

UNIFORM WAGE GARNISHMENT ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM WAGE GARNISHMENT ACT

Prefatory Note

Wage garnishment for consumer debt is a mass industry in the United States. In a recent year, about four million workers, or about three percent of all workers, had their wages garnished for consumer debt. Paul Kiel & Chris Arnold, *Unseen Toll: Wages of Millions Seized to Pay Past Debts*, ProPublica (Sept. 15, 2014). Despite its ubiquity, the statutes authorizing wage garnishment tend to be old, outdated, and inefficient.

The Uniform Wage Garnishment Act provides a modern and efficient garnishment process:

- It streamlines the wage-garnishment process and limits, to the extent possible, the involvement of the courts. For example, an employer served with a summons will answer to the creditor rather than the court and will remit garnished amounts directly to the creditor. This approach will reduce costs, which are typically charged to the employee, and will obviate the need for an employer to retain counsel except in unusual circumstances. If an issue arises, any affected party – employee, employer, or creditor – may petition the court for relief.
- It permits a creditor and an employer to agree on the method by which payments will be transmitted to the creditor (including electronically) and it authorizes an employer with several employees being garnished by the same creditor to make a single payment that lumps together sums deducted from all the employees' earnings.
- It resolves choice-of-law issues. Under current law, a summons can issue in any jurisdiction in which the employer can be served. This act generally requires that the summons be issued by a court in the jurisdiction where the employee works, giving the employee better access to the court.
- It extends protection to a cadre of individuals who are classified as independent contractors but who are virtually indistinguishable from employees.
- It encourages states to increase the level of protection provided to employees within a framework of uniform definitions and procedures. The federal Consumer Credit Protection Act limits the amount of wages subject to garnishment but permits states to be more protective of employees.
- It requires that an employee be given a plain-language notification that explains garnishment and provides helpful information regarding the responsive steps available to the employee.
- It gives an employee time to act after being notified of a garnishment; deductions from wages cannot begin until the first regular payday occurring more than 30 days after the employee is sent the plain-language notification.

- It resolves priority issues related to multiple garnishments. More than one garnishment can be in effect at the same time and the creditors will share equally any amounts that can be garnished. The act does not apply to garnishments based on child-support orders, which take priority over other garnishments under federal law.
- It imposes sanctions on an employer that fails to carry out its responsibilities under the act after receiving a notification that it is in default. Any sanctions paid by the employer go to reduce the obligation of the employee, and the employer may not seek restitution or indemnification from the employee.
- It precludes an employer from retaliating against an employee because of a garnishment no matter how many times the employee's wages have been garnished.
- It imposes sanctions on a creditor that acts in bad faith, including monetary damages and attorney's fees. In addition, it requires creditors to act quickly when notified by an employee or employer that a garnishment is wrongful. When notified, a creditor must promptly either stop the garnishment and refund amounts garnished during the last 60 days or file a motion asking the court to determine whether the garnishment was in fact wrongful.
- It does not displace protections or remedies available under other law.

Because garnishment involves large numbers of employers and employees, it is a form-based process. Although differences in practice and procedure among the states mean that identical forms will not be possible, the efficiency of the process will be greatly improved if the forms across states are similar. To facilitate this, Appendix B provides a guide to assist states as they revise their forms to implement the Uniform Wage Garnishment Act.

UNIFORM WAGE GARNISHMENT ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

The term includes a successor in interest.

(2) “Debtor” means an individual against whom a creditor has an enforceable money judgment.

(3) “Disposable earnings” means earnings remaining after deductions for any amount required by law to be withheld.

(4) “Earnings” means compensation owed by an employer to an employee for personal services. The term includes a wage, salary, commission, bonus, profit-sharing distribution, severance payment, fee, and periodic pension or disability payment.

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

(6) “Employee” means an individual, including a former employee who is owed earnings, who:

(A) is treated by an employer as an employee for federal-employment-tax purposes; or

(B) receives earnings from an employer through periodic payments and is not treated by the employer as an employee for federal-employment-tax purposes.

(7) “Employer” means a person that owes or will owe earnings to an employee.

(8) “Garnishee” means:

(A) a person served with a [complaint][motion] under Section 5(b)(2); or

(B) a person whose registered agent is served with a [complaint][motion] under Section 5(b)(1).

(9) “Garnishment” means an ordered deduction for payment to a creditor under a garnishment action.

(10) “Garnishment action” means a court proceeding in which a garnishment is sought.

(11) “Ordered deduction” means a deduction by an employer from the earnings of an employee for payment to another person under a garnishment action, support order, order to recover federal, state, city, or local taxes, or administrative order issued by a federal [or state] agency. The term does not include a deduction with the consent of the employee or for current tax obligations.

(12) “Payday” means a regularly scheduled day on which an employer pays earnings to an employee for a pay period or, if the day of payment is uncertain or less often than once a month, the day on which the employer pays earnings to the employee.

(13) “Periodic payments” means recurring payments on set intervals.

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

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

(16) “Send” means to:

(A) deposit a record in the United States mail to the last-known address of the intended recipient with first-class postage provided;

(B) deliver a record by any other usual means of communication to the last-known address of the intended recipient with the cost of transmission, if any, provided; or

(C) cause a record to be received in any other way within the time it would have arrived if sent under subparagraph (A).

(17) “Sign” means, with present intent to authenticate or adopt a record:

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

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

(18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [The term includes a federally recognized Indian tribe.]

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

Comment

“Creditor” is limited to a person that has an enforceable money judgment against a debtor and “debtor,” in turn, is limited to an individual against whom the creditor has the enforceable money judgment. As noted in the comment below on the definition of “garnishment,” this excludes pre-judgment garnishment from the scope of the act.

“Disposable earnings” is the same substantively as the definition of “disposable earnings” in the federal Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1671-1677. It is important to keep the scope of this act consistent with the scope of the CCPA to prevent conflict or inconsistency with federal law. The types of deductions permitted under the CCPA are well-understood (federal, state, and local withholding taxes; social security and Medicare taxes;

mandatory deductions for state disability or unemployment insurance; mandatory contributions to a state employee pension plan; and mandatory contributions under the Railroad Retirement Act). The vast majority of states currently follow the CCPA definition of disposable earnings. A few states permit other kinds of payments to be deducted from disposable earnings (such as union dues, union initiation fees, and insurance contributions). This act is officially neutral on these other deductions. The calculation worksheet in Section 12 below includes a line to accommodate them (line 2.g.), but the act is silent otherwise.

“Earnings.” This definition also tracks the CCPA to ensure consistency with federal law. The term “fee,” which does not appear in the CCPA, has been added only to emphasize this act’s explicit inclusion of independent contractor’s within the scope of its coverage. It is not intended to create any differences between the definition of “earnings” in the two acts.

“Electronic” is derived from Section 2(5) of the Uniform Electronic Transactions Act and is a standard ULC definition.

“Employee” covers (a) individuals who are treated as employees by the employer for federal employment-tax purposes and (b) other individuals who, while treated by the employer as independent contractors, are in much the same position as ordinary employees. Subsection (B) is intended to include some, but not all, independent contractors. Workers are only covered if they (a) are individuals, (b) who perform personal services, and (c) are paid periodically. Extending the act’s coverage to this subset of independent contractors serves three functions. First, it provides the act’s protections to individuals who look a lot like employees but are not treated as such by their employers. Some of these individuals may be misclassified; others may work for enterprises structured to produce that result. *See, e.g., Slayman v. Fedex Ground Package Sys., Inc.*, 765 F.3d 1033 (9th Cir. 2014)(holding that Fedex misclassified drivers as independent contractors rather than employees); *O’Connor v. Uber Techs, Inc.*, 82 F. Supp. 3d 1133 (N.D. Cal. 2015)(denying summary judgment on issue of whether Uber drivers were employees or independent contractors). Second, it permits these types of workers (and their “employers”) to enjoy the efficiencies from the new and better procedures provided by this act. Third, it will ensure that this act is at least as broad as the CCPA. The CCPA does not reference “employees” and “employers,” but rather simply protects earnings from personal services. As a result, some courts have extended the CCPA’s protections to independent contractors. *See, e.g., In Re Sexton*, 140 B.R. 742 (S.D. Iowa 1992); *In Re Duncan*, 140 B.R. 210 (E.D. Tenn. 1992); *California-Peterson Currency Exch. v. Friedman*, 316 Ill. App. 3d 610 (Ill. Ct. App. 2000). *But see, e.g., Idaho Pac. Lumber Co. v. Celestial Land Co. Ltd.*, 348 P.3d 950 (Colo. Ct. App. 2013)(Colorado garnishment statute does not extend protections to independent contractors; Colorado garnishment statute was subsequently amended to cover independent contractors, Colo. Rev. Stat. § 13-54.5-101(2)(a)(i)).

“Garnishee.” This act normally refers to the person that is served with a complaint or motion in a garnishment action as an “employer.” However, in some instances a person may be served even though it does not employ the individual whose earnings are sought to be garnished. When it is not clear that the person served is an “employer,” this act uses the term “garnishee.” For an explanation of the “[complaint][motion]” construction, see the comment to section 5.

“Garnishment” is one type of “ordered deduction.” It includes only ordered deductions for payment to a creditor under a “garnishment action.” Because a creditor is defined as a person that has an enforceable money judgment against a debtor, the act does not apply to pre-judgment garnishments.

“Ordered deduction” is a broad term that encompasses both garnishment as defined by this act to include only post-judgment garnishment by creditors and garnishment for other purposes, such as child support and federal or state taxes. These other types of garnishment are excluded by Section 3 from the scope of this act.

“Periodic payments” is used only in part (B) of the definition of “employee.” This part of the definition of “employee” is intended to extend the act’s protections to a subset of workers who are in much the same position as ordinary employees, but who are not classified by the employer as employees for federal employment-tax purposes. Periodic payment is one of the factors that makes this subset of workers resemble ordinary employees.

“Person” is a standard ULC definition. The term includes both individuals and certain entities. Under this act, any “person” (that is, either an individual or an entity) can be an employer or garnishee, but only an individual can be an employee.

“Record” is derived from Section 2(13) of the Uniform Electronic Transactions Act and is a standard ULC definition.

“Send” is drawn from a similar definition in U.C.C. § 9-102(a)(75). Subsection (B) is intended primarily to permit email or other electronic forms of notice. Subsection (C) is intended primarily to permit a record to be hand-delivered.

“Sign” is a standard ULC definition and includes both physical and electronic signatures.

“State” is a standard ULC definition.

“Support order.” This definition follows the definitions that define the coverage of the Uniform Interstate Family Support Act (UIFSA) and is used to exclude garnishments under UIFSA from the scope of this act.

SECTION 3. SCOPE.

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

(b) This [act] does not apply to any remedy available to a creditor under law of this state other than this [act].

(c) Except as otherwise provided in Section 14, this [act] does not apply to an ordered deduction that is not a garnishment, including an ordered deduction:

- (1) under an order of a bankruptcy court;
- (2) for a debt due for a federal, state, city, or local tax; [or]
- (3) under a support order[; or
- (4) [insert other specified ordered deductions, if any]].

Legislative Note: *Subsection (c)(4) provides an option for a state to exclude from the act's coverage other, less common types of ordered deductions, such as deductions for criminal restitution or to recover overpayment of unemployment or welfare benefits.*

Comment

Subsection (a) makes clear that the application of this act is limited to a garnishment action, meaning an action in which a creditor – a person with a money judgment – seeks to garnish the earnings of a debtor – the individual against whom the judgment was rendered. In other words, the act applies only to what is commonly known as debt garnishment. Ordered deductions under the act include both debt garnishment and other procedures that are sometimes referred to as garnishments, such as support orders and tax liens. Subsection (c) reinforces the limitation of subsection (a) by excluding these other procedures from the act's coverage.

Subsection (c)(4) permits states to narrow the applicability of the act even further. At the extreme, the option could be used to preclude most forms of debt garnishment. Even with an expansive exclusion, however, a state might be interested in enacting the act to provide a fair process for enforcing garnishments that are permitted. *See, e.g.*, 42 PA. STAT. AND CONS. STAT. ANN. § 8127(a)(permitting personal garnishment only for support and certain rent obligations).

SECTION 4. DISMISSAL OR STAY OF ACTION; CHOICE OF LAW.

(a) Except as otherwise provided in subsection (b), the court shall dismiss or stay a garnishment action if the debtor's principal place of work is not in this state when the action is commenced.

(b) The court is not required to dismiss or stay a garnishment action under subsection (a) if the employer is subject to personal jurisdiction in this state but not in the state of the debtor's principal place of work.

(c) In a garnishment action subject to subsection (b), this [act] applies except that the debtor is entitled to the exemptions from and limits on garnishment provided by the law of the

jurisdiction of the debtor's principal place of work.

Comment

Subsection (a) provides a default forum-selection rule requiring a garnishment action to be filed in the state of the debtor's principal place of work. The primary goal of this rule is convenience for both employees and employers. In the absence of such a rule, jurisdiction may be based on whether the *employer* is subject to personal jurisdiction in the forum even though the debtor has only minimal contacts there. *See Nagel v. Westen*, 865 N.W.2d 325 (Minn. Ct. App. 2015)(permitting garnishment action in Minnesota against debtors located in Texas). *See generally* Restatement (Second) of Conflict of Laws § 68 (Am. Law Inst. 1971). This may permit a creditor to file a garnishment action in a state quite inconvenient to the debtor. For example, a creditor could sue a national corporation in California where it has operations even though the employee works for that corporation in Nebraska. As this example illustrates, a secondary goal of the forum selection rules is to limit forum shopping.

General structure of the section. If the act were limited to true employees, it would be quite rare for a situation to arise in which an employer has employees in a state which does not have personal jurisdiction over the employer. But the act's coverage extends to some independent contractors, and this situation may be less rare for them.

To handle such a situation, subsections (b) and (c) permit the action to be filed in a state other than the employee's principal place of work and authorize the court to use its own state garnishment procedures (that is, the procedures of this act). But in this situation the court is required to apply the exemptions from and limits on garnishment of the state of the employee's principal place of work. Using the forum state's procedural rules is standard procedure for a host of reasons. But the foreign state's exemptions and limits apply because it has the strongest interest in the level of protection provided to workers within its jurisdiction.

This section follows the lead of the Uniform Interstate Family Support Act (UIFSA) in two ways. First, that act uses "principal place of employment" without further delineation as the criterion for making the choice of law decision. (We have expanded the term to "principal place of work" to accommodate the expansion of the act to cover some non-employees.) Second, UIFSA requires the court to defer to the law of the state of the principal place of employment to determine the level of protection for the family-support obligor. UIFSA § 502(d).

Subsection (a). The phrase "when the action is commenced" signals that if an employee is in State A when the action is filed there and is then transferred by the employer to State B, the garnishment action may continue in State A. This is in mild conflict with the policy that the state where the employee works is the one whose limits and exemptions should apply because in this situation the court in State A will be applying State A's limits and exemptions even though the employee is now in State B. But the alternatives are inefficient and avoiding these inefficiencies outweighs this state-interest concern. The inefficient alternatives are (1) to require the court in State A to dismiss the garnishment at the time of the transfer and force the creditor to file a new action in State B or (2) to require the court in State A to have a hearing to begin to apply State B's limits and exemptions at the time of the transfer.

Subsection (b). This subsection merely provides an exception to the default rule of subsection (a) that a court must dismiss an action if the debtor’s principal place of work is not in the state. Thus, if an action falls under subsection (b), a court may, but is not required to, dismiss it. Subsection (b) does not prevent a court from dismissing the action for other reasons, including a lack of sufficient debtor contact with the state to comply with due process. *See Nagel v. Westen*, 865 N.W.2d 325, 335-40 (Minn. Ct. App. 2015)(considering whether a non-resident, post-judgment debtor had sufficient contacts with the state to support a garnishment action based only on property within the state).

SECTION 5. COMMENCEMENT OF GARNISHMENT ACTION.

(a) A creditor may commence a garnishment action by filing a [complaint][motion] with the court.

(b) The [complaint][motion] under subsection (a) must be served:

(1) on the registered agent if the employer against which the garnishment is sought has a registered agent that can be served with reasonable diligence under [cite state law on registered agents]; or

(2) if paragraph (1) does not apply, on the employer.

(c) The [complaint][motion] under subsection (a) must include:

(1) the name of the debtor;

(2) the last-known physical and mailing addresses of the debtor or a statement that the information is not known;

(3) the amount the creditor claims is owed by the debtor and information sufficient to identify the judgment on which the garnishment action is based;

(4) a completed notice that satisfies Section 10;

(5) a Notice of [insert state name] Rules About Garnishment that satisfies Section 11;

(6) the name of and contact information for the creditor’s agent to which the garnishee is required by Sections 6(1) and (2)(A) and 9(c) to send information; and

(7) the mailing address to which the garnishee must send the amount withheld and, at the creditor's option, a statement of other reasonable means of sending the amount to the creditor.

(d) The [complaint][motion] served under subsection (b) must be accompanied by:

(1) a separate document provided only to the garnishee and not filed with the court which:

(A) provides the debtor's date of birth and full social security number or states that the date or number is not known; and

(B) if the debtor's full social security number is not known, provides other identifying information known to the creditor or states that no other identifying information is known; and

(2) an administrative fee of \$[] payable to the garnishee.

Legislative Note: A state should insert for “[complaint][motion]” the appropriate action specified by state law for commencing a garnishment action.

The information in subsection (d)(1)(A) is confidential. Most states have practices and procedures for dealing with this type of information. See, e.g., Neb. Sup. Ct. Rules, Chapter 6, Art. 15, Section 6-1521 (providing a special form and procedure for dealing with this type of information). A state should align this requirement with the particular practice and procedure in the state for dealing with this type of sensitive information.

Subsection (d)(2) requires the creditor to pay the garnishee a one-time, up-front fee. Some states have and may prefer to keep other fee structures. Three possibilities are (1) both an up-front and a per-payment fee, (2) a per-payment fee only and (3) no fee. Changes in the act required to implement these other fee options are included in Appendix A.

Comment

General comments on structure. The “[complaint][motion]” construction recognizes that states vary in how a garnishment action is commenced. In general, some states treat garnishment as a method of execution on a judgment that is part of the original action against the debtor (so it would begin with a motion or writ to implead the employer), while other states treat it as an independent action against the employer to collect on a prior judgment (so it would begin with a complaint). This act is neutral on which method a state uses and is intended to accommodate

either, or indeed any, approach a state specifies for beginning a garnishment action.

A professional responsibility issue provides one rationale for the extra-judicial nature of most of this procedure. Professional responsibility rules prohibit non-attorneys from representing others in court, including responding on behalf of an entity in a garnishment proceeding. A strict application of those rules would require an entity served in a garnishment action to retain a lawyer to respond, thereby greatly increasing the costs of garnishees. This section permits the garnishee to respond and comply outside of court. Consequently, in a normal, uncomplicated garnishment, the process can be managed entirely by non-lawyer payroll administrators.

This extra-judicial procedure is analogous to a normal interrogatory process. In most states, interrogatories may be served with a complaint and the responses do not need to be filed in court.

Subsection (b)(1). The “reasonable diligence” language tracks language in the Model Registered Agents Act, § 13(b), which also requires service on the registered agent if the agent can be served with reasonable diligence, but otherwise permits service according to applicable judicial rules and procedures.

Subsection (c)(3) requires that the complaint or motion state the amount the creditor claims is owed by the debtor. Unless dismissed for other reasons, the garnishment will remain in effect until this amount has been remitted to the creditor. Under Section 9(b) a garnishment terminates when the amount stated on the complaint or motion has been fully paid, and Section 9(d) requires the creditor to dismiss the action within a stated number of days after receiving payment in full. Section 8(b) permits the creditor, before termination, to send the employer a notice requiring the employer to change its records to indicate an increase or decrease in the amount owed. An increase might occur, for example, because of accrued interest on the judgment; a decrease might occur, for example, because of a payment made to the creditor by the employee outside the garnishment action.

Subsection (d)(1)(B). Properly identifying the debtor is a common problem in garnishment. The problem may be especially acute under this act because its protections extend to individuals whom the employer classifies as independent contractors. An employer may not have all the identifying information about these individuals that it would have for ordinary employees. This subsection is intended to improve the likelihood of proper identification. In general, a full social security number is the most reliable form of identification and, if a creditor knows it, it must be provided. But if a creditor does not know a debtor’s social security number, this subsection requires it to provide additional information to assist identification or to state that such information is not known to the creditor. For individuals who are not classified as employees, the additional information may include identifiers such as an employer identification number or an individual taxpayer identification number.

Subsection (d)(2). Currently, most states provide for administrative fees (31 states), although a substantial minority do not (19). Of those that provide for administrative fees, 9 states have a one-time, up-front fee; 18 have some variation of a per-payment fee; and 2 have both an up-front and a per-payment fee. (Two states have per-payment fees that are limited idiosyncratically.) Subsection (d)(2) provides for a one-time up-front fee.

In providing for a fee, the act takes the position that it makes sense to relieve the employer of at least some of the cost of providing this uninvited mediation service between its employees and creditors.

Having determined that a fee is appropriate, the act favors a one-time, up-front fee instead of the alternatives of either a per-payment fee alone or both an up-front fee and a per-payment fee. For the employer, a one-time fee can provide the same relief from the unwelcome costs of garnishment as per-payment fees if the one-time fee is set at a level that approximates the total returns of the multiple-fee alternative. But the one-time fee approach has two advantages. First, it is significantly more efficient both because it only has to be paid once and because it is easier to implement. (As indicated by Appendix A, a per-payment fee requires changes to several other provisions of the act.) Second, it is fairer in some circumstances. For example, a large number of payments may be required when individual payments are low because debtors have low earnings. Indeed, it is possible in some circumstances, that the fee could exceed the amount paid to the creditor to service the debt. As a result, the poorest debtors may often pay the highest fees under a per-payment fee schedule. An up-front fee avoids this possibility.

The act recognizes, however, that some states already have per-payment fees and may wish to continue them. Thus, to accommodate those states, Appendix A provides a roadmap for incorporating per-payment fees into the act.

SECTION 6. GARNISHEE RESPONSE TO GARNISHMENT ACTION. Not later than [21] days after being served with a [complaint][motion] in a garnishment action:

(1) if one of the following grounds applies, the garnishee shall send to the agent named under Section 5(c)(6) a notice stating the applicable ground:

(A) the debtor is not an employee of the garnishee;

(B) the debtor's principal place of work is not in this state and the employer is subject to jurisdiction in the state of the debtor's principal place of work;

(C) the [complaint][motion] does not contain all information required by Section 5(c);

(D) the [complaint][motion] is not accompanied by the separate document required by Section 5(d)(1) or the document does not contain all the required information; or

(E) the [complaint][motion] is not accompanied by the fee required by Section 5(d)(2); or

(2) if paragraph (1) does not apply, the garnishee shall:

(A) send to the agent named under Section 5(c)(6) a notice that includes:

- (i) a statement that the named debtor is an employee of the garnishee;
- (ii) the pay frequency of the employee and the date of the next payday;
- (iii) the name of and contact information for the garnishee's agent to

which the creditor must send information if required by Section 8(d) or (f) or 15(a)(2); and

(iv) if the employee's earnings are subject to other ordered deductions, the number of other deductions and the priority of each deduction, including the priority of the garnishment sought by the [complaint][motion]; and

(B) send to the employee a copy of the notices provided to the garnishee under Section 5(c)(4) and (5).

SECTION 7. BEGINNING OF GARNISHMENT. If Section 6(2) applies, the employer shall begin garnishment on the first payday that occurs at least [30] days after the employer sends the employee the notices under Section 6(2)(B).

SECTION 8. PENDENCY OF GARNISHMENT.

(a) Not later than [five] business days after withholding an amount from the earnings of an employee under a garnishment action, the employer shall send the amount to the creditor at the mailing address specified under Section 5(c)(7) or, at the employer's option, by another means specified by the creditor under Section 5(c)(7).

(b) If an employer withholds earnings from more than one employee for the same creditor and specifies the amount attributable to each employee, the employer may combine the amounts in one payment to the creditor.

(c) An employer shall notify an employee of any amount withheld as a garnishment in the

same manner that the employer notifies the employee of other withholdings from earnings.

(d) Before termination under Section 9(b) of a garnishment action, the creditor may send the employer a notice requiring the employer to change its records to indicate an increase or decrease in the amount owed. The creditor shall send the notice to the agent named under Section 6(2)(A)(iii).

(e) The employer that receives a notice under subsection (d) shall send the employee a copy of the notice or a completed calculation worksheet under Section 12.

(f) For each payday on which a garnishment occurs, the employer shall maintain a record sufficient to prepare for each creditor a calculation worksheet under Section 12. At any time, the employee or creditor may request in a record a completed calculation worksheet. The creditor shall send the request to the agent named under Section 6(2)(A)(iii). Not later than [five] business days after receipt of a request, the employer shall send without charge a calculation worksheet for the most recent payday. The employer is not required to provide:

(1) the employee more than one calculation worksheet for each creditor for any payday; or

(2) the creditor more than four calculation worksheets for each employee during a calendar year.

SECTION 9. TERMINATION OF GARNISHMENT ACTION.

(a) Not later than [21] days after receiving notice under Section 6(1), the creditor shall seek dismissal of the garnishment action or a prompt hearing under Section 18 to determine whether the garnishee is required to proceed under Section 6(2).

(b) A garnishment begun under Section 7 terminates when:

(1) the garnishee's records indicate that the amount owed by the employee has

been paid in full; or

(2) the debtor is no longer an employee of the garnishee.

(c) Not later than [21] days after the first day on which a debtor is no longer an employee of the garnishee, the garnishee shall send the agent named under Section 5(c)(6) notice of the cessation of employment.

(d) A creditor shall seek dismissal of a garnishment action not later than [21] days after the earlier of the time:

(1) the amount owed by the debtor is paid in full; or

(2) the creditor receives the notice required by subsection (c).

SECTION 10. NOTICE TO EMPLOYEE OF GARNISHMENT; FORM.

(a) In this section, “original creditor” means a person to which a debtor originally owed the obligation for which a garnishment is sought.

(b) The notice required by Section 5(c)(4) must be in substantially the following form:

Notice of Garnishment

Money Will Be Taken from Your Pay If You Fail to Act

You are getting this notice because (name of creditor) says you owe them money.

1. Why Am I Getting This Notice?

- (Name or shortened name of creditor) has started a legal process called “garnishment.” The process requires that money be taken from your pay and given to them to pay what you owe. The person who pays you does not keep the money.
- (Name or shortened name of creditor) filled out this form. The law requires the person who pays you to give you this form.
- If the line below is checked, (name or shortened name of creditor) is not the creditor you originally owed money to. If that is the case, knowing the name of the original creditor might help you understand why money will be taken from your pay.

___ The amount you owe originally comes from a debt you owed to (name of original creditor).

2. How Much Do I Owe?

(Name or shortened name of creditor) says you currently owe \$(state amount). The amount could go up if there are more court costs or additional interest. The amount also could go down if you make payments to (name or shortened name of creditor).

3. How Will The Amount I Owe Be Paid

The person who pays you will soon be required to start taking money from your pay. Money will continue to be taken from your pay until the total amount you owe on this debt is paid.

The rules about how much of your pay can be taken are explained in the Notice of [insert name of this state] Rules About Garnishment that you received with this notice.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or email the person who pays you.

You have three options:

Talk with a lawyer. A lawyer can explain the situation to you and help you decide what to do. This office can help you find a lawyer:

(insert name and contact information
for legal aid or lawyer referral service)

**4. What Options
Do I Have?**

Contact (insert name or shortened name of creditor).

If you can work something out with them, money might not have to be taken from your pay. This is the creditor's contact information:

(Insert creditor's contact information)

Request a court hearing. A hearing could be helpful if there are any disagreements about the garnishment, for example, if you don't think you owe money. For help in requesting a hearing, contact:

(insert name and address of appropriate entity)

**5. What If I
Don't Do
Anything?**

If you don't do anything, the law requires that money be taken out of your pay every payday and given to (name or shortened name of creditor). This process continues until you have paid off your debt.

Comment

Expert Advice. This notice form was prepared with the help of a plain-language specialist who advised on its language and format and then tested it with a focus group of individuals drawn from target populations.

Readability. It is exceedingly important that this notice and other notices required by the act be easy to read. The notice in this section was carefully drafted to ensure that it was written in simple language likely to be understood by the target audience. Similar care should be taken in the drafting of the individualized state notice required by Section 11.

Ensuring readability requires drafters to take into consideration a variety of factors in addition to the language of the notice itself. One set of factors relates to the presentation of the information. Thus, careful attention must be paid to font size, background colors, type color and shading, headers, and other formatting considerations. Attention must also be paid to whether the normal mode of presentation is print or electronic; the best formatting may well vary depending on the mode of presentation. Another set of considerations relates to ensuring that the information is accessible to every target population, including those with visual disabilities and non-English speakers. Finally, a related consideration is ensuring that the forms are easy to scan and store electronically, which may raise additional considerations related to paper size and margins. These types of records are often maintained electronically. This will become more common over time and, since it is one more move towards efficiency, it should be facilitated.

Original Creditor Name. Throughout most of the notice, the form requires the name of the creditor that filed the garnishment action. The notice also requires the name of the “original creditor” if the “creditor” and “original creditor” are different. The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o (FDCPA) requires “debt collectors” to disclose the name of the “creditor” when they initiate contact with a debtor. These terms are defined in the FDCPA and this act’s categorizations are not exactly the same, but providing this type of information should be familiar to those in the field, and it provides useful information to the debtor.

SECTION 11. NOTICE OF [INSERT NAME OF THIS STATE] RULES ABOUT GARNISHMENT. The notice required by Section 5(c)(5) must:

(1) have a heading stating that it is the “Notice of [insert name of this state] Rules About Garnishment”; and

(2) reasonably inform an employee of:

(A) the limit on wage garnishment under Section 13;

(B) exemptions from and limits on garnishment under law of this state other than this [act]; and

(C) the process for claiming exemptions from and limits on garnishment, if any.

Comment

Due Process. The United States Supreme Court once held that due process did not require notice to debtors in a post-judgment wage garnishment action. The theory was that debtors had already received all the process they were due in the underlying action upon which the wage garnishment was based. *Endicott-Johnson Corp. v. Encyclopedia Press*, 266 U.S. 285 (1924). But much has changed since then. In 1969, the Supreme Court, without mentioning *Endicott-Johnson*, held that due process required adequate notice before wages could be garnished in a pre-judgment proceeding. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969). Since then, a long line of lower-court cases has held that debtors in wage garnishment actions are constitutionally entitled to notice of exemptions and the procedures for enforcing them. For a review of the cases, see *Strickland v. Alexander*, 153 F. Supp. 3d 1397 (N.D. Ga. 2015). Consequently, it is likely that this notice is required by due process. But even if not, this type of notice seems advisable as a matter of fundamental fairness.

Non-Uniformity. This form will be non-uniform for two reasons. First, as noted in the comment to Section 13, the act's standard exemption provision permits states to provide varying levels of protection to employees. Second, states currently have a variety of other exemptions available to employees. A state may wish to simplify its procedures by making the act's standard exemption provision more generous and eliminating other exemptions. But to the extent other exemptions are retained, the state will need to customize the form to accommodate them.

SECTION 12. CALCULATION WORKSHEET. A calculation worksheet required under Section 8(e) or (f) must be in substantially the following form:

Garnishment: Calculation of Amount

Debtor:
Creditor:
For earnings paid on:

Calculation of Amount Garnished for this Payday

Disposable earnings:

1. Gross earnings paid to debtor: \$ _____
2. Amounts withheld:
 - a. Federal social security tax: \$ _____
 - b. Federal medicare tax: \$ _____
 - c. Federal income tax: \$ _____
 - d. State income tax: \$ _____

- e. City or local tax: \$ _____
 - f. Railroad retirement tax: \$ _____
 - g. Other: \$ _____
3. Total amounts withheld: \$ _____
(Sum of items in line 2(a) through (g))
4. Disposable earnings: \$ _____
(Line 1 minus line 3)

Garnishment calculation:

5. []% of disposable earnings (line 4): \$ _____
6. Exemption amount: \$ _____
7. Line 4 minus line 6 (if less than \$0, enter \$0): \$ _____
8. Enter smaller of line 5 or line 7: \$ _____
9. Amounts of other current garnishments with higher priority (if none, enter \$0): \$ _____
10. Subtract line 9 from line 8 (if less than \$0, enter \$0): \$ _____
11. Enter the number of other current garnishments with the same priority, plus one: _____
12. Divide line 10 by line 11: \$ _____

The amount on line 12 is the garnishment amount for this pay period.

Statement of Amount Due and Paid

13. Total amount currently claimed by creditor: \$ _____
14. Amounts paid through garnishment:
- a. Prior garnishments: \$ _____
 - b. This garnishment: \$ _____
(Line 12)
 - c. Total garnishments: \$ _____

15. Net amount owed after garnishments to date: \$ _____
(Line 13 minus line 14c)

SECTION 13. LIMIT ON WAGE GARNISHMENT.

(a) The amount of earnings subject to garnishment may not exceed the lesser of:

(1) [] percent of disposable earnings for a workweek; or

(2) the amount by which disposable earnings for a workweek exceed [insert state multiple] times the [federal][state] minimum wage required by [Section 6(a) of the Fair Labor Standards Act, 29 U.S.C. Section 206(a)][, as amended][insert cross-reference to state minimum wage law].

(b) For a pay period greater than one week, the amount in subsection (a)(2) must be adjusted to be the appropriate multiple of [insert state multiple] times the [federal][state] minimum wage. In calculating the multiple, a pay period of one calendar month is deemed to be four and one-third weeks.

***Legislative Note:** In a state in which the constitution or other law does not permit the phrase “as amended” when a federal statute is incorporated into state law, the phrase should be omitted from subsection (a)(2).*

The Consumer Credit Protection Act, 15 U.S.C. Section 1673 (CCPA), provides that garnishment for consumer debt cannot begin until wages exceed 30 times the federal minimum wage and cannot exceed 25 percent of disposable earnings. But the CCPA does not preempt more protective state laws. Id. at Section 1677. As a result, a state that wishes to provide greater protections for employees may make the percentage in subsection (a)(1) lower than 25 percent. (It cannot be more than 25 percent.) Similarly, a state may increase the “state multiple” in subsection (a)(2) to a multiple greater than thirty. (It cannot be less than thirty.) Many states already provide greater protection against wage garnishment along these two dimensions.

Comment

Subsection (b). The four-and-one-third calculation is specified by the United States Department of Labor under the CCPA, 29 CFR § 870.10(c)(2).

SECTION 14. MULTIPLE ORDERED DEDUCTIONS.

(a) If more than one ordered deduction is in effect against an employee of a garnishee, the following rules apply:

(1) For an ordered deduction with higher priority than a garnishment, the garnishee shall send withheld earnings to the person entitled to the deduction before sending any withheld earnings under paragraph (2) or (3). The garnishee shall send any amounts remaining after payment under this paragraph in accordance with paragraphs (2) and (3).

(2) For an ordered deduction with the same priority as a garnishment, the garnishee shall send an equal amount of the withheld earnings to each person entitled to a deduction without regard to the time the deduction became effective, the amount of the debt, or any other factor.

(3) For an ordered deduction with a lower priority than a garnishment, the garnishee shall send the amount due under paragraphs (1) and (2) before any payment is made on the deduction.

(b) Priority of an ordered deduction is determined under law of this state other than this [act].

Comment

These priorities are illustrated in the examples below:

Example 1. On a given payday, the following garnishments are in effect against an employee: one by Creditor A, commenced a year ago with a remaining unpaid claim of \$5,000; one by Creditor B, commenced four months ago with a remaining unpaid claim of \$500; and one by Creditor C, commenced 45 days ago with a total claim of \$150 which is wholly unpaid. No other ordered deductions are in effect against the employee and on this payday \$300 is available for remittance. Subsection (a)(2) requires the employer to pay \$100 each to Creditors A, B, and C.

Example 2. Same facts as in Example 1, except that the payments in Example 1 have already been made; consequently Creditor A is now owed \$4,900, Creditor B \$400,

and Creditor C \$50. The next payday has now arrived and on this payday another \$300 is available for remittance. Subsection (a)(2) requires the employer to pay \$50 to Creditor C, \$125 to Creditor A, and \$125 to Creditor B.

Example 3. Same facts as in Example 1, except that Creditor A's ordered deduction is a child support order with a higher priority than a garnishment. Subsection (a)(1) requires the employer to pay the entire \$300 to Creditor A.

SECTION 15. COMPLIANCE PROCESS.

(a) A garnishee is not liable for a sanction under Section 16 unless:

(1) the debtor or creditor files a motion with the court which states with specificity the nature of the garnishee's failure to comply with this [act];

(2) if the creditor files the motion under paragraph (1) and an agent has been named under Section 6(2)(A)(iii), the creditor sends a copy of the motion to the agent; and

(3) the garnishee fails:

(A) to send the information required by Section 6(1) or (2) not later than [10] business days after the earlier of the time the garnishee receives a copy of the motion under paragraph (1) or (2);

(B) to begin garnishment under Section 7 not later than [21] days after the earlier of the time the garnishee receives a copy of the motion under paragraph (1) or (2) or, if no payday occurs at least [six] and not later than [21] days after receiving the copy, to begin garnishment on the next payday later than [21] days after the earlier of the time the garnishee receives a copy; or

(C) to remit to the creditor, not later than [five] business days after receiving a copy, the amount that has been withheld from the earnings of the debtor since garnishment began under Section 7 but not properly remitted to the creditor under Section 8(a).

(b) For good cause, the court may excuse payment of all or part of an amount due under

Section 16.

Comment

Sections 15 and 16 must be read together. Section 16 imposes sanctions on a garnishee that fails to comply with the act. The sanctions differ depending on the nature of the misconduct. Section 15 provides that no sanctions may be imposed unless a motion is filed with the court indicating the nature of the misconduct and the garnishee fails to cure the problem within a certain period of time after receiving a copy of the motion. Because there may be extenuating circumstances, Section 15(b) permits the court to excuse all or part of a sanction.

SECTION 16. GARNISHEE SANCTIONS FOR NONCOMPLIANCE. Subject to Section 15, the following rules apply:

(1) A garnishee that fails to comply with Section 6 is liable to the creditor for \$[20] for each day beginning [22] days after service of the [complaint][motion]:

(A) until the garnishee sends the information required by Section 6(1); or

(B) until the earlier of the day the garnishee sends the information required by

Section 6(2) or garnishment is required to begin under Section 7.

(2) A garnishee that fails to comply with Section 7 is liable to the creditor for the amount under that section that should have been withheld and sent to the creditor.

(3) A garnishee that fails to comply with Section 8(a) is liable to the creditor for:

(A) any amount withheld from the earnings of the employee which the creditor did not receive because of the garnishee's failure to send the amount properly; and

(B) \$[20] for each day beginning [six] business days after a payday on which the amount was or should have been withheld and ending the day before the amount is sent to the creditor.

(4) A garnishee that fails under Section 8(e) to send a calculation worksheet or a copy of the notice received from the creditor is liable to the employee for \$[5] for each day beginning on the payday when the worksheet or notice should have been sent and ending the day before the

garnishee sends the worksheet or notice.

(5) A garnishee that fails to comply with a request by the employee or creditor under Section 8(f) for a calculation worksheet is liable to the requesting employee or creditor for \$[5] for each day beginning [six] business days after the request and ending the day before the garnishee sends the worksheet.

(6) A garnishee that fails to comply with Section 9(c) is liable to the creditor for \$[5] for each day beginning [22] days after the first day on which the debtor is no longer an employee of the garnishee and ending the day the notice is sent.

(7) A creditor shall apply any amount paid by a garnishee to the creditor under this section toward reduction of the amount owed by the debtor to the creditor. The maximum amount paid by a garnishee under this section may not exceed the total amount owed by the debtor in the garnishment action.

(8) A reduction of the amount owed by the debtor to the creditor under paragraph (7) does not entitle the garnishee to any right of reimbursement, indemnity, or subrogation against the debtor. This paragraph may not be varied by agreement.

Comment

Section 16 must be read in light of Section 15, which precludes any sanctions against an employer unless a motion is filed with the court indicating the nature of the misconduct and the employer fails to cure the problem within a certain period of time after receiving a copy of the motion.

Amounts. The amounts a garnishee must pay for various violations of the act are bracketed because the need for uniformity is low. The key consideration in setting them is to encourage garnishees to comply with the act.

SECTION 17. CREDITOR SANCTIONS.

(a) If the court determines that a creditor acted in bad faith in seeking a garnishment under this [act], the court may find the creditor liable for:

- (1) an amount not to exceed \$[1,000];
- (2) any amount due under subsection (c); and
- (3) reasonable attorney's fees of the garnishee and individual whose earnings the creditor sought to garnish.

(b) A garnishee or individual whose earnings the creditor sought to garnish may send to the creditor a notice in a record stating the reason that the garnishment is wrongful. If the creditor is represented by an attorney, the garnishee or individual shall send the notice to the attorney. The creditor acts in bad faith if it fails not later than [7] business days after receiving the notice:

- (1) to take appropriate action to stop the garnishment and return any earnings garnished during the [60] days preceding receipt of the notice and send to the garnishee or individual a notice in a record indicating that it has done so; or

- (2) to file a motion with the court requesting an expedited hearing to determine whether the garnishment was wrongful.

(c) A creditor that fails to comply with subsection (b) is liable for \$[50] per day beginning on the [eighth] business day after receiving the notice provided for in subsection (b) and ending the day before the creditor complies with subsection (b)(1).

(d) A court may allocate an amount awarded under subsection (a), other than attorney's fees, between the garnishee and the individual whose earnings the creditor sought to garnish, taking into consideration which person filed the claim alleging bad faith or sent the notice alleging wrongful garnishment, the extent of each person's participation in the proceedings, and the harm suffered by each person.

(e) For good cause, the court may excuse payment of all or part of an amount due under

this section.

(f) This [section] does not limit any other remedy available under law of this state other than this [act] to a garnishee or an individual whose earnings a creditor sought to garnish.

Comment

This section provides sanctions for a creditor whose misconduct constitutes bad faith. A creditor that fails to comply with subsection (b) is deemed to have acted in bad faith as a matter of law, but the subsection does not state the exclusive circumstances in which bad faith conduct may occur. Subsection (f) makes clear that it is not intended to preempt other remedies that might be available under state tort law, or otherwise. Additional remedies may also be available under the Fair Credit Protection Act, 15 U.S.C. §§ 1601 *et seq.*

SECTION 18. HEARING.

(a) A garnishee, creditor, or debtor may request the court to hold a hearing to determine an issue arising under this [act].

(b) A debtor may request the court to hold a hearing to claim an exemption from or limit on garnishment under law of this state other than this [act].

(c) The court shall promptly hold a hearing requested under this section. The court may enjoin a garnishment until the hearing can be held.

SECTION 19. PROTECTION OF EMPLOYEE SUBJECT TO GARNISHMENT.

(a) An employer may not discharge or take other adverse action against an employee because of a garnishment or attempted garnishment.

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

Comment

This type of provision is common in state garnishment statutes. The Consumer Credit Protection Act (CCPA) contains a similar provision, but the protection provided by this section is broader in several respects. This section provides protection regardless of the number of actual or potential garnishments (the CCPA provides protection for only one garnishment); it provides protection for both actual and attempted garnishments; and it provides protection for all adverse

employment actions, not just discharges. *Compare* CCPA, 15 U.S.C. § 1674(a).

Subsection (b) is based on the enforcement provisions of the Americans with Disabilities Act (ADA), which uses similar language to incorporate the powers, remedies, and procedures of Title VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117.

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

SECTION 20. OTHER LAWS NOT LIMITED. This [act] does not affect any other law of this state that limits or prohibits garnishment.

Comment

This section preserves restrictions on garnishment found elsewhere in state law, including complete prohibitions on garnishment. Some states have such restrictions in their current law. For example, South Carolina does not permit wage garnishments for debts arising from consumer credit sales, consumer leases, consumer loans, or consumer rental-purchase agreements. S.C. Code Ann. § 37-5-104. Thus, unless other changes are made, this provision would preserve these limitations on garnishment. Similarly, several states prohibit wage garnishment of people who receive public assistance or have “wild card” exemptions that might apply.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.

Section 7003(b).

Comment

This is a standard section in Uniform Law Commission acts that provides an express defense for this act against preemption by the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq. (“E-Sign”). E-Sign, enacted into federal law in 2000, governs the legal validity of electronic records and signatures in private and governmental transactions in the United States. In most circumstances, it applies to permit electronic signatures to satisfy the statute of frauds even in states that otherwise retain paper or manual signature requirements. 15 U.S.C. § 7001.

E-sign expressly permits states to “modify, limit, or supersede” its requirements if (a) the state law is consistent with E-sign and (b) the state law makes “specific reference” to E-sign. 15 U.S.C. § 7002(a). This act has provisions that permit electronic records and signatures to be used. Consequently, this provision is the “specific reference” required to ensure that these provisions are covered by the non-preemption provision of E-sign. The probability of conflict preemption for this act is very unlikely in any event since the act has been drafted to be consistent with E-Sign and the Uniform Electronic Transactions Act. But this standard section satisfies the express technical requirements of E-sign to qualify for non-preemption, so it provides even greater assurance that the act is not preempted by federal law.

This provision also makes clear that this act does not attempt to modify, limit, or supersede provisions of E-sign that permit states to continue to require non-electronic records and signatures in certain situations. These situations include certain consumer contracts, notices to cancel important services (such as utilities and health insurance), and notices of product recalls. 15 U.S.C. §§ 7001(c), 7003(b). Since this act does not apply to those situations, these disclaimers are not essential, but they are included anyway to protect against confusion and because this is a standard ULC provision.

SECTION 23. SAVINGS CLAUSE. This [act] does not affect the validity or effect of a garnishment action filed before [the effective date of this [act]].

[SECTION 24. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

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

SECTION 25. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 26. EFFECTIVE DATE. This [act] takes effect

APPENDIX A

**Changes Required to Implement Alternate Fee Structures
(See Section 5, Legislative Note)**

1. Up-Front and Per-Payment Fees

A. In Section 11(2) insert:

(D) The amount of the fee the employer may deduct from the employee's earnings for each payment made to a creditor.

B. In Section 12, delete everything after line 12 and insert:

13. Fee retained by the employer for making this payment to the creditor: \$ _____

14. Subtract line 13 from line 12: \$ _____

The amount on line 14 is the garnishment amount paid to the creditor for this pay period.

Statement of Amount Due and Paid

15. Total amount currently claimed by creditor: \$ _____

16. Amounts paid through garnishment:

a. Prior garnishments: \$ _____

b. This garnishment:
(Line 14) \$ _____

c. Total garnishments: \$ _____

17. Net amount owed after garnishments to date:
(Line 15 minus line 14c) \$ _____

C. Delete Section 13 and insert:

SECTION 13. FEES; LIMIT ON WAGE GARNISHMENT.

(a) For each payment made to a creditor in a garnishment action, an employer may retain from earnings a fee of \$[] subject to the following rules:

(1) If a payment to the creditor is made under Section 8(b), the employer may charge only one fee and must allocate it equally to each employee.

(2) If the payment to the creditor is less than \$[insert a number that is [5] times the amount of the fee in subsection (a)], the employer may not retain a fee.

(3) The fee is included within the limits of subsection (b).

(b) The amount of earnings subject to garnishment may not exceed the lesser of:

(1) [] percent of disposable earnings for a workweek; or

(2) the amount by which disposable earnings for a workweek exceed [insert state multiple] times the [federal][state] minimum wage required by [Section 6(a) of the Fair Labor Standards Act, 29 U.S.C. Section 206(a)][, as amended][insert cross-reference to state minimum wage law].

(c) For a pay period greater than one week, the amount in subsection (b)(2) must be adjusted to be the appropriate multiple of [insert state multiple] times the [federal][state] minimum wage. In calculating the multiple, a pay period of one calendar month is deemed to be four and one-third weeks.

***Legislative Note:** In a state in which the constitution or other law does not permit the phrase “as amended” when a federal statute is incorporated into state law, the phrase should be omitted from subsection (b)(2).*

2. Per-payment fees only

- A. Delete Sections 5(d)(2) and 6(1)(E); and
- B. Insert the provisions above for option 1 (Up-Front and Per-Payment Fees).

3. No fees

Delete Sections 5(d)(2) and 6(1)(E).

APPENDIX B

A Guide to Forms

Wage garnishment is a mass industry affecting millions of employees every year. A major goal of the Uniform Wage Garnishment Act (UWGA) is to increase the efficiency of this process. This appendix is provided to advance that goal: The garnishment process will be even more efficient if the forms used to comply with its provisions are similar across states.

This appendix is a guide to forms a state might provide, or parties might voluntarily adopt, to implement the UWGA. Since enacting states may differ in the employee protections they provide and in certain aspects of practice and procedure, this appendix provides a guide to forms rather than forms themselves. It is intended to be a useful starting point for the development of state-specific forms. The hope is that this appendix will result in the widespread use of common forms and, hence, in more efficient garnishment processes.

The garnishment process will also be improved if employers are provided with clear and easy-to-follow instructions about how to proceed when served in a garnishment action. This is especially important for small employers that engage in this process infrequently. The Uniform Law Commission provides model instructions for employers separately in the enactment kit for this act.

Note that the UWGA itself contains two forms. Section 10 provides a uniform notice to be provided to a debtor at the commencement of a garnishment, and Section 12 provides a form for reporting how the amount to be garnished is determined. Since those forms are in the act itself, they are not repeated in this appendix.

The forms included are:	<u>Page</u>
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Form to Commence Garnishment

Section 5(c) of the UWGA requires a creditor to commence a garnishment action by providing a specified set of information to the employer. States will differ procedurally in how this information needs to be provided. For example, garnishment is commenced in some states by filing a new action, while in other states it is commenced by filing a motion in the underlying action on the debt. The form used to commence garnishment must reflect the appropriate procedure. The following information is required by Section 5(c) and should be included as the core part of whatever form is used:

- 1) The debtor's name is [state name of debtor].
- 2) The debtor's last known physical address is (insert address or check box):

[state last known physical address]

 Physical address is not known
- 3) The debtor's last known mailing address is (insert address or check one of the boxes):

[state last known mailing address if different]

 Same as the last known physical address above

 Mailing address is not known.
- 4) The debtor owes [state amount owed] based on [provide information sufficient to identify judgment upon which garnishment action is based].
- 5) A completed Notice of Garnishment that complies with [Section 10 of the Uniform Wage Garnishment Act] is attached.
- 6) A Notice of [insert state name] Rules About Garnishment that complies with [Section 11 of the Uniform Wage Garnishment Act] is attached.
- 7) Creditor's agent is [state name of and contact information for agent].
- 8) Employer must send amounts withheld from the debtor's earnings to creditor at [state mailing address to which amounts must be sent].
- 9) Instead of mailing amounts withheld to the address above, creditor agrees that employer may instead send the amount by the following means [state with specificity alternative means of sending amounts withheld].

**Addendum to Form to Commence Garnishment
Confidential Identifying Information**

Section 5(d)(1) of the UWGA requires the creditor to provide confidential information about the debtor to the employer. This is necessary to ensure proper identification, but it is also information that needs to be protected. All states have procedures for conveying this type of information while protecting it from improper disclosure. This form will need to reflect each particular state's procedure. The form should include this information:

- 1) The debtor's date of birth is (state date of birth or check box):

[state debtor's date of birth]

___ Debtor's date of birth is not known

- 2) The debtor's social security number is (state social security number or check box):

[state debtor's social security number]

___ Debtor's social security number is not known.

- 3) The following additional identifying information is known (must complete or check box if the debtor's full social security number is not known):

___ No additional identifying information is known to the creditor

(Additional identifying information may include but is not limited to a taxpayer identification number, a partial social security number, or other names used by the debtor.)

**Employer's Response to Garnishment:
No Garnishment to Commence**

Service of process in a garnishment action requires the employer to commence garnishment unless there is a statutory reason for not doing so. When the employer receives the [Form to Commence Garnishment], the UWGA requires it to either commence the garnishment process by sending the creditor the [Employer's Response to Garnishment: Garnishment to Commence] on page 40 or to provide the creditor with the reason(s) for failing to commence garnishment. This form reflects the possible reasons for failing to commence garnishment specified by Section 6(1) of the UWGA. It should be sent to the creditor by an employer that does not intend to commence garnishment:

To: [Agent of creditor named in Form to Commence Garnishment]
From: [State name of employer]
Date: [Insert date]
In Re: [Identify case]

As required by [the Uniform Wage Garnishment Act], [state name of employer] is sending this information to you within [21] days of receiving the [Form to Commence Garnishment]. This form provides you with the reason(s) [state name of employer] is not commencing garnishment at this time.

This is to advise you that (check all that apply):

- The debtor named in the [Form to Commence Garnishment] is not one of our employees.
- The principal place of work of the debtor named in the [Form to Commence Garnishment] is not in this state.
- The [Form to Commence Garnishment] does not contain the following required information:
 - Insufficient information to identify the debtor
 - Amount the debtor owes was not specified
 - Insufficient information to identify the judgment upon which garnishment is based
 - One or both notice forms were not supplied
 - Creditor's agent was not named
 - Insufficient information about where to send withheld earnings

___ The [Form to Commence Garnishment] was not accompanied by the separate addendum providing confidential information to identify the debtor.

___ The separate addendum did not contain all the required information.

___ The [Form to Commence Garnishment] was not accompanied by the required fee.

___ Other (specify other reason(s)):

**Employer's Response to Garnishment:
Garnishment to Commence**

If garnishment is appropriate after an employer receives a [Form to Commence Garnishment], Section 6(2) of the UWGA requires the employer to provide the creditor with certain information. This form should be sent to the creditor by an employer that is required to commence garnishment:

To: [Agent of creditor named in Form to Commence Garnishment]
From: [State name of employer]
Date: [Insert date]
In Re: [Identify case]

As required by [the Uniform Wage Garnishment Act], [state name of employer] is sending this information to you within [21] days after being served with the [Form to Commence Garnishment].

This is to advise you that:

- 1) The debtor named in the [Form to Commence Garnishment], [state name of debtor], is one of our employees.
- 2) The employee's pay frequency is [state pay frequency].
- 3) The employee's next payday is [state next payday if known, otherwise state that employee's next day of payment is uncertain].
- 4) The employer's agent for purposes of this action is [state name of and contact information for agent].
- 5) The employee's earnings are currently subject to the following ordered deductions:

[list each ordered deduction currently in effect, including the priority of the garnishment in this action and the priority of each of the other ordered deductions].

Notice to Creditor of Multiple Remittances

If an employer withholds earnings from more than one employee for the same creditor, Section 8(b) of the UWGA permits the employer to send one remittance to the creditor. When it does this, however, the employer must specify the amount attributable to each employee. If an employer does not provide this information to the creditor in another way, this form can be used for that purpose:

To: [Agent of creditor named in Form to Commence Garnishment]
From: [State name of employer]
Date: [Insert date]
In Re: One remittance for multiple employees

This is to advise that the remittance to which this notice relates combines amounts withheld from more than one employee.

The total amount of the remittance is [state total amount being remitted].

The amount attributable to each employee is as follows:

<u>Case</u>	<u>Name</u>	<u>Amount</u>
[identify case]	[state employee's name] ¹	[state amount for employee] ²

¹ There must be a line for each employee for whom there is a remitted amount.

² The sum of the amounts listed must match the total amount of the remittance.

Motion for a Hearing or Dismissal

Section 9(a) of the UWGA requires a creditor that receives a notice from an employer under Section 6(1) to either dismiss the case or move for a court hearing. This is a form for that motion:

Creditor received a notice from the employer under [Section 6(1) of the Uniform Wage Garnishment Act] stating that (check all that apply):

- The debtor is not an employee of the employer.
- The debtor's principal place of work is not in this State.
- The [Form to Commence Garnishment] used to commence this garnishment action did not contain all the information required by [Section 5(c) of the Uniform Wage Garnishment Act].
- The [Form to Commence Garnishment] used to commence this garnishment action was not accompanied by the separate addendum required by [Section 5(d)(1) of the Uniform Wage Garnishment Act].
- The [Form to Commence Garnishment] used to commence this garnishment action did not contain all the information required by [Section 5(d)(1) of the Uniform Wage Garnishment Act].
- The [Form to Commence Garnishment] used to commence this garnishment action was not accompanied by the fee required by [Section 5(d)(2) of the Uniform Wage Garnishment Act].

Creditor now moves (check one):

- For a prompt hearing under [Section 18 of the Uniform Wage Garnishment Act] to determine whether the employer is required to proceed with garnishment under [Section 6(2) of the Uniform Wage Garnishment Act].
- To [dismiss this action][withdraw the motion] seeking garnishment.

Notice that the Debtor is No Longer an Employee

Section 9(b) of the UWGA requires an employer to notify the creditor if the debtor is no longer an employee of the employer. This form provides that notice:

To: [Agent of creditor named in Form to Commence Garnishment]
From: [State name of employer]
Date: [Insert date]
In Re: [Identify case]

This is to advise you that the debtor in the above-referenced matter, [state debtor's name], is no longer one of our employees. The first day on which the debtor was no longer employed was [insert date].

Motion to Dismiss Garnishment Action

Section 9(d) of the UWGA requires a creditor to dismiss a garnishment action if either the amount of the debt has been paid in full or the debtor is no longer an employee of the employer. This is a form for that motion:

Now comes [state name of creditor] to move that this [action be dismissed] [motion be withdrawn] because (check one):

- The debtor has paid the amount due in full.
- The debtor is no longer an employee of the employer.
- Other: [state reason for dismissal]

Notice of [Insert Name of This State] Rules About Garnishment

Section 11 of the UWGA requires creditors to provide a notice to employers (and employers to provide that notice to debtors) that describes state-specific rules about limits on the amounts that can be taken from pay through garnishment and any procedures for claiming those limits. These notices will vary from state to state because the limits and procedures vary by state. The following notice can be adapted for this purpose:

The law of [insert name of this state] limits the amount that creditors can require your employer to take from your pay through garnishment. This notice will explain the limits on how much can be taken from your pay.

The maximum amount that can be deducted from your pay for garnishment can be no more than the lesser of these two amounts:

1. The amount by which your disposable earnings are above \$[]¹ per week.

For example, if your disposable earnings are less than \$[] per week, nothing can be taken from your check for this garnishment. But if your disposable earnings are more than \$[] per week, any amount above that can be taken from your check, but no more than the amount in 2 below.

2. []² percent of your disposable earnings in a week.

For example, if your disposable earnings are \$1,000 per week, no more than [] percent, or [insert dollar amount that is the proper percentage of \$1,000], can be taken from your check for this garnishment.

Note that both 1 and 2 above refer to your “disposable earnings.” Your “disposable earnings” are the amount you have left in your check after money has been taken out for federal, state and local income taxes; social security and Medicare taxes; mandatory deductions for state disability and unemployment insurance; mandatory contributions to a state employee pension plan; and mandatory contributions under the Railroad Retirement Act.³ For example, if your total wages are \$1,200 but \$200 was taken out for taxes, your “disposable earnings” are \$1,000.

If you have more than one garnishment, the total amount that can be taken out of your check for all the garnishments combined cannot exceed these limits.

¹ Insert amount required by Section 13(a)(2) of the Act. If the state provides the minimum protection required by the Consumer Credit Protection Act, this amount is \$217.50.

² Insert amount required by Section 13(a)(1) of the Act. If the state provides the minimum protection required by the Consumer Credit Protection Act, this percentage is 25 percent.

³ The items listed here are the ones the Consumer Credit Protection Act requires to be deducted from earnings to calculate disposable earnings. Most states use this list but a few states require other items to be deducted, such as union dues and health insurance premiums. Those states should add those additional items to this list.

At any time, you can ask your employer for a worksheet that explains how the employer has determined the amount to take from your wages for this garnishment. To do this, you should ask your employer for a Calculation Worksheet and you should do this in writing.

[List any exemptions from and limits on garnishment under state law other than those under the Uniform Wage Garnishment Act.]

[Explain any process required for claiming exemptions from and limits on garnishment.]

Motion of Employer Non-Compliance

Section 15(a) of the UWGA requires employers to be notified of non-compliance and given an opportunity to cure before any sanctions can be imposed. This form provides the notice of non-compliance and instructions about how to cure any non-compliance.

Now comes (check one):

___ [State name of creditor]

___ [State name of debtor], the debtor against whom garnishment is sought in this action

to notify the Court and the employer has been served in a garnishment action and has failed to comply with its obligations under the [Uniform Wage Garnishment Act] in that (check all that apply):

___ (1) The employer failed to send the information required by [Section 6(1)] within [21] days of being served with the [Form to Commence Garnishment].

___ (2) The employer failed to send the information required by [Section 6(2)(A)] within [21] days of being served with the [Form to Commence Garnishment].

___ (3) The employer failed to send the information required by [Section 6(2)(B)] within [21] days of being served with the [Form to Commence Garnishment].

___ (4) The employer failed to begin garnishment on the first payday that occurred at least [30] days after it sent the debtor the notices under [Section 6(2)(B)].

___ (5) The employer failed to remit to the creditor amounts withheld from the earnings of the debtor until later than [five] business days after withholding the amounts as required by [Section 8(a)].

___ (6) The employer received a notice from the creditor requiring it to change its records about the amount the debtor owes to the creditor and the employer failed to send to the debtor either a copy of the notice changing the amount due or a Calculation Worksheet as required by [Section 8(e)].

___ (7) The movant sent a request for a Calculation Worksheet on [insert date] but the employer failed to send a Calculation Worksheet within [five] business days of receiving the request.

___ (8) The employer failed to send the notice required by [Section 9(c)] that the debtor is no longer an employee of the employer within [21] days of the first day on which the debtor was no longer an employee.

This notice is intended to give the employer an opportunity to cure the failure(s) alleged above. To cure, the employer must:

- Send the information required by items (1), (2) and (3) within [10] business days of receiving this motion.
- Begin the garnishment required by item (4) within [21] days of receiving this motion or, if no payday occurs by that time, on the next payday after [21] days.
- Remit withheld earnings to the creditor under item (5) within [5] business days of receiving this motion.
- Immediately provide the information required by items (6), (7), or (8).

If the employer does not cure the failure(s) alleged above, the movant may seek the remedies provided by [Section 16] of the [Uniform Wage Garnishment Act].

Motion Seeking Sanctions Against Employer

Section 16 of the UWGA provides sanctions for employers that fail to comply with the act and do not timely cure under section 15 of the Uniform Wage Garnishment Act. This form is a motion seeking such sanctions:

Now comes (check one):

[State name of creditor]

[State name of debtor], the debtor against whom garnishment is sought in this action.

[Creditor or debtor] filed and served a [Motion of Employer Noncompliance] under Section [15] of the [Uniform Wage Garnishment Act] on [insert date]. The employer has not timely cured the failure(s) identified in that motion. Now comes [creditor] [debtor] to move that [state name of employer] be sanctioned for its failure to comply with its obligations under the [Uniform Wage Garnishment Act] in that (check all that apply):

The employer failed to send the information required by [Section 6(1)] within [21] days of being served with the [Form to Commence Garnishment].

The employer failed to send the information required by [Section 6(2)(A)] within [21] days of being served with the [Form to Commence Garnishment].

The employer failed to send the information required by [Section 6(2)(B)] within [21] days of being served with the [Form to Commence Garnishment].

The employer failed to begin garnishment on the first payday that occurred at least [30] days after it sent the debtor the notices under [Section 6(2)(B)].

The employer failed to remit to the creditor amounts withheld from the earnings of the debtor until later than [five] business days after withholding the amounts as required by [Section 8(a)].

The employer failed to send the debtor a Calculation Worksheet or a copy of the notice changing the amount due as required by [Section 8(e)].

The employer failed to send a Calculation Worksheet to (check one or both) the debtor the creditor within [five] business days of receiving a request for a worksheet.

— The employer failed to send the notice required by [Section 9(c)] that the debtor is no longer an employee of the employer within [21] days of the first day on which the debtor was no longer an employee.

Motion Seeking Sanctions Against Creditor for Bad Faith

Section 17 of the UWGA provides for sanctions against a creditor that acts in bad faith. This form is for a motion seeking such sanctions:

Now comes (check one):

___ [State name of employer]

___ [State name of debtor], the debtor against whom garnishment is sought in this action

to move that [state name of creditor], the creditor in this action, be sanctioned for bad faith in seeking a garnishment under the [Uniform Wage Garnishment Act] because (check all that apply):

___ The creditor was notified in a record on [insert date] that the garnishment sought was wrongful and failed within [7] business days to either (1) take appropriate action to stop the garnishment and return any earnings garnished during the [60] days preceding receipt of the notice, or (2) file a motion with this court requesting an expedited hearing to determine whether the garnishment was wrongful.

___ The creditor acted in bad faith in seeking a garnishment by:

[list and explain reasons]

The movant seeks (check all that apply):

___ [Insert amount up to \$1,000] in sanctions.

___ \$[] for failure to respond in a timely manner to the notice provided on [insert date] that the garnishment sought was wrongful, which is \$[50] for each day of non-compliance beginning [eight] days after the notice was provided.

___ Reasonable attorney's fees as determined by the court.

Motion Seeking a Hearing

Section 18 of the UWGA permits any party to move for a court hearing at any time. This form is a motion seeking such a hearing:

Now comes (check one):

___ [State name of creditor]

___ [State name of employer]

___ [State name of debtor], the debtor against whom garnishment is sought in this action

to move for a hearing to determine the following issue(s) under the [Uniform Wage Garnishment Act]:

[Explain issue(s)]