

UNIFORM WAGE GARNISHMENT ACT*

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR
STOWE, VERMONT
JULY 8 - JULY 14, 2016**

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

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UNIFORM WAGE GARNISHMENT ACT

[ARTICLE] 1

SHORT TITLE AND DEFINITIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Wage Garnishment Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Creditor” means a person that has an enforceable money judgment against a debtor, including 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 amounts 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 and disability payment.

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

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

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

(B) receives earnings from an employer through periodic payments and is not treated by the employer as an employee for federal-income-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 203(b)(2); or

(B) a person that has a registered agent that is served with a [complaint][motion]

under Section 203(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 from earnings 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) “Pay record” means a record provided to an employee which includes a statement of the employee’s total earnings on a payday and a listing of the amount and purpose of each deduction, if any.

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

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

(16) “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.

(17) “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 pursuant to subparagraph (A).

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

(A) execute or adopt a tangible symbol; or

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

(19) “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.]

(20) “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.

[ARTICLE] 2

GARNISHMENT OF EARNINGS

SECTION 201. SCOPE.

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

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

(c) Except as otherwise provided in Section 212, this [article] does not apply to an ordered deduction that is not a garnishment, including an ordered deduction under:

(1) an order of a bankruptcy court;

(2) a debt due for a federal, state, city, or local tax; [or]

(3) a support order[; or

[(4) other specified ordered deductions].

SECTION 202. CHOICE OF LAW.

(a) Except as 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) Subsection (a) does not apply 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 under subsection (b), this [article] 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.

SECTION 203. 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 person against whom 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 person against whom the garnishment is sought.

(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 208;

(5) a Notice of [insert state name] Rules about Garnishment that satisfies Section 209;

(6) the name of and contact information for the creditor's agent to whom the garnishee is required by Sections 204(1) and (2)(A) and 207(c) to send information; and

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

SECTION 204. GARNISHEE INITIAL 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 203(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 the information required by Section 203(c);

(D) the [complaint][motion] is not accompanied by the separate document required by Section 203(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 203(d)(2); or

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

(A) send the agent named under Section 203(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 whom the creditor must send information if required by Section 206(d) and (f) or 213(b)(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 the employee a copy of the notices provided to the garnishee under Section 203(c)(4) and (5).

SECTION 205. BEGINNING OF GARNISHMENT. If Section 204(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 204(2)(B).

SECTION 206. ACTION DURING PENDENCY OF GARNISHMENT.

(a) Not later than [five] business days after withholding an amount from the earnings of an employee pursuant to a garnishment action, the employer shall send the amount to the creditor at the mailing address specified under Section 203(c)(7) or, at the employer's option, by another means specified by the creditor under Section 203(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) At any time before termination of a garnishment action under Section 207(b), a creditor may send to an 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 204(2)(A)(iii).

(e) An employer that receives a notice under subsection (d) shall send the employee a copy of the notice or a completed calculation worksheet under Section 210.

(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 210. At any time, an employee or creditor may request in a record a completed calculation worksheet. The creditor shall send the request to the agent named under Section 204(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 207. TERMINATION OF GARNISHMENT ACTION.

(a) Not later than [21] days after receiving notice under Section 204(1), a creditor shall seek dismissal of the garnishment action or a prompt hearing under Section 302 to determine whether the garnishee is required to proceed under Section 204(2).

(b) A garnishment begun under Section 205 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 203(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 208. 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 203(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 your pay is being garnished.

___ The amount you owe originally comes from a debt you owed to [insert 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 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]

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]

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

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 [insert name or shortened name of creditor]. This process continues until you have paid off your debt.

SECTION 209. NOTICE OF [INSERT NAME OF STATE] RULES ABOUT GARNISHMENT. The notice required by Section 203(c)(5) must:

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

(2) reasonably inform an employee of:

(A) the limits on wage garnishment under Section 211;

(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.

SECTION 210. CALCULATION WORKSHEET. A calculation worksheet required under Section 206(e) or (f) must be in substantially the following form:

Notice of Garnishment

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) | \$_____ |

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 211. LIMITS ON WAGE GARNISHMENT.

(a) The maximum 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 [state multiple] times the [federal][state] minimum wage required by [Section 6(a) of the federal Fair Labor Standards Act, 29 U.S.C. Section 206(a)][cross-reference to state minimum wage law][, as amended].

(b) For a pay period greater than one week, the amount in subsection (a)(2) must be adjusted to be the appropriate multiple of [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.

SECTION 212. MULTIPLE ORDERED DEDUCTIONS.

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

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

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

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

SECTION 213. COMPLIANCE PROCESS.

(a) A garnishee is not liable for a sanction under Section 214 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 a creditor files the motion under paragraph (1) and an agent has been named under Section 204(2)(A)(iii), the creditor sends a copy of the motion to the agent; and

(3) the garnishee fails:

(i) to send the information required by Section 204(1) or (2)(A), or (2)(B), as applicable, not later than [10] business days after receiving the motion under paragraph (a)(1) or a copy of the motion under paragraph (a)(2), whichever is earlier;

(ii) to begin garnishment under Section 205 not later than [21] days after receiving the motion or, if no payday occurs between [six] and [21] days after receiving the motion, on the next payday later than [21] days after receiving the motion under paragraph (a)(1) or a copy of the motion under paragraph (a)(2), whichever is earlier; or

(iii) to remit to the creditor, not later than [five] business days after receiving the motion, the amount that has been withheld from the earnings of the debtor since garnishment began under Section 205 but not properly remitted to the creditor under Section 206(a).

(b) For good cause, the court may waive all or any part of the amounts otherwise due under Section 214.

SECTION 214. GARNISHEE SANCTIONS FOR NONCOMPLIANCE. Subject to Section 213, the following rules apply:

(1) A garnishee that fails to comply with Section 204 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 204(1); or

(B) until the earlier of the day the garnishee sends the information required by Section 204(2) or garnishment is required to begin under Section 205.

(2) A garnishee that fails to comply with Section 205 is liable to the creditor for the amount that should have been withheld pursuant to that section and sent to the creditor.

(3) A garnishee that fails to comply with Section 206(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 from the earnings of the employee and ending the day before the amount is sent to the creditor.

(4) A garnishee that fails under Section 206(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 an employee or creditor for a calculation worksheet under Section 206(f) 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 207(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.

[ARTICLE] 3

GENERAL PROVISIONS

SECTION 301. CREDITOR SANCTIONS.

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

(1) an amount not to exceed \$[1,000];

(2) any amounts due under subsection (c); and

(3) reasonable attorney's fees, as determined by the court, of the garnishee and the individual whose earnings the creditor sought to garnish.

(b) A creditor acts in bad faith if it receives from a garnishee or an individual whose earnings the creditor sought to garnish a notice in a record stating the reason that the garnishment

is wrongful and fails within [7] business days after receiving the notice to either:

(1) 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 record indicating that it has done so; or

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

If the creditor is represented by an attorney, the garnishee or individual must send the notice to the attorney.

(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 that subsection and ending the day before the creditor complies with subsection (b)(1).

(d) A court may allocate amounts 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, a court may waive all or part of the amounts otherwise due under subsection (a).

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

SECTION 302. HEARING.

(a) A garnishee, creditor, or debtor at any time may request the court to hold a hearing to

determine any issue arising under this [act].

(b) A debtor at any time 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) A hearing requested under this section must be held promptly. The court may enjoin a garnishment until the hearing can be held.

SECTION 303. 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 [the state's fair employment practices law].

SECTION 304. OTHER LAWS NOT LIMITED. This [act] does not limit any law of this state other than this [act] that otherwise limits or prohibits garnishment.

[ARTICLE] 4

MISCELLANEOUS PROVISIONS

SECTION 401. 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 402. 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).

SECTION 403. SAVINGS CLAUSE. This [act] does not affect the validity or effect of a garnishment action filed on or before [the effective date of this [act]].

[SECTION 404. 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.]

SECTION 405. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 406. EFFECTIVE DATE. This [act] takes effect