

D R A F T
FOR DISCUSSION ONLY

WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

March 20 – 21, 2015 Committee Meeting

WITH REPORTER'S NOTES AND QUESTIONS

REDLINE DRAFT

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ON UNIFORM STATE LAWS

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March 2, 2015

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WAGE GARNISHMENT ACT

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1 WAGE GARNISHMENT ACT

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

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

5 (1) ~~“Arrearages”~~ “Calculation worksheet” means ~~support order obligations that are~~
6 ~~overdue and unpaid.~~

7 ~~(2) “Child” means an individual, whether over or under the age of majority under~~
8 ~~the law of the State or foreign country issuing a child support order applicable to a parent~~
9 ~~of the individual, who is or is alleged to be owed money under the support order~~form
10 [provided in][required by] Section 8.

11 ~~(3) “Child support order” means a support order for a child.~~

12 ~~(4) “Convention” means the Convention on the International Recovery of Child~~
13 ~~Support and Other Forms of Family Maintenance, concluded at The Hague on November~~
14 ~~23, 2007.~~

15 ~~(5)~~(2) “Creditor” means a person that holds a money judgment against a debtor
16 from a court of competent jurisdiction. The term includes a successor in interest.

17 ~~(6)~~(3) “Current employee” means an employee who is currently employed by the
18 employer and an employee to whom an employer ~~still~~ owes earnings even if not currently
19 employed.

20 ~~(7)~~(4) “Debtor” means an employee who owes money to a creditor.

21 ~~(8)~~(5) “Disposable earnings” means that part of ~~the~~ earnings remaining after
22 deductions required by law.

23 ~~(9)~~(6) “Earnings” means compensation ~~paid or payable~~ owed by an employer to

1 an employee for personal services, ~~including.~~ The term includes wages, salary,
2 commissions, bonuses, profit-sharing distributions, severance payments, reimbursements,
3 and periodic pension and disability payments. [See discussion in Issues Memo.]

4 ~~(10)(7)~~ “Electronic” means relating to technology having electrical, digital,
5 magnetic, wireless, optical, electromagnetic, or similar capabilities.

6 ~~(11)(8)~~ “Employee” means an individual [See ~~the~~ who is treated by an employer as
7 an employee for federal tax purposes. [See discussion in Issues Memo].

8 ~~(12)~~ “Employee information form” means the form ~~[provided in][required by]~~
9 Section 5.

10 ~~(13)(9)~~ “Employer” means a person ~~[that hires an employee][that receives the~~
11 personal services of ~~owes earnings to~~ an employee]. ~~[Note to Committee: . [See~~
12 discussion about the definition of “employee” in the Issues Memo.]

13 ~~(14)(10)~~ “Garnishee” means an employer that is served with a complaint in a
14 garnishment action.

15 ~~(15)(11)~~ “Garnishment action” means a lawsuit ~~initiated by a creditor~~ seeking a
16 garnishment order to garnish earnings of an employee.

17 ~~(16)(12)~~ “Garnishment ~~order~~” means an order a levy for the benefit of ~~the [court]~~
18 directing a creditor obtained pursuant to a garnishment action.

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

20 (14) “Levy” means an act by an employer to withhold some part of the earnings
21 of an employee and to deliver the withheld earnings to a ~~creditor~~ third person. The term
22 includes a garnishment; a support order; an order to recover federal, state or local taxes;
23 and an administrative order issued by a federal [or State] agency. The term does not

1 include the act of withholding earnings with the consent of the employee or for current
2 tax obligations.

3 ~~(17) “Foreign country” means a country, including a political subdivision thereof,~~
4 ~~other than the United States, that authorizes the issuance of support orders and:~~

5 ~~(A) which has been declared under the law of the United States to be a~~
6 ~~foreign reciprocating country;~~

7 ~~(B) which has established a reciprocal arrangement for child support with~~
8 ~~this State as provided in [Section 308 of the Uniform Interstate Family Support Act];~~

9 ~~(C) which has enacted a law or established procedures for the issuance and~~
10 ~~enforcement of support orders which are substantially similar to the procedures under~~
11 ~~[the Uniform Interstate Family Support Act]; or~~

12 ~~(D) in which the Convention is in force with respect to the United States.~~

13 ~~(18)~~ (15) “Notice form” means the form [provided in][required by] Section 6.

14 ~~(16)~~ (16) “Original creditor” means a person to whom a debtor originally owed the
15 money that is the subject of a garnishment action. An original creditor may be a creditor,
16 but the term does not include a successor in interest.

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

20 ~~(18)~~ (18) “Record” means information that is inscribed on a tangible medium or
21 that is stored in an electronic or other medium and is retrievable in perceivable form.

22 ~~(19)~~ “Registered order” means a child support order issued in another State or
23 foreign country that has been [recorded][filed] in a tribunal of this State.

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

6
7 ~~*Note to Committee*: The following definitions come from UIFSA and are probably
8 required if we are to accommodate this Act with UIFSA (see the issues memo): Child;
9 Child support order; Convention; Foreign Country; Registered order;; Support Order; and
10 Tribunal.~~

11
12 “Disposable earnings” is the same substantively as the definition in the federal Consumer
13 Credit Protection Act (CCPA). (It has been modified a bit to have the language conform
14 better to ULC drafting standards.) The types of deductions permitted are well-understood
15 under the CCPA (federal, state, and local withholding taxes; social security and Medicare
16 taxes; mandatory deductions for state disability or unemployment insurance; mandatory
17 contributions to a state employee pension plan; and mandatory contributions under the
18 Railroad Retirement Act). The vast majority of states currently follow the CCPA
19 definition of disposable earnings. A few states, however, permit some other things to be
20 exempted from disposable earnings (such as union dues and initiation fees and insurance
21 contributions). I think we should encourage all states to adopt the standard CCPA
22 definition. The reasons for this are: (1) this will ease administration and further the
23 ULC’s goals in uniformity; (2) if a state wants its statute to be more protective of worker
24 income, placing that generosity in the minimum exemption or the withholding limit
25 would be broader-based and easier to administer; and (3) these particular types of
26 additional exclusions, while intended to help protect workers, are not well-targeted to the
27 most needy workers.

28
29 ~~“Earnings” is also the same substantively as the definition in the CCPA, once
30 again, with changes to have the language conform better to ULC drafting standards. [See
31 Issues Memo.]~~

32 “Electronic” is a standard ULC definition.

33
34 “Levy” is a term that encompasses both garnishments under this Act (which are limited to
35 debt garnishments) and “garnishments” for other purposes, such as child support and
36 federal or state taxes. This broader definition is required by Section 11 which discusses
37 priorities among all levies.

38
39 “Original Creditor.” See the note to the committee after Section 7.

40
41 “Person” is a standard ULC definition.

42
43 “Record” is a standard ULC definition.

1 “Sign” is a standard ULC definition.

2
3 “State” is a standard ULC definition.

4
5 “Support order.” Alternative A should do the trick if the State has adopted the Uniform
6 Interstate Family Support Act, as I think every State has. Alternative B is basically the
7 definition from UIFSA of what UIFSA covers. Maybe, probably, we do not need
8 Alternative B?

9
10 **SECTION 3. SCOPE.**

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

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

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

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

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

16 [(4) Other specified levies.]

17 **Reporter’s Notes and Questions**

18
19 *Note to Committee:* At our last meeting, we agreed to exclude support orders from the
20 Act. The federal Consumer Credit Protection Act also excludes (1) and (2) above from
21 the withholding exemptions and limits of that Act. This provision does something a bit
22 more than that; it excludes those categories from coverage of the Act entirely.

23
24 The question here is (a) whether it makes sense to exclude (1) and (2) from the Act
25 entirely or (b) whether we should stick closer to the CCPA model and exclude them only
26 from the exemptions and limits of Section 8. My intuition on that is that we might as well
27 exclude them from the Act entirely, but perhaps there are reasons to follow the CCPA
28 more closely. If so, that would be easy to do by including only item (3) here and re-
29 inserting items (1) and (2) into Section 10 as it was in the last draft.

30
31 *Note to Committee:* Subsection (b)(4) permits states to narrow the applicability of the
32 Act. At the extreme, the option could be used to preclude most forms of debt
33 garnishment. Even with such a large exclusion, a State might be interested in enacting the
34 Act to provide a fair process for enforcing garnishments that arrive from other states.
35 Texas, for example, has a constitutional prohibition on debt garnishment which prohibits
36 Texas courts from issuing garnishment orders themselves. But it does permit Texas
37 courts to enforce garnishment orders that come from other states. See *Knighton v. IBM*
38 Corp., 856 S.W.2d 210 (Tex. App. 1993).

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

6
7 **SECTION 4. FORUM AND CHOICE OF LAW.**

8
9 (a) Subject to subsection (b), a [court] shall dismiss or stay a garnishment action,
10 as appropriate, if the debtor's principal place of employment is not in this State ~~and the~~
11 ~~debt was not incurred in this State.~~

12 (b) A [court] may hear a garnishment action if the employer is subject to personal
13 jurisdiction in this State, but would not be subject to personal jurisdiction in ~~both the~~
14 State of the debtor's principal place of employment ~~and the State where the debt was~~
15 ~~incurred.~~

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

17 **Reporter's Notes and Questions**

18
19 ~~(e) Subject to subsections (d) and (e), a garnishment action is governed by the law~~
20 ~~of the State of the debtor's principal place of employment.~~

21
22 ~~(d) In the case of a support order, the law of the issuing State or foreign country~~
23 ~~governs:~~

24
25 ~~(1) the nature, extent, amount and duration of current payments under the~~
26 ~~order;~~

27
28 ~~(2) the computation and payment of arrearages and accrual of interest on~~
29 ~~the arrearages under the order; and~~

30
31 ~~(3) the existence and satisfaction of other obligations under the order.~~

32
33 ~~(e) In a proceeding for arrearages under a registered order, the statute of~~
34 ~~limitations of this State, or of the issuing State or foreign country, whichever is longer,~~
35 ~~applies.~~

Reporter's Notes and Questions

1
2
3 The primary goal of the forum selection rules is convenience for the debtor, and
4 employers. In the absence of forum selection rules, jurisdiction would lie based on
5 whether the *employer* was subject to personal jurisdiction. This would permit a creditor
6 to file a garnishment action in a State quite inconvenient to the debtor. For example, a
7 creditor could sue a national corporation in California, where it has operations, even
8 though the employee is employed by that corporation in Nebraska ~~and the credit was~~
9 ~~incurred in Nebraska~~. As this example illustrates, a secondary goal of the forum selection
10 rules is to limit forum shopping.

11
12 *Note to Committee*. ~~Subparagraph (a) permits cases to be heard based on either the~~
13 ~~debtor's employment or where the debt was initially incurred. The second part of that~~
14 ~~causes problems of definition (just where is the debt incurred?) and may permit forum~~
15 ~~shopping where the two locations are different (although (c) minimizes that risk). We~~
16 ~~might want to consider having the place of employment be the only permissible forum~~
17 ~~State, while still retaining the exception in subsection b.~~

18
19 *Subsection (c), Choice of Law. In general: Subsection (c), Choice of Law.* First, in most
20 cases, this will not be an issue since the case has to be filed in the State of the debtor's
21 principal place of employment. So no choice of law issue will be presented. But under
22 paragraph (b), sometimes the action will not be filed in the debtor's principal place of
23 employment. In that circumstance, the two possibilities for the applicable law are (1) the
24 state of the debtor's principal place of employment or (2) the state where the action is
25 filed. The first option is likely to make administration easier for employers; this rule will
26 ensure that the garnishment rules for all of an employer's employees in a particular
27 location will be the same. The second option would be somewhat easier for courts; they
28 could apply their own state's law in every case and not have to attend to foreign law. This
29 section opts for the first option for three principal reasons. First, ~~as mentioned above~~, it
30 limits forum-shopping opportunities. Second, ease of administration for employers is a
31 principal goal of this project. Third, this choice-of-law option is the rule adopted by the
32 Uniform Interstate Family Support Act, §§ 502(d), 503 (UIFSA). ~~Since we should try to~~
33 ~~make our act align well with UIFSA, if we adopted a different rule than UIFSA, we~~
34 ~~would have to make some special and somewhat complicated rules later in the priority~~
35 ~~section to make sure that the state of employment rule applied to family support orders~~
36 ~~even though a different rule applied to everything else. Making the applicable law the~~
37 ~~state of the debtor's principal place of employment avoids those complications.~~, 503
38 (UIFSA) in analogous circumstances.

39
40 Subsection (d) and (e) are the same language as in UIFSA, §§ 604(a) and (b).

41
42 *Note to Committee:* Jack Davies raises the issue of whether we should attend to
43 circumstances in which a debtor's place of employment is ambiguous, for example, an
44 employee who travels across several states as part of his job. I have not attended to that in
45 this draft. One option would be to permit cases to be heard in any state in which a debtor
46 is principally employed and then to have the choice of law rule be the state where the

1 action is filed. This would attend to Jack's situation. The issues would be (1) whether this
2 situation is common enough to worry about (note: it is not attended to in the analogous
3 section 504(d) of UIFSA, so either they didn't think about it or didn't think it was worth
4 worrying about) and (2) whether we want to open the door to the modest forum-shopping
5 that might be possible under this alternative rule.

6
7 **SECTION 4.5. PROCEDURES.**

8 (a) A creditor may file a garnishment action in [*designate appropriate court*]
9 ~~The~~ by causing a complaint to be served on an employer pursuant to [*the normal*
10 *procedures for service of process in this State*]. If the employer has a registered agent
11 under [*cite state law on registered agents*], the complaint must be served on the garnishee
12 using [*the normal process for serving complaints in State*] and, if registered agent. If the
13 creditor knows the debtor's mailing address is known, a copy of the complaint must be
14 sent to the creditor, on the debtor. The complaint must indicate include:

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

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

20 (3) A completed notice form;

21 (4) The name of the debtor and, to the extent known to the creditor, the
22 physical, mailing address, and electronic addresses, if any, of the debtor and the debtor's
23 telephone number or, or a statement that the information is not known;

24 ~~(A~~ (5) The name of the individual to whom the garnishee ~~shall~~
25 ~~send the employee information form as is~~ required to communicate by Section
26 4 subsection (b)(1) or 4(b)(2);(c)(1)(A), and

1
2 ~~(B) The the mailing and electronic address of that individual whose~~
3 ~~name and contact information is required for the garnishee to complete Section 6(a)(5) if~~
4 ~~a notice form must be sent to the debtor pursuant to Section 4(b)(2)(B); and~~

5 ~~(b) Within [10] business days after being served with a complaint, the garnishee~~
6 ~~must:~~

7 ~~(1) (6) Information sufficient to instruct the garnishee about how to~~
8 ~~remit garnished earnings to the creditor.~~

9 ~~(b) If the named debtor is not a current employee of the garnishee, complete an~~
10 ~~employee information form as provided in [*insert appropriate reference to Section 5*~~
11 ~~*when alternative is chosen*] and return it the garnishee shall within [10] business days~~
12 ~~after being served with the complaint send that information to the individual named in the~~
13 ~~complaint pursuant to Section 4 subsection (a)(3)(A5). The creditor must then promptly~~
14 ~~notify the [court] that the garnishee has indicated that the named debtor is not a current~~
15 ~~employee and either request dismissal of the complaint or seek a prompt hearing to~~
16 ~~determine whether the debtor is in fact a current employee of the garnishee.~~

17 ~~(2) (c) If the named debtor is a current employee of the garnishee, the~~
18 ~~garnishee shall:~~

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

20 ~~(A) Complete an employee information form as provided in [*insert*~~
21 ~~*appropriate reference to Section 5 when alternative is chosen*] and return it Send to the~~
22 ~~individual named in the complaint pursuant to Section 4 subsection (a)(3)(A); and 5):~~

23 ~~(i) A statement that the named debtor is a current~~

1 employee;

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

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

6 (B) -Send the debtor ~~at~~the notice form ~~and~~provided to the garnishee
7 pursuant to subsection (a copy of the completed employee)(3).

8 (2) Within [20] business days after being served with the complaint, send
9 the debtor an information form ~~by first class mail and, if an electronic address is~~
10 available, ~~by electronic mail to the most current mailing and electronic addresses~~
11 ~~indicated in the garnishee's records~~ and a calculation worksheet based on the earnings
12 received by the debtor on the last regular payday prior to service of the complaint.

13 ~~(e) A creditor may seek a garnishment order:~~

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

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

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

1 notify the debtor of the existence and amount of the garnishment in the same manner as it
2 notifies the debtor of other payments of and deductions from earnings.

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

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

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

17 (B) the creditor is notified that the debtor is no longer a current employee
18 of the garnishee ~~and the creditor has received an~~; or

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

22 (h)(2) A garnishee must notify the creditor as soon as practicable when a debtor is
23 no longer a current employee ~~information form from~~of the garnishee ~~within~~.

1 ~~(h)(3) If [75] days have expired since the time specified last regular payday on~~
2 ~~which garnished earnings were remitted to a creditor under a garnishment, the creditor~~
3 ~~may send a request in subsection (b), no earlier than a record to the garnishee for an~~
4 ~~explanation. Within [10] business days after the date on which the forms in subsection~~
5 ~~(b)(2)(B) were sent to the debtor as indicated in the employee information form., the~~
6 ~~garnishee must send the creditor a response.~~

7 ~~(2) If the creditor has not received the employee information form from~~
8 ~~the garnishee within the time specified in subsection (b), no earlier than [20] business~~
9 ~~days after the complaint was served on the garnishee.~~

10 ~~(d _____ (i) A garnishee, creditor, or debtor may request a hearing at any time to~~
11 ~~determine whether a garnishment order should issue commence or, if it has already~~
12 ~~issued commenced, whether it should be quashed continued. If a hearing is requested, the~~
13 ~~[court] shall schedule the hearing promptly and may not issue, or shall enjoin, suspend,~~
14 ~~the or continue any garnishment order until the garnishee, creditor, or debtor has had an~~
15 ~~opportunity to be heard.~~

16 Reporter's Notes and Questions

17
18 ~~(e) A garnishment order must specify the total amount to be withheld from a~~
19 ~~debtor's earnings, the amount to be withheld from each pay period, and the duration of~~
20 ~~the order. The withholding shall commence at the end of the first full pay period~~
21 ~~occurring after the issuance of the garnishment order. If the pay period is uncertain or~~
22 ~~longer than one month, the withholding shall commence on the last day of the first full~~
23 ~~month occurring after the issuance of the garnishment order.~~

24
25 ~~(f) A garnishee shall promptly send amounts withheld from a debtor's wages~~
26 ~~pursuant to a garnishment order directly to the creditor or the creditor's attorney. The~~
27 ~~garnishee must notify the debtor of the withholding and payment to creditor in the same~~
28 ~~manner as it notifies the debtor of other payments of and deductions from earnings.~~

29
30 Note to Committee: This is my best effort to capture the discussion we had at our Tucson
31 meeting about the procedure, with a few tweaks that seemed appropriate as I was

1 working through the issue.

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

9
10 **~~Reporter's Notes and Questions~~**

11
12 *Note to Committee:* This procedure is structured to respond to the Georgia/professional
13 responsibility issue. ~~From our last meeting, you~~ You will recall that ~~the~~ this issue arises
14 because the professional responsibility rules prohibit non-attorneys from responding in
15 court to garnishment proceedings. Thus, when garnishment enters a court, employers
16 have to retain a lawyer. The “solution” here is a procedure which permits the ~~garnished~~
17 ~~garnishee/~~ employer to respond ~~at the early stages and comply~~ outside of court. In a
18 normal, uncomplicated garnishment, the employer ~~could complete the preliminary steps~~
19 ~~out of court, silently agree to a default judgment, and would~~ never have to retain a
20 lawyer. Obviously, we will need to discuss what we think of this at our meeting.

21
22 This procedure is analogous to a normal interrogatory process. In most states,
23 interrogatories can be served with the complaint and the responses do not need to be filed
24 in court. Although we do not call the employee information form an interrogatory, that in
25 essence is what it is and so a procedure like this should not be unfamiliar in most states.
26 If we think there would be some utility in alluding to this (e.g., to make the procedure
27 seem more familiar), we could think of explicitly calling the employee information form
28 an interrogatory.

29
30 *Note to Committee:* Query whether we need to include a definition of registered agent.
31 The Model Registered Agent Act has three definitions to define the term: (1) registered
32 agent (defined as a commercial or non-commercial registered agent); (2) commercial
33 registered agent; and (3) non-commercial registered agent. My intuition is that the term is
34 well-enough understood elsewhere in state law that little would be added by including a
35 definition in this Act.

36
37 *Note to Committee:* Subsection (h). Jack Davies has suggested that the notice should be
38 more conspicuous than the normal list of deductions from earnings. As you can see, this
39 subsection responds to that concern, but only for the initial garnishment. After that, the
40 employer would not need to do anything separate from normal wage reporting. This
41 provision would require some sort of separate statement from the normal pay slip for the
42 first paycheck which includes a garnishment. Normally, I might expect the employer to
43 comply with this by sending a calculation worksheet and a statement of amount due and
44 paid with the first paycheck containing a garnishment. So an option would be to just
45 require that instead of this more flexible “conspicuous” language. This option, however,
46 permits the notice to contain less information than contained in the calculation worksheet

1 and statement of amount due and paid. For example, the notice would simply say in a
2 very conspicuous way that there has been a garnishment of X amount.

3
4 **SECTION 6. NOTICE FORM.**

5
6 **Alternative A**

7
8 A notice form must be in the following format:

9
10 **MONEY WILL BE DEDUCTED FROM YOUR**
11 **WAGES TO PAY A DEBT, UNLESS YOU ACT**

12
13 [Insert name of creditor that filed the garnishment action; a shortened name to be
14 used later in the form can also be listed here] has filed an action in [insert name of court]
15 to require your employer to deduct money from your wages and pay it to them. This is
16 called a garnishment.

17
18 This notice was prepared by [insert name of creditor that filed the garnishment
19 action] and the law requires your employer to provide it to you.

20
21 [Insert name of creditor that filed the garnishment action] says that you owe it
22 [\$[insert amount of the claimed debt]. [If the creditor filing the garnishment action is not
23 the original creditor insert the following sentence: This amount comes from a debt you
24 originally owed to [insert name of original creditor].

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

32
33 These are actions you can take in response to this claim:

34
35 1. You can contact [insert name of creditor that filed the garnishment action] to
36 discuss the debt and this garnishment with them. This is their contact information:

37
38 [Insert name and address for the contact person for the creditor].

39
40 Unless you get [insert name of creditor that filed the garnishment action] to agree
41 to dismiss its action, this option will not stop your employer from deducting money from
42 your wages.

43
44 2. You can contact your employer to discuss the garnishment.
45 But unless you get the creditor to agree to dismiss its action, your employer will still be required
46 to deduct money from your wages to pay this debt. This option will not stop that deduction.

1 unless the creditor agrees.

2
3 3. You can ask the Court to hold a hearing to permit you to challenge any aspect of this
4 proceeding. For example, you could challenge whether you really are an employee of the
5 employer or whether you really owe the amount claimed. Such a request should be sent in
6 writing to the Clerk of the Court of [insert name and address of court].

7
8 **~~SECTION 5. EMPLOYEE INFORMATION FORM.~~**

9
10 **~~ALTERNATIVE A~~**

11
12 ~~(a) An employee information form shall provide for entry of the following~~
13 ~~information:~~

14 ~~(1) The garnishee's name, mailing address, and electronic mail address, if~~
15 ~~any;~~

16 ~~(2) The name, telephone number, mailing address, and electronic address,~~
17 ~~if any, for the agent of the garnishee who will administer the garnishment for the~~
18 ~~garnishee;~~

19 ~~(3) The date the garnishment complaint was served on the garnishee;~~

20 ~~(4) The name of the debtor named in the garnishment complaint;~~

21 ~~(5) Whether the debtor is or is not a current employee of the garnishee;~~

22 ~~(6) The next four pay periods of the debtor;~~

23 ~~(7) The total earnings of the debtor for the most recently completed pay~~
24 ~~period;~~

25 ~~(8) The amounts required by law to be withheld from the debtor's~~
26 ~~earnings for the most recent pay period for the federal social security tax, the federal~~
27 ~~income tax, the state income tax (if any), and the railroad retirement tax (if any), and the~~
28 ~~total of those amounts;~~

1 ~~(9) The net earnings of the debtor determined by subtracting the amount~~
2 ~~entered for paragraph (8) from the amount entered for paragraph (7);~~

3 ~~(10) The maximum percentage permitted to be withheld from the debtor's~~
4 ~~net earnings as specified in Section 7;~~

5 ~~(11) The amount determined by multiplying the amount in paragraph (9)~~
6 ~~by the percentage in paragraph (10);~~

7 ~~(12) The exemption amount as specified in Section 7;~~

8 ~~(13) The amount determined by subtracting the amount of paragraph (12)~~
9 ~~from the amount of paragraph (11) or, if the difference is zero or less, zero;~~

10 ~~(14) The lesser of the amount specified by paragraph (11) or paragraph~~
11 ~~(13);~~

12 ~~(15) The amount and duration of each other current garnishment against~~
13 ~~the same debtor with a higher priority, if any;~~

14 ~~(16) The amount determined by subtracting the sum of the amounts~~
15 ~~specified in paragraph (15) from the amount of paragraph (14) or, if the difference is zero~~
16 ~~or less, zero;~~

17 ~~(17) The number of current garnishments against the debtor other than~~
18 ~~this one and any specified in paragraph (15); and~~

19 ~~(18) The amount determined by dividing the amount in paragraph (14) or~~
20 ~~(16), whichever is less, by the number in subsection (17) plus one.~~

21 ~~(19) The mailing address and electronic address, if any, to which the~~
22 ~~garnishee sent the notice form and a copy of the completed employee information form~~
23 ~~and the date on which the forms were sent.~~

1 ~~*If the employee/debtor is not currently employed by employer, the rest of the*~~
2 ~~*form need not be completed.*~~

3 6. ~~— The next four pay periods for the employee end on the following dates:~~

4 7. ~~— Total earnings for the most recently completed pay period were:~~

5 8. ~~— Amounts required by law to be withheld for the most recent pay period were:~~

6 Federal social security tax (FICA): _____

7 Federal income tax: _____

8 State income tax: _____

9 Railroad retirement tax: _____

10 TOTAL: _____

11 9. ~~— Net earnings (7 minus 8):~~

12

13 10. ~~— Multiply net earnings (9) times the appropriate maximum:[†]~~

14 11. ~~— Subtract [enter the exemption amount] from line 9 (if less than 0, enter 0):~~

15 12. ~~— Enter the lesser of line 10 or line 11:~~

16 ~~*If there are no additional garnishments, stop here. The amount on line 12 is the*~~

17 ~~*amount to be withheld from the employee/debtor's earnings for this*~~

18 ~~*garnishment.*~~

19 13. ~~— List amounts and durations of other current garnishments with higher priority, if~~

20 ~~any. If none, enter 0:~~

[†]-(a) [25%] if the garnishment is not for a spouse or dependent child; (b) [50%] if the garnishment is for support and the employee supports a different spouse or dependent child; (c) [60%] if the garnishment is for support and the employee does not support a spouse or dependent child; (d) [55%] if the garnishment is for support and the employee supports a different spouse or dependent child but the support order is at least 12 weeks old; or (e) [65%] if the garnishment is for support, the employee does not support a different spouse or dependent child, and the support order is at least 12 weeks old.

1 14. Subtract line 13 from line 12 (if less than 0, enter 0):

2 *If there are no additional garnishments, stop here. The amount on line 14 is the*
3 *amount to be withheld from the employee/debtor's earnings for this*
4 *garnishment.*

5 15. Enter the number of current garnishments other than this one and those specified
6 in line 13. If none, enter 0:

7 16. Divide line 12 or 14 (whichever is less) by the number on line 15 plus one:

8 *The amount on line 16 is the amount to be withheld for this garnishment and*
9 *an equal amount shall be withheld for each of the other garnishments.*

10 17. This Employee Information Form and Notice Form were sent to the employee:

11 _____ By email on this date _____ to the following address:

12 _____ [Email address]

13 _____ By United States mail on this date _____ to the following address:

14 _____ [Mail address]

15 **END OF ALTERNATIVE B**

16
17 As part of this request, you can ask the Court to order the employer not to deduct money
18 from your wages.

19
20 If you decide to address this claim in one of these ways, or in other ways, you
21 should consider getting a lawyer to represent you. Again, if you do not act, your
22 employer will be required to begin deducting money from each of your paychecks
23 beginning on about [insert date] and continuing until the debt is paid.

24
25 **Alternative B**

26 (a) A notice form must

27
28 **~~Reporter's Notes and Questions~~**

29
30 ~~These two options are designed to be the same. If we went with **Alternative A**,~~
31 ~~we would probably include the form in Alternative B in the comments section. The Style~~

1 ~~Committee prefers that forms not be in the statutory text. David Biklen, our~~
2 ~~representative from the Style Committee, will have to defend that view himself. (One~~
3 ~~irony of the Style Committee's position on this is that their latest set of Drafting Rules~~
4 ~~provides an example of a form appearing in a statute. See Appendix E. Go figure.)~~
5

6 For what it's worth, I don't have a strong preference between the two, but the
7 form does seem to be simpler and easier to understand.
8

9 **~~SECTION 6. NOTICE FORM.~~**

10 ~~ALTERNATIVE A~~

11 ~~(a) A notice form shall~~ include the following information:

12 (1) A heading that is bold, in all capitals, and in a larger font than the
13 remainder of the form and that reads, **~~IMPORTANT NOTICE: MONEY~~**

14 **~~MAY WILL BE DEDUCTED FROM YOUR WAGES TO PAY A DEBT, UNLESS~~**
15 **~~YOU ACT.~~**

16 (2) An unnumbered initial paragraph that ~~names the creditor and~~ states
17 ~~that the name of~~ the creditor ~~claims that~~ filed the ~~debtor owes it a specified amount of~~
18 ~~money.~~

19 ~~(3) An unnumbered second paragraph stating garnishment action,~~ that the
20 creditor has filed such an action ~~in a specified court,~~ that ~~attempts~~ the creditor is seeking
21 to require the employer to deduct money from the debtor's wages ~~until~~ and pay them to
22 ~~the debt is paid; creditor, and~~ that this ~~type of~~ action is called a garnishment; ~~and that~~
23 ~~unless.~~

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

27 (4) An unnumbered third paragraph that states the name of the creditor

1 that filed the garnishment action, says the amount of money the creditor is seeking, and,
2 if the creditor is not the original creditor, names the original creditor to which the debt
3 was owed.

4 (5) An unnumbered fourth paragraph that states that unless the debtor
5 takes one of the actions listed in paragraphs (57) through (7) is taken, the amount
6 indicated on the appropriate line of the employee information form 9), the employer will
7 be deducted begin making a deduction from each of the debtor's paychecks paycheck
8 beginning on the appropriate specified dates soon and continuing until the debt is fully
9 paid; and that the deduction may be as high as [25%] of the debtor's pay.

10
11 (4) (6) An unnumbered line that states that there are actions that the debtor
12 can take in response to the creditor's claim.

13
14 (5) (7) A paragraph -numbered (1) that states that the debtor can contact the
15 individual named in creditor that filed the complaint pursuant to Section
16 4(a)(3)(B) garnishment action to discuss the debt and the garnishment; that provides that
17 individual's name, mailing and address, electronic address, if any, and telephone number;
18 and that contains an underlined statement that unless the creditor agrees to dismiss the
19 action, contacting the creditor will not stop the employer from deducting money from the
20 employee's wages beginning on the date on which the garnishment would begin.

21
22 (6) (8) A paragraph numbered (2) that states that the debtor may contact the
23 employer to discuss the information provided in the employee information form;
24 that garnishment; an underlined statement that, unless the creditor agrees to dismiss its
25 action, the employer will correct any incorrect information on the form be required to

1 begin deducting money from the debtor's wages; and an underlined statement that
2 pursuing this actionoption will not stop ~~the employer from deducting money from the~~
3 ~~employee's wages beginning on the date on which the garnishment would begin absent~~
4 ~~agreement by the creditor that deduction, unless the creditor agrees.~~

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

13 ~~(8~~ (10) An unnumbered paragraph that advises the debtor to consider
14 retaining a lawyer in the matter and that if the debtor does not ~~pursue one of the actions~~
15 ~~listed in subparagraphs (5) through (7)act~~ the employer will be required to begin
16 deducting ~~the amount specified on the appropriate line of the employee information~~
17 ~~form money~~ from each of the debtor's ~~paycheek~~ paychecks beginning on ~~the an~~
18 ~~approximate date specified on the employee information form;~~ and ~~continuing that the~~
19 deductions will continue until the debt is fully paid.

20 ~~(9) The name, mailing address, electronic address, if any, and telephone number~~
21 ~~for a contact person for the garnishee.~~

22 ~~END OF ALTERNATIVE A~~

23 ~~ALTERNATIVE B~~

1 The notice form is as follows:

2 **IMPORTANT NOTICE**
3 **MONEY MAY BE DEDUCTED FROM YOUR**
4 **WAGES TO PAY A DEBT**

5
6 ~~[Insert name of creditor] claims that you owe it [insert amount of the claimed debt].~~

7
8 ~~[Insert name of creditor] has filed an action in [insert name of court] to require us, your~~
9 ~~employer, to deduct money from your wages until the debt is paid. **End of Alternatives**~~
10 ~~This is called a garnishment. Unless you take one of the actions listed below, the amount~~
11 ~~listed on line [insert appropriate line number] of the attached employee information form~~
12 ~~will be deducted from each of your paychecks beginning [insert date] and continuing~~
13 ~~until the debt is fully paid.~~

14
15 These are actions you can take in response to this claim:

- 16
17 1. ~~———— You can contact [insert name of creditor] to discuss the debt with them.~~
18 ~~This is the contact information for [insert name of creditor]:~~

19
20 ~~*[Insert name, mail address, electronic address, if any, and*~~
21 ~~*telephone number for the contact person for the creditor].*~~

22
23 ~~Unless you get the creditor to agree to dismiss its action, this option will~~
24 ~~not stop us from deducting money from your wages beginning on [insert~~
25 ~~date].~~

- 26
27 2. ~~———— You can contact us to discuss the information we have provided on the~~
28 ~~employee information form. If any of the information is incorrect, we will~~
29 ~~correct it. But unless you get the creditor to agree to dismiss its action, this~~
30 ~~option will not stop us from deducting money from your wages beginning~~
31 ~~on [insert date].~~

- 32
33
34 3. ~~———— You can ask the Court to hold a hearing to permit you to challenge any aspect of this~~
35 ~~proceeding. For example, you could challenge the amount of the debt, whether you are legally~~
36 ~~obligated to pay the debt, or any information on the employee information form. Such a request~~
37 ~~should be sent in writing to the Clerk of the Court of [insert name and address of court].~~

38 ~~As part of this request, you can ask the Court to permit us not to deduct~~
39 ~~money from your wages.~~

40
41 If you decide to address this claim in one of these ways, or in other ways, you should
42 consider getting a lawyer to represent you. If you do not pursue any of these actions, we
43 will begin deducting the amount listed on line [insert appropriate line number] of the
44 attached employee information form from each of your paychecks beginning [insert date]
45 and continuing until the debt is paid.

1
2 *[Insert name, mail address, electronic address, if*
3 *any, and telephone number for the contact person*
4 *for the garnishee]*
5

6 **END OF ALTERNATIVE B**

7
8 **Reporter's Notes and Questions**

9
10 As with Section 5, these *Note to Committee*: These two alternatives are designed to be
11 the same, but Alternative AB complies with the Style Committee's preference for no
12 statutory forms while Alternative BA is a form which, obviously, does not comply with
13 the Style Committee's no-form preference.

14
15 *Note to Committee*: As currently drafted, the Notice Form says that "your employer will
16 soon be required by law to begin to make a deduction from your paycheck." In an earlier
17 draft, we had the form provide a specific date on which it was estimated the first
18 deduction might take place. The specific date is obviously of interest to the debtor; will
19 the first deduction take place in tomorrow's check, or the one in two weeks, or the one in
20 a month? But the creditor who initially prepares this form will not know the timing, and it
21 might be even worse to have an inaccurate estimate than a vague "soon." We might want
22 to discuss this issue some.

23
24 *Note to Committee*: Note that the notice form requires the name of the creditor that filed
25 the garnishment action throughout most of the notice, but it also requires the name of the
26 "original creditor" in the second paragraph (if the "creditor" and "original creditor" are
27 different). The federal Fair Debt Collection Practices Act requires "debt collectors"
28 (which is a long defined term in the Act) to disclose the name of the "creditor" (which is
29 also a defined term in the Act) when they initiate contact with a debtor. 15 U.S.C. §§
30 1692-1692o. Our distinction is slightly different than the one in the FDCPA, but
31 providing the two pieces of information should be familiar to those in the field, and it
32 provides useful information to the debtor. This is something we talked about and (I think)
33 agreed upon at our last meeting (although we'll have to talk about whether this
34 implementation of the idea is appropriate).

35
36 **SECTION 7. INFORMATION FORM.**

37 An information form must be in the following format:

38 **Information Form**

39 Dear *[insert name of debtor]*,

40 We sent you a notice on *[insert date]* to inform you that a creditor has asked us to
41 deduct money from your paycheck and send it to them. This is called a garnishment.
42

1 now, I thought we could talk about whether these are appropriate forms, and we can deal
2 with style issues later.

3
4 **SECTION 8. CALCULATION WORKSHEET. A calculation worksheet**

5 **must be in the following format:**

6 **Calculation Worksheet**

7
8 **Employee:**

9 **Creditor:**

10 **For Paycheck Dated:**

11
12 **Disposable Earnings:**

13

14	1. Gross Earnings Paid to Employee	\$
15	<hr/>	
16	2. Amounts Withheld:	
17		
18	a. Federal social security tax (FICA):	\$
19	b. Federal income tax:	\$
20	c. State income tax:	\$
21	d. Railroad retirement tax:	\$
22	3. Total Amounts Withheld	\$
23	(Sum of items in line 2)	
24	<hr/>	
25	4. Disposable Earnings	\$
26	(Line 1 minus line 3)	
27	<hr/>	

28 **Wage Garnishment Calculation:**

29

30	5. [25%] of Disposable Earnings ([25%] of line 4)	\$
31	<hr/>	
32	6. Exemption Amount	\$
33	<hr/>	

34 [Description of Exemption Amount will be here when we agree on what the
35 Act will say about them. For example, if we decide on the CCPA's 30 times
36 federal minimum wage exemption, we might have something like this:

37

38	<u>If employee is Paid</u>	<u>Line 6 is</u>	<u>If employee is Paid</u>	<u>Line 6 is</u>
39	<u>Weekly or less</u>	<u>\$217.50</u>	<u>2X per month</u>	<u>\$471.25</u>
40	<u>Every other week</u>	<u>\$435.00</u>	<u>Monthly</u>	<u>\$942.50</u>

41

42	7. Line 4 minus Line 6 (If less than \$0, enter \$0)	\$
43	<hr/>	
44	8. Enter smaller of line 5 or line 7	\$
45	9. Amounts of Other Current Garnishments with Higher	
46	Priority (if none, enter \$0)	\$
	<hr/>	

1 (2) the amount by which disposable earnings for any workweek exceed
2 [~~30~~*state multiple*] times the federal minimum wage required by section 6(a) of the federal
3 Fair Labor Standards Act, whichever is less.

4 (b) For pay periods greater than one week, the amount in subsection (a)(2) shall
5 be adjusted to be the appropriate multiple of [~~30~~*state multiple*] times the federal
6 minimum wage. For this purpose, a pay period of one calendar month ~~shall be~~ deemed
7 to be four and one-third weeks.

8 ~~(c) The restrictions of subsection (a) do not apply to:~~

9 ~~(1) An order of a court of bankruptcy under federal bankruptcy law, or~~

10 ~~(2) A debt due for any state or federal tax.~~

11 ~~(d)~~ **Alternative B**

12 (a) The maximum amount subject to garnishment ~~to enforce a support order in~~
13 ~~any workweek~~ may not exceed:

14 ~~(1) [50] percent of disposable earnings if the employee is supporting a~~
15 ~~spouse or dependent child other than a spouse or dependent child for whom the support~~
16 ~~order is issued, or~~

17 ~~(2) [60] percent of disposable earnings if the employee is not supporting a~~
18 ~~spouse or dependent child.~~

19 ~~(e) If a garnishment is sought to enforce a support order for a period twelve or~~
20 ~~more weeks prior to the beginning of the workweek for which the garnishment is sought,~~
21 ~~the percentages in subsections (d)(1) and (d)(2) shall be [55] percent and [65] percent,~~
22 ~~respectively.~~

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

7 (d) For pay periods greater than one week, the amount in subsection (a)(2) shall
8 be adjusted to be the appropriate multiple of the amount specified by subsection (a)(2).
9 For this purpose, a pay period of one calendar month ~~shall be~~ deemed to be four and
10 one-third weeks.

11 ~~(d) The restrictions of subsection (a) do not apply to:~~

12 ~~(1) An order of a court of bankruptcy under federal bankruptcy law, or~~

13 ~~(2) A debt due for any state or federal tax.~~

14 ~~(e) The maximum amount subject to garnishment to enforce a support order in~~
15 ~~any workweek may not exceed:~~

16 ~~(1) [50] percent of disposable earnings if the employee is supporting a~~
17 ~~spouse or dependent child other than a spouse or dependent child for whom the support~~
18 ~~order is issued, or~~

19 ~~(2) [60] percent of disposable earnings if the employee is not supporting a~~
20 ~~spouse or dependent child.~~

21 ~~(f) If a garnishment is sought to enforce a support order for a period twelve or~~
22 ~~more weeks prior to the beginning of the workweek for which the garnishment is sought,~~

1 the percentages in subsections (e)(1) and (e)(2) shall be [55] percent and [65] percent,
2 respectively.

3 ~~END OF ALTERNATIVE B~~

4 End of Alternatives

5 Reporter's Notes and Questions

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

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

16
17 ~~Reporter's Notes and Questions~~

18
19 ~~Note.~~ Alternative A follows the Consumer Credit Protection Act very closely, with
20 changes intended only to update and improve the drafting.

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

39
40 **Some comments on Alternative B.** The inflation adjustment language here is based
41 loosely on IRC § 415(d). Several comments. First, this alternative responds to the
42 concerns about the minimum-wage measure I discussed in my policy memo for our first

1 meeting, that is, that the minimum wage is a lumpy measure for this and one that's not
2 related to any policy relating to garnishment. This alternative provides for a smoother
3 adjustment of the number. Second, \$220 is a rounded number close to the present number
4 that is in most garnishment statutes now. Most statutes use 30 times the federal minimum
5 wage, so the number is currently \$217.50. Again, we would encourage states to adjust
6 this (only upwards) if they want to increase protections for debtors/employees, rather
7 than to use other alternatives. Third, (b)(2) has a rounding provision. Could make it \$1
8 instead of \$5. I don't mean to indicate by the brackets that we should give states an
9 option of higher or lower; we should decide. Fourth, the Consumer Price Index for All
10 Urban Consumers is the most widely-used CPI number. Fifth, note that (b)(1)
11 contemplates adjustments only for increases in the CPI. No adjustments would occur in
12 the event of a decrease. Finally, a general unsolicited comment. For me, I do think this
13 construction of the limit makes more sense from a policy perspective since it is less
14 lumpy and more tied to what a legislature would want this limit to be. BUT it would be a
15 change and it may create more concern than we want to stir up.

16
17 *Subsection (b) in Alternative A and Subsection (ed) in Alternative B.* The four-and-one-
18 third calculation is the one specified by the Department of Labor under the Consumer
19 Credit Protection Act, 29 CFR §870.10(c)(2).

20
21 **SECTION 811. MULTIPLE GARNISHMENTSLEVIES.**

22 (a) ~~In the case of~~ If there is more than one garnishment orderlevy in effect against
23 an employee of a single employer:

24 (1) ~~Garnishment orders~~ A levy with higher priority ~~shall than a~~
25 garnishment must be paid in full before ~~anythe~~ garnishment ordersis paid.

26 (2) A garnishment must be paid in full before a levy with a lower priority
27 ~~are paid-~~ than a garnishment.

28 (2) ~~(3)~~ (3) If the total amount of garnishment orderslevies with the same
29 priority as a garnishment reaches the maximum amount subject to ~~garnishment under~~
30 Section 7levy, each ~~order shall~~levy must be paid the same amount.

31 (b) ~~Except as provided in subsection (e), the~~ The following levies have a higher
32 priority ~~of than a~~ garnishment orders ~~shall be as follows~~:

33 (1) ~~Current child-A~~ support ordersorder;

- 1 (2) ~~Other current support orders. A bankruptcy order; [and]~~
2 (3) ~~Arrearages of child support orders.~~
3 (4) ~~Arrearages of other support orders.~~
4 (5) ~~Bankruptcy orders.~~
5 (6) ~~Administrative garnishment orders by A federal agencies.~~
6 (7) ~~Federal tax levies. levy that has been served on an employer prior to a~~
7 ~~garnishment. [and]~~
8 (8) ~~State tax [(4) Other types of levies to be determined by the state~~
9 ~~legislature.]~~

10 (c) The following [levy has]] levies:

- 11 (9) ~~Local tax levies.~~
12 (10) ~~Other have] a lower priority than a garnishment orders.:~~

13 (e) ~~If the date of a (1) A federal tax levy is prior to the date of a support order, the~~
14 ~~federal tax levy shall have the highest priority.~~

15 **Reporter's Notes and Questions**

16
17 Subsection (a)(2) is the basic allocation we tentatively agreed to at our
18 first meeting, that is, when there are multiple garnishments, each garnishment in
19 the same priority level should be paid the same amount. The other major
20 possibility is to weight the garnishments by their amount and allocate the
21 available amounts in proportion to the total amounts due on each that has been
22 served on an employer subsequent to a garnishment. That option is a lot more
23 complicated to describe and implement. .[.]; and]

24
25 For the most part, the priority levels in subsections (b) and (c) are determined by
26 federal law. [Note: Need to check all of these federal statutes, and cite them here.] Note
27 that according to our definitions, “support orders” include both regular and medical
28 support.

29
30 [(2) Other specified levies.]

31 **Reporter's Notes and Questions**

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

2

3

SECTION 9. PENALITIES 12. ENFORCEMENT.

4

(a) A garnishee ~~shall be that fails to comply with section 5(b) is~~ liable to ~~the~~ creditor for ~~[\$10050]~~ for each day ~~up to [10] days that beginning [11] business days after~~ service of the complaint and continuing until the garnishee fails to comply with Section 4 sends the information.

8

~~(b) If the~~ A garnishee ~~has not complied with Section 4(b) by the end of the~~ initial ~~[10] day period, it shall be that fails to comply with section 5(c)(1) is~~ liable to the creditor for ~~[\$100]~~[state dollar amount] for each ~~additional day beginning [11] business~~ days after service of non-compliance, provided the complaint and continuing until the garnishee sends the information or until garnishment would be required to begin under section 5(d), whichever is earlier.

14

(c) A garnishee that ~~fails to comply with section 5(c)(2) is~~ liable to the creditor ~~provides notice for [state dollar amount] for each day beginning [21] business days after~~ service of the failure to comply to the court complaint and the garnishee at least [3] days prior to the commencement of each additional [10] day period.

18

~~(b) If a garnishee fails to send amounts due a creditor pursuant to a garnishment order under Section 4(e) and (f), continuing until the garnishee shall be~~ sends the information or until garnishment would be required to begin under section 5(d), whichever is earlier.

22

(d) A garnishee that fails to comply with section 5(d) is liable to the creditor for the amount that should have been sent to the creditor or ~~[\$100] for each week when~~[state dollar amounts for weekly, biweekly and monthly pay periods] for each regular payday on

24

1 which an amount should have been sent, whichever is greater.

2 ~~(e) Amounts~~(e) A garnishee that fails to comply with section 5(e) is liable to the
3 creditor for:

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

6 (2) [State dollar amount] for each day beginning [5] days after a regular
7 payday on which a debtor's earnings have or should have been garnished and ending on
8 the day the full required amount is remitted to the creditor.

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

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

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

17 (i) A creditor must apply any amounts paid by a garnishee to athe creditor
18 pursuant to ~~subsections~~subsections (a) ~~or (b) shall be credited~~through (e) towards payment
19 of the debtor's obligation to the creditor. If the amounts due pursuant to subsections (a)
20 through (e) exceed the amount of the debtor's obligation to the creditor, any excess
21 amounts [need not be paid][must be paid to the court? Debtor? Reporter of the Uniform
22 Garnishment Act?]

23 ~~(d) For~~(j) A garnishee is not liable for any amounts under subsections (a)

1 through (g) unless:

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

4 (2) The garnishee fails:

5 (i) To send the information required by sections 5(b), 5(c)(1),
6 5(c)(2), 5(f), 5(g), 5(h)2, or 5(h)(3), as applicable, within [10] business days after receipt
7 of the notice;

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

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

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

16 Reporter's Notes and Questions

17
18 See the Issues Memo.} for a discussion of whether we should have creditor remedies.

19
20 *Note to Committee:* Note that we've left all amounts blank at this point. We might want
21 to discuss whether we want to insert amounts. On the one hand, the need for uniformity is
22 weak re these dollar amounts. On the other hand, we are probably in a better position to
23 think about the optimum level of these amounts than others.

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

1 [go to. On that, I am strongly in favor of the last option.](#)

2
3 **SECTION ~~10~~13. UNIFORMITY OF APPLICATION AND**
4 **CONSTRUCTION.** In applying and construing this uniform act, consideration must be
5 given to the need to promote uniformity of the law with respect to its subject matter
6 among states that enact it.

7 **SECTION ~~11~~14. RELATION TO ELECTRONIC SIGNATURES IN**
8 **GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits or
9 supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
10 Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act,
11 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
12 described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

13 **SECTION ~~12~~15. SAVINGS CLAUSE.** This [act] does not affect the validity or
14 effect of any garnishment filed on or before [effective date of -the Act].

15
16 **SECTION ~~13~~16. SEVERABILITY.** If any provision of this [act] or its
17 application to any person or circumstance is held invalid, the invalidity does not affect
18 other provisions or applications of this [act] which can be given effect without the invalid
19 provision or application, and to this end the provisions of this [act] are severable.

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

23
24 **SECTION ~~14~~17. REPEALS; CONFORMING AMENDMENTS.**

25 [\(a\)](#)

26 [\(b\)](#)

27 [\(c\)](#)

1 **Legislative Note:** *-Include in this section repeal of current state law regarding wage*
2 *garnishment.*

3
4 **SECTION 1518. EFFECTIVE DATE.** This [act] takes effect ~~on XXX...~~

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

6
7 (a) An employer may not discharge or otherwise discriminate against an
8 employee because of any actual or attempted garnishment.

9
10 (b) The powers, remedies, and procedures used to enforce [the state's fair
11 employment practices law] shall be the powers, remedies and procedures used to enforce
12 subsection (a).

13 **Reporter's Notes and Questions**

14
15 Subsection (a) is based on the language used in statutes that prohibit employment
16 discrimination. *See* Title VII § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1). It is broader than the
17 language in the Consumer Credit Protection Act (CCPA) in several respects. It provides
18 protection regardless of the number of actual or potential garnishments (the CCPA
19 provides protect only for one garnishment); it provides protection for both actual and
20 attempted garnishment; and it provides protection for all adverse employment actions, not
21 just discharges. *Compare* CCPA, 15 U.S.C. § 1674(a).

22
23 Subsection (b) is based on the enforcement provisions of the Americans with
24 Disabilities Act (ADA) which uses similar language to incorporate the powers, remedies
25 and procedures of Title VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117. I do
26 not know of any issues arising from this sort of cross-reference from the ADA to Title
27 VII.

28
29 There are two main advantages of using a cross-reference to define these
30 enforcement procedures. First, it means this language can be short and sweet for a
31 provision that is not likely to be used very often. Second, it means that procedural issues
32 that might arise under this statute are likely to have already been well ventilated under the
33 state's fair employment practices statute. Because Title VII defers to state discrimination
34 procedures, all states (except Alabama) have state procedures that cover the types of
35 discrimination prohibited by Title VII. Alabama has discrimination statutes that prohibit
36 other types of employment discrimination (age and disability). Thus, every state will have
37 procedures to which reference could be made under this section.