UNIFORM WAGE GARNISHMENT ACT\*

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR

STOWE, VERMONT

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*Without Prefatory Note and Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

The conference changed the designation of the Wage Garnishment Act from Uniform to Model as approved by the Executive Committee on July 7, 2022.

August 24, 2022

**UNIFORM WAGE GARNISHMENT ACT**

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

SECTION 2. DEFINITIONS.In this [act]:

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

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

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

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

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

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

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

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

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

(8) “Garnishee” means:

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

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

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

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

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

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

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

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

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

(16) “Send” means to:

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

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

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

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

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

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

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

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

##  SECTION 3. SCOPE.

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

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

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

(1) under an order of a bankruptcy court;

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

(3) under a support order[; or

(4) [insert other specified ordered deductions, if any]].

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

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

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

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

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

##  SECTION 5. COMMENCEMENT OF GARNISHMENT ACTION.

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

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

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

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

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

(1) the name of the debtor;

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

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

(4) a completed notice that satisfies Section 10;

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

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

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

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

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

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

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

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

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

*The information in subsection (d)(1)(A) is confidential. Most states have practices and procedures for dealing with this type of information. See, e.g., Neb. Sup. Ct. Rules, Chapter 6,*

*Art. 15, Section 6-1521 (providing a special form and procedure for dealing with this type of information). A state should align this requirement with the particular practice and procedure in the state for dealing with this type of sensitive information.*

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

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

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

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

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

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

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

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

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

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

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

(ii) the pay frequency of the employee and the date of the next payday;

(iii) the name of and contact information for the garnishee’s agent to which the creditor must send information if required by Section 8(d) or (f) or 15(a)(2); and

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

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

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

##  SECTION 8. PENDENCY OF GARNISHMENT.

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

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

(c) An employer shall notify an employee of any amount withheld as a garnishment in the same manner that the employer notifies the employee of other withholdings from earnings.

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

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

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

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

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

##  SECTION 9. TERMINATION OF GARNISHMENT ACTION.

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

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

 (1) the garnishee’s records indicate that the amount owed by the employee has been paid in full; or

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

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

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

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

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

##  SECTION 10. NOTICE TO EMPLOYEE OF GARNISHMENT; FORM.

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

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

**Notice of Garnishment
Money Will Be Taken from Your Pay If You Fail to Act**

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

 ● (Name or shortened name of creditor) has started a legal process called “garnishment.” The process requires that money be taken from your pay and given to them to pay

 what you owe. The person who pays you does not keep the money.

 **1. Why Am I**

 **Getting This**  ● (Name or shortened name of creditor) filled out this form.

 **Notice?** The law requires the person who pays you to give you this form.

 ● If the line below is checked, (name or shortened name of creditor) is not the creditor you originally owed money to. If that is the case, knowing the name of the original creditor might help you understand why money will be taken from

 your pay.

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

 (Name or shortened name of creditor) says you currently owe **2. How Much** $(state amount). The amount could go up if there are more court **Do I Owe?** costs or additional interest. The amount also could go down if you make payments to (name or shortened name of creditor).

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

**3. How Will** The rules abouthow much of your pay can be taken are explained

 **The Amount I** in the Notice of [insert name of this state] Rules About

 **Owe Be Paid** Garnishment that you received with this notice.

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

 You have three options:

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

 (insert name and contact information

 for legal aid or lawyer referral service)

 **4. What Options** *Contact (insert name or shortened name of creditor).*  **Do I Have?** If you can work something out with them, money might not have to be taken from your pay. This is the creditor’s contact information:

 (Insert creditor’s contact information)

 *Request a court hearing*. A hearing could be helpful if there

are any disagreements about the garnishment, for example, if you don’t think you owe money. For help in requesting a hearing, contact:

 (insert name and address of appropriate entity)

**5. What If I** If you don’t do anything, the law requires that money be taken out

 **Don’t Do** of your pay every payday and given to (name or shortened

 **Anything?** name of creditor). This process continues until you have paid off your debt.

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

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

(2) reasonably inform an employee of:

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

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

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

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

**Garnishment: Calculation of Amount**

Debtor:

Creditor:

For earnings paid on:

**Calculation of Amount Garnished for this Payday**

Disposable earnings:

 1. Gross earnings paid to debtor: $

 2. Amounts withheld:

 a. Federal social security tax: $

 b. Federal medicare tax: $

 c. Federal income tax: $

 d. State income tax: $

 e. City or local tax: $

 f. Railroad retirement tax: $

 g. Other: $

 3. Total amounts withheld: $

 (Sum of items in line 2(a) through (g))

 4. Disposable earnings: $

 (Line 1 minus line 3)

Garnishment calculation:

 5. [ ]% of disposable earnings (line 4): $

 6. Exemption amount: $

 7. Line 4 minus line 6 (if less than $0, enter $0): $

 8. Enter smaller of line 5 or line 7: $

 9. Amounts of other current garnishments with higher

 priority (if none, enter $0): $

 10. Subtract line 9 from line 8 (if less than $0, enter $0): $

 11. Enter the number of other current garnishments

 with the same priority, plus one: \_\_\_\_

 12. Divide line 10 by line 11: $

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

**Statement of Amount Due and Paid**

13. Total amount currently claimed by creditor: $

14. Amounts paid through garnishment:

 a. Prior garnishments: $

 b. This garnishment: $

 (Line 12)

 c. Total garnishments: $

15. Net amount owed after

garnishments to date: $

(Line 13 minus line 14c)

##

##  SECTION 13. LIMIT ON WAGE GARNISHMENT.

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

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

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

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

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

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

##  SECTION 14. MULTIPLE ORDERED DEDUCTIONS.

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

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

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

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

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

##  SECTION 15. COMPLIANCE PROCESS.

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

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

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

 (3) the garnishee fails:

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

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

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

(b) For good cause, the court may excuse payment of all or part of an amount due under Section 16.

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

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

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

 (B) until the earlier of the day the garnishee sends the information required by Section 6(2) or garnishment is required to begin under Section 7.

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

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

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

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

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

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

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

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

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

##  SECTION 17. CREDITOR SANCTIONS.

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

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

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

 (3) reasonable attorney’s fees of the garnishee and individual whose earnings the creditor sought to garnish.

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

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

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

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

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

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

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

##  SECTION 18. HEARING.

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

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

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

##  SECTION 19. PROTECTION OF EMPLOYEE SUBJECT TO GARNISHMENT.

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

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

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

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

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

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

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

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

##  SECTION 25. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .

(b) . . . .

(c) . . . .

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

# APPENDIX A

## Changes Required to Implement Alternate Fee Structures

**(See Section 5, Legislative Note)**

**1. Up-Front and Per-Payment Fees**

A. In Section 11(2) insert:

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

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

13. Fee retained by the employer for making $\_\_\_\_\_\_

this payment to the creditor:

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

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

**Statement of Amount Due and Paid**

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

16. Amounts paid through garnishment:

 a. Prior garnishments: $\_\_\_\_\_\_

 b. This garnishment: $\_\_\_\_\_\_

 (Line 14)

 c. Total garnishments: $\_\_\_\_\_\_

17. Net amount owed after $\_\_\_\_\_\_

 garnishments to date:

 (Line 15 minus line 14c)

C. Delete Section 13 and insert:

 **SECTION 13. FEES; LIMIT ON WAGE GARNISHMENT.**

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

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

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

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

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

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

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

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

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

**2. Per-payment fees only**

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

 B. Insert the provisions above for option 1 (Up-Front and Per-Payment Fees).

**3. No fees**

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

# APPENDIX B

## A Guide to Forms

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

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

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

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

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**Form to Commence Garnishment**

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

1) The debtor’s name is [state name of debtor].

2) The debtor’s last known physical address is (insert address or check box):

[state last known physical address]

\_\_\_ Physical address is not known

3) The debtor’s last known mailing address is (insert address or check one of the boxes):

[state last known mailing address if different]

\_\_\_ Same as the last known physical address above

\_\_\_ Mailing address is not known.

4) The debtor owes [state amount owed] based on [provide information sufficient to identify judgment upon which garnishment action is based].

5) A completed Notice of Garnishment that complies with [Section 10 of the Uniform Wage Garnishment Act] is attached.

6) A Notice of [insert state name] Rules About Garnishment that complies with [Section 11 of the Uniform Wage Garnishment Act] is attached.

7) Creditor’s agent is [state name of and contact information for agent].

8) Employer must send amounts withheld from the debtor’s earnings to creditor at [state mailing address to which amounts must be sent].

9) Instead of mailing amounts withheld to the address above, creditor agrees that employer may instead send the amount by the following means [state with specificity alternative means of sending amounts withheld].

**Addendum to Form to Commence Garnishment**

**Confidential Identifying Information**

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

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

[state debtor’s date of birth]

\_\_\_ Debtor’s date of birth is not known

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

[state debtor’s social security number]

\_\_\_ Debtor’s social security number is not known.

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

\_\_\_ No additional identifying information is known to the creditor

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

**Employer’s Response to Garnishment:**

**No Garnishment to Commence**

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

To: [Agent of creditor named in Form to Commence Garnishment]

From: [State name of employer]

Date: [Insert date]

In Re: [Identify case]

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

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

\_\_\_ The debtor named in the [Form to Commence Garnishment] is not one of our employees.

\_\_\_ The principal place of work of the debtor named in the [Form to Commence Garnishment] is not in this state.

\_\_\_ The [Form to Commence Garnishment] does not contain the following required information:

\_\_\_ Insufficient information to identify the debtor

 \_\_\_ Amount the debtor owes was not specified

\_\_\_ Insufficient information to identify the judgment upon which garnishment is based

 \_\_\_ One or both notice forms were not supplied

 \_\_\_ Creditor’s agent was not named

\_\_\_ Insufficient information about where to send withheld earnings

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

\_\_\_ The separate addendum did not contain all the required information.

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

\_\_\_ Other (specify other reason(s)):

**Employer’s Response to Garnishment:**

**Garnishment to Commence**

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

To: [Agent of creditor named in Form to Commence Garnishment]

From: [State name of employer]

Date: [Insert date]

In Re: [Identify case]

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

 This is to advise you that:

1) The debtor named in the [Form to Commence Garnishment], [state name of debtor], is one of our employees.

2) The employee’s pay frequency is [state pay frequency].

3) The employee’s next payday is [state next payday if known, otherwise state that employee’s next day of payment is uncertain].

4) The employer’s agent for purposes of this action is [state name of and contact information for agent].

5) The employee’s earnings are currently subject to the following ordered deductions:

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

**Notice to Creditor of Multiple Remittances**

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

To: [Agent of creditor named in Form to Commence Garnishment]

From: [State name of employer]

Date: [Insert date]

In Re: One remittance for multiple employees

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

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

The amount attributable to each employee is as follows:

Case Name Amount

[identify case] [state employee’s name] [[1]](#footnote-2) [state amount for employee][[2]](#footnote-3)

**Motion for a Hearing or Dismissal**

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

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

\_\_\_ The debtor is not an employee of the employer.

\_\_\_ The debtor’s principal place of work is not in this State.

\_\_\_ The [Form to Commence Garnishment] used to commence this garnishment action did not contain all the information required by [Section 5(c) of the Uniform Wage Garnishment Act].

\_\_\_ The [Form to Commence Garnishment] used to commence this garnishment action was not accompanied by the separate addendum required by [Section 5(d)(1) of the Uniform Wage Garnishment Act].

\_\_\_ The [Form to Commence Garnishment] used to commence this garnishment action did not contain all the information required by [Section 5(d)(1) of the Uniform Wage Garnishment Act].

\_\_\_ The [Form to Commence Garnishment] used to commence this garnishment action was not accompanied by the fee required by [Section 5(d)(2) of the Uniform Wage Garnishment Act].

Creditor now moves (check one):

\_\_\_ For a prompt hearing under [Section 18 of the Uniform Wage Garnishment Act] to determine whether the employer is required to proceed with garnishment under [Section 6(2) of the Uniform Wage Garnishment Act].

\_\_\_ To [dismiss this action][withdraw the motion] seeking garnishment.

**Notice that the Debtor is No Longer an Employee**

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

To: [Agent of creditor named in Form to Commence Garnishment]

From: [State name of employer]

Date: [Insert date]

In Re: [Identify case]

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

**Motion to Dismiss Garnishment Action**

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

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

 \_\_\_\_ The debtor has paid the amount due in full.

\_\_\_\_ The debtor is no longer an employee of the employer.

\_\_\_\_ Other: [state reason for dismissal]

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

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

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

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

1. The amount by which your disposable earnings are above $[ ][[3]](#footnote-4) per week.

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

2. [ ][[4]](#footnote-5) percent of your disposable earnings in a week.

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

Note that both 1 and 2 above refer to your “disposable earnings.” Your “disposable earnings” are the amount you have left in your check after money has been taken out for federal, state and local income taxes; social security and Medicare taxes; mandatory deductions for state disability and unemployment insurance; mandatory contributions to a state employee pension plan; and mandatory contributions under the Railroad Retirement Act.[[5]](#footnote-6) For example, if your total wages are $1,200 but $200 was taken out for taxes, your “disposable earnings” are $1,000.

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

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

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

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

**Motion of Employer Non-Compliance**

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

Now comes (check one):

\_\_\_ [State name of creditor]

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

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

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

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

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

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

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

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

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

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

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

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

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

**Motion Seeking Sanctions Against Employer**

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

Now comes (check one):

\_\_\_ [State name of creditor]

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

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

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

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

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

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

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

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

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

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

**Motion Seeking Sanctions Against Creditor for Bad Faith**

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

Now comes (check one):

\_\_\_ [State name of employer]

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

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

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

\_\_\_ The creditor acted in bad faith in seeking a garnishment by:

 [list and explain reasons]

The movant seeks (check all that apply):

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

 \_\_\_ $[ ] for failure to respond in a timely manner to the notice

 provided on [insert date] that the garnishment sought was wrongful, which is $[50] for each day of non-compliance beginning [eight] days after the notice was provided.

 \_\_\_ Reasonable attorney’s fees as determined by the court.

**Motion Seeking a Hearing**

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

Now comes (check one):

 \_\_\_ [State name of creditor]

\_\_\_ [State name of employer]

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

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

 [Explain issue(s)]

1. There must be a line for each employee for whom there is a remitted amount. [↑](#footnote-ref-2)
2. The sum of the amounts listed much match the total amount of the remittance. [↑](#footnote-ref-3)
3. Insert amount required by Section 13(a)(2) of the Act. If the state provides the minimum protection required by the Consumer Credit Protection Act, this amount is $217.50. [↑](#footnote-ref-4)
4. Insert amount required by Section 13(a)(1) of the Act. If the state provides the minimum protection required by the Consumer Credit Protection Act, this percentage is 25 percent. [↑](#footnote-ref-5)
5. The items listed here are the ones the Consumer Credit Protection Act requires to be deducted from earnings to calculate disposable earnings. Most states use this list but a few states require other items to be deducted, such as union dues and health insurance premiums. Those states should add those additional items to this list. [↑](#footnote-ref-6)