open the door to the modest forum-shopping
35 that might be possible under this alternative rule.

36
37 **SECTION 5. PROCEDURES.**

38 (a) A creditor may file a garnishment action in [*designate appropriate court*] by
39 causing a complaint to be served on an employer pursuant to [*the normal procedures for*
40 *service of process in this State*]. If the employer has a registered agent under [*cite state*
41 *law on registered agents*], the complaint must be served on the registered agent. If the

1 creditor knows the debtor's mailing address, a copy of the complaint must be sent to the
2 debtor. The complaint must include:

3 (1) The basis for the claimed debt, including the name of the original
4 creditor, the court issuing the judgment, and the date of the judgment;

5 (2) The total amount of the claimed debt, including a listing of the
6 judgment amount, accrued interest to date, court costs, and amounts already paid or
7 collected;

8 (3) A completed notice form;

9 (4) The name of the debtor and, to the extent known to the creditor, the
10 physical, mailing, and electronic addresses of the debtor and the debtor's telephone
11 number, or a statement that the information is not known;

12 (5) The name of the individual to whom the garnishee is required to
13 communicate by subsection (b) or (c)(1)(A), and the mailing and electronic address of
14 that individual; and

15 (6) Information sufficient to instruct the garnishee about how to remit
16 garnished earnings to the creditor.

17 (b) If the debtor is not a current employee of the garnishee, the garnishee shall
18 within [10] business days after being served with the complaint send that information to
19 the individual named in the complaint pursuant to subsection (a)(5). The creditor must
20 then promptly notify the [court] that the garnishee has indicated that the debtor is not a
21 current employee and either request dismissal of the complaint or seek a prompt hearing
22 to determine whether the debtor is in fact a current employee of the garnishee.

23 (c) If the debtor is a current employee of the garnishee, the garnishee shall:

1 (1) Within [10] business days after being served with the complaint:

2 (A) Send to the individual named in the complaint pursuant to
3 subsection (a)(5):

4 (i) A statement that the named debtor is a current
5 employee;

6 (ii) The dates of the next four regular paydays; and

7 (iii) If the debtor's earnings are currently subject to other
8 levies, the number of such levies and the priority of each levy, including the priority of
9 the garnishment sought by the complaint; and

10 (B) Send the debtor the notice form provided to the garnishee
11 pursuant to subsection (a)(3) .

12 (2) Within [20] business days after being served with the complaint, send
13 the debtor an information form and a calculation worksheet based on the earnings
14 received by the debtor on the last regular payday prior to service of the complaint.

15 (d) If garnishment is required, it must commence with the first regular payday that
16 occurs at least [5] business days after the debtor has been sent the information form and
17 calculation worksheet pursuant to subsection (c)(2).

18 (e) A garnishee shall promptly remit garnished earnings to the creditor in the
19 manner specified by the creditor pursuant to subsection (a)(6).

20 (f) On the first regular payday on which a debtor's earnings are garnished, the
21 garnishee must provide notice to the debtor of the existence and amount of the
22 garnishment. The notice must be conspicuous and presented in a manner distinct from the
23 manner in which the garnishee notifies the debtor of other payments of and deductions

1 from earnings. For subsequent garnishments for the same creditor, the garnishee must
2 notify the debtor of the existence and amount of the garnishment in the same manner as it
3 notifies the debtor of other payments of and deductions from earnings.

4 (g) For each regular payday on which a debtor's earnings are garnished, the
5 garnishee shall maintain a record containing information sufficient to prepare a
6 calculation worksheet and statement of amount due and paid for that payday. A debtor
7 may request in a record a completed calculation worksheet and statement of amount due
8 and paid up to [6] days prior to any regular payday on which a garnishment is expected to
9 occur. On or after any regular payday, a creditor may request in a record a completed
10 calculation worksheet and statement of amount due and paid. The garnishee shall send
11 the calculation worksheet and statement of amount due and paid to the debtor or creditor
12 within [5] business days after receipt of a request. The garnishee is not required to
13 provide more than one worksheet and statement to any debtor or creditor for any pay
14 period.

15 (h)(1) A creditor must petition the [court] for dismissal of a garnishment action no
16 later than [15] business days after:

17 (A) the debt has been paid in full;

18 (B) the creditor is notified that the debtor is no longer a current employee
19 of the garnishee; or

20 (C) the expiration of [90] days after the last regular payday on which
21 garnished earnings were remitted to the creditor despite full compliance with this [Act]
22 by the garnishee.

23 (h)(2) A garnishee must notify the creditor as soon as practicable when a debtor is

1 no longer a current employee of the garnishee.

2 (h)(3) If [75] days have expired since the last regular payday on which garnished
3 earnings were remitted to a creditor under a garnishment, the creditor may send a request
4 in a record to the garnishee for an explanation. Within [10] business days, the garnishee
5 must send the creditor a response.

6 (i) A garnishee, creditor, or debtor may request a hearing at any time to determine
7 whether a garnishment should commence or, if it has already commenced, whether it
8 should be continued. If a hearing is requested, the [court] shall schedule the hearing
9 promptly and may enjoin, suspend, or continue any garnishment until the garnishee,
10 creditor, or debtor has had an opportunity to be heard.

11 **Reporter’s Notes and Questions**

12
13 *Note to Committee:* This is my best effort to capture the discussion we had at our Tucson
14 meeting about the procedure, with a few tweaks that seemed appropriate as I was
15 working through the issue.

16
17 *Note to Committee:* Subsection (a)(5) currently requires both a mailing and electronic
18 address. That would mean that the information required to be sent to that individual under
19 (b) or (c)(1)(A) would need to be sent to both addresses. Alternatives would be to draft
20 (a)(5) to say: (1) the creditor should provide both mailing and electronic addresses but
21 specify to which one information should be sent, or (2) to require only a mailing or
22 electronic address. Our preference?

23
24 *Note to Committee:* This procedure is structured to respond to the Georgia/professional
25 responsibility issue. You will recall that this issue arises because the professional
26 responsibility rules prohibit non-attorneys from responding in court to garnishment
27 proceedings. Thus, when garnishment enters a court, employers have to retain a lawyer.
28 The “solution” here is a procedure which permits the garnishee/employer to respond and
29 comply outside of court. In a normal, uncomplicated garnishment, the employer would
30 never have to retain a lawyer. Obviously, we will need to discuss what we think of this at
31 our meeting.

32
33 This procedure is analogous to a normal interrogatory process. In most states,
34 interrogatories can be served with the complaint and the responses do not need to be filed
35 in court. Although we do not call the employee information form an interrogatory, that in
36 essence is what it is and so a procedure like this should not be unfamiliar in most states.

1 If we think there would be some utility in alluding to this (e.g., to make the procedure
2 seem more familiar), we could think of explicitly calling the employee information form
3 an interrogatory.

4
5 **Note to Committee:** Query whether we need to include a definition of registered agent.
6 The Model Registered Agent Act has three definitions to define the term: (1) registered
7 agent (defined as a commercial or non-commercial registered agent); (2) commercial
8 registered agent; and (3) non-commercial registered agent. My intuition is that the term is
9 well-enough understood elsewhere in state law that little would be added by including a
10 definition in this Act.

11
12 **Note to Committee:** Subsection (h). Jack Davies has suggested that the notice should be
13 more conspicuous than the normal list of deductions from earnings. As you can see, this
14 subsection responds to that concern, but only for the initial garnishment. After that, the
15 employer would not need to do anything separate from normal wage reporting. This
16 provision would require some sort of separate statement from the normal pay slip for the
17 first paycheck which includes a garnishment. Normally, I might expect the employer to
18 comply with this by sending a calculation worksheet and a statement of amount due and
19 paid with the first paycheck containing a garnishment. So an option would be to just
20 require that instead of this more flexible “conspicuous” language. This option, however,
21 permits the notice to contain less information than contained in the calculation worksheet
22 and statement of amount due and paid. For example, the notice would simply say in a
23 very conspicuous way that there has been a garnishment of X amount.

24 25 **SECTION 6. NOTICE FORM.**

26 27 **Alternative A**

28
29 A notice form must be in the following format:

30 31 **MONEY WILL BE DEDUCTED FROM YOUR** 32 **WAGES TO PAY A DEBT, UNLESS YOU ACT**

33
34 *[Insert name of creditor that filed the garnishment action; a shortened name to be*
35 *used later in the form can also be listed here]* has filed an action in *[insert name of court]*
36 to require your employer to deduct money from your wages and pay it to them. This is
37 called a garnishment.

38
39 This notice was prepared by *[insert name of creditor that filed the garnishment*
40 *action]* and the law requires your employer to provide it to you.

41
42 *[Insert name of creditor that filed the garnishment action]* says that you owe it
43 \$*[insert amount of the claimed debt]*. *[If the creditor filing the garnishment action is not*
44 *the original creditor insert the following sentence: This amount comes from a debt you*
45 *originally owed to [insert name of original creditor].*

1 Unless you take one of the actions listed below, your employer will soon be
2 required by law to begin to make a deduction from your paycheck and send it to [*insert*
3 *name of creditor that filed the garnishment action*] to pay this debt. Your employer will
4 continue making the deduction from each of your paychecks until the debt is paid. Your
5 employer will notify you soon of the approximate amount that will be deducted from
6 each paycheck, but it may be as high as [25%] of your wages.

7
8 These are actions you can take in response to this claim:

9
10 1. You can contact [*insert name of creditor that filed the garnishment action*] to
11 discuss the debt and this garnishment with them. This is their contact information:

12
13 [*Insert name and address for the contact person for the creditor*].

14
15 Unless you get [*insert name of creditor that filed the garnishment action*] to agree
16 to dismiss its action, this option will not stop your employer from deducting money from
17 your wages.

18
19 2. You can contact your employer to discuss the garnishment.
20 But unless you get the creditor to agree to dismiss its action, your employer will still be required
21 to deduct money from your wages to pay this debt. This option will not stop that deduction,
22 unless the creditor agrees.

23
24 3. You can ask the Court to hold a hearing to permit you to challenge any aspect of this
25 proceeding. For example, you could challenge whether you really are an employee of the
26 employer or whether you really owe the amount claimed. Such a request should be sent in
27 writing to the Clerk of the Court of [*insert name and address of court*].

28
29 As part of this request, you can ask the Court to order the employer not to deduct money
30 from your wages.

31
32 If you decide to address this claim in one of these ways, or in other ways, you
33 should consider getting a lawyer to represent you. Again, if you do not act, your
34 employer will be required to begin deducting money from each of your paychecks
35 beginning on about [*insert date*] and continuing until the debt is paid.

36
37 **Alternative B**

38 (a) A notice form must include the following information:

39 (1) A heading that is bold, in all capitals, and in a larger font than the
40 remainder of the form and that reads, **MONEY WILL BE DEDUCTED FROM YOUR**
41 **WAGES TO PAY A DEBT, UNLESS YOU ACT.**

1 (2) An unnumbered initial paragraph that states the name of the creditor
2 that filed the garnishment action, that the creditor has filed such an action, that the
3 creditor is seeking to require the employer to deduct money from the debtor's wages and
4 pay them to the creditor, and that this action is called a garnishment.

5 (3) An unnumbered second paragraph that states that the notice was
6 prepared by the creditor that filed the garnishment action and that the law requires the
7 employee's employer to provide the notice to the employee.

8 (4) An unnumbered third paragraph that states the name of the creditor
9 that filed the garnishment action, says the amount of money the creditor is seeking, and,
10 if the creditor is not the original creditor, names the original creditor to which the debt
11 was owed.

12 (5) An unnumbered fourth paragraph that states that unless the debtor
13 takes one of the actions listed in paragraphs (7) through (9), the employer will begin
14 making a deduction from the debtor's paycheck beginning soon and continuing until the
15 debt is fully paid; and that the deduction may be as high as [25%] of the debtor's pay.

16 (6) An unnumbered line that states that there are actions that the debtor
17 can take in response to the creditor's claim.

18 (7) A paragraph numbered (1) that states that the debtor can contact the
19 creditor that filed the garnishment action to discuss the debt and the garnishment; that
20 provides that individual's name and address; and that contains an underlined statement
21 that unless the creditor agrees to dismiss the action, contacting the creditor will not stop
22 the employer from deducting money from the employee's wages.

23 (8) A paragraph numbered (2) that states that the debtor may contact the

1 employer to discuss garnishment; an underlined statement that, unless the creditor agrees
2 to dismiss its action, the employer will be required to begin deducting money from the
3 debtor’s wages; and an underlined statement that pursuing this option will not stop that
4 deduction, unless the creditor agrees.

5 (9) A paragraph numbered (3) that states that the debtor may request a
6 court hearing to challenge any aspect of the proceeding, including whether the debtor
7 really is an employee of the employer and whether the employee really owes the amount
8 claimed; that the request should be sent in writing to the clerk of the court; that provides
9 the name and address of the court; and an underlined statement that such a request may
10 ask the court to order the employer not to deduct money from the debtor’s wages.

11 (10) An unnumbered paragraph that advises the debtor to consider
12 retaining a lawyer in the matter and that if the debtor does not act the employer will be
13 required to begin deducting money from each of the debtor’s paychecks beginning on an
14 approximate date; and that the deductions will continue until the debt is fully paid.

15 **End of Alternatives**

16 **Reporter’s Notes and Questions**

17 *Note to Committee:* These two alternatives are designed to be the same, but Alternative B
18 complies with the Style Committee’s preference for no statutory forms while Alternative
19 A is a form which, obviously, does not comply with the Style Committee’s no-form
20 preference.
21
22

23 *Note to Committee:* As currently drafted, the Notice Form says that “your employer will
24 *soon* be required by law to begin to make a deduction from your paycheck.” In an earlier
25 draft, we had the form provide a specific date on which it was estimated the first
26 deduction might take place. The specific date is obviously of interest to the debtor; will
27 the first deduction take place in tomorrow’s check, or the one in two weeks, or the one in
28 a month? But the creditor who initially prepares this form will not know the timing, and it
29 might be even worse to have an inaccurate estimate than a vague “soon.” We might want
30 to discuss this issue some.
31
32

1 **Note to Committee:** Note that the notice form requires the name of the creditor that filed
2 the garnishment action throughout most of the notice, but it also requires the name of the
3 “original creditor” in the second paragraph (if the “creditor” and “original creditor” are
4 different). The federal Fair Debt Collection Practices Act requires “debt collectors”
5 (which is a long defined term in the Act) to disclose the name of the “creditor” (which is
6 also a defined term in the Act) when they initiate contact with a debtor. 15 U.S.C. §§
7 1692-1692o. Our distinction is slightly different than the one in the FDCPA, but
8 providing the two pieces of information should be familiar to those in the field, and it
9 provides useful information to the debtor. This is something we talked about and (I think)
10 agreed upon at our last meeting (although we’ll have to talk about whether this
11 implementation of the idea is appropriate).

12
13 **SECTION 7. INFORMATION FORM.**

14
15 An information form must be in the following format:

16
17 **Information Form**

18
19 Dear [*insert name of debtor*],

20 We sent you a notice on [*insert date*] to inform you that a creditor has asked us to
21 deduct money from your paycheck and send it to them. This is called a garnishment.

22
23 This letter will provide you with more information about this garnishment. On the
24 next page, we will list the parties involved in this garnishment, the basis for the claimed
25 debt, and the amount the creditor claims you owe it. In addition, we have enclosed a
26 Calculation Worksheet which tells you how much money we would have deducted from
27 your last check if we had begun deducting money then.

28
29 Unless the creditor or court tells us that we do not need to garnish your wages, we
30 will begin the deductions with the paycheck due to you on [*insert date*]. If you want to
31 see a Calculation Worksheet for that pay period, or any later pay period, please ask us for
32 one and we will send it to you. You may ask to see the Calculation Worksheet for any
33 pay period as soon as [6] days prior to the regular payday for that period.
34 Please refer to the Notice Form we sent you earlier for ways in which you can respond to
35 this garnishment.

36
37 [*Insert name of employer*]

38 [*Insert a page break*]

39 The Parties

40
41 Employee Name:

42
43 Employer Name:

1 Employer Address:
2
3 Original Creditor Name:
4 Current Creditor Name:
5 Current Creditor Address:
6

7 Basis for the Debt
8

9 Court Name:
10 Case No:
11 Date of Decision:
12

13 Amount of Debt:
14

15 Judgment Amount \$ _____
16 Accrued Interest \$ _____
17 Court Costs \$ _____
18 TOTAL AMOUNT OWED \$ _____
19

20 **Reporter's Notes and Questions**
21

22 *Note to Committee:* For now, for Sections 7-9, I have included the information
23 only as forms. If necessary, I can convert these forms to statutory language later. But for
24 now, I thought we could talk about whether these are appropriate forms, and we can deal
25 with style issues later.
26

27 **SECTION 8. CALCULATION WORKSHEET.**
28

29 A calculation worksheet must be in the following format:
30

31 **Calculation Worksheet**
32

33 *Employee:*

34 *Creditor:*

35 *For Paycheck Dated:*
36

37 *Disposable Earnings:*
38

39 1. Gross Earnings Paid to Employee \$ _____
40

41 2. Amounts Withheld:
42

43 a. Federal social security tax (FICA): \$ _____
44 b. Federal income tax: \$ _____
45 c. State income tax: \$ _____
46 d. Railroad retirement tax: \$ _____

1 **Amounts Paid Through Garnishments:**

2
3 Prior Garnishments \$_____

4
5 This Garnishment \$_____
6 (Line 12 of Calculation Worksheet)

7
8 Total Garnishments \$_____

9
10 NET AMOUNT OWED AFTER \$_____
11 GARNISHMENTS TO DATE

12
13
14 **SECTION 10. EXEMPTIONS AND LIMITS.**

15
16 **Alternative A**

17
18 (a) The maximum amount subject to garnishment may not exceed:

19 (1) [25] percent of disposable earnings for any workweek, or

20 (2) the amount by which disposable earnings for any workweek exceed

21 [*state multiple*] times the federal minimum wage required by section 6(a) of the federal
22 Fair Labor Standards Act, whichever is less.

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

27 **Alternative B**

28 (a) The maximum amount subject to garnishment may not exceed:

29 (1) [25] percent of disposable earnings for any pay period, or

30 (2) the amount by which disposable earnings for any workweek exceed

31 [*state dollar amount*] plus any amounts added by the annual adjustments specified in
32 subsections (b)(1) and (b)(2), or the amount specified by subsection (b)(3), whichever is

1 less.

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

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

7 (2) Any increase under subsection (b)(1) which does not result in a
8 number which is a multiple of \$5 shall be rounded to the next [lower][higher] number
9 which is a multiple of \$5.

10 (3) If [same dollar amount entered in subsection (a)(2) above] plus any
11 amounts added by the annual adjustments specified by subsections (b)(1) and (b)(2) is
12 lower than 30 times the federal minimum wage required by section 6(a) of the federal
13 Fair Labor Standards Act, then the amount shall be adjusted to be 30 times the federal
14 minimum wage.

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

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

1 weeks.

2 **End of Alternatives**

3
4 **Reporter's Notes and Questions**

5
6 *Note to Committee:* The federal Consumer Credit Protection Act also includes higher
7 permissible garnishment levels for support orders. Since we have excluded them from
8 this Act, I have deleted those higher limits here. As a result, this language largely tracks
9 that of the CCPA except (a) I have added "support orders" to the list of things to which
10 these limits do not apply and (b) I have excluded the limits contained in the CCPA that
11 apply to support orders.

12
13 *Note to Committee:* See Issues Memo on the issue of whether we should talk about the
14 issue of how these exemptions and limits apply when a debtor/employee has two jobs.

15
16 *Bracketed numbers in Alternative A.* The numbers in the brackets are the amounts from
17 the federal Consumer Credit Protection Act. I would expect to provide a couple types of
18 guidance to states on these percentages. First, they cannot increase the bracketed
19 percentages, nor decrease the bracketed multiple (30 times the federal minimum wage).
20 Federal law requires at least these levels of protection. On the other hand, federal law
21 does permit state garnishment law to provide greater protection for debtor/employees. So,
22 for example, if a State wants to permit only 20 percent of disposable earnings to be
23 subject to garnishment or wants to limit garnishment to amounts above 40 times the
24 minimum wage, those adjustments would be permissible. Second, we would encourage
25 States to use adjustments to these numbers as the main way to calibrate the level of
26 protection for debtor/employees. The other main alternatives used in some States to
27 calibrate the level of protection are (1) to increase the protection for certain categories of
28 debtors (such as heads of households) or (2) to monkey with the definitions of earnings
29 and disposable earnings. We think it would be preferable to calibrate the level of
30 protection through adjustments to these numbers rather than through these other
31 alternatives. Making the adjustments in this way would enhance uniformity and ease
32 administration.

33
34 *Some comments on Alternative B.* The inflation adjustment language here is based
35 loosely on IRC § 415(d). Several comments. First, this alternative responds to the
36 concerns about the minimum-wage measure I discussed in my policy memo for our first
37 meeting, that is, that the minimum wage is a lumpy measure for this and one that's not
38 related to any policy relating to garnishment. This alternative provides for a smoother
39 adjustment of the number. Second, \$220 is a rounded number close to the present number
40 that is in most garnishment statutes now. Most statutes use 30 times the federal minimum
41 wage, so the number is currently \$217.50. Again, we would encourage states to adjust
42 this (only upwards) if they want to increase protections for debtors/employees, rather
43 than to use other alternatives. Third, (b)(2) has a rounding provision. Could make it \$1
44 instead of \$5. I don't mean to indicate by the brackets that we should give states an
45 option of higher or lower; we should decide. Fourth, the Consumer Price Index for All

1 Urban Consumers is the most widely-used CPI number. Fifth, note that (b)(1)
2 contemplates adjustments only for increases in the CPI. No adjustments would occur in
3 the event of a decrease. Finally, a general unsolicited comment. For me, I do think this
4 construction of the limit makes more sense from a policy perspective since it is less
5 lumpy and more tied to what a legislature would want this limit to be. BUT it would be a
6 change and it may create more concern than we want to stir up.

7
8 *Subsection (b) in Alternative A and Subsection (d) in Alternative B.* The four-and-one-
9 third calculation is the one specified by the Department of Labor under the Consumer
10 Credit Protection Act, 29 CFR §870.10(c)(2).

11
12 **SECTION 11. MULTIPLE LEVIES.**

13 (a) If there is more than one levy in effect against an employee of a single
14 employer:

15 (1) A levy with higher priority than a garnishment must be paid in full
16 before the garnishment is paid.

17 (2) A garnishment must be paid in full before a levy with a lower priority
18 than a garnishment.

19 (3) If the total amount of levies with the same priority as a garnishment
20 reaches the maximum amount subject to levy, each levy must be paid the same amount.

21 (b) The following levies have a higher priority than a garnishment:

22 (1) A support order;

23 (2) A bankruptcy order; [and]

24 (3) A federal tax levy that has been served on an employer prior to a
25 garnishment. [and]

26 [(4) Other types of levies to be determined by the state legislature.]

27 (c) The following [levy has][levies have] a lower priority than a garnishment:

28 (1) A federal tax levy that has been served on an employer subsequent to a
29 garnishment[.][; and]

1 [(2) Other specified levies.]

2 **Reporter's Notes and Questions**

3
4 See the Issues Memo for discussion of some issues about this section.

5
6 **SECTION 12. ENFORCEMENT.**

7 (a) A garnishee that fails to comply with section 5(b) is liable to the creditor for
8 [\$50] for each day beginning [11] business days after service of the complaint and
9 continuing until the garnishee sends the information.

10 (b) A garnishee that fails to comply with section 5(c)(1) is liable to the creditor
11 for [*state dollar amount*] for each day beginning [11] business days after service of the
12 complaint and continuing until the garnishee sends the information or until garnishment
13 would be required to begin under section 5(d), whichever is earlier.

14 (c) A garnishee that fails to comply with section 5(c)(2) is liable to the creditor for
15 [*state dollar amount*] for each day beginning [21] business days after service of the
16 complaint and continuing until the garnishee sends the information or until garnishment
17 would be required to begin under section 5(d), whichever is earlier.

18 (d) A garnishee that fails to comply with section 5(d) is liable to the creditor for
19 the amount that should have been sent to the creditor or [*state dollar amounts for weekly,*
20 *biweekly and monthly pay periods*] for each regular payday on which an amount should
21 have been sent, whichever is greater.

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

23 (1) Any amounts which the creditor did not receive because of the failure
24 to remit the garnished earnings in the proper manner, and

25 (2) [*State dollar amount*] for each day beginning [5] days after a regular

1 payday on which a debtor's earnings have or should have been garnished and ending on
2 the day the full required amount is remitted to the creditor.

3 (f) A garnishee that fails to comply with section 5(f) is liable to the creditor for
4 [*state dollar amount*] for each regular payday on which a debtor's earnings are garnished.

5 (g) A garnishee that fails to comply with a request for a calculation worksheet or
6 statement of amount due and paid under section 5(g) is liable to the creditor for [*state*
7 *dollar amount*] for each day beginning [6] business days after the request and continuing
8 until the garnishee sends the information.

9 (h) A garnishee that fails to comply with section 5(h)(2) or (3) is liable to the
10 creditor for [*state dollar amount*] for each violation.

11 (i) A creditor must apply any amounts paid by a garnishee to the creditor pursuant
12 to subsections (a) through (e) towards payment of the debtor's obligation to the creditor.
13 If the amounts due pursuant to subsections (a) through (e) exceed the amount of the
14 debtor's obligation to the creditor, any excess amounts [need not be paid][must be paid to
15 the court? Debtor? Reporter of the Uniform Garnishment Act?]

16 (j) A garnishee is not liable for any amounts under subsections (a) through (g)
17 unless:

18 (1) The debtor or creditor notifies the [court] and the garnishee of the
19 failure to comply, and

20 (2) The garnishee fails:

21 (i) To send the information required by sections 5(b), 5(c)(1),
22 5(c)(2), 5(f), 5(g), 5(h)2), or 5(h)(3), as applicable, within [10] business days after receipt
23 of the notice;

1 (ii) To begin garnishment under section 5(d) within [15] business
2 days after receipt of the notice or, if no regular payday occurs between [6] and [15]
3 business days after receipt of the notice, on the next regular payday subsequent to [15]
4 days after receipt of the notice; or

5 (iii) To properly remit garnished earnings pursuant to section 5(e)
6 to the creditor within [5] business days after receipt of the notice.

7 (k) For good cause shown, [court] may waive any of the penalties of subsections (a)
8 through (g).

9 **Reporter's Notes and Questions**

10 See the Issues Memo for a discussion of whether we should have creditor remedies.

11
12
13 *Note to Committee:* Note that we've left all amounts blank at this point. We might want
14 to discuss whether we want to insert amounts. On the one hand, the need for uniformity is
15 weak re these dollar amounts. On the other hand, we are probably in a better position to
16 think about the optimum level of these amounts than others.

17
18 *Note to Committee:* We may want to discuss the issue pointed out at the end of
19 subsection (i). There are two basic issues: (1) whether to require a payment at all if the
20 penalty exceeds the debt. On the one hand, the debt seems like a reasonable limit on the
21 scope of the garnishee's liability. On the other hand, these penalties are intended to
22 encourage garnishee's to follow the rules. If they're waived if they exceed the amount of
23 the debt, the penalties would not provide much of an incentive for small debts or at the
24 end of the life of a garnishment. (2) If we decide that a penalty ought to be paid even if it
25 exceeds the amount of the debt (to create the proper set of incentives), then who should it
26 go to. On that, I am strongly in favor of the last option.

27 28 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

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

31 **SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL** 32 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits or supersedes the

33 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et

1 seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.
2 Section 7001(c), or authorize electronic delivery of any of the notices described in
3 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

4 **SECTION 15. SAVINGS CLAUSE.** This [act] does not affect the validity or
5 effect of any garnishment filed on or before [effective date of the Act].

6 **SECTION 16. SEVERABILITY.** If any provision of this [act] or its
7 application to any person or circumstance is held invalid, the invalidity does not affect
8 other provisions or applications of this [act] which can be given effect without the invalid
9 provision or application, and to this end the provisions of this [act] are severable.

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

13
14 **SECTION 17. REPEALS; CONFORMING AMENDMENTS.**

15 (a)

16 (b)

17 (c)

18 *Legislative Note: Include in this section repeal of current state law regarding wage*
19 *garnishment.*

20
21 **SECTION 18. EFFECTIVE DATE.** This [act] takes effect

22 **[RESERVED SECTION: PROTECTION FROM DISCRIMINATION.]**

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

25 (b) The powers, remedies, and procedures used to enforce [the state’s fair
26 employment practices law] shall be the powers, remedies and procedures used to enforce
27 subsection (a).

1 **Reporter's Notes and Questions**

2
3 Subsection (a) is based on the language used in statutes that prohibit employment
4 discrimination. *See* Title VII § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1). It is broader than the
5 language in the Consumer Credit Protection Act (CCPA) in several respects. It provides
6 protection regardless of the number of actual or potential garnishments (the CCPA
7 provides protect only for one garnishment); it provides protection for both actual and
8 attempted garnishment; and it provides protection for all adverse employment actions, not
9 just discharges. *Compare* CCPA, 15 U.S.C. § 1674(a).

10
11 Subsection (b) is based on the enforcement provisions of the Americans with
12 Disabilities Act (ADA) which uses similar language to incorporate the powers, remedies
13 and procedures of Title VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117. I do
14 not know of any issues arising from this sort of cross-reference from the ADA to Title
15 VII.

16
17 There are two main advantages of using a cross-reference to define these
18 enforcement procedures. First, it means this language can be short and sweet for a
19 provision that is not likely to be used very often. Second, it means that procedural issues
20 that might arise under this statute are likely to have already been well ventilated under the
21 state's fair employment practices statute. Because Title VII defers to state discrimination
22 procedures, all states (except Alabama) have state procedures that cover the types of
23 discrimination prohibited by Title VII. Alabama has discrimination statutes that prohibit
24 other types of employment discrimination (age and disability). Thus, every state will have
25 procedures to which reference could be made under this section.