

D R A F T
FOR DISCUSSION ONLY

WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

February 19 – 20, 2016 Committee Meeting

WITH REPORTER'S NOTES AND QUESTIONS

Copyright © 2016
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

February 5, 2016

DRAFTING COMMITTEE ON WAGE GARNISHEMT ACT

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

WILLIAM H. HENNING, Texas A & M School of Law, 1515 Commerce St., Fort Worth, TX 76102, *Chair*
DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105
CARL S. BJERRE, University of Oregon School of Law, 1515 Agate St., Eugene, OR 97403-1221
JACK DAVIES, 1201 Yale Pl., Unit #2004, Minneapolis, MN 55403-1961
LORIE FOWLKE, 2696 N. University Ave., #220, Provo, UT 84604
BRIAN G. GOSCH, 1575 N. LaCrosse St., Suite K, Rapid City, SD 57701
PATRICK A GUIDA, One Financial Plaza, 18th Floor, Providence, RI 02903-2419
LAWRENCE R. KLEMIN, 1709 Montego Dr., Bismarck, ND 58503-0856
JAMES G. MANN, House Republican Legal Staff, Room B-6, Main Capitol Bldg., P.O. Box 202228, Harrisburg, PA 17120
ANNE L. McGIHON, P.O. Box 9396, Denver, CO 80209
NEAL OSSEN, 500 Mountain Rd., West Hartford, CT 06117
STEVE WILBORN, 3428 Lyon Dr., Lexington, KY 40513
STEVEN L. WILLBORN, University of Nebraska College of Law, Ross McCollum Hall, 1875 N. 42nd St., P.O. Box 830902, Lincoln, NE 68583-0902, *Reporter*

EX OFFICIO

RICHARD T. CASSIDY, P.O. Box 1124, 100 Main St., Burlington, VT 05402, *President*
LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

GARTH JACOBSON, 520 Pike St., Suite 985, Seattle, WA 98101, *ABA Advisor*
DENISE M. CLARK, 1250 Connecticut Ave. NW, Suite 200, Washington, DC, 20036, *ABA Section Advisor*
ROBYN B. KLINGER, One Technology Place, Rockland, MA 02370, *ABA Section Advisor*

EXECUTIVE DIRECTOR

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

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
(312) 450-6600
www.uniformlaws.org

WAGE GARNISHEMT ACT

TABLE OF CONTENTS

Prefatory Note	1
----------------------	---

[ARTICLE] 1 GARNISHMENT OF EARNINGS

SECTION 101. SHORT TITLE.	2
SECTION 102. DEFINITIONS.....	2
SECTION 103. SCOPE.	6
SECTION 104. CHOICE OF LAW.....	7
SECTION 105. COMMENCEMENT OF GARNISHMENT ACTION.....	9
SECTION 106. GARNIShee INITIAL RESPONSE TO GARNISHMENT ACTION.....	12
SECTION 107. BEGINNING OF GARNISHMENT.	13
SECTION 108. PENDENCY OF GARNISHMENT.	13
SECTION 109. TERMINATION OF GARNISHMENT ACTION.....	14
SECTION 110. NOTICE FORM.....	15
SECTION 111. CALCULATION WORKSHEET.....	17
SECTION 112. LIMIT ON WAGE GARNISHMENT.....	19
SECTION 113. MULTIPLE ORDERED DEDUCTIONS.	20
SECTION 114. COMPLIANCE PROCESS.	21
SECTION 115. GARNIShee PENALTIES FOR NONCOMPLIANCE.	22

[[ARTICLE] 2 GARNISHMENT OF BANK ACCOUNTS]

SECTION 201. DEFINITIONS.....	25
SECTION 202. BANK OBLIGATION WHEN ORDER IS ACCCOMPANIED BY NOTICE..	28
SECTION 203. FREEZING OF FUNDS; ACCOUNT REVIEW.	28
SECTION 204. NOTICE TO ACCOUNT HOLDER.	29
SECTION 205. PROCESS FOR CLAIMING EXEMPT AMOUNT.	32
SECTION 206. BANK'S DETERMINATION OF EXEMPT AMOUNT; ACCOUNT HOLDER'S RIGHT TO EXEMPT AMOUNT.....	33
SECTION 207. FUNDS DEPOSITED OR CREDITED TO ACCOUNT AFTER ACCOUNT REVIEW.....	33
SECTION 208. BANK DETERMINATION OF EXEMPT AMOUNT CONCLUSIVE.	34
SECTION 209. OTHER LAWS NOT LIMITED.	34

[ARTICLE] 3 GENERAL PROVISIONS

SECTION 301. CREDITOR PENALTIES.	34
SECTION 302. HEARING.....	35
SECTION 303. PROTECTION OF EMPLOYEE SUBJECT TO GARNISHMENT.	35

[ARTICLE] 4
MISCELLANEOUS PROVISIONS

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	36
SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	37
SECTION 403. SAVINGS CLAUSE.....	37
SECTION 404. SEVERABILITY.....	37
SECTION 405. REPEALS; CONFORMING AMENDMENTS.....	37
SECTION 406. EFFECTIVE DATE.....	37

1 **WAGE GARNISHMENT ACT**
2

3 **Prefatory Note**
4

5 We have structured this draft to facilitate discussion at our next committee meeting and
6 by interest groups. As a result, Article 1 on employer garnishment is (mostly)
7 independent from Article 2 on bank garnishment. If we decide to proceed with both types
8 of garnishment, it is likely that we will re-organize the act to align with other Uniform
9 Acts that contain multiple articles. For example, we would probably have a new Article 1
10 that contains the short title and definitions, then an Article 2 with the substantive
11 provisions on employer garnishment, etc.
12

[ARTICLE] 1

GARNISHMENT OF EARNINGS

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

5 SECTION 102. DEFINITIONS. In this [act]:

(1) "Creditor" means a person that has an enforceable money judgment against a debtor. The term includes a successor in interest.

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

10 (3) “Disposable earnings” means earnings remaining after deductions for current
11 tax obligations, mandatory deductions for [insert references to required deductions for
12 state disability or unemployment insurance], and mandatory contributions to [insert
13 references to state retirement systems for public-sector employees] and the Railroad
14 Retirement Act, 45 U.S.C. Section 631 et seq.

(4) "Earnings" means compensation owed by an employer to an employee for personal services. The term includes salary, commissions, bonuses, profit-sharing distributions, severance payments, and periodic pension and disability payments.

(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:

(B) who 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 earnings to an employee or will owe earnings to the employee.

5 (8) "Garnishee" means a person served with a [complaint][motion] in a
6 garnishment action.

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

(10) "Garnishment action" means a court proceeding seeking a garnishment.

(11) "Ordered deduction" means a deduction by an employer from the earnings of an employee for payment to another person under a garnishment order, support order, order to recover federal, state, 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.

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

18 (13) "Periodic payments" means recurring payments on intervals of one month or
19 less.

20 (14) "Person" means an individual, estate, business or nonprofit entity, public
21 corporation, government or governmental subdivision, agency, or instrumentality, or
22 other legal entity.

(15) "Record" means information that is inscribed on a tangible medium or that is

1 stored in an electronic or other medium and is retrievable in perceivable form.

2 (16) “Send” means:

3 (A) to deposit a record in the United States mail to the last-known address

4 of the intended recipient with first-class postage provided;

5 (B) to deliver a record by any other usual means of communication to the

6 last-known address of the intended recipient with the cost of transmission, if any,

7 provided; or

8 (C) to cause a record to be received in any other way within the time it

9 would have arrived if sent pursuant to subparagraph (A).

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

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

12 (B) to attach to or logically associate with the record an electronic symbol,

13 sound, or process.

14 (18) “State” means a state of the United States, the District of Columbia, Puerto

15 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

16 jurisdiction of the United States. [The term includes a federally recognized Indian tribe.]

17 (19) “Support order” means a judgment, decree, order, decision, or directive,

18 whether temporary, final, or subject to modification, issued in a state or foreign country

19 for the benefit of a child, spouse, or former spouse, which provides for monetary support,

20 health care, arrearages, retroactive support, or reimbursement for financial assistance

21 provided to an individual obligee in place of child support. The term includes related

22 costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s

23 fees, and other relief.

Reporter's Notes

“Disposable earnings” is the same substantively as the definition of “disposable earnings” in the federal Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1671-1677. The types of deductions permitted are well-understood under the CCPA (federal, state, and local withholding taxes; social security and Medicare taxes; mandatory deductions for state disability or unemployment insurance; mandatory contributions to a state employee pension plan; and mandatory contributions under the Railroad Retirement Act). The vast majority of states currently follow the CCPA definition of disposable earnings. A few states permit other kinds of payments to be deducted from disposable earnings (such as union dues, union initiation fees, and insurance contributions). This act is officially neutral on these other deductions. The calculation worksheet in Section 111 below includes a line to accommodate them (line 2.e.), but is silent otherwise.

For “earnings,” the Drafting Committee discussed two possibilities at our fall meeting: (1) one which tracks the definition in the CCPA and (2) one which relies on definitions of earnings in federal tax law. For this draft, we’ve included only the first option. We did this for several reasons. First, with this definition we will align perfectly with the CCPA since we track its language. After our last meeting, I began to worry quite a bit that the tax-law language would inadvertently and inappropriately be over- or under-inclusive. Second, any tax-law reference would be subject to unpredictable changes in federal tax law. Third, the more general language would be preferable if we decide to include independent contractors in the act.

“Electronic” is a standard ULC definition.

“Employee” covers both (a) individuals who are treated as employees by the employer for tax purposes and (b) other individuals who, while not treated by the employer as employees, are in much the same position. The second category serves two functions. First, it provides the act’s protections to people who look a lot like employees but are not treated as employees by their employers. Some of these people may be misclassified; others may work for types of enterprises which are structured to produce that result (such as Uber and FedEx). Second, covering these types of workers will permit them (and their “employers”) to enjoy the efficiencies from the new and better procedures provided by this act. Subsection (B) is intended to cover some, but not all, independent contractors. Only workers (a) who are individuals, (b) who perform personal services, and (c) who are paid periodically will be covered. Thus, workers who perform services as LLCs or other corporate entities will not be covered; entities that provide goods to an employer will not be covered; and workers who perform one-off services will not be covered.

Note to Drafting Committee on definition of “employee”: Bill and I discussed over- and under-inclusiveness problems with the part of this definition that captures (some) independent contractors. One option we considered was to narrow the definition’s scope to those workers for whom an employer expected to have to file a federal tax form (a Form 1099). The worry with that is that it may exclude from the protections of the act a set of workers who work only small amounts for many different “employers,” which is

1 one of the groups we are trying to capture by the expansion. Thus, adding that phrase
2 may have resulted in under-inclusiveness. On the other hand, the current provision, by its
3 terms, is over-inclusive. For example, it would include payments by parents to their own
4 minor children (e.g., a regular allowance for mowing the lawn) and “casual employment
5 consisting of yard work, household chores, and repairs in and about one-family, owner-
6 occupied residences” (this is an exclusion from the New York workers’ compensation
7 law). We need to discuss this, but our tentative conclusion was that in balancing the
8 defects of the two possibilities, it was probably better to ensure inclusion of workers we
9 intend to protect. We doubt that either defect will arise commonly in practice.

10
11 “Garnishee.” For an explanation of the “[complaint][motion]” construction, see the first
12 note after section 105.

13
14 “Ordered deduction” is a broad term that encompasses both garnishments under this act
15 (which are currently limited to debt garnishments) and “garnishments” for other
16 purposes, such as child support and federal or state taxes.

17
18 **Note to Drafting Committee:** We have had some difficulty in coming up with a term for
19 this concept. For the draft presented to the 2015 Annual Meeting, we used the term
20 “mandatory withholding.” We received a comment from the floor that this seemed
21 demeaning. At our fall meeting, we tried the term “mandatory deduction.” We had a
22 discussion about that term. Lots of alternatives were suggested (although not the one we
23 are suggesting now). This is our current, suggested alternative.

24
25 “Person” is a standard ULC definition.

26
27 “Record” is a standard ULC definition.

28
29 “Send” is a definition that is drawn from a similar definition in the UCC. Subsection (B)
30 is intended primarily to permit email or other electronic forms of notice. Subsection (C)
31 is intended primarily to permit a record to be hand-delivered.

32
33 “Sign” is a standard ULC definition.

34
35 “State” is a standard ULC definition.

36
37 “Support order.” This definition follows the definitions that define the coverage of the
38 Uniform Interstate Family Support Act (UIFSA). An alternative would be to define
39 “support order” to mean an order enforceable under UIFSA, which every state has
40 adopted. This would perhaps be even clearer about the intent (which is to exclude support
41 orders governed by UIFSA). But the Joint Editorial Board for Uniform Family Laws has
42 expressed its support for this definition, so that is the one we included.

43
44 **SECTION 103. SCOPE.**

45 (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 113, this [article] does not apply to an ordered deduction that is not a garnishment, including an ordered deduction pursuant to:

5 (1) an order of a bankruptcy court;

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

7 (3) a support order[; or

8 [4) other specified ordered deductions].

(d) This [article] is subject to any law that otherwise prohibits or limits

10 garnishment.

Reporter's Notes

13 Subsection (c)(4) permits states to narrow the applicability of the act. At the extreme, the
14 option could be used to preclude most forms of debt garnishment. Even with such an
15 expansive exclusion, however, a state might be interested in enacting the act to provide a
16 fair process for enforcing garnishments that arrive from other states. Texas, for example,
17 has a constitutional prohibition on debt garnishment which prohibits Texas courts from
18 issuing garnishment orders themselves. But Texas courts do enforce garnishment orders
19 that come from other states. *See Knighton v. IBM Corp.*, 856 S.W.2d 210 (Tex. App.
20 1993).

22 Subsection (d) permits states to incorporate restrictions on garnishment found elsewhere
23 in state law, including prohibitions on garnishment. Some states have such restrictions in
24 their current law. For example, South Carolina does not permit wage garnishments for
25 debts arising from consumer credit sales, consumer leases, consumer loans, or consumer
26 rental-purchase agreements. S.C. Code Ann. § 37-5-104. Thus, South Carolina could
27 narrow the act here so that it does not apply to those types of debts. Similarly, several
28 states prohibit wage garnishment for people who receive public assistance or have “wild
29 card” exemptions that might apply.

SECTION 194. CHOICE OF LAW.

32 (a) The [court] shall dismiss or stay a garnishment action if the debtor's principal
33 place of work is not in this state when the action is commenced, unless the employer is

1 subject to personal jurisdiction in this state but is not subject to personal jurisdiction in
2 the state of the debtor's principal place of work.

3 (b) In a garnishment action against a debtor whose principal place of work is not
4 in this state, this [article] applies except that the debtor is entitled to the exemptions from
5 and limits on garnishment provided by the law of the jurisdiction of the debtor's principal
6 place of work.

7 **Reporter's Notes**
8

9 The primary goal of the forum selection rules is convenience for the debtor and
10 employers. In the absence of forum selection rules, jurisdiction would lie based on
11 whether the *employer* was subject to personal jurisdiction. See Restatement (Second) of
12 Conflict of Laws § 68 (Am. Law Inst. 1971). This would permit a creditor to file a
13 garnishment action in a state quite inconvenient to the debtor. For example, a creditor
14 could sue a national corporation in California where it has operations even though the
15 employee is employed by that corporation in Nebraska. As this example illustrates, a
16 secondary goal of the forum selection rules is to limit forum shopping.
17

18 **Subsection (a).** The phrase "when the action is commenced" signals that if an employee
19 is in State A when the action is filed there and then the employee is transferred to State B
20 (but is still working for the same employer), the garnishment action would continue in
21 State A. This is in mild conflict with the notion that the state of employment is the one
22 whose limits and exemptions should apply because in this scenario the court in State A
23 will be applying State A's limits and exemptions even though the employee is now in
24 State B. But the alternatives are inefficient and those inefficiencies outweigh this state-
25 interest concern. The inefficient alternatives are (1) to have State A dismiss its
26 garnishment at the time of the transfer and force the creditor to file a new action in State
27 B or (2) to require the State A court to have a hearing to begin to apply State B's limits
28 and exemptions at the time of the transfer.
29

30 **General structure of the section.** If the act were limited to true employees, it would be
31 quite rare for a situation to arise where the employer has employees in a state but there is
32 no personal jurisdiction over the employer. But these situations would be less rare for this
33 version of the act, which also covers some independent contractors.
34

35 To handle this situation, the basic structure of the section is (1) to permit the action to be
36 filed in a state other than the employee's principal place of work, (2) to permit the court
37 to use its own state's garnishment procedures, but (3) to require it to apply the
38 exemptions and limits of the state of the employee's principal place of work. Using the
39 state's own procedures is standard procedure for a host of reasons. But the foreign state
40 has the strongest interest in the level of protection for workers within its jurisdiction.

1 Consequently, subsection (b) directs the court to apply the exemptions and limits of the
2 debtor's principal place of work. The subsection follows the lead of the Uniform
3 Interstate Family Support Act (UIFSA) in two ways. First, that act uses "principal place
4 of employment" without further delineation as the criterion for making the choice of law
5 decision. (We have expanded the term a bit to "principal place of work" to accommodate
6 the expansion of the act to cover some non-employees.) Second, UIFSA requires the
7 court to defer to the law of the state of the principal place of employment to determine
8 the level of protection for the family-support obligor. UIFSA § 502(d). (Having said that,
9 it should be noted that UIFSA, balancing a different set of concerns, also requires deferral
10 to the other state on other limited matters.)

11

12 **SECTION 105. COMMENCEMENT OF GARNISHMENT ACTION.**

13 (a) A creditor may commence a garnishment action by [filing a
14 complaint/motion]. If the garnishee has a registered agent that can be served with
15 reasonable diligence under [cite state law on registered agents], the action must be
16 commenced by service on the registered agent. Otherwise, the garnishment action must
17 be commenced by service on the garnishee.

18 (b) The [complaint][motion] under subsection (a) must include:
19 (1) the name of the debtor;
20 (2) the physical and mailing addresses of the debtor, or a statement that the
21 information is not known;
22 (3) the amount the creditor claims is owed by the debtor and information
23 sufficient to identify the judgment on which the garnishment action is based;
24 (4) a completed notice form that satisfies Section 110;
25 (5) the name of and contact information for the creditor's agent to whom
26 the garnishee is required by Section 106(1) or (2)(A) to send information; and
27 (6) the mailing address to which the garnishee shall send amounts
28 withheld and, at the creditor's option, a statement of other reasonable means of sending
29 the amounts to the creditor.

(c) The [complaint][motion] under subsection (a) must be accompanied by[:
(1)] a separate document provided only to the garnishee and not filed with
court that provides the debtor's date of birth and social security number, or states that
both are not known[; and
(2) an administrative fee of [\$X][X times the [federal][state] minimum
payable to the garnishee].

Reporter's Notes

General comment on structure. In general, garnishment can commence in one of two ways: (1) as a method of execution on a judgment that is part of the original action against the debtor (so it would begin with something called a motion or a writ to implead the employer) or (2) as an independent action against the employer to collect on a prior judgment (so it would begin with a complaint). Our act is neutral on which method a state uses and is intended to accommodate either or, indeed, any approach a state specifies for beginning a garnishment action. Hence, the bracketed “[complaint][motion]” construction. A legislative note will instruct legislative drafters that they should insert for “[complaint][motion]” the appropriate action specified by state law for commencing a garnishment action.

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

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

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

Subsection (c)(1). This information is necessary to enable employers, especially large employers, to determine identity. On the other hand, the information is confidential and

1 subject to abuse. This section requires the creditor to provide the information to the
2 employer, but in a manner that protects its confidentiality.

3

4 Most states have practices and procedures for dealing with this type of information. *See,*
5 *e.g.*, Neb. Ct. Rules art. 15 § 6-1521 (providing a special form and procedure for dealing
6 with this type of information). This subsection will be accompanied by a legislative note
7 that asks drafters to align this requirement with the particular practices and procedures in
8 their states.

9

10 ***Comment on administrative fees, subsection (c)(2).*** Currently, most states provide for
11 administrative fees (31 states), although a substantial minority do not (19). Views on the
12 Drafting Committee on the issue were split. On the one hand, employers are largely
13 neutral parties in these proceedings and they do incur costs. Drafting Committee
14 observers representing employers and payroll processing entities are strongly in favor of
15 fees. On the other hand, some members of the committee felt strongly that the act will
16 create efficiencies that will reduce costs significantly and that most of those savings will
17 accrue to employers. Consequently, the view of these committee members is that
18 removing the complications of fees from the act is a fair trade-off to employers for those
19 significant benefits.

20

21 This subsection brackets fees. This is the approach we decided to take at our last meeting.
22 The bracketing means that if those states which do not currently have fees want to
23 continue with that policy, they could simply fail to adopt the bracketed language entirely.
24 However, other states may want to continue (or begin) to apply fees. Including the
25 bracketed language would facilitate that preference.

26

27 For states that want to include fees, an additional issue is how should they be structured?
28 The basic options are (1) a lump-sum fee early in the process; (2) a fee that is paid with
29 each payment to a creditor; or (3) both. We have opted here for a lump-sum early in the
30 process both because it is easier to administer and because it provides a fee even in
31 circumstances when no garnishment occurs (*e.g.*, because the debtor is not an employee
32 of the garnishee or the debtor's income is entirely protected from garnishment). The
33 approach is straight-forward and easy-to-administer, but of course it only does rough
34 justice across the full range of garnishment possibilities (*e.g.*, it is likely to under-
35 compensate employers for the cost of large, long-term garnishments and over-
36 compensate them for situations where no garnishment occurs).

37

38 We provide two basic options for the amount of the up-front lump-sum payment: (1) it
39 can either be a set amount (Michigan, which recently amended its garnishment law set
40 the amount at \$35) or (2) it could be set as a multiple of the state or federal minimum
41 wage (so if one wanted to set it at about the level in Michigan, one could say five times
42 the federal minimum wage). We have observed that the amount of the fee in the states
43 depends significantly on how long ago the fee was set. Referencing the state or federal
44 minimum wage provides a rough, but easy index for future inflation, in precisely the
45 same way that Section 112 later in the act uses the minimum wage to index the
46 exemptions for inflation.

1 **SECTION 106. GARNISHEE INITIAL RESPONSE TO GARNISHMENT**

2 **ACTION.** Not later than [21] days after being served with a [complaint][motion] in a
3 garnishment action:

4 (1) the garnishee shall send notice to the agent named under Section 105(b)(5) if:

5 (A) the debtor is not an employee; [or]

6 (B) the [complaint][motion] did not contain all the information required by

7 Section 105; [or

8 (C) the [complaint][motion] was not accompanied by the fee required by

9 Section 105(c)(2); or]

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

11 (A) send to the agent named under Section 105(b)(5) a notice that

12 includes:

13 (i) a statement that the named debtor is an employee;

14 (ii) the pay frequency of the employee and the date of the next

15 payday;

16 (iii) the name of and contact information for the garnishee's agent

17 to whom the creditor must send information if required by Section 108(d), 108(f), or

18 114(b)(2); and

19 (iv) if the employee's earnings are subject to other ordered

20 deductions, the number of other ordered deductions and the priority of each ordered

21 deduction, including the priority of the garnishment sought by the [complaint][motion];

22 and

23 (B) send to the employee a copy of the notice form provided to the

1 garnishee pursuant to Section 105(b)(4) .

2 **SECTION 107. BEGINNING OF GARNISHMENT.** If Section 106(2)
3 applies, the employer shall begin garnishment with the first payday that occurs not less
4 than [30] days after the employer sends the employee the notice form under Section
5 106(2)(B).

6 **SECTION 108. PENDENCY OF GARNISHMENT.**

7 (a) Not later than [seven] days after withholding an amount from the earnings of
8 an employee pursuant to a garnishment, the employer shall send the amount to the
9 creditor at the mailing address specified under Section 105(b)(6) or, at the employer's
10 option, by other means specified by the creditor under Section 105(b)(6).

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

14 (c) An employer shall notify an employee of any amount withheld from earnings
15 pursuant to a garnishment action in the same manner that the employer notifies the
16 employee of other withholdings from earnings.

17 (d) The creditor may send notice to the employer to increase the amount due on
18 the debt because of accrued interest or additional court costs or to decrease the amount
19 due on the debt for any reason at any time before termination of a garnishment under
20 Section 109(b). The creditor shall send the notice to the agent named under Section
21 106(2)(A)(iii).

22 (e) An employer that receives notice under subsection (d) shall send a completed
23 calculation worksheet under Section 111 to the employee on the employee's next payday

1 with a heading that states “The creditor has changed the amount you owe because of
2 accrued interest or additional court costs or because of other payments. See item 13 on
3 this worksheet.”

4 (f) For each payday on which a garnishment occurs, the employer shall maintain a
5 record containing information sufficient to prepare a calculation worksheet under Section
6 111 for each creditor. At any time, an employee or creditor may request in a record a
7 completed calculation worksheet. The creditor shall send the request to the agent named
8 under Section 106(2)(A)(iii). Not later than [seven] days after receipt of the request, the
9 employer shall send without charge a calculation worksheet for the most recent payday.

10 The employer is not required to provide:

11 (1) an employee more than one calculation worksheet for each creditor for
12 any payday; or
13 (2) a creditor more than four calculation worksheets for each employee
14 during a calendar year.

15 **SECTION 109. TERMINATION OF GARNISHMENT ACTION.**

16 (a) Not later than [21] days after receiving a notice under Section 106(1), the
17 creditor shall [seek dismissal of the complaint][withdraw the motion] or seek a prompt
18 hearing under Section 302 to determine whether the conditions requiring the employer to
19 proceed under Section 106(2) were satisfied.

20 (b) A garnishment commenced under Section 107 terminates when either:

21 (1) the employer’s records show that the debt has been paid in full; or
22 (2) the debtor is no longer an employee of the garnishee.

23 (c) Not later than [21] days after the first day on which a debtor is no longer an

1 employee of the garnishee, the garnishee shall send notice to the creditor of the cessation
2 of employment.

3 (d) A creditor shall seek dismissal of a garnishment action not later than [21] days

4 after:

5 (1) the debt is paid in full; or

6 (2) the creditor has notice that the debtor is no longer an employee of the
7 garnishee.

8 **SECTION 110. NOTICE FORM.**

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

11 (b) The notice form required by Section 105(b)(4) must be in substantially the
12 following form:

13 Money will be Deducted from your Earnings, Unless You Act

14
15 [Insert name of creditor that filed the garnishment action; a shortened name to be used
16 later in the form can also be listed here] has begun a legal process to require money to be
17 deducted from your earnings and paid to them. This is called a garnishment.

18
19 This notice was prepared by [insert name or shortened name of creditor that filed the
20 garnishment action]. The law requires us to provide it to you.

21
22 [Insert name or shortened name of creditor that filed the garnishment action] says that
23 you owe it \$[insert amount of the claimed debt]. [If the creditor filing the garnishment
24 action is not the original creditor insert the following sentence: This amount comes from
25 a debt you originally owed to [insert name of original creditor]]. There is more
26 information about the debt at the end of this notice.

27
28 We will soon be required by law to begin making deductions to pay this debt and we will
29 have to continue making the deductions until the debt is paid in full. The amount
30 deducted could be as high as [X]% of your earnings.

31 The amount deducted from your earnings may be reduced if you fit into any of these
32 categories:

33
34 [Insert exemptions provided by state law.]

1 [Insert process for claiming exemptions.]
2

3 You can ask us at any time for a worksheet that tells you how we calculated the amount
4 we were required to deduct, but you must do that in writing or by email.
5

6 You can take any or all of the following actions in response to this claim:
7

- 8 1. You can contact [insert name or shortened name of creditor that filed the
9 garnishment action] to discuss the debt and this garnishment with them.
10 Information about how to contact them is on the next page.
11
- 12 2. You should consider getting a lawyer to represent you. A lawyer could
13 explain this process to you and help you decide what to do. To get a
14 lawyer, you might consider contacting [insert information about local legal
15 aid office or lawyer referral service].
16
- 17 3. You can ask the court to hold a hearing to permit you to challenge any
18 aspect of this proceeding. For example, you could claim that a deduction
19 should not be made because you fit within an exception in the law. Such a
20 request should be sent to the Clerk of the Court:
21

22 [Insert name and address of court].
23

24 Again, if you do not act, we will soon be required to begin deducting money from your
25 earnings.
26

27 [Insert a page break]
28

29 Information Form
30

31 Those Claiming You Owe Them Money
32

33 Current Creditor Name:
34 Current Creditor Contact Information:
35 (If Different) Original Creditor Name:
36

37 Basis for the Debt
38

39 Court Name:
40 Case No:
41 Date of Judgment:
42

43 Amount of the Debt:
44

45 Judgment Amount \$ _____
46

Current Amount Owed* \$ _____

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

Reporter's Notes

Expert Advice. We have engaged a plain-language expert who will provide advice on the precise wording of this notice.

General Note on Style. For now, we have presented sections 110 and 111 only as forms. If necessary, we can convert the forms to statutory language later. But for now, we thought a substantive discussion would be facilitated best by presenting them only as forms.

Bracketed Exemption Information. We'll need to talk about this. Maybe a preferable alternative to this would be to require states to provide a separate state-specific form with the Notice Form that describes the exemptions and the process for claiming them, if any. In either event (that is, whether we do it on this Notice Form or through another required form), we will get non-uniformity. But that's probably necessary given that the states differ considerably in their exemptions. If we require a separate form, we could probably also eliminate the sentence that says up to X% of their earnings might be deducted. That information could be provided with less generality and more detail in a required form.

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

SECTION 111: CALCULATION WORKSHEET: A calculation worksheet

required to be provided under Section 108(e) or (f) must be in substantially the following form:

Debtor:
Creditor:
For Earnings Paid on:

1 Disposable Earnings:

- 2
- 3 1. Gross Earnings Paid to Debtor \$_____
- 4
- 5 2. Amounts Withheld:
- 6
- 7 a. Federal social security tax (FICA): \$_____
- 8 b. Federal income tax: \$_____
- 9 c. State income tax: \$_____
- 10 d. Railroad retirement tax: \$_____
- 11 e. Other: \$_____
- 12
- 13 3. Total Amounts Withheld \$_____
- 14 (Sum of items in line 2)
- 15
- 16 4. Disposable Earnings \$_____
- 17 (Line 1 minus line 3)
- 18

19 Garnishment Calculation:

- 20
- 21 5. [X]% of Disposable Earnings ([X]% of line 4) \$_____
- 22
- 23 6. Exemption Amount \$_____
- 24
- 25 [Description of Exemption Amount will be here. See the
26 note below.]
- 27
- 28 7. Line 4 minus line 6 (if less than \$0, enter \$0) \$_____
- 29
- 30 8. Enter smaller of line 5 or line 7 \$_____
- 31
- 32 9. Amounts of Other Current Garnishments with Higher
33 Priority (if none, enter \$0) \$_____
- 34
- 35 10. Subtract line 9 from line 8 (if less than \$0, enter \$0) \$_____
- 36
- 37 11. Enter the number of Other Current Garnishments
38 with the Same Priority, plus one _____
- 39
- 40 12. Divide line 10 by line 11 \$_____
- 41

42 The amount on line 12 is the garnishment amount.

43 Statement of Amount Due and Paid

- 44
- 45 13. Total Amount Claimed by Creditor:
- 46

1	a.	Principal	\$_____
2	b.	Interest	\$_____
3	c.	Court costs	\$_____
4	d.	Total	\$_____
5	14.	Amounts Paid Through Garnishment:	
6	a.	Prior Garnishments	\$_____
7	b.	This Garnishment (Line 12)	\$_____
8	c.	Total Garnishments	\$_____
9	15.	Net Amount Owed After Garnishments to Date (Line 13 minus line 14.c.)	\$_____

Reporter's Notes

Exemption Amount. The description of the exemption amount will be non-uniform for two reasons. First, as we discuss in section 112 below, we intend to permit states to provide varying levels of protection to debtor/employees under the standard exemption provision. Second, states currently have a variety of other exemptions. We do not anticipate suggesting to states that they eliminate these other exemptions.

SECTION 112. LIMIT ON WAGE GARNISHMENT.

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

(1) [X] 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]

1 minimum wage. In calculating the multiple, a pay period of one calendar month is
2 deemed to be four and one-third weeks.

Legislative Note: In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(2).

Reporter's Notes

9 Note to Drafting Committee. In prior drafts, we have had two alternatives here: the one
10 that is currently here and another one that would adjust the amounts automatically for
11 inflation. At our last meeting, we tentatively decided to eliminate the inflation-adjustment
12 option, which is what we have done here. Of course, if there is support, the inflation-
13 adjustment language could be re-introduced.

Bracketed numbers. We would provide guidance to states on the bracketed “X” for percentages and “state multiple” for the exemption. First, states cannot make the bracketed percentage more than 25%, nor can they decrease the bracketed multiple below 30 times the federal minimum wage. Federal law requires at least these levels of protection. On the other hand, federal law permits state garnishment law to provide greater protection for debtor/employees. So, for example, if a state wants to permit only 20% of disposable earnings to be subject to garnishment or wants to limit garnishment to amounts above 40 times the federal minimum wage, those adjustments would be permissible.

25 ***Subsection (b).*** The four-and-one-third calculation is the one specified by the Department
26 of Labor under the Consumer Credit Protection Act, 29 CFR § 870.10(c)(2).

SECTION 113. MULTIPLE ORDERED DEDUCTIONS.

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

(2) For garnishment and other ordered deductions with the same priority

1 as a garnishment, the garnishee shall send an equal amount of the withheld earnings to
2 each person entitled to receive these ordered deductions without regard to the time the
3 ordered deduction became effective, the amount of the ordered deduction, or any other
4 factor.

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

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

10 **Reporter's Notes**

11
12 Carl Bjerre has suggested these nice examples, which we may include in the Reporter's
13 Notes:

14 Example 1. On a given payday, the following garnishments are in effect with
15 employer against employee: one by Creditor A, commenced a year ago with a remaining
16 unpaid claim of \$5,000; one by Creditor B, commenced four months ago with a
17 remaining unpaid claim of \$491; and one by Creditor C, commenced 45 days ago with a
18 total claim of \$150 which is wholly unpaid. No other remedial deductions are in effect
19 against employee, and on this payday \$300 is available for remittance. Subsection (a)(2)
20 requires the employer to pay \$100 each to Creditors A, B and C.
21

22 Example 2. Same facts as in Example 1, except that the payment in Example 1
23 has already been made; consequently Creditor A is now owed \$4,900, Creditor B \$391,
24 and Creditor C \$50. The next payday has now arrived and on this payday, too, \$300 is
25 available for remittance. Subsection (a)(2) requires the employer to pay \$50 to Creditor
26 C, \$125 to Creditor A, and \$125 to Creditor B.
27

28 Example 3. Same facts as in Example 1, except that Creditor A's ordered
29 deduction is a child support order with a higher priority than a garnishment. Subsection
30 (a)(1) requires the employer to pay the entire \$300 to Creditor A.
31

32
33 **SECTION 114. COMPLIANCE PROCESS.**

34 (a) In this section, "receiving the motion" means:

35 (1) in the case of a claim against a garnishee by a debtor, receiving the

1 motion filed under subsection (b)(1); and

2 (2) in the case of a claim against a garnishee by a creditor, receiving a

3 copy of the motion pursuant to subsection (b)(2).

4 (b) A garnishee is not liable for an amount under Section 115 unless:

5 (1) the debtor or creditor files a motion with the [court] which states with

6 specificity the nature of the garnishee's failure to comply with this [act];

7 (2) in the case of a motion by a creditor under paragraph (1), the creditor

8 sends a copy of the motion to the agent named under Section 106(2)(A)(iii); and

9 (3) the garnishee fails:

10 (i) to send the information required by Section 106(1), (2)(A), or

11 (2)(B), as applicable, not later than [10] business days after receiving the motion;

12 (ii) to begin garnishment under Section 107 not later than [21] days

13 after receiving the motion or, if no payday occurs between [six] and [21] days after

14 receiving the motion, on the next payday subsequent to [21] days after receiving the

15 motion; or

16 (iii) to remit to the creditor the amount that should have been

17 withheld from the earnings of the debtor since garnishment began under Sections 107 not

18 later than [five] business days after receiving the motion.

19 (c) For good cause, the [court] may waive all or any portion of the penalties under

20 Section 115.

21 SECTION 115. GARNISHEE PENALTIES FOR NONCOMPLIANCE.

22 Subject to Section 114(b) and (c), the following rules apply:

23 (1) A garnishee that fails to comply with Section 106 is liable to the creditor for

1 [state dollar amount] for each day beginning [22] days after service of the

2 [complaint][motion]:

3 (A) until the garnishee sends the information required by Section 106(1);

4 or

5 (B) until the earlier of when garnishee sends the information required by
6 Section 106(2) or garnishment would be required to begin under Section 107.

7 (2) A garnishee that fails to comply with Section 107 is liable to the creditor for
8 the amount that should have been withheld pursuant to that section and sent to the
9 creditor.

10 (3) A garnishee that fails to comply with Section 108(a) is liable to the creditor
11 for:

12 (A) any amount withheld from the earnings of the employee which the
13 creditor did not receive because of the garnishee's failure to send the amount in the
14 proper manner; and

15 (B) [state dollar amount] for each day beginning [eight] days after a
16 payday on which the amount was or should have been withheld from the earnings of the
17 employee and ending on the day the amount is sent to the creditor.

18 (4) A garnishee that fails to send a calculation worksheet under Section 108(e) is
19 liable to the employee for [state dollar amount] for each day beginning on the payday
20 when the worksheet should have been sent and ending on the day the garnishee sends the
21 worksheet.

22 (5) A garnishee that fails to comply with a request for a calculation worksheet
23 under Section 108(f) is liable to the employee or creditor for [state dollar amount] for

- 1 each day beginning [eight] days after the request and ending on the day the garnishee
- 2 sends the worksheet.

(6) A garnishee that fails to comply with Section 109(c) is liable to the creditor for [state dollar amount] for each day beginning [22] days after the first day on which the debtor is no longer an employee of the garnishee and continuing until the notice is sent.

(7) A creditor must apply any amount paid by a garnishee to the creditor pursuant to this section towards reduction of the debtor's obligation to the creditor. The maximum amount paid by a garnishee pursuant to this section may not exceed the total amount of the debtor's obligation to the creditor.

Reporter's Notes

12 ***Amounts.*** We've left all the amounts blank at this point. The Drafting Committee has
13 not yet discussed this issue robustly. On the one hand, the need for uniformity is weak
14 with respect to these dollar amounts. On the other hand, we are probably in a better
15 position to think about the optimum level of these amounts than others.

Paragraph (7). The Drafting Committee has not reached a consensus about what to do when the sanction exceeds the debt. There are two basic issues: (1) whether to require a payment at all in this circumstance. On the one hand, the debt seems like a reasonable limit on the scope of the garnishee's liability. On the other hand, these penalties are intended to encourage garnissees to follow the rules. If they're waived if they exceed the amount of the debt, the penalties would not provide much of an incentive for small debts or at the end of the life of a garnishment. (2) If we decide that an amount ought to be paid even if it exceeds the amount of the debt (to create the proper set of incentives), then we would need to decide who would get the money. Since the money would be to incentivize the garnishee rather than to compensate someone for an injury, the amount would be a windfall for whoever received it. As currently drafted, we limit the amount of the penalty to the amount of the debt (issue 1), which avoids the need to consider issue 2.

[[ARTICLE] 2

GARNISHMENT OF BANK ACCOUNTS]

Reporter's Notes

³⁴ This article arose out of concern that debtors would be little better off if the garnishment statute protected part of their wages, but then the creditor could immediately grab the rest

1 by garnishing the debtor's bank account. Our consumer and banker representatives noted
2 that if that were a possibility it would also discourage employees from participating in the
3 banking system.

4

5 At its January meeting, the Scope and Program Committee authorized us to include this
6 article, if we think it desirable. However, please note that at this point the entire article is
7 bracketed. Article 3 also contains bracketed language relating to banks that will need to
8 be included only if Article 2 is included in the act.

9

10 The article is structured to follow the federal regulation on garnishment of bank accounts
11 containing federal benefit payments, such as social security and railroad retirement
12 benefits. Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. §§
13 212.1 *et seq.* That regulation requires banks to do an "account review" and protects
14 federal benefits deposited into accounts during a "lookback period." The definitions of
15 those terms in this act follow the definitions in the federal regulations. The procedures of
16 Sections 203 to 204 also closely track the federal regulation. The federal regulation is
17 non-preemptive and specifically recognizes the validity of state laws that are consistent
18 with federal law and more protective. *Id.* at § 212.9(b). As a result, the procedure and
19 concepts here should be both permissible under federal law and familiar to banks.

20

21 We have structured the article to closely align with our primary mission, which is
22 regulation of garnishment by employers. As a result, the exemption only applies if the
23 account contains earnings that have already been subjected to some type of prior
24 garnishment within the lookback period, including garnishments governed by Article 1.
25 Similarly, the amount protected in this article is closely tied to those earnings.

26

27 Right now, 35 states provide some type of protection for bank depositors against
28 garnishment. But the nature and scope of the protection varies considerably between
29 states. *See* National Consumer Law Center, No Fresh Start, at 23-26, 39-40 (2013),
30 available at www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf. This section
31 would provide needed uniformity.

32

33 **SECTION 201. DEFINITIONS.** In [articles 2 and 3]:

34

35 (1) "Account" means an account maintained by a bank. The term includes a

36 demand, time, savings, passbook, or similar account.

37

38 (2) "Account holder" means an individual whose name appears in a bank's

records as the owner of an account.

39

40 (3) "Account review" means the process of examining direct deposits in an

account to determine if the account contains a federally protected amount or an exempt

1 amount.

2 (4) "Bank" means an entity engaged in the business of banking. The term includes
3 a bank, savings association, savings and loan association, and a credit union.

4 (5) "Bank garnishment" means an act by a bank to deduct funds from an account
5 for payment to another person pursuant to a bank garnishment order.

6 (6) "Bank garnishment order" means a legally enforceable order to effect a bank
7 garnishment.

8 (7) "Direct deposit" means funds electronically deposited into an account by a
9 person other than the account holder. "Directly deposited" has a corresponding meaning.

10 (8) "Exempt amount" means the funds in an account that are exempt from bank
11 garnishment under this [article].

12 (9) "Federally protected amount" means the amount determined by a bank to be
13 the protected amount under the Regulation on Garnishment of Accounts Containing
14 Federal Benefit Payments, Code of Federal Regulations, title 31, part 212.3[, as
15 amended].

16 (10) "Lookback period" means the two-month period that begins on the day
17 preceding the day of an account review and ends on the corresponding day of the month
18 two months earlier or on the last day of the month two months earlier if the
19 corresponding day does not exist.

20 (11) "Notice of right to garnish federal benefits" means the form provided at
21 Appendix B of the Regulation on Garnishment of Accounts Containing Federal Benefit
22 Payments, Code of Federal Regulations, title 31, part 212.3[, as amended].

23 (12) "Pay stub" means a record provided to an employee by an employer on a

1 payday that includes a statement of the employee's total earnings during that pay period
2 and a listing of the amount and purpose of each deduction.

3 **Legislative Note:** In states in which the constitution, or other law, does not permit the
4 phrase "as amended" when federal statutes are incorporated into state law, the phrase
5 should be deleted in subsections (9) and (11).

6

7 Reporter's Notes

8

9 This article uses a number of terms defined in Article 1 so the only terms being separately
10 defined here are those that do not appear in Article 1. In a final draft containing both
11 articles, all definitions would be in a new Article 1 (see the Prefatory Note).

12 **Note to Drafting Committee.** If we decide to include this article, we will need to revise
13 the definitions of creditor and debtor in article 1. Currently, those definitions are
14 restricted to persons holding or subject to enforceable money judgments. Here, we intend
15 the protection to be broader to include persons that have obtained or been subjected to
16 any ordered deduction (including non-debt ones, such as ones for back taxes). The
17 problem is that we want to retain the restricted definition for Article 1, but have a more
18 expanded definition for Articles 2 and 3. As a result, if the act covers bank garnishments,
19 we will probably want a definition of creditor something like this (and an equivalent
20 expansion of the term "debtor"):

21
22 "Creditor" means:

23
24 (1) a person that has an enforceable money judgment against a debtor; and
25
26 (2) for Articles 2 and 3 only, a person that files a bank garnishment order.

27
28 The term includes a successor in interest.

29
30 **Lookback period.** Two months is the same look-back period as under the federal
31 regulation for federal benefits. Thus, it would be familiar to banks and cause the least
32 confusion. Another option would be to bracket the period. This would permit states to
33 provide greater protection for bank account holders. But permitting that option may be
34 problematic for banks which would probably prefer a uniform lookback period.

35
36 **Federally protected amount.** The reference here is to the federal laws that exempt
37 federal benefit payments from garnishment. These payments include Social Security
38 Administration benefit payments protected under 42 U.S.C. § 407 and 42 U.S.C. §
39 1383(d)(1), Veterans Administration benefit payments protected under 38 U.S.C. §
40 5301(a), Railroad Retirement Board benefit payments protected under 45 U.S.C. §
41 231m(a) and 45 U.S.C. § 352(e), and Office of Personnel Management benefit payments
42 protected under 5 U.S.C. § 8346 and 5 U.S.C. § 8470. . Garnishment of Accounts
43 Containing Federal Benefit Payments, 31 C.F.R. §§ 212.1 *et seq.*

1 **SECTION 202. BANK OBLIGATION WHEN ORDER IS**
2 **ACCOMPANIED BY NOTICE.** If a bank is served with a bank garnishment order
3 from the United States or a state child support enforcement agency which is accompanied
4 by a notice of right to garnish federal benefits, it shall follow its customary procedures for
5 handling the order and Sections 203 through 207 do not apply.

6 **SECTION 203. FREEZING OF FUNDS; ACCOUNT REVIEW.**

7 (a) If Section 202 does not apply, a bank served with a bank garnishment order
8 shall perform an account review for each account subject to the order not later than two
9 business days after being served with the order.

10 (b) If a bank determines from an account review that there have not been two or
11 more direct deposits to the account from at least one source during the lookback period,
12 the bank has no further obligation under this [article] and shall follow its customary
13 procedures for handling the order.

14 (c) If a bank determines from an account review that there have been two or more
15 direct deposits from at least one source during the lookback period and that the account
16 contains funds in excess of any federally protected amount, the bank shall:

17 (1) freeze funds in the account in an amount equal to the sum of any
18 federally protected amount and all direct deposits made during the lookback period by
19 each source that made two or more direct deposits during the period; and

20 (2) send the notice required by Section 204(a)(1) or (2).

21 **Reporter's Notes**

22
23 The timing of the freezing of the account follows the federal regulation. That regulation
24 requires that financial institutions perform the account review prior to taking "any other
25 actions" related to the garnishment that may affect funds in the account. Garnishment of
26 Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212.5(e). Thus, under

1 federal law, as under this act as currently drafted, the account is only frozen after the
2 initial (and quick) account review.
3
4 The federal regulation permits one exception to the time limit of two business days. It
5 permits an unspecified longer period in cases where the financial institution receives “a
6 batch of a large number of orders,” provided that the creditor who initiated the orders
7 permits the longer review period and it is consistent with the terms of the garnishment
8 orders. *Id.* at 212.5(a)(2). The federal regulation provides no guidance on the meaning of
9 a “batch of a large number of orders,” but the exception appears to be designed to address
10 orders that come from government agencies, such as state child support agencies, which
11 might be inclined for comity reasons to permit a longer time period. See Ted Teruo
12 Kitada, The Updated Federal Garnishment Rule, at 12 (Jan. 7, 2014). Since the exception
13 requires creditor approval, it would be unlikely to apply to debt garnishment orders.
14 Thus, we have not included it in this article.
15

16 **SECTION 204. NOTICE TO ACCOUNT HOLDER.**

17 (a) If Section 203(c) applies, not later than three business days after the account
18 review required by Section 203(a), the bank shall:

19 (1) if the account contains a federally protected amount, send to the
20 account holder the notice required by federal law, amended to include:

21 (A) a statement of the account holder’s right to claim an exempt
22 amount under this [article];

23 (B) an explanation of the process for claiming the amount; and

24 (C) the beginning date of the lookback period; or

25 (2) if the account does not contain a federally protected amount, send to
26 the account holder a notice that contains the following information:

27

28 (A) a statement that the bank has been served with a bank
29 garnishment order;

30 (B) the date on which the order was served;

31 (C) a succinct explanation of garnishment;

- (D) the account subject to the order;
 - (E) a statement that the bank is required by state law to freeze funds in the account to satisfy the order and of the amount frozen, if any;
 - (F) the amount of the garnishment fee, if any, charged to the account;
 - (G) a statement of the account holder's right to claim an exempt amount under this [article];
 - (H) an explanation of the process for claiming the amount;
 - (I) the beginning date of the lookback period;
 - (J) the right of the account holder to consult an attorney or legal aid service;
 - (K) the name of the creditor and, if contact information is included in the bank garnishment order, the means of contacting the creditor; and
 - (L) the means of contacting the bank.

Are any funds in my account protected from garnishment?

If your employer deducted money from your earnings to pay a creditor, amounts it deposited into your account after [bank to insert beginning date of lookback period] may be protected from garnishment. [Bank to add the following sentence if the notice is issued pursuant to Section 204(a)(1): Any amounts protected from garnishment for this reason would be in addition to amounts protected from garnishment because they are federal benefit payments.]

How can I show that funds in my account are protected from garnishment?

To claim this protection, you must do two things. First, you must complete the form below and send it to us. We must receive the form not later than [15] business days after the date of this notice:

Your name:
Your account number:
Date:

I received a notice of garnishment of my bank account on [blank for employee to enter date].

Funds were deposited into that account by my employer after [bank to insert date of beginning of lookback period]. Those funds were previously subject to garnishment. My employer is [blank for employee to insert employer name].

Sign here

Second, you must send us copies of all the pay stubs you have received since [bank to insert beginning date of lookback period]. We must receive the pay stubs not later than [15] business days after we have received the form above. If you wish, you can send the pay stubs along with the form above; that would speed up the process of claiming your exemption.

If you do not complete these two steps, your funds will remain frozen and may be paid to your creditor. If you complete these two steps, we may unfreeze some or all of the funds in your account and make them available for your use.

Reporter's Notes

This section closely follows the notice requirements contained in the federal regulation, Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212.7. This will make it easy for banks to comply.

For subsection (a)(1), banks are directed to use the federal notice form that is included as Appendix A to the federal regulation. The federal rules explicitly permit the form to be amended to integrate information about a state's bank garnishment rules and protections. *Id.* at § 212.7(d).

Subsection (a)(2) is required in situations where federal law does not require the federal form to be sent (because there is no federally protected amount). But the requirements of (a)(2) closely follow the requirements of the federal form, omitting only the parts that are specific to the federally protected amount. The general idea is that banks will still be able to comply easily by copying the federal form, while omitting a paragraph or two to eliminate the references to the federally protected amount and adding a paragraph or two to integrate the state-based information.

To avoid confusion about our intention, we have copied the federal format even in

1 circumstances where our own preferences (and normal Uniform Law Commission
2 practice) might ordinarily push us in a different direction. For example:

- 3
- 4 • Subparagraph (a)(2)(C) calls for a “succinct explanation” of garnishment.
5 Ordinarily, we would be tempted to say a bit more to flesh out the meaning of
6 “succinct.” But we left the statement as it was because (a) that’s how it
7 appears in the federal regulation; (b) the form that’s a part of the federal
8 regulation provides a very good succinct explanation of garnishment so using
9 precisely the same language in the act will permit banks to copy that part of
10 the form with confidence that it will satisfy this requirement; and (c) if we
11 expanded on the language in this subparagraph, it would call into question our
12 treatment of other subparagraphs where we did not change the federal
13 language.
 - 14 • The notice form of subsection (b) is in a question-and-answer format.
15 Ordinarily we would not have done that, but the idea here is that this language
16 can be inserted into the federal form. The federal form uses a question-and-
17 answer format.

19

20 **SECTION 205. PROCESS FOR CLAIMING EXEMPT AMOUNT.**

21 (a) An account holder may claim an exempt amount by sending the bank with
22 which the account is maintained the form provided in Section 204(b), or a substantially
23 similar form.

24 (b) An account holder must confirm an exempt amount by sending the bank
25 copies of the pay stubs the account holder received since the beginning of the lookback
26 period.

27 (c) There is no exempt amount if the bank fails to receive from the account
28 holder:

29 (1) the form required by subsection (a) not later than [15] business days
30 after the bank sends the notice required by Section 204(a)(1) or (2); or
31 (2) the pay stubs required by subsection (b) not later than [15] business
32 days after the bank receives the form required by subsection (a).

33 (d) If there is no exempt amount, the bank shall follow its customary procedures

1 for handling the bank garnishment order.

2 **SECTION 206. BANK'S DETERMINATION OF EXEMPT AMOUNT;**

3 **ACCOUNT HOLDER'S RIGHT TO EXEMPT AMOUNT.**

4 (a) If a bank receives the form and pay stubs required by Section 205(a) and (b)
5 within the time limits of Section 205(c), the bank shall examine each pay stub to
6 determine if:

7 (1) the pay stub reports a direct deposit that corresponds with a direct
8 deposit made to the account holder's account during the lookback period; and
9 (2) the pay stub reports an ordered deduction.

10 (b) The exempt amount is equal to the sum of all direct deposits reported on pay
11 stubs that satisfy subsections (a)(1) and (2).

12 (c) If a bank determines that an account contains an exempt amount, the bank
13 shall release a freeze on the account under Section 203(c)(1) up to the amount of the
14 exempt amount and provide the account holder with full and customary access to that
15 amount.

16 (d) An account holder's right to an exempt amount is in addition to any federally
17 protected amount.

18 **SECTION 207. FUNDS DEPOSITED OR CREDITED TO ACCOUNT**

19 **AFTER ACCOUNT REVIEW.** A bank garnishment order does not apply to funds
20 deposited or credited to an account after the date of an account review and the bank must
21 not take any action with respect to these funds unless it is served with a new or different
22 bank garnishment order.

1 **SECTION 208. BANK DETERMINATION OF EXEMPT AMOUNT**

2 **CONCLUSIVE.** A bank's good-faith determination of an exempt amount is conclusive.

3 The bank is not liable to the account holder or creditor, or for any penalties under law of
4 this state other than this [act] for failure to make a bank garnishment with respect to the
5 exempt amount.

6 **SECTION 209. OTHER LAWS NOT LIMITED.** This [act] does not limit any
7 law of this state other than this [act] that otherwise prohibits or limits bank garnishment.]

8 **[ARTICLE] 3**

9 **GENERAL PROVISIONS**

10 **SECTION 301. CREDITOR PENALTIES.**

11 (a) If a [court] determines that a creditor acted in bad faith in seeking a
12 garnishment [or bank garnishment] under this [act], the creditor is liable to the employer
13 [or bank] and the individual whose earnings [or funds] the creditor sought to garnish for
14 up to [state dollar amount] for each day the garnishment action is on the docket of the
15 [court], including days required to adjudicate issues under this section, and for reasonable
16 attorney's fees of the employer [or bank] and individual.

17 (b) An amount awarded under subsection (a) other than attorney's fees shall be
18 divided equally between the employer [or bank] and individual whose earnings [or funds]
19 the creditor sought to garnish.

20 (c) For good cause, the [court] may waive all or part of the penalties under this
21 section.

22 **Reporter's Notes**

23
24 **Amounts.** As with garnishee penalties, we've left the amount blank at this point. As with
25 that section, the need for uniformity is weak with respect to this dollar amount. On the

1 other hand, we are probably in a better position to think about the optimum level of
2 penalties than others.
3
4 ***Remedies against creditors.*** We provide this section on creditor penalties to facilitate a
5 discussion of the issue, even though we have not reached a consensus about whether to
6 include remedies against creditors in the act. In general, three types of costs can be relied
7 on to encourage creditors to act with proper care: (1) The filing fee itself (it was reported
8 to the committee that commencing a wage garnishment action probably costs in the range
9 of \$150-\$300); (2) an administrative fee, such as the one suggested by Section 105(b)(2)
10 (although it is optional); and/or (3) an explicit penalty for creditors who act improperly.
11 An explicit penalty would be the most targeted way to encourage creditors to act
12 properly, but it is problematic in ways that are evident by this draft section, for example,
13 it requires a standard for when the penalty applies, such as bad faith or lack of proper
14 diligence; it would apply only rarely; and it would be expensive to enforce when applied.
15 Finally, since situations where creditor penalties might apply would involve the judicial
16 process, the courts may have inherent power to deal with them even in the absence of
17 specific penalties in the act. Indeed, it's possible that penalties in the act would constrain
18 rather than expand judicial authority or willingness to deal with creditor abuse.
19

20 **SECTION 302. HEARING.**

21 (a) A garnishee, creditor, [or] debtor[, or bank] may request a hearing at any time
22 to determine any issue arising under this [act].

23 (b) A debtor may request a hearing at any time to claim an exemption or limit
24 under law of this state other than this [act].

25 (c) If a hearing is requested under this section to determine whether earnings are
26 being withheld properly [or whether a bank garnishment is proper], the [court] shall hold
27 an expedited hearing. For other requests, the [court] shall hold the hearing promptly. The
28 [court] may enjoin, suspend, revise, or continue a garnishment [or bank garnishment]
29 until a hearing can be held.

30 **SECTION 303. PROTECTION OF EMPLOYEE SUBJECT TO**
31 **GARNISHMENT.**

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

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

3 **Reporter's Notes**

4
5 Until this meeting, we had this section bracketed because we were not sure if it was
6 within the scope of the charge of the drafting committee. At its January meeting, the
7 Scope and Program Committee agreed to expand our scope to permit us to include this
8 provision. This is a common provision in state garnishment statutes.

9
10 Subsection (a) is based on the language used in statutes that prohibit employment
11 discrimination. *See* Title VII § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1). It is broader than the
12 language in the Consumer Credit Protection Act (CCPA) in several respects. It provides
13 protection regardless of the number of actual or potential garnishments (the CCPA
14 provides protection for only one garnishment); it provides protection for both actual and
15 attempted garnishments; and it provides protection for all adverse employment actions,
16 not just discharges. *Compare* CCPA, 15 U.S.C. § 1674(a). The employer representatives
17 on the drafting committee have expressed support for this expansion.

18
19 Subsection (b) is based on the enforcement provisions of the Americans with Disabilities
20 Act (ADA) which uses similar language to incorporate the powers, remedies and
21 procedures of Title VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117. I do not
22 know of any major issues arising from this sort of cross-reference from the ADA to Title
23 VII.

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

34
35 **[ARTICLE] 4**

36 **MISCELLANEOUS PROVISIONS**

37 **SECTION 401. UNIFORMITY OF APPLICATION AND**

38 **CONSTRUCTION.** In applying and construing this uniform act, consideration must be
39 given to the need to promote uniformity of the law with respect to its subject matter

1 among states that enact it.

2 **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN**

3 **GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or

4 supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.

5 Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act,

6 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices

7 described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

8 **SECTION 403. SAVINGS CLAUSE.** This [act] does not affect the validity or

9 effect of a garnishment filed on or before [the effective date of this [act]].

10 **SECTION 404. SEVERABILITY.** If any provision of this [act] or its

11 application to any person or circumstance is held invalid, the invalidity does not affect

12 other provisions or applications of this [act] which can be given effect without the invalid

13 provision or application, and to this end the provisions of this [act] are severable.

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

16

17 **SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

18 (a)

19 (b)

20 (c)

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

24

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