

D R A F T  
FOR DISCUSSION ONLY

## WAGE GARNISHMENT ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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October 23 – 24, 2015 Committee Meeting

*WITH REPORTER'S NOTES AND QUESTIONS*

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September 30, 2015

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# WAGE GARNISHMENT ACT

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1 **WAGE GARNISHMENT ACT**

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

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

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

7 (2) “Debtor” means an individual against whom a creditor has an enforceable money  
8 judgment, but only under and to the extent of the judgment.

9 (3) “Disposable wages” means wages remaining after deductions for current tax  
10 obligations, mandatory deductions for [insert references to required deductions for state  
11 disability and/or unemployment insurance], and mandatory contributions to [insert referenced to  
12 state retirement systems for public-sector employees] and the federal Railroad Retirement Act.

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

15 (5) “Employee” means an individual treated by an employer as an employee for federal  
16 income tax purposes. The term includes a former employee who is owed wages.

17 (6) “Employer” means a person that owes or will owe wages to an employee.

18 (7) “Garnishee” means an employer served with a [complaint][motion] in a garnishment  
19 action.

20 (8) “Mandatory deduction” means an act by an employer to comply with a legal  
21 obligation by deducting some part of the wages of an employee for delivery to another person.  
22 The term includes a wage garnishment; a support order; an order to recover federal, state, or  
23 local taxes; and an administrative order issued by a federal [or state] agency. The term does not

1 include withholding wages with the consent of the employee or for current tax obligations.

2 (9) “Original creditor” means a person to which a debtor originally owed the obligation  
3 for which a wage garnishment is sought.

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

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

9 (12) “Regular payday” means a day on which an employer pays wages for a pay period to  
10 an employee subject to wage garnishment. If a regular payday is uncertain or less often than once  
11 a month, the term means any day on which an employer pays or expects to pay wages to the  
12 employee.

13 (13) “Send” means:

14 (A) deposit a record in the mail with a proper address and with first-class postage  
15 provided;

16 (B) deliver a record by any other usual means of communication to a proper  
17 address and with the cost of transmission provided; or

18 (C) cause a record to be received in any other way within the time it would have  
19 arrived under paragraph (A).

20 (14) “Sign” means, with present intent to authenticate a record:

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

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

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

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

10 (17) “Wage garnishment” means a mandatory deduction for delivery to a creditor  
11 pursuant to a wage garnishment action.

12 (18) “Wage garnishment action” means a legal proceeding for a wage garnishment.

13 (19) “Wages” means

14 **Alternative A**

15  
16 compensation owed by an employer to an employee for personal services. The term includes  
17 salary, commissions, bonuses, profit-sharing distributions, severance payments, and periodic  
18 pension and disability payments.

19 **Alternative B**

20  
21 compensation subject to federal income tax owed by an employer to an employee plus any  
22 amount the employee earns but is not owed because the employee elected to contribute the  
23 amount to a tax-deferred account.

24 **End of Alternatives**

## Reporter's Notes

1  
2  
3 “Disposable wages” is the same substantively as the definition of “disposable earnings” in the  
4 federal Consumer Credit Protection Act (CCPA), 15 U.S.C. § 1671-1677. (It has been modified a  
5 bit to have the language conform better to ULC drafting standards; we have changed “earnings”  
6 to the more commonly understood “wages.”) The types of deductions permitted are well-  
7 understood under the CCPA (federal, state, and local withholding taxes; social security and  
8 Medicare taxes; mandatory deductions for state disability or unemployment insurance;  
9 mandatory contributions to a state employee pension plan; and mandatory contributions under  
10 the Railroad Retirement Act). The vast majority of states currently follow the CCPA definition  
11 of disposable earnings. A few states, however, permit other things to be deducted from  
12 disposable earnings (such as union dues and initiation fees and insurance contributions). This Act  
13 is officially neutral on these other deductions. The calculation worksheet in Section 11 below  
14 includes a line to accommodate them, but is silent otherwise. However, we should consider  
15 encouraging all states to adopt the standard CCPA definition. The reasons for this are: (1) this  
16 will ease administration and further the ULC’s goals in uniformity; (2) if a state wants its statute  
17 to be more protective of worker income, placing that generosity in the minimum exemption or  
18 the withholding limit would be broader-based and easier to administer; and (3) these particular  
19 types of additional deductions, while intended to help protect workers, are not well-targeted to  
20 the most needy workers.

21  
22 “Electronic” is a standard ULC definition.

23  
24 “Employee” defers to federal income tax law to determine who is an employee under the Act.  
25 See I.R.C. § 3121(d)(“any individual who, under the usual common law rules applicable in  
26 determining the employer/employee relationship, has the status of an employee”); Rev. Rul. 87-  
27 41 (setting out a 20-factor test for making the determination). One function of this deferral is to  
28 establish the boundaries of this Act. As currently drafted, it means, for example, that the Act  
29 simply does not apply to attempted garnishments of distributions to partners or LLC members  
30 since they are not “employees.” Although not protected under this Act, if partners or LLC  
31 members want to claim protection against charging orders under other law (including the  
32 Consumer Credit Protection Act), this Act would not prevent that. Having said all that, we need  
33 to discuss whether we want to expand the scope of the Act. See the Issues Memo.

34  
35 “Garnishee.” For an explanation of the “[complaint][motion]” construction, see the second note  
36 after Section 5.

37  
38 “Mandatory deduction” is a broad term that encompasses both wage garnishments under this Act  
39 (which are currently limited to debt garnishments) and “garnishments” for other purposes, such  
40 as child support and federal or state taxes. **Note to drafting committee:** In prior drafts, we used  
41 the phrase “involuntary withholding” for this concept. At the annual meeting, a comment was  
42 made that this term was demeaning; we were asked to think about an alternative. This is our  
43 current, suggested alternative.

44  
45 “Original creditor.” See the third note after Section 10 on the use of this term.

46

1 “Person” is a standard ULC definition.

2  
3 “Record” is a standard ULC definition.

4  
5 “Sign” is a standard ULC definition.

6  
7 “State” is a standard ULC definition.

8  
9 “Support order.” This definition follows the definitions that define the coverage of the Uniform  
10 Interstate Family Support Act (UIFSA). An alternative would be to define “support order” to  
11 mean an order enforceable under UIFSA, which every State has adopted. This would perhaps be  
12 even clearer about the intent (which is to exclude support orders governed by UIFSA). But the  
13 Joint Editorial Board for Uniform Family Laws has expressed its support for this definition, so  
14 that is the one we included.

15  
16 For “wages,” we provide two alternative definitions. Alternative A closely tracks the definition  
17 of “earnings” in the CCPA. (Again, we have changed the word “earnings” as used in the CCPA  
18 and most state garnishment laws to the more commonly understood “wages.”) This has the  
19 advantage of tracking the CCPA and, thereby, avoids any claim that this Act is less protective  
20 than the CCPA. On the other hand, this definition will also have the effect of capturing the many  
21 decisions interpreting this language under state law and the CCPA, and those cases are not  
22 perfectly consistent. Thus, using the language will lead to inconsistent application and lack of  
23 uniformity. It will also be more difficult for employers to determine the proper amount than  
24 Alternative B. Alternative B closely tracks the definition of wages under the federal income tax.  
25 The first part of the definition will capture all of the income included in Box 1 of the standard  
26 W-2 form, while the second part will capture additional income that would be included in Box  
27 12 of the W-2 form for elective deferrals under various provisions of the Internal Revenue Code  
28 (such as §§ 401(k), 403(b), 408(k), and 457(b) deferrals) and for designated deductible Roth  
29 contributions. This would have the advantage of calling on a large, nationally consistent body of  
30 law for making the earnings/non-earnings distinction and it would be efficient since employers  
31 need to make these categorizations for other reasons. On the other hand, it would be a significant  
32 change from the current way of thinking about the issue and, as a result, may be startling. *Note to*  
33 *drafting committee*. If we expand the scope of the Act to cover non-employees, such as  
34 independent contractors and LLC members, we will need to make a number of changes to the  
35 Act, including to this definition. See the Issues Memo for discussion of this.

36  
37 **SECTION 3. SCOPE.**

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

39 (b) This [act] does not apply to any other remedy that might be available to a creditor  
40 under law other than this [act].

41 (c) Except as provided in Section 13, this [act] does not apply to a mandatory deduction



1 that is not a wage garnishment, including a mandatory deduction pursuant to:

2 (1) an order of a bankruptcy court;

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

4 (3) a support order[.]; or

5 [(4) other specified mandatory deductions.]

6 (d) This [act] is subject to any law that prohibits or limits wage garnishment.

7 **Reporter's Notes**

8  
9 Subsection (c)(4) permits states to narrow the applicability of the Act under this Act. At the  
10 extreme, the option could be used to preclude most forms of debt garnishment. Even with such  
11 an expansive exclusion, however, a State might be interested in enacting the Act to provide a fair  
12 process for enforcing wage garnishments that arrive from other states. Texas, for example, has a  
13 constitutional prohibition on debt garnishment which prohibits Texas courts from issuing wage  
14 garnishment orders themselves. But Texas courts do enforce wage garnishment orders that come  
15 from other states. *See Knighton v. IBM Corp.*, 856 S.W.2d 210 (Tex. App. 1993).

16  
17 Subsection (d) permits states to incorporate restrictions on wage garnishment found elsewhere in  
18 state law, including prohibitions on garnishment. Some states have such restrictions in their  
19 current law. For example, South Carolina does not permit wage garnishments for debts arising  
20 from consumer credit sales, consumer leases, consumer loans, or consumer rental-purchase  
21 agreements. S.C. Code Ann. § 37-5-104. Thus, South Carolina could narrow the Act here so that  
22 it does not apply to those types of debts. Similarly, several states prohibit wage garnishment for  
23 people who receive public assistance.

24  
25 **SECTION 4. FORUM; CHOICE OF LAW.**

26 (a) Subject to subsection (b), a [court] shall dismiss or stay a wage garnishment action if  
27 the debtor's principal place of employment is not in this state.

28 (b) A [court] may hear a wage garnishment action if the employer is subject to personal  
29 jurisdiction in this state but would not be subject to personal jurisdiction in the state of the  
30 debtor's principal place of employment.

31 (c) A [court] hearing a wage garnishment action pursuant to subsection (b) shall apply  
32 this [act] except that the debtor is entitled to the exemptions from and limits on wage

1 garnishment provided by the law of the jurisdiction of the debtor’s principal place of  
2 employment.

3 **Reporter’s Notes**

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

11  
12 **SECTION 5. COMMENCEMENT OF GARNISHMENT ACTION**

13 (a) A creditor may commence a wage garnishment action by serving a  
14 [complaint][motion] on a garnishee pursuant to [the normal procedures for service of process in  
15 this state]. If the garnishee has a registered agent that can be served with reasonable diligence  
16 under [cite state law on registered agents], the [complaint][motion] must be served on the  
17 registered agent. The [complaint][motion] must include:

18 (1) the name of the debtor;

19 (2) the physical and mailing addresses of the debtor, or a statement that the  
20 information is not known;

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

23 (4) a completed notice form that satisfies section 10;

24 (5) the name of and contact information for the individual to whom the garnishee  
25 is required by section 6(b)(1) or (2)(A) to send information; and

26 (6) reasonable instructions on how to remit to the creditor any amount withheld  
27 from the wages of the debtor.

1 (b) The [complaint][motion] under subsection (a) must be accompanied by:

2 (1) An administrative fee of \$[X] payable to the garnishee, and

3 (2) A separate document provided only to the garnishee and not filed with the  
4 court that either indicates the debtor’s date of birth and social security number or states that the  
5 information is not known.

6 **Reporter’s Notes**

7  
8 *Note to Drafting Committee.* In earlier drafts, the garnishment procedures were all contained in  
9 one section. Now they are spread across five sections. This was the strong preference of the Style  
10 Committee.

11  
12 *General comment on structure.* In general, wage garnishment can commence in one of two  
13 ways: (1) as a method of execution on a judgment that is part of the original action against the  
14 debtor (so it would begin with something called a motion or a writ to implead the employer) or  
15 (2) as an independent action against the employer to collect on a prior judgment (so it would  
16 begin with a complaint). Our Act is neutral on which method a state uses and is intended to  
17 accommodate either. Hence, the bracketed “[complaint][motion]” construction.

18  
19 One reason for the extra-judicial nature of most of this procedure is a professional responsibility  
20 issue. Professional responsibility rules prohibit non-attorneys from responding in court to  
21 garnishment proceedings. Thus, when garnishment enters a court, employers have to retain a  
22 lawyer, which greatly increases the cost of garnishment for employers. (For a time, this was a  
23 contentious issue in Georgia.) The solution here is a procedure which permits the  
24 garnishee/employer to respond and comply outside of court. Consequently, in a normal,  
25 uncomplicated wage garnishment, an employer would be able to have non-lawyer employees  
26 manage the process and avoid the need for an attorney.

27  
28 This extra-judicial procedure is analogous to a normal interrogatory process. In most states,  
29 interrogatories can be served with a complaint and the responses do not need to be filed in court.  
30 As a result, a procedure like this should not be unfamiliar in most states.

31  
32 *Comment on administrative fees, subsection (b)(1).* The drafting committee has not yet had a  
33 robust discussion on administrative fees for employers. In general, there are two issues. First,  
34 should the Act provide for administrative fees at all? On the one hand, employers are largely  
35 neutral parties in these proceedings and they do incur costs. Administrative fees help to defray  
36 those costs. Currently, most states provide for administrative fees (31 states), although a  
37 substantial minority do not (19 states). Drafting committee observers representing employers and  
38 payroll processing entities are strongly in favor of fees. On the other hand, some members of the  
39 committee feel strongly that the Act will create efficiencies that will reduce costs significantly  
40 and that most of those savings will accrue to employers. Consequently, the view of these  
41 committee members is that removing the complications of fees from the Act is a fair trade-off to

1 employers for those significant benefits.

2  
3 The second issue is if administrative fees are included, how should they be structured? The basic  
4 options are (1) a lump-sum fee early in the process; (2) a fee that is paid with each payment to a  
5 creditor; or (3) both. Again, the committee has not discussed this issue robustly, so the bracketed  
6 language of (b)(1) is basically a place-holder to ensure future discussion. But the provision  
7 currently opts for a lump-sum payment only. Ten states use this approach currently and the  
8 amount ranges from \$10 to \$35. (The amount seems to depend some on how long ago the fee  
9 was set, which itself would be an issue to consider.) This approach is straight-forward and easy-  
10 to-administer, but of course it only does rough justice across the full range of garnishment  
11 possibilities.

12  
13 *Note to Drafting Committee on subsection (b)(2).* In prior drafts, we had the date of birth and  
14 the last four digits of the social security number in the complaint or motion. At the annual  
15 meeting, it was suggested that we try to think about alternatives that would provide even less  
16 potential for disclosure of this information. Subsection (b)(2) is one way of doing that.

17  
18 We will need to talk about this issue at our meeting. I have not done a survey, but court rules in  
19 Nebraska protect social security numbers, date of birth, and financial account information. A  
20 special form and procedure is in place to deal with this type of information in Nebraska courts.  
21 Neb. Ct. Rules art. 15 § 6-1521. I expect other states have their own practices and procedures,  
22 and that they vary.

23  
24 **SECTION 6. GARNISHEE INITIAL RESPONSE TO A GARNISHMENT**

25 **ACTION.**

26 (a) If a creditor commences a garnishment action under section 5 but does not provide all  
27 the information required by that section, the garnishee [shall][may] within [15] business days  
28 after being served with the [complaint][motion] notify the creditor of the missing information.  
29 The garnishee need take no further action until the missing information is provided by the  
30 creditor.

31 (b) Within [15] business days after being served with a [complaint][motion] in a wage  
32 garnishment action or after receipt of the missing information pursuant to subsection (a):

33 (1) If the debtor named in the [complaint][motion] is not an employee of the  
34 garnishee, the garnishee shall send that information to the individual named in the  
35 [complaint][motion] pursuant to section 5(a)(5).

1 (2) If the debtor named in the [complaint][motion] is an employee of the  
2 garnishee, the garnishee shall:

3 (A) send to the individual named in the [complaint][motion] pursuant to  
4 section 5(a)(5):

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

6 (ii) the pay frequency of the debtor and the date of the next regular  
7 payday; and

8 (iii) if the debtor's wages are subject to other mandatory  
9 deductions, the number of other mandatory deductions and the priority of each mandatory  
10 deduction, including the priority of the wage garnishment sought by the [complaint][motion];  
11 and

12 (B) send to the debtor a copy of the notice form provided to the garnishee  
13 pursuant to section 5(a)(4).

14 **Reporter's Notes**

15  
16 *Note to Drafting Committee on subsection (a).* We weren't quite sure what to do in the event  
17 that the creditor's complaint or motion does not fully comply with Section 5. First, if we don't  
18 include some language about what to do in that event, the Act will be silent on it and the parties  
19 will have no guidance. But what to do? On the one hand, it seems to make sense for the  
20 employer to tell the creditor that it's not going to do what's called for in subsections (b)(1) or  
21 (b)(2) because of failure to comply with Section 5. On the other hand, Bill and I were somewhat  
22 reluctant to put that burden on the employer. (But maybe we shouldn't be? See Section 8(c)  
23 below.)

24  
25

**SECTION 7. COMMENCEMENT OF GARNISHMENT.**

26 (a) If garnishment is required, it must commence with the first regular payday that occurs  
27 at least [30] days after the debtor has been sent the notice form pursuant to section 6(b)(2)(B).

28 (b) A garnishee promptly shall remit to the creditor the amount withheld from the wages  
29 of the debtor in the manner specified by the creditor pursuant to section 5(a)(6).

1 (c) A garnishee must notify a debtor of any amount withheld from wages pursuant to a  
2 wage garnishment action in the same manner as it notifies the debtor of other withholdings from  
3 wages.

4 (d) For each regular payday on which a garnishee withholds an amount from an  
5 employee's wages pursuant to a wage garnishment action, the garnishee shall maintain a record  
6 containing information sufficient to prepare a calculation worksheet for the payday. At any time,  
7 an employee or creditor may request in a record a completed calculation worksheet that satisfies  
8 Section 11. Within [seven] business days of receipt of a request, the garnishee must send without  
9 charge a calculation worksheet for the most recent regular payday. The garnishee is not required  
10 to provide more than one calculation worksheet to an employee for any regular payday, nor more  
11 than four calculation worksheets to a creditor during a calendar year.

12 **SECTION 8. DISMISSAL OF GARNISHMENT ACTION.**

13 (a) If a creditor receives a notice under Section 6(b)(1), it must promptly [seek dismissal  
14 of the complaint][withdraw the motion] or seek a prompt hearing to determine whether the  
15 debtor is an employee of the garnishee.

16 (b) If a creditor receives a notice under Section 6(b)(2)(a), it must petition the [court] for  
17 dismissal of a wage garnishment action not later than [15] business days after:

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

19 (2) the creditor is notified that the debtor is no longer an employee of the  
20 garnishee.

21 (c) A garnishee must notify the creditor as soon as practicable if the debtor is no longer  
22 an employee of the garnishee.



1 Information about how to contact them is on the next page.

- 2  
3 3. You can ask the Court to hold a hearing to permit you to challenge any aspect of  
4 this proceeding. For example, you could challenge whether you really owe the  
5 amount claimed or you could claim that a deduction should not be made because  
6 you fit within an exception in the law. Such a request should be sent in writing to  
7 the Clerk of the Court:

8  
9 [Insert name and address of court].

10  
11 Again, if you do not act, your employer will soon be required to begin deducting money from  
12 your pay.

13  
14 [Insert a page break]

15  
16 Information Form

17  
18 Those Claiming You Owe Them Money

- 19  
20 Current Creditor Name:  
21 Current Creditor Contact Information:  
22 (If Different) Original Creditor Name:  
23

24 Basis for the Debt

- 25 Court Name:  
26 Case No:  
27 Date of Judgment:  
28

29 Amount of Debt:

- 30  
31 Judgment Amount \$ \_\_\_\_\_  
32  
33 Current Amount Owed\* \$ \_\_\_\_\_  
34

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

38  
39 **Reporter's Notes**

40  
41 **Note to Drafting Committee.** For this draft, we have not made many changes to the notice form  
42 because we are hopeful that we will soon get expert advice on how to make it easier to read. Bill  
43 will have more information on that at our meeting.

44  
45 **General Note on Style.** For now, for Sections 10 and 11, we have presented this information  
46 only as forms. If necessary, we can convert the forms to statutory language later. But for now,



1 we thought a substantive discussion would be facilitated best by presenting them only as forms.

2  
3 **Original Creditor Name.** The notice form requires the name of the creditor that filed the wage  
4 garnishment action throughout most of the notice, but it also requires the name of the “original  
5 creditor” if the “creditor” and “original creditor” are different. The federal Fair Debt Collection  
6 Practices Act requires “debt collectors” (which is a long defined term in the Act) to disclose the  
7 name of the “creditor” (which is also a defined term in the Act) when they initiate contact with a  
8 debtor. 15 U.S.C. §§ 1692-1692o. Our distinction is slightly different than the one in the  
9 FDCPA, but providing the two pieces of information should be familiar to those in the field, and  
10 it provides useful information to the debtor. The creditor representative on our drafting  
11 committee did not think this would be burdensome to creditors.

12  
13 **SECTION 11. CALCULATION WORKSHEET.** A calculation worksheet must be in

14 substantially the following form:

15 Employee:

16 Creditor:

17 For Wages Paid on:

18  
19 Disposable Wages:

20  
21 1. Gross Wages Paid to Employee \$\_\_\_\_\_

22  
23 2. Amounts Withheld:

24  
25 a. Federal social security tax (FICA): \$\_\_\_\_\_

26 b. Federal income tax: \$\_\_\_\_\_

27 c. State income tax: \$\_\_\_\_\_

28 d. Railroad retirement tax: \$\_\_\_\_\_

29 e. Other: \$\_\_\_\_\_

30  
31 3. Total Amounts Withheld \$\_\_\_\_\_

32 (Sum of items in line 2)

33  
34 4. Disposable Wages \$\_\_\_\_\_

35 (Line 1 minus line 3)

36  
37 Wage Garnishment Calculation:

38  
39 5. [X%] of Disposable Wages ([X%] of line 4) \$\_\_\_\_\_

40  
41 6. Exemption Amount \$\_\_\_\_\_

42  
43 [Description of Exemption Amount will be here. See the note below.]

- 1           7.     Line 4 minus line 6 (if less than \$0, enter \$0)                 \$ \_\_\_\_\_
- 2
- 3           8.     Enter smaller of line 5 or line 7                                         \$ \_\_\_\_\_
- 4
- 5           9.     Amounts of Other Current Garnishments with Higher
- 6                 Priority (if none, enter \$0)                                         \$ \_\_\_\_\_
- 7
- 8           10.    Subtract line 9 from line 8 (if less than \$0, enter \$0)             \$ \_\_\_\_\_
- 9
- 10          11.    Enter the number of Other Current Garnishments
- 11                 with the Same Priority, plus one                                     \_\_\_\_\_
- 12
- 13          12.    Divide line 10 by line 11                                                 \$ \_\_\_\_\_

14  
15         The amount on line 12 is the wage garnishment amount.

16  
17                                         Statement of Amount Due and Paid

- 18
- 19          13.    Total Amount Claimed by Creditor:                                 \$ \_\_\_\_\_
- 20
- 21          14.    Amounts Paid Through Garnishment:
- 22
- 23                 a.     Prior Garnishments                                         \$ \_\_\_\_\_
- 24
- 25                 b.     This Garnishment                                         \$ \_\_\_\_\_
- 26                         (Line 12)
- 27
- 28                 c.     Total Garnishments                                         \$ \_\_\_\_\_
- 29
- 30
- 31          15.    Net Amount Owed After                                                 \$ \_\_\_\_\_
- 32                 Garnishments to Date
- 33                         (Line 13 minus Line 14.c.)
- 34

35                                         Reporter's Notes

36

37         **Exemption Amount.** The description of the exemption amount will be non-uniform for two  
 38 reasons. First, as signaled in Section 12 below, we intend to permit States to provide varying  
 39 levels of protection to debtor/employees under the standard exemption provision. Second, States  
 40 currently have a variety of other exemptions. At present, we do not anticipate suggesting to states  
 41 that they eliminate these other exemptions.

42  
43         **SECTION 12. EXEMPTIONS AND LIMITS.**

44         (a) The maximum amount subject to wage garnishment may not exceed the lesser of:

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

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

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

### 9 **Reporter's Notes**

10 *Note to Drafting Committee.* In prior drafts, we have had two alternatives here: the one that is  
11 currently here and another one that would adjust the amounts automatically for inflation. We  
12 have not included the inflation-adjustment option this time. Our thinking is that there was  
13 insufficient support for it to continue considering it. But if there is support, the inflation-  
14 adjustment language could be re-introduced.

15  
16 *Bracketed numbers.* We would provide guidance to States on the bracketed “X” for percentages  
17 and “state multiple” for the exemption. First, States cannot make the bracketed percentage more  
18 than 25%, nor can they decrease the bracketed multiple below 30 times the federal minimum  
19 wage. Federal law requires at least these levels of protection. On the other hand, federal law does  
20 permit state garnishment law to provide greater protection for debtor/employees. So, for  
21 example, if a State wants to permit only 20% of disposable earnings to be subject to garnishment  
22 or wants to limit garnishment to amounts above 40 times the federal minimum wage, those  
23 adjustments would be permissible. Second, we would encourage States to use adjustments to  
24 these numbers as the main way to calibrate the level of protection for debtor/employees. The  
25 other main alternatives used in some States to calibrate the level of protection are (1) to increase  
26 the protection for certain categories of debtors (such as heads of households) or (2) to narrow the  
27 definitions of wages and disposable wages. We think it would be preferable to calibrate the level  
28 of protection through adjustments to these numbers rather than through these other alternatives.  
29 Making the adjustments in this way would enhance uniformity and ease administration.

30  
31  
32 *Subsection (b).* The four-and-one-third calculation is the one specified by the Department of  
33 Labor under the Consumer Credit Protection Act, 29 CFR §870.10(c)(2).

### 34 **SECTION 13. MULTIPLE MANDATORY DEDUCTIONS.**

35  
36 (a) If more than one mandatory deduction is in effect against an employee of a garnishee,

1 the following rules apply:

2 (1) A mandatory deduction with higher priority than a wage garnishment must be  
3 paid to the maximum amount available for that mandatory deduction before any withholding is  
4 made for a wage garnishment.

5 (2) A wage garnishment must be paid to the maximum amount available for wage  
6 garnishment before any withholding is made for a mandatory deduction with lower priority than  
7 the wage garnishment.

8 (3) If the total amount of all mandatory deductions in effect with equal priority as  
9 a wage garnishment reaches the maximum amount subject to mandatory deduction, the amount  
10 available must be divided equally among the mandatory deductions without regard to the time a  
11 mandatory deduction became effective, the amount of a mandatory deduction, or any other  
12 factor.

13 (b) Priorities for mandatory deductions are determined under law other than this [act].

14 **SECTION 14. PENALTIES.**

15 (a) A garnishee that fails to comply with Section 6(b)(1) is liable to the creditor for [state  
16 dollar amount] for each day beginning [16] business days after service of the  
17 [complaint][motion] and continuing until the garnishee sends the information required by that  
18 subsection.

19 (b) A garnishee that fails to comply with Section 6(b)(2)(A) is liable to the creditor for  
20 [state dollar amount] for each day beginning [16] business days after service of the  
21 [complaint][motion] and continuing until the garnishee sends the information required by that  
22 subsection or until wage garnishment would be required to begin under Section 7(a), whichever  
23 is earlier.

1 (c) A garnishee that fails to comply with Section 6(b)(2)(B) is liable to the creditor for  
2 [state dollar amount] for each day beginning [16] business days after service of the  
3 [complaint][motion] and continuing until the garnishee sends the information required by that  
4 subsection or until wage garnishment begins, whichever is earlier.

5 (d) A garnishee that fails to comply with Section 7(a) is liable to the creditor for the  
6 amount that should have been sent to the creditor pursuant to that subsection.

7 (e) A garnishee that fails to comply with Section 7(b) is liable to the creditor for:

8 (1) any amount withheld from the wages of an employee which the creditor did  
9 not receive because of the garnishee's failure to remit the amount in the proper manner; and

10 (2) [state dollar amount] for each day beginning [five] business days after a  
11 regular payday on which an amount has been or should have been withheld from an employee's  
12 wages and ending on the day the amount is remitted to the creditor.

13 (f) A garnishee is liable to the creditor for [state dollar amount] for each regular payday  
14 on which amounts are withheld from an employee's wages without providing a notice pursuant  
15 to Section 7(c).

16 (g) A garnishee that fails to comply with a request for a calculation worksheet under  
17 Section 7(d) is liable to the creditor for [state dollar amount] for each day beginning [eight]  
18 business days after the request and continuing until the garnishee sends the information required  
19 by that subsection.

20 (h) A garnishee that fails to comply with Section 8(c) is liable to the creditor for [state  
21 dollar amount] for each violation.

22 (i) A creditor must apply any amount paid by a garnishee to a creditor pursuant to  
23 subsections (a) through (h) towards payment of the debtor's obligation to the creditor. The

1 maximum amount of payments made by the garnishee pursuant to subsection (a) through (h) may  
2 not exceed the total amount of the debtor's obligation to the creditor.

3 (j) A garnishee is not liable for any amount under subsections (a) through (h) unless:

4 (1) the debtor or creditor notifies the [court] and the garnishee of the failure to  
5 comply; and

6 (2) the garnishee fails:

7 (i) to send the information required by section 6(b)(1), 6(b)(2)(A),  
8 6(b)(2)(B), as applicable, not later than [10] business days after receipt of the notice;

9 (ii) to begin wage garnishment under Section 7(a) not later than [15]  
10 business days after receipt of the notice or, if no regular payday occurs between [six] and [15]  
11 business days after receipt of the notice, on the next regular payday subsequent to [15] days after  
12 receipt of the notice; or

13 (iii) to remit to the creditor the amount that should have been withheld  
14 from the wages of the debtor pursuant to section 7(b) not later than [five] business days after  
15 receipt of the notice.

16 (k) A creditor or debtor may request a hearing at any time to determine whether any of  
17 the sanctions of subsections (a) through (h) should be imposed. A debtor may request a hearing  
18 at any time to determine compliance with subsection (i). If a hearing is requested, the [court]  
19 shall schedule the hearing promptly. For good cause, the [court] may waive all or any portion of  
20 the sanctions.

### 21 **Reporter's Notes**

22  
23 **Amounts.** We've left all the amounts blank at this point. The drafting committee has not yet  
24 discussed this issue robustly. On the one hand, the need for uniformity is weak with respect to  
25 these dollar amounts. On the other hand, we are probably in a better position to think about the  
26 optimum level of these amounts than others.

1 **Subsection (i).** The drafting committee has not reached a consensus about what to do when the  
2 sanction exceeds the debt. There are two basic issues: (1) whether to require a payment at all in  
3 this circumstance. On the one hand, the debt seems like a reasonable limit on the scope of the  
4 garnishee’s liability. On the other hand, these penalties are intended to encourage garnishees to  
5 follow the rules. If they’re waived if they exceed the amount of the debt, the penalties would not  
6 provide much of an incentive for small debts or at the end of the life of a garnishment. (2) If we  
7 decide that an amount ought to be paid even if it exceeds the amount of the debt (to create the  
8 proper set of incentives), then we would need to decide who would get the money. Since the  
9 money would be to incentivize the garnishee rather than to compensate someone for an injury,  
10 the amount would be a windfall for whoever received it.

11  
12 **Remedies against creditors.** The drafting committee has not reached a consensus about whether  
13 to include remedies against creditors for seeking garnishments improperly or abusively. In  
14 general, three types of costs can be relied on to encourage creditors to act with proper care: (1)  
15 The filing fee itself (it was reported to the committee that commencing a wage garnishment  
16 action probably costs in the range of \$150-\$300); (2) an administrative fee, such as the one  
17 suggested by Section 5(b)(1); and/or (3) an explicit penalty for creditors who act improperly. An  
18 explicit penalty would be the most targeted way to encourage creditors to act properly, but it  
19 would also be problematic. For example, it would require some sort of standard for when the  
20 penalty would apply, such as bad faith or lack of proper diligence; it would apply only rarely;  
21 and it would be expensive to enforce when applied. Finally, since situations where creditor  
22 penalties might apply would involve the judicial process, the courts may have inherent power to  
23 deal with them even in the absence of specific penalties in the Act. Indeed, it’s possible that  
24 penalties in the Act would constrain rather than expand judicial authority or willingness to deal  
25 with creditor abuse.

26  
27 **[RESERVED SECTION 15. PROTECTION OF EMPLOYEE SUBJECT TO**  
28 **GARNISHMENT.]**

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

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

33 **Reporter’s Notes**

34  
35 This provision may not be within the scope of the charge of the drafting committee, but it is a  
36 common provision in state garnishment statutes.

37  
38 Subsection (a) is based on the language used in statutes that prohibit employment discrimination.  
39 See Title VII § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1). It is broader than the language in the  
40 Consumer Credit Protection Act (CCPA) in several respects. It provides protection regardless of

1 the number of actual or potential garnishments (the CCPA provides protection for only one  
2 garnishment); it provides protection for both actual and attempted garnishment; and it provides  
3 protection for all adverse employment actions, not just discharges. Compare CCPA, 15 U.S.C. §  
4 1674(a). The employer representatives on the drafting committee have expressed support for this  
5 expansion.

6  
7 Subsection (b) is based on the enforcement provisions of the Americans with Disabilities Act  
8 (ADA) which uses similar language to incorporate the powers, remedies and procedures of Title  
9 VII to enforce the ADA. ADA, §107(a), 42 U.S.C. § 12117. I do not know of any major issues  
10 arising from this sort of cross-reference from the ADA to Title VII.

11  
12 There are two main advantages of using a cross-reference to define these enforcement  
13 procedures. First, it means this language can be short and sweet for a provision that is not likely  
14 to be used very often. Second, it means that procedural issues that might arise under this statute  
15 are likely to have already been well ventilated under the state's fair employment practices  
16 statute. Because Title VII defers to state discrimination procedures, all states (except Alabama)  
17 have state procedures that cover the types of discrimination prohibited by Title VII. Alabama has  
18 discrimination statutes that prohibit other types of employment discrimination (age and  
19 disability). Thus, every state will have procedures to which reference could be made under this  
20 section.

21  
22 **SECTION [15][16]. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

23 In applying and construing this uniform act, consideration must be given to the need to promote  
24 uniformity of the law with respect to its subject matter among states that enact it.

25 **SECTION [16][17]. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
26 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the  
27 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
28 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
29 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
30 U.S.C. Section 7003(b).

31 **SECTION [17][18]. SAVINGS CLAUSE.** This [act] does not affect the validity or  
32 effect of a wage garnishment filed on or before [the effective date of this [act]].

33 **SECTION [18][19]. SEVERABILITY.** If any provision of this [act] or its application  
34 to any person or circumstance is held invalid, the invalidity does not affect other provisions or



1 applications of this [act] which can be given effect without the invalid provision or application,  
2 and to this end the provisions of this [act] are severable.

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

5

6 **SECTION [19][20]. REPEALS; CONFORMING AMENDMENTS.**

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

9

10 **SECTION [20][21]. EFFECTIVE DATE.** This [act] takes effect on [state effective  
11 date].