

D R A F T
FOR DISCUSSION ONLY

WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

December 5-6, 2014 Committee Meeting

WITH REPORTER'S NOTES AND QUESTIONS

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October 21, 2014

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WAGE GARNISHMENT ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.	1
SECTION 3. FORUM AND CHOICE OF LAW.	5
SECTION 4. PROCEDURES.	7
SECTION 5. EMPLOYEE INFORMATION FORM.	10
SECTION 6. NOTICE FORM.	14
SECTION 7. EXEMPTIONS AND LIMITS.	18
SECTION 8. MULTIPLE GARNISHMENTS.	22
SECTION 9. PENALITIES.	23
SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	23
SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	24
SECTION 12. SAVINGS CLAUSE.	24
SECTION 13. SEVERABILITY.	24
SECTION 14. REPEALS; CONFORMING AMENDMENTS.	24
SECTION 15. EFFECTIVE DATE.	25
[RESERVED SECTION: PROTECTION FROM DISCRIMINATION.]	25

1 **WAGE GARNISHMENT ACT**

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

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

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

6 (2) “Child” means an individual, whether over or under the age of majority under
7 the law of the State or foreign country issuing a child support order applicable to a parent
8 of the individual, who is or is alleged to be owed money under the support order.

9 (3) “Child-support order” means a support order for a child.

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

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

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

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

19 (8) “Disposable earnings” means that part of the earnings remaining after
20 deductions required by law.

21 (9) “Earnings” means compensation paid or payable to an employee for personal
22 services, including wages, salary, commissions, bonuses, and periodic pension payments.

23 [*See discussion in Issues Memo.*]

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

3 (11) “Employee” means an individual [See the Issues Memo].

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

6 (13) “Employer” means a person [that hires an employee][that receives the
7 personal services of an employee]. [*Note to Committee: See discussion about the*
8 definition of “employee” in the Issues Memo.]

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

11 (15) “Garnishment action” means a lawsuit initiated by a creditor seeking a
12 garnishment order.

13 (16) “Garnishment order” means an order of the [court] directing an employer to
14 withhold some part of the earnings of an employee and to deliver the withheld earnings to
15 a creditor.

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

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

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

22 (C) which has enacted a law or established procedures for the issuance and
23 enforcement of support orders which are substantially similar to the procedures under

1 [the Uniform Interstate Family Support Act]; or

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

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

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

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

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

11 (22) “Sign means, with present intent to authenticate a record:

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

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

15 (23) “State” means a state of the United States, the District of Columbia, Puerto
16 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
17 jurisdiction of the United States.

18 (24) “Support order” means a judgment, decree, order, decision, or directive,
19 whether temporary, final, or subject to modification, issued in a State or foreign country
20 for the benefit of a child, a spouse, or a former spouse, which provides for monetary
21 support, health care, arrearages, retroactive support, or reimbursement for financial
22 assistance provided to an individual creditor in place of child support. The term may
23 include related costs and fees, interest, income withholding, automatic adjustment,

1 reasonable attorney’s fees, and other relief.

2 (25) “Tribunal” means a court, administrative agency, or quasi-judicial entity
3 authorized to establish, enforce, or modify support orders.

4 **Reporter’s Notes and Questions**

5

6 *Note to Committee:* I thought about including a definition for “business day” which we
7 use in the Act. However, when I looked through other Uniform Acts, it appears that we
8 generally do not include such a definition. So in other Acts, we have decided to rely on
9 general definitions of that term elsewhere in state law. Do we think that’s ok? Or do we
10 want a definition?

11

12 *Note to Committee:* “Creditor” and “debtor” are our definitions and crafted to be
13 applicable to this Act in particular. For example, the definition of “debtor” refers to an
14 employee owing money to a creditor under a money judgment, rather than to debtors
15 more generally. Other Uniform Acts define these terms in different and broader ways.
16 For example, the Uniform Voidable Transactions Act defines “creditor” as a person who
17 has a claim and “debtor” as a person who is liable on a claim. “Claim” is also defined, but
18 probably in a broader way than we would want: “a right to payment, whether or not the
19 right is reduced to judgment, liquidated, unliquidated...”). We might want to consider if
20 we want to call on other Uniform Acts for these definitions.

21

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

27

28 *Note to Committee:* The following definitions come from UIFSA and are probably
29 required if we are to accommodate this Act with UIFSA (see the issues memo): Child;
30 Child-support order; Convention; Foreign Country; Registered order;; Support Order; and
31 Tribunal.

32

33 “Disposable earnings” is the same substantively as the definition in the federal Consumer
34 Credit Protection Act (CCPA). (It has been modified a bit to have the language conform
35 better to ULC drafting standards.) The types of deductions permitted are well-understood
36 under the CCPA (federal, state, and local withholding taxes; social security and Medicare
37 taxes; mandatory deductions for state disability or unemployment insurance; mandatory
38 contributions to a state employee pension plan; and mandatory contributions under the
39 Railroad Retirement Act). The vast majority of states currently follow the CCPA
40 definition of disposable earnings. A few states, however, permit some other things to be
41 exempted from disposable earnings (such as union dues and initiation fees and insurance
42 contributions). I think we should encourage all states to adopt the standard CCPA
43 definition. The reasons for this are: (1) this will ease administration and further the

1 ULC’s goals in uniformity; (2) if a state wants its statute to be more protective of worker
2 income, placing that generosity in the minimum exemption or the withholding limit
3 would be broader-based and easier to administer; and (3) these particular types of
4 additional exclusions, while intended to help protect workers, are not well-targeted to the
5 most needy workers.

6
7 “Earnings” is also the same substantively as the definition in the CCPA, once again, with
8 changes to have the language conform better to ULC drafting standards. [See Issues
9 Memo.]

10
11 “Electronic” is a standard ULC definition.

12
13 “Person” is a standard ULC definition.

14
15 “Record” is a standard ULC definition.

16
17 “Sign” is a standard ULC definition.

18
19 “State” is a standard ULC definition.

20 **SECTION 3. FORUM AND CHOICE OF LAW.**

21 (a) Subject to subsection (b), a [court] shall dismiss or stay a garnishment action,
22 as appropriate, if the debtor’s principal place of employment is not in this State and the
23 debt was not incurred in this State.

24 (b) A [court] may hear a garnishment action if the employer is subject to personal
25 jurisdiction in this State, but would not be subject to personal jurisdiction in both the
26 State of the debtor’s principal place of employment and the State where the debt was
27 incurred.

28 (c) Subject to subsections (d) and (e), a garnishment action is governed by the law
29 of the State of the debtor’s principal place of employment.

30 (d) In the case of a support order, the law of the issuing State or foreign country
31 governs:

32 (1) the nature, extent, amount and duration of current payments under the

1 order;

2 (2) the computation and payment of arrearages and accrual of interest on
3 the arrearages under the order; and

4 (3) the existence and satisfaction of other obligations under the order.

5 (e) In a proceeding for arrearages under a registered order, the statute of
6 limitations of this State, or of the issuing State or foreign country, whichever is longer,
7 applies.

8 **Reporter's Notes and Questions**

9

10 The primary goal of the forum selection rules is convenience for the debtor. In the
11 absence of forum selection rules, jurisdiction would lie based on whether the *employer*
12 was subject to personal jurisdiction. This would permit a creditor to file a garnishment
13 action in a State quite inconvenient to the debtor. For example, a creditor could sue a
14 national corporation in California, where it has operations, even though the employee is
15 employed by that corporation in Nebraska and the debt was incurred in Nebraska. As this
16 example illustrates, a secondary goal of the forum selection rules is to limit forum
17 shopping.

18

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

25

26 *Subsection (c), Choice of Law.* In general, the two possibilities for the applicable law are
27 (1) the state of the debtor's principal place of employment or (2) the state where the
28 action is filed. The first option is likely to make administration easier for employers; this
29 rule will ensure that the garnishment rules for all of an employer's employees in a
30 particular location will be the same. The second option would be somewhat easier for
31 courts; they could apply their own state's law in every case and not have to attend to
32 foreign law. This section opts for the first option for three principal reasons. First, as
33 mentioned above, it limits forum-shopping opportunities. Second, ease of administration
34 for employers is a principal goal of this project. Third, this choice-of-law option is the
35 rule adopted by the Uniform Interstate Family Support Act, §§ 502(d) , 503 (UIFSA).
36 Since we should try to make our act align well with UIFSA, if we adopted a different rule
37 than UIFSA, we would have to make some special and somewhat complicated rules later
38 in the priority section to make sure that the state-of-employment rule applied to family
39 support orders even though a different rule applied to everything else. Making the

1 applicable law the state of the debtor's principal place of employment avoids those
2 complications.

3
4 Subsection (d) and (e) are the same language as in UIFSA, §§ 604(a) and (b).

5
6 **SECTION 4. PROCEDURES.**

7 (a) A creditor may file a garnishment action in [*designate appropriate court*]. The
8 complaint must be served on the garnishee using [the normal process for serving
9 complaints in State] and, if the debtor's address is known to the creditor, on the debtor.

10 The complaint must indicate:

11 (1) The basis for the claimed debt;

12 (2) The total amount of the claimed debt; and

13 (3) The name, mailing address, electronic addresses, if any, and telephone

14 number of:

15 (A) The individual to whom the garnishee shall send the employee
16 information form as required by Section 4(b)(1) or 4(b)(2); and

17 (B) The individual whose name and contact information is required
18 for the garnishee to complete Section 6(a)(5) if a notice form must be sent to the debtor
19 pursuant to Section 4(b)(2)(B).

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

22 (1) If the named debtor is not a current employee of the garnishee,
23 complete an employee information form as provided in [*insert appropriate reference to*
24 *Section 5 when alternative is chosen*] and return it to the individual named in the
25 complaint pursuant to Section 4(a)(3)(A). The creditor must then promptly notify the
26 [court] that the garnishee has indicated that the named debtor is not a current employee

1 and either request dismissal of the complaint or seek a prompt hearing to determine
2 whether the debtor is in fact a current employee of the garnishee.

3 (2) If the named debtor is a current employee of the garnishee:

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

7 (B) Send the debtor a notice form and a copy of the completed
8 employee information form by first class mail and, if an electronic address is available,
9 by electronic mail to the most current mailing and electronic addresses indicated in the
10 garnishee's records.

11 (c) A creditor may seek a garnishment order:

12 (1) If the debtor is a current employee of the garnishee and the creditor has
13 received an employee information form from the garnishee within the time specified in
14 subsection (b), no earlier than [10] business days after the date on which the forms in
15 subsection (b)(2)(B) were sent to the debtor as indicated in the employee information
16 form.

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

20 (d) A garnishee or debtor may request a hearing at any time to determine whether
21 a garnishment order should issue or, if already issued, whether it should be quashed. If a
22 hearing is requested, the [court] shall schedule the hearing promptly and may not issue, or
23 shall suspend, the garnishment order until the garnishee or debtor has had an opportunity

1 to be heard.

2 (e) A garnishment order must specify the total amount to be withheld from a
3 debtor's earnings, the amount to be withheld from each pay period, and the duration of
4 the order. The withholding shall commence at the end of the first full pay period
5 occurring after the issuance of the garnishment order. If the pay period is uncertain or
6 longer than one month, the withholding shall commence on the last day of the first full
7 month occurring after the issuance of the garnishment order.

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

12 **Reporter's Notes and Questions**

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

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

1 (11) The amount determined by multiplying the amount in paragraph (9)
2 by the percentage in paragraph (10);

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

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

6 (14) The lesser of the amount specified by paragraph (11) or paragraph
7 (13);

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

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

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

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

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

20 (b) If the debtor is not a current employee of the garnishee, the employee
21 information form is properly completed if the garnishee provides responses to
22 subsections (a)(1) to (a)(5).

23 (c) If the debtor is a current employee of the garnishee, the employee information

1 form is properly completed:

2 (1) For a debtor with no other current garnishments for this garnishee, if
3 the garnishee provides responses to subsections (a)(1) through (a)(14) and (a)(19); or

4 (2) For a debtor with other current garnishments for this garnishee, if the
5 garnishee provides responses to subsections (a)(1) to (a)(19).

6 **Alternative B**

7 An employee information form shall be in the following format:

8 **Employee Information Form**

9 1. Employer/Garnishee (“employer”) name, mailing address, and electronic address, if
10 any:

11 2. Employer contact name, telephone number, mailing address, and electronic address, if
12 any:

13 3. The garnishment complaint was received on:

14 4. The employee/debtor (“employee”) named in the garnishment complaint is:

15 5. The employee:

16 ___ Is currently employed by employer

17 ___ Is not currently employed by employer

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

20 6. The next four pay periods for the employee end on the following dates:

21 7. Total earnings for the most recently completed pay period were:

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

23 Federal social security tax (FICA): _____

1 Federal income tax: _____
2 State income tax: _____
3 Railroad retirement tax: _____
4 TOTAL: _____

5 9. Net earnings (7 minus 8):

6 10. Multiply net earnings (9) times the appropriate maximum:¹

7 11. Subtract [*enter the exemption amount*] from line 9 (if less than -0-, enter -0-):

8 12. Enter the lesser of line 10 or line 11:

9 ***If there are no additional garnishments, stop here. The amount on line 12 is the***
10 ***amount to be withheld from the employee/debtor's earnings for this garnishment.***

11 13. List amounts and durations of other current garnishments with higher priority, if any.

12 If none, enter -0-:

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

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

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

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

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

¹ (a) [25%] if the garnishment is not for a spouse or dependent child; (b) [50%] if the garnishment is for support and the employee supports a different spouse or dependent child; (c) [60%] if the garnishment is for support and the employee does not support a spouse or dependent child; (d) [55%] if the garnishment is for support and the employee supports a different spouse or dependent child but the support order is at least 12 weeks old; or (e) [65%] if the garnishment is for support, the employee does not support a different spouse or dependent child, and the support order is at least 12 weeks old.

1 17. This Employee Information Form and Notice Form were sent to the employee:
2 ___ By email on this date _____ to the following address: [Email address]
3 ___ By United States mail on this date _____ to the following address:
4 [Mail address]

5 **End of Alternatives**

6
7 **Reporter’s Notes and Questions**
8

9 These two options are designed to be the same. If we went with Alternative A, we
10 would probably include the form in Alternative B in the comments section. The Style
11 Committee prefers that forms not be in the statutory text. David Biklen, our
12 representative from the Style Committee, will have to defend that view himself. (One
13 irony of the Style Committee’s position on this is that their latest set of Drafting Rules
14 provides an example of a form appearing in a statute. See Appendix E. Go figure.)
15

16 For what it’s worth, I don’t have a strong preference between the two, but the
17 form does seem to be simpler and easier to understand.
18

19 **SECTION 6. NOTICE FORM.**

20 **Alternative A**

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

22 (1) A heading that is bold, in all capitals, and in a larger font than the
23 remainder of the form and that reads, **IMPORTANT NOTICE: MONEY MAY BE**
24 **DEDUCTED FROM YOUR WAGES TO PAY A DEBT.**

25 (2) An unnumbered initial paragraph that names the creditor and states
26 that the creditor claims that the debtor owes it a specified amount of money.

27 (3) An unnumbered second paragraph stating that the creditor has filed an
28 action in a specified court that attempts to require the employer to deduct money from the
29 debtor’s wages until the debt is paid; that this type of action is called a garnishment; and
30 that unless one of the actions listed in paragraphs (5) through (7) is taken, the amount

1 indicated on the appropriate line of the employee information form will be deducted from
2 each of the debtor's paychecks beginning on the appropriate specified date and
3 continuing until the debt is fully paid.

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

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

13 (6) A paragraph numbered (2) that states that the debtor may contact the
14 employer to discuss the information provided in the employee information form; that the
15 employer will correct any incorrect information on the form; and an underlined statement
16 that pursuing this action will not stop the employer from deducting money from the
17 employee's wages beginning on the date on which the garnishment would begin absent
18 agreement by the creditor.

19 (7) A paragraph numbered (3) that states that the debtor may request a
20 court hearing to challenge any aspect of the proceeding, including the amount of the debt,
21 whether the debtor is legally obligated to pay the debt, and the correctness of any
22 information in the employee information form; that the request should be sent in writing
23 to the clerk of the court; that provides the name and address of the court; and that such a

1 request may ask the court to order the employer not to deduct money from the debtor's
2 wages.

3 (8) An unnumbered paragraph that advises the debtor to consider retaining
4 a lawyer in the matter and that if the debtor does not pursue one of the actions listed in
5 subparagraphs (5) through (7) the employer will begin deducting the amount specified on
6 the appropriate line of the employee information form from the debtor's paycheck
7 beginning on the date specified on the employee information form and continuing until
8 the debt is fully paid.

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

11 **Alternative B**

12 The notice form is as follows:

13 **IMPORTANT NOTICE**

14 **MONEY MAY BE DEDUCTED FROM YOUR**

15 **WAGES TO PAY A DEBT**

16 *[Insert name of creditor]* claims that you owe it *[insert amount of the claimed debt]*.

17 *[Insert name of creditor]* has filed an action in *[insert name of court]* to require us, your
18 employer, to deduct money from your wages until the debt is paid. This is called a
19 garnishment. Unless you take one of the actions listed below, the amount listed on line
20 *[insert appropriate line number]* of the attached employee information form will be
21 deducted from each of your paychecks beginning *[insert date]* and continuing until the
22 debt is fully paid.

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

1 1. You can contact *[insert name of creditor]* to discuss the debt with them. This is the
2 contact information for *[insert name of creditor]*:
3 *[Insert name, mail address, electronic address, if any, and telephone number for the*
4 *contact person for the creditor].*

5 Unless you get the creditor to agree to dismiss its action, this option will not stop us from
6 deducting money from your wages beginning on *[insert date]*.

7 2. You can contact us to discuss the information we have provided on the employee
8 information form. If any of the information is incorrect, we will correct it. But unless you
9 get the creditor to agree to dismiss its action, this option will not stop us from deducting
10 money from your wages beginning on *[insert date]*.

11 3. You can ask the Court to hold a hearing to permit you to challenge any aspect of this
12 proceeding. For example, you could challenge the amount of the debt, whether you are
13 legally obligated to pay the debt, or any information on the employee information form.
14 Such a request should be sent in writing to the Clerk of the Court of *[insert name and*
15 *address of court]*.

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

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

23 *[Insert name, mail address, electronic address, if any, and telephone number for the*

1 *contact person for the garnishee]*

2 **End of Alternatives**

3

4 **Reporter's Notes and Questions**

5

6 As with Section 5, these two alternatives are designed to be the same, but Alternative A
7 complies with the Style Committee's preference for no statutory forms while Alternative
8 B, obviously, does not.

9

10 **SECTION 7. EXEMPTIONS AND LIMITS.**

11 **Alternative A**

12 (a) Except as provided in subsections (c), (d) and (e), the maximum amount
13 subject to garnishment may not exceed:

14 (1) [25] percent of disposable earnings for any workweek, or

15 (2) the amount by which disposable earnings for any workweek exceed

16 [30] times the federal minimum wage required by section 6(a) of the federal Fair Labor
17 Standards Act, whichever is less.

18 (b) For pay periods greater than one week, the amount in subsection (a)(2) shall
19 be adjusted to be the appropriate multiple of [30] times the federal minimum wage. For
20 this purpose, a pay period of one calendar month shall be deemed to be four and one-third
21 weeks.

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

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

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

25 (d) The maximum amount subject to garnishment to enforce a support order in
26 any workweek may not exceed:

27 (1) [50] percent of disposable earnings if the employee is supporting a

1 spouse or dependent child other than a spouse or dependent child for whom the support
2 order is issued, or

3 (2) [60] percent of disposable earnings if the employee is not supporting a
4 spouse or dependent child.

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

9 **Alternative B**

10 (a) Except as provided in subsections (d), (e) and (f), the maximum amount
11 subject to garnishment may not exceed:

12 (1) [25] percent of disposable earnings for any pay period, or

13 (2) the amount by which disposable earnings for any workweek exceed
14 [\$220] plus any amounts added by the annual adjustments specified in subsections (b)(1)
15 and (b)(2), or the amount specified by subsection (b)(3), whichever is less.

16 (b) Beginning on December 31, [2XXX], and on every December 31 thereafter:

17 (1) The amount in subsection (a)(2) shall be increased by any unadjusted
18 twelve-month percentage increase in the United States Department of Labor's Consumer
19 Price Index for All Urban Consumers for the period ending on September 30 of that year.

20 (2) Any increase under subsection (b)(1) which does not result in a
21 number which is a multiple of \$5 shall be rounded to the next [lower][higher] number
22 which is a multiple of \$5.

23 (3) If [\$220] plus any amounts added by the annual adjustments specified

1 by subsections (b)(1) and (b)(2) is lower than 30 times the federal minimum wage
2 required by section 6(a) of the federal Fair Labor Standards Act, then the amount shall be
3 adjusted to be 30 times the federal minimum wage.

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

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

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

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

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

13 (1) [50] percent of disposable earnings if the employee is supporting a
14 spouse or dependent child other than a spouse or dependent child for whom the support
15 order is issued, or

16 (2) [60] percent of disposable earnings if the employee is not supporting a
17 spouse or dependent child.

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

1 **End of Alternatives**

2
3 **Reporter’s Notes and Questions**

4
5 *Note.* Alternative A follows the Consumer Credit Protection Act very closely, with
6 changes intended only to update and improve the drafting.

7
8 *Bracketed numbers in Alternative A.* The numbers in the brackets are the amounts from
9 the federal Consumer Credit Protection Act. I would expect to provide a couple types of
10 guidance to States on these percentages. First, they cannot increase the bracketed
11 percentages, nor decrease the bracketed multiple (30 times the federal minimum wage).
12 Federal law requires at least these levels of protection. On the other hand, federal law
13 does permit state garnishment law to provide greater protection for debtor/employees. So,
14 for example, if a State wants to permit only 20 percent of disposable earnings to be
15 subject to garnishment or wants to limit garnishment to amounts above 40 times the
16 minimum wage, those adjustments would be permissible. Second, we would encourage
17 States to use adjustments to these numbers as the main way to calibrate the level of
18 protection for debtor/employees. The other main alternatives used in some States to
19 calibrate the level of protection are (1) to increase the protection for certain categories of
20 debtors (such as heads of households) or (2) to monkey with the definitions of earnings
21 and disposable earnings. We think it would be preferable to calibrate the level of
22 protection through adjustments to these numbers rather than through these other
23 alternatives. Making the adjustments in this way would enhance uniformity and ease
24 administration.

25
26 *Some comments on Alternative B.* The inflation adjustment language here is based
27 loosely on IRC § 415(d). Several comments. First, this alternative responds to the
28 concerns about the minimum-wage measure I discussed in my policy memo for our first
29 meeting, that is, that the minimum wage is a lumpy measure for this and one that’s not
30 related to any policy relating to garnishment. This alternative provides for a smoother
31 adjustment of the number. Second, \$220 is a rounded number close to the present number
32 that is in most garnishment statutes now. Most statutes use 30 times the federal minimum
33 wage, so the number is currently \$217.50. Again, we would encourage States to adjust
34 this (only upwards) if they want to increase protections for debtors/employees, rather
35 than to use other alternatives. Third, (b)(2) has a rounding provision. Could make it \$1
36 instead of \$5. I don’t mean to indicate by the brackets that we should give States an
37 option of higher or lower; we should decide. Fourth, the Consumer Price Index for All
38 Urban Consumers is the most widely-used CPI number. Fifth, note that (b)(1)
39 contemplates adjustments only for increases in the CPI. No adjustments would occur in
40 the event of a decrease. Finally, a general unsolicited comment. For me, I do think this
41 construction of the limit makes more sense from a policy perspective since it is less
42 lumpy and more tied to what a legislature would want this limit to be. BUT it would be a
43 change and it may create more concern than we want to stir up.

44
45 *Subsection (b) in Alternative A and Subsection (c) in Alternative B.* The four-and-one-
46 third calculation is the one specified by the Department of Labor under the Consumer

1 Credit Protection Act, 29 CFR §870.10(c)(2).

2

3

SECTION 8. MULTIPLE GARNISHMENTS.

4

(a) In the case of more than one garnishment order against an employee of a
5 single employer:

6

(1) Garnishment orders with higher priority shall be paid in full before any
7 garnishment orders with lower priority are paid.

8

(2) If the total amount of garnishment orders with the same priority
9 reaches the maximum amount subject to garnishment under Section 7, each order shall be
10 paid the same amount.

11

(b) Except as provided in subsection (c), the priority of garnishment orders shall
12 be as follows:

13

(1) Current child-support orders.

14

(2) Other current support orders.

15

(3) Arrearages of child-support orders.

16

(4) Arrearages of other support orders.

17

(5) Bankruptcy orders.

18

(6) Administrative garnishment orders by federal agencies.

19

(7) Federal tax levies.

20

(8) State tax levies.

21

(9) Local tax levies.

22

(10) Other garnishment orders.

23

(c) If the date of a federal tax levy is prior to the date of a support order, the
24 federal tax levy shall have the highest priority.

1 **Reporter’s Notes and Questions**

2
3 Subsection (a)(2) is the basic allocation we tentatively agreed to at our first
4 meeting, that is, when there are multiple garnishments, each garnishment in the same
5 priority level should be paid the same amount. The other major possibility is to weight
6 the garnishments by their amount and allocate the available amounts in proportion to the
7 total amounts due on each garnishment. That option is a lot more complicated to describe
8 and implement.

9
10 For the most part, the priority levels in subsections (b) and (c) are determined by
11 federal law. [Note: Need to check all of these federal statutes, and cite them here.] Note
12 that according to our definitions, “support orders” include both regular and medical
13 support.

14
15 **SECTION 9. PENALITIES.**

16 (a) A garnishee shall be liable to a creditor for [\$100] for each day up to [10] days
17 that the garnishee fails to comply with Section 4(b). If the garnishee has not complied
18 with Section 4(b) by the end of the initial [10]-day period, it shall be liable to the creditor
19 for [\$100] for each additional day of non-compliance, provided that the creditor provides
20 notice of the failure to comply to the court and the garnishee at least [3] days prior to the
21 commencement of each additional [10]-day period.

22 (b) If a garnishee fails to send amounts due a creditor pursuant to a garnishment
23 order under Section 4(e) and (f), the garnishee shall be liable to the creditor for the
24 amount that should have been sent to the creditor or [\$100] for each week when an
25 amount should have been sent, whichever is greater.

26 (c) Amounts paid by a garnishee to a creditor pursuant to subsection (a) or (b)
27 shall be credited towards payment of the debtor’s obligation to the creditor.

28 (d) [For creditor penalties, see the Issues Memo.]

29 **SECTION 10. UNIFORMITY OF APPLICATION AND**

30 **CONSTRUCTION.** In applying and construing this uniform act, consideration must be

1 given to the need to promote uniformity of the law with respect to its subject matter
2 among states that enact it.

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

9 **SECTION 12. SAVINGS CLAUSE.** This [act] does not affect the validity or
10 effect of any garnishment filed on or before [effective date of the Act].

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

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

18 **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

19 (a)

20 (b)

21 (c)]

22 **Legislative Note: Include in this section repeal of current state law regarding wage**
23 *garnishment.*
24

