

D R A F T
FOR APPROVAL

UNIFORM WAGE GARNISHMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR
STOWE, VERMONT
JULY 8 - JULY 14, 2016

UNIFORM WAGE GARNISHMENT ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 2, 2016

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1 **UNIFORM WAGE GARNISHMENT ACT**

2 **PREFATORY NOTE**

3 ***I. Brief Overview of Act’s Benefits***

4 The Uniform Wage Garnishment Act accomplishes a number of important goals:

- 5 ● It streamlines the wage-garnishment process and limits, to the extent possible, the
6 involvement of the courts. This will reduce costs and obviate the need for an
7 employer to retain counsel except in unusual circumstances. If an issue arises, an
8 affected party may petition the court for relief at any time.
- 9 ● It requires that a summons provide an employer with sufficient information to
10 permit it to determine quickly whether the individual named in the summons is in
11 fact an employee.
- 12 ● It resolves choice-of-law issues.
- 13 ● It extends protection to a cadre of individuals who are classified as independent
14 contractors but who are, to a significant extent, indistinguishable from employees.
15 The cadre, which is included within the definition of “employee,” is limited to
16 individuals who perform personal services in exchange for periodic payments.
- 17 ● It permits states to vary the level of protection provided to employees (as long as
18 it is not below the level mandated by the federal Consumer Credit Protection Act)
19 within a framework of uniform definitions and procedures.
- 20 ● It requires that employees be given a plain-language notification that explains
21 garnishment and provides helpful information regarding the responsive steps
22 available to the employee. It also gives employees time to act – garnishment
23 cannot begin until the first regular payday occurring more than 30 days after the
24 notification is sent.
- 25 ● It requires employers, upon request, to provide creditors and employees with an
26 explanation of how the amount deducted from earnings was calculated.
- 27 ● It permits a creditor and employer to agree on the method by which payments will
28 be transmitted to the creditor, and it authorizes an employer with several
29 employees being garnished by the same creditor to make a single payment that
30 lumps together sums deducted from the employees’ earnings.
- 31 ● It resolves priority issues related to multiple garnishments.
- 32 ● It extends the protections provided at the employer level to funds in a bank

1 account by providing a procedure that allows an account holder to claim as
2 exempt from bank garnishment earnings that have been subjected to garnishment
3 and then deposited.

- 4 ● It imposes sanctions on an employer that fails to carry out its responsibilities
5 under the act after receiving a notification of default.
- 6 ● It imposes sanctions on a creditor that acts in bad faith. It also provides an
7 incentive for a creditor whose garnishment is wrongful to stop the garnishment
8 quickly.

9 **II. Overview of Article 2**

10 Section 201 limits application of the article to a garnishment action, which means a debt
11 garnishment initiated on behalf of a person with a money judgment against an employee. The act
12 does not address pre-judgment garnishment. It also does not address similar procedures, such as
13 the enforcement of a support order or bankruptcy court order or the collection of a tax debt. Note
14 that the act uses the umbrella term “ordered deduction” to cover all these types of procedures,
15 including a garnishment under the act.

16 Section 202 requires that a garnishment action be brought in the state of the employee’s
17 principal place of work unless the employer is not subject to service of process in that state. In
18 the latter case, the employee is still entitled to the exemptions from and limits on garnishment
19 available in the state of the principal place of work.

20 Section 203 deals with the commencement of a garnishment action. Subsection (a)
21 provides alternative methods – complaint and motion – for commencing the action and each state
22 will select the term that corresponds with its normal practice. Subsection (b) provides that
23 service must be accomplished in the normal manner, and subsection (c) states the contents of the
24 complaint or motion. Of particular note in this regard is that the creditor must provide the
25 amount it claims is owed by the debtor. If this amount is not challenged by the debtor,
26 garnishment will continue until the amount is paid. The subsection also requires the creditor to
27 provide the notices to the employee required by the act; the name and contact information of an
28 agent of the creditor in order to facilitate communications between the creditor and the employer;
29 an address to which garnished amounts should be sent and, at the creditor’s option, a reasonable
30 alternative method of making payment (e.g., wire transfer); and an administrative fee. Subsection
31 (d) requires that the creditor provide, in a record that is not filed with the court, the debtor’s
32 social security number and date of birth or, if that information is not known to the creditor, other
33 known identifying information.

34 Section 204 requires the garnishee to reply directly to the creditor not later than 21 days
35 after being served. Under Paragraph 1, the reply may state certain grounds under which the
36 garnishee will have no obligation to begin garnishing earnings (e.g., the named debtor is not an

1 employee, the complaint or motion was not accompanied by the required notices or the required
2 fee, etc.). (Note that under Section 207(a) a creditor that receives such a reply must within 21
3 days either dismiss the action or request a hearing to determine whether the garnishee must
4 proceed under Paragraph 2, described next). Paragraph 2 requires that the reply state that the
5 named debtor is an employee, provide information regarding pay frequency and other ordered
6 deductions that are in effect, and provide the name and contact information of an agent of the
7 employer for communication purposes. The employer must also send the employee the notices
8 provided by the creditor.

9 Under Section 205, garnishment may not begin until the first regular payday that occurs
10 more than 30 days after the employer sends the notices to the debtor.

11 Section 206 provides procedures to be used during the pendency of the garnishment.
12 Subsection (a) requires that garnished earnings be sent to the creditor no more than five days
13 after a payday. Under subsection (b), an employer that withholds for a creditor the earnings of
14 more than one employee may combine the amounts into a single payment if it specifies the
15 amount attributable to each employee. Under subsection (d), a creditor may send a notice to an
16 employer indicating that the amount owed has increased (e.g., because of accrued interest) or
17 decreased (e.g., because of a voluntary payment), in which case subsection (e) requires the
18 employer to send the employee either a copy of the notice or a calculation worksheet indicating
19 the new target amount (the form of a calculation worksheet is set out in Section 210). Subsection
20 (f) requires that an employer's records permit it to produce a calculation worksheet for each
21 payday on which a garnishment occurs and provide it to creditors and employees upon request.

22 Section 207 provides rules governing termination of garnishment. Garnishment
23 terminates when the garnishee's records indicate that the amount owed has been paid in full or
24 when the debtor is no longer an employee (the garnishee must notify the creditor of the latter
25 event within 21 days). A creditor must dismiss a garnishment action within 21 days after the
26 earlier of the time the amount owed is paid in full or the creditor receives a notice indicating that
27 the debtor is no longer an employee.

28 Section 208 provides a form for the notice required by Section 203(c)(4). The form was
29 prepared with the help of The Plain Language Group, whose services were engaged thanks to
30 grants from the Uniform Law Foundation and the American Payroll Association. Language was
31 developed and then tested with a panel of individuals representing the desired demographic, after
32 which changes were made to address areas that were unclear to the panelists. The goal is to
33 provide a notice that is as helpful as possible.

34 Section 209 addresses the notice required by Section 203(c)(5). Under decisional law,
35 due process requires that a garnishee be reasonably informed of all exemptions from and
36 limitations on garnishment and of the process for claiming exemptions. The form for the notice
37 will necessarily differ from state to state.

1 Section 210 provides the form for a calculation worksheet.

2 Section 211 limits the amount of an employee’s disposable earnings that may be
3 garnished. The format is the same as the format found in the Consumer Credit Protection Act,
4 which requires a certain level of protection for employees but allows the states to be more
5 generous. Under existing law, states sometimes provide for more generous protection by
6 changing the definition of disposable earnings found in federal law. The approach of this act is to
7 use the federal definition of disposable earnings and permit states to express their generosity by
8 limiting the amount subject to garnishment in this section.

9 Section 212 deals with multiple ordered deductions (a garnishment under the act is a type
10 of ordered deduction). The rule for ordered deductions with the same priority as a garnishment
11 under the act is in subsection (b), which requires that the employer send an equal amount to each
12 person entitled to a deduction without regard to the time the deduction became effective, the
13 amount of the debt, or any other factor. Thus, two creditors under the act will receive exactly the
14 same amount each payday. Subsections (a) and (c) deal with ordered deductions entitled under
15 other law to a higher or lower priority than a garnishment under the act.

16 Sections 213 and 214 must be read together. Section 214 imposes sanctions on a
17 garnishee that fails to comply with the act. The sanctions differ depending on the nature of the
18 misconduct. Sanctions must be applied to the amount owed by the debtor and the maximum
19 amount of the sanctions cannot exceed the total amount owed. Section 213 provides that no
20 sanctions can be imposed unless a motion is filed with the court indicating the nature of the
21 misconduct and the garnishee fails to effect a cure within a certain period of time, which differs
22 depending on the nature of the misconduct. The court may waive all or part of the sanctions that
23 would otherwise be due.

24 ***III. Overview of Article 3***

25 Section 301 provides, in language familiar to banks, that the act does not apply to a
26 garnishment for child support.

27 Section 302 coordinates the act with federal law as it relates to federal benefits not
28 subject to garnishment. The account review covering a lookback period required by subsection
29 (a) is the same as the account review required by federal law. Under subsection (b), there is no
30 exempt amount under the act if all the funds in the account are protected by federal law. Under
31 subsections (c) and (d), a bank must freeze all amounts in an account above any federally
32 protected amount, subject to Section 4-303 of the Uniform Commercial Code (subsection (e)).
33 The freeze gives the account holder an opportunity to apply for an exemption for funds that have
34 already been subjected to garnishment at the employer level by following the procedures
35 outlined below.

1 Section 303 will be familiar to banks. If a notice of federally protected funds must be
2 sent, subsection (a) requires the bank to add three items (federal law permits such additions) – a
3 statement of the account holder’s right to claim an exemption under the act, an explanation of
4 how to claim the exemption, and the beginning date of the lookback period. If a notice of
5 federally protected funds does not need to be sent, subsection (b) applies and the notice required
6 under that subsection includes the relevant provisions of the federal notice plus the three
7 additional items mentioned above. Subsection (c) provides language for the explanation of how
8 to claim an exempt amount under the act: all the account holder has to do is send the bank pay
9 records that correspond with deposits made during the lookback period and that show that the
10 earnings were subject to an ordered deduction.

11 Section 304 provides that an account holder must submit pay records to claim an
12 exemption and also provides that there is no exempt amount under the act if the bank does not
13 receive any pay records within 15 business days after sending the notice required by Section 303.

14 Section 305 describes how a bank will calculate an exempt amount if it receives pay
15 records in a timely manner. The bank must examine each pay record to determine whether it
16 shows that the earnings were subject to an ordered deduction and whether it corresponds with a
17 deposit made during the lookback period. The exempt amount is the sum of deposited earnings
18 reflected on pay records meeting these two requirements.

19 Section 306 provides that a bank garnishment does not have a continuing effect; that is, it
20 applies to funds in the account as of the date of the account review and not to funds deposited
21 later.

22 Section 307(a) provides that a bank’s good-faith determination of an exempt amount may
23 not be challenged, and the subsequent subsections reinforce that rule by providing safe harbors in
24 language derived from federal law.

25 ***IV. Overview of Article 4***

26 Section 401 provides sanctions for creditors that engage in bad-faith conduct. Under
27 subsection (a), a creditor may be liable for up to \$1,000 plus attorney’s fees. The creditor may
28 also be liable for a per diem penalty of \$50 per day for failing to comply with subsection (b),
29 under which it is deemed to be in bad faith if it receives a record stating that a garnishment is
30 wrongful and fails within 7 days to either: i) take appropriate steps to stop the garnishment and
31 return money wrongfully garnished during the past 60 days, or ii) file a motion asking the court
32 to determine whether the garnishment is in fact wrongful. Subsection (d) authorizes the court to
33 allocate any recovery, other than attorney’s fees, between the garnishee and the individual whose
34 earnings or funds the creditor sought to garnish, and subsection (e) permits the court to waive all
35 or part of the sanctions that would otherwise be due. Subsection (f) makes clear that the section
36 does not limit any other available remedy.

1 Section 402 permits a party to request a hearing to resolve any issue arising under the act
2 and also permits an employee to request a hearing to assert an exemption from or limit on
3 garnishment arising under other law. A requested hearing must be held promptly and a broad
4 range of interim relief is authorized.

5 Section 403 is an anti-retaliation provision that prohibits an employer from discharging or
6 taking any adverse action against an employee based on a garnishment. Violations of the
7 prohibition are enforced under the state's fair employment practices law.

1 **UNIFORM WAGE GARNISHMENT ACT**

2 **[ARTICLE] 1**

3 **SHORT TITLE AND DEFINITIONS**

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

6 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Account” means a demand, time, savings, passbook, or similar account of an
8 individual or individuals maintained by a bank.

9 (2) “Account holder” means an individual whose name appears in a bank’s records as the
10 owner of an account.

11 (3) “Account review” means the process of examining deposits in an account to
12 determine if the account contains a federally protected amount.

13 (4) “Bank” means an organization engaged in the business of banking. The term includes
14 a savings bank, savings and loan association, and credit union.

15 (5) “Bank garnishment” means a deduction of funds from an account for payment to
16 another person under a bank-garnishment order.

17 (6) “Bank-garnishment order” means an enforceable order to effect a bank garnishment.

18 (7) “Creditor” means:

19 (A) a person that has an enforceable money judgment against a debtor, including a
20 successor in interest; and

21 (B) in Articles 3 and 4 also includes a person that causes a bank-garnishment
22 order to be served on a bank.

23 (8) “Debtor” means:

1 (A) an individual against whom a creditor has an enforceable money judgment;
2 and

3 (B) in Articles 3 and 4 also includes an account holder whose account is the
4 subject of a bank-garnishment order.

5 (9) “Disposable earnings” means earnings remaining after deductions for any amounts
6 required by law to be withheld.

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

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

12 (12) “Employee” includes a former employee who is owed earnings and means an
13 individual who:

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

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

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

18 (14) “Exempt amount” means the funds in an account which are exempt from bank
19 garnishment under [Article] 3.

20 (15) “Federally protected amount” means the amount a bank determines is exempt from
21 bank garnishment under the Regulation on Garnishment of Accounts Containing Federal Benefit
22 Payments, 31 C.F.R. part 212.3[, as amended].

23 (16) “Garnishee” means a person served with a [complaint][motion] in a garnishment

1 action or with a bank-garnishment order.

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

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

5 (19) “Lookback period” means the two-month period that begins on the day before the
6 day of an account review and ends on the corresponding day of the month two months earlier or
7 on the last day of the month two months earlier if the corresponding day does not exist.

8 (20) “Notice of right to garnish federal benefits” means the form provided at Appendix B
9 of the Regulation on Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R.
10 part 212.3[, as amended].

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

16 (22) “Organization” means a person other than an individual.

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

20 (24) “Pay record” means a record provided to an employee which includes a statement of
21 the employee’s total earnings on a payday and a listing of the amount and purpose of each
22 deduction, if any.

23 (25) “Periodic payments” means recurring payments on set intervals of one month or less.

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

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

6 (28) “Send” means to:

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

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

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

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

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

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

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

20 (31) “Support order” means a judgment, decree, order, decision, or directive, whether
21 temporary, final, or subject to modification, issued in a state or foreign country for the benefit of
22 a child, spouse, or former spouse, which provides for monetary support, health care, arrearages,
23 retroactive support, or reimbursement for financial assistance provided to an individual obligee

1 in place of child support. The term includes related costs and fees, interest, income withholding,
2 automatic adjustment, reasonable attorney’s fees, and other relief.

3 *Legislative Note: In states in which the constitution, or other law, does not permit the phrase “as*
4 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
5 *paragraphs (15) and (20).*

6
7
8

Reporter’s Notes

9 “Bank.” This is from the definition of “bank” in the U.C.C. except that it deletes the reference to
10 “trust companies.” U.C.C. § 9-102(a)(8). The only part of the business of banking relevant for
11 this act is the maintenance of accounts.

12

13 “Disposable earnings” is the same substantively as the definition of “disposable earnings” in the
14 federal Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1671-1677. It is important to
15 keep the scope of this act consistent with the scope of the CCPA to prevent conflict or
16 inconsistency with federal law. The types of deductions permitted are well-understood under the
17 CCPA (federal, state, and local withholding taxes; social security and Medicare taxes; mandatory
18 deductions for state disability or unemployment insurance; mandatory contributions to a state
19 employee pension plan; and mandatory contributions under the Railroad Retirement Act). The
20 vast majority of states currently follow the CCPA definition of disposable earnings. A few states
21 permit other kinds of payments to be deducted from disposable earnings (such as union dues,
22 union initiation fees, and insurance contributions). This act is officially neutral on these other
23 deductions. The calculation worksheet in Section 210 below includes a line to accommodate
24 them (line 2.f.), but is silent otherwise.

25

26 “Earnings.” This definition also tracks the CCPA to ensure consistency with federal law.

27

28 “Electronic” is a standard ULC definition.

29

30 “Employee” covers both (a) individuals who are treated as employees by the employer for tax
31 purposes and (b) other individuals who, while treated by the employer as independent
32 contractors, are in much the same position as employees. Subsection (B) is intended to cover
33 some, but not all, independent contractors. Only workers (a) who are individuals, (b) who
34 perform personal services, and (c) who are paid periodically will be covered. Thus, workers who
35 perform services as LLCs or other entities will not be covered; entities that provide goods to an
36 employer will not be covered; and workers who perform one-time services will not be covered.
37 Extending the act to cover this subset of independent contractors serves three functions. First, it
38 provides the act’s protections to people who look a lot like employees but are not treated as
39 employees by their employers. Some of these people may be misclassified; others may work for
40 types of enterprises which are structured to produce that result (such as Uber and FedEx).
41 Second, covering these types of workers will permit them (and their “employers”) to enjoy the
42 efficiencies from the new and better procedures provided by this act. Third, the coverage will
43 ensure that this Act is at least as broad as the CCPA. The CCPA does not talk of employees and
44 employers, but rather simply protects earnings from personal services. As a result, some courts

1 have extended the act’s protections to independent contractors. *See, e.g., In Re Sexton*, 140 B.R.
2 742 (S.D. Iowa 1992); *In Re Duncan*, 140 B.R. 210 (E.D. Tenn. 1992); *California-Peterson*
3 *Currency Exchange v. Friedman*, 316 Ill. App. 3d 610 (Ill. Ct. App. 2000). *But see, e.g., Idaho*
4 *Pacific Lumber Co. v. Celestial Land Co. Ltd.*, 348 P.3d 950 950 (Colo. Ct. App.
5 2013)(Colorado garnishment statute does not extend protections to independent contractors;
6 Colorado garnishment statute was subsequently amended to cover independent contractors, Colo.
7 Rev. Stat. § 13-54.5-101(2)(a)(i)).

8
9 “Federally protected amount.” The reference here is to federal law that exempts federal benefit
10 payments from bank garnishment. These payments include Social Security Administration
11 benefit payments protected under 42 U.S.C. § 407 and 42 U.S.C. § 1383(d)(1), Veterans
12 Administration benefit payments protected under 38 U.S.C. § 5301(a), Railroad Retirement
13 Board benefit payments protected under 45 U.S.C. § 231m(a) and 45 U.S.C. § 352(e), and Office
14 of Personnel Management benefit payments protected under 5 U.S.C. § 8346 and 5 U.S.C. §
15 8470. Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. parts 212.1 *et*
16 *seq.*

17
18 “Garnishee.” For an explanation of the “[complaint][motion]” construction, see the first note
19 after section 203.

20
21 “Lookback period.” Two months is the same look-back period as under the federal regulation for
22 federal benefit payments. Garnishment of Accounts Containing Federal Benefit Payments, 31
23 C.F.R. part 212.3. Thus, it is familiar to banks and aligns with the account review they are
24 already required to perform under federal law.

25
26 “Ordered deduction” is a broad term that encompasses both garnishment under article 2 of this
27 act (which is limited to debt garnishment) and “garnishment” for other purposes, such as child
28 support and federal or state taxes.

29
30 “Organization” limits the definition of “bank” to non-individuals. It comes from the U.C.C.

31
32 “Person” is a standard ULC definition.

33
34 “Record” is a standard ULC definition.

35
36 “Send” is drawn from a similar definition in U.C.C. § 9-102(a)(74). Subsection (B) is intended
37 primarily to permit email or other electronic forms of notice. Subsection (C) is intended
38 primarily to permit a record to be hand-delivered.

39
40 “Sign” is a standard ULC definition.

41
42 “State” is a standard ULC definition.

43
44 “Support order.” This definition follows the definitions that define the coverage of the Uniform
45 Interstate Family Support Act (UIFSA). An alternative would be to define “support order” to
46 mean an order enforceable under UIFSA, which every state has adopted. This would perhaps be

1 even clearer about the intent (which is to exclude support orders governed by UIFSA). But the
2 Joint Editorial Board for Uniform Family Laws has expressed its support for this definition, so
3 that is the one included in this act.

4
5 **[ARTICLE] 2**

6 **GARNISHMENT OF EARNINGS**

7 **SECTION 201. SCOPE.**

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

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

11 (c) Except as otherwise provided in Section 212, this [article] does not apply to an
12 ordered deduction that is not a garnishment, including an ordered deduction under:

13 (1) an order of a bankruptcy court;

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

15 (3) a support order[; or

16 [(4) other specified ordered deductions].

17 **Reporter's Notes**

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

26
27 **SECTION 202. CHOICE OF LAW.**

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

30 (b) Subsection (a) does not apply if the employer is subject to personal jurisdiction in this

1 state but not in the state of the debtor’s principal place of work.

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

5 **Reporter’s Notes**

6
7 The primary goal of this forum selection rule is convenience for the debtor and employers. In the
8 absence of a forum selection rule, jurisdiction would lie based on whether the *employer* was
9 subject to personal jurisdiction. *See* Restatement (Second) of Conflict of Laws § 68 (Am. Law
10 Inst. 1971). This would permit a creditor to file a garnishment action in a state quite inconvenient
11 to the debtor. For example, a creditor could sue a national corporation in California where it has
12 operations even though the employee is employed by that corporation in Nebraska. As this
13 example illustrates, a secondary goal of the forum selection rules is to limit forum shopping.

14
15 **General structure of the section.** If the act were limited to true employees, it would be quite
16 rare for a situation to arise in which an employer has employees in a state but there is no personal
17 jurisdiction over the employer. But these situations would be less rare for independent
18 contractors.

19
20 To handle this situation, the basic structure of the section is (1) to permit the action to be filed in
21 a state other than the employee’s principal place of work, (2) to permit the court to use its own
22 state’s garnishment procedures, but (3) to require it to apply the exemptions from and limits on
23 garnishment of the state of the employee’s principal place of work. Using the state’s own
24 procedures is standard procedure for a host of reasons. But the foreign state has the strongest
25 interest in the level of protection for workers within its jurisdiction. Consequently, subsection (c)
26 directs the court to apply the exemptions and limits of the debtor’s principal place of work. The
27 subsection follows the lead of the Uniform Interstate Family Support Act (UIFSA) in two ways.
28 First, that act uses “principal place of employment” without further delineation as the criterion
29 for making the choice of law decision. (We have expanded the term to “principal place of work”
30 to accommodate the expansion of the act to cover some non-employees.) Second, UIFSA
31 requires the court to defer to the law of the state of the principal place of employment to
32 determine the level of protection for the family-support obligor. UIFSA § 502(d). Having said
33 that, it should be noted that UIFSA, balancing a different set of concerns, also requires deferral
34 to the other state on other limited matters.

35
36 **Subsection (a).** The phrase “when the action is commenced” signals that if an employee is in
37 State A when the action is filed there and then the employee is transferred to State B (but is still
38 working for the same employer), the garnishment action would continue in State A. This is in
39 mild conflict with the notion that the state where the employee works is the one whose limits and
40 exemptions should apply because in this scenario the court in State A will be applying State A’s
41 limits and exemptions even though the employee is now in State B. But the alternatives are
42 inefficient and those inefficiencies outweigh this state-interest concern. The inefficient

1 alternatives are (1) to have State A dismiss its garnishment at the time of the transfer and force
2 the creditor to file a new action in State B or (2) to require the State A court to have a hearing to
3 begin to apply State B's limits and exemptions at the time of the transfer.

4
5 **SECTION 203. COMMENCEMENT OF GARNISHMENT ACTION.**

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

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

9 (1) on the registered agent if the garnishee has a registered agent that can be
10 served with reasonable diligence under [cite state law on registered agents]; or

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

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

13 (1) the name of the debtor;

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

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

18 (4) a completed notice that satisfies Section 208;

19 (5) a Notice of [insert state name] Rules about Garnishment that satisfies Section
20 209;

21 (6) the name of and contact information for the creditor's agent to whom the
22 garnishee is required by Sections 204(1) and (2)(A) and 207(c) to send information; and

23 (7) the mailing address to which the garnishee must send amounts withheld and,
24 at the creditor's option, a statement of other reasonable means of sending the amounts to the
25 creditor.

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

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

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

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

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

10 ***Legislative Note:*** *This section reflects the Committee’s recommendation of a one-time up-front*
11 *fee. The reasons for that recommendation are discussed in the Reporter’s Note below. But some*
12 *states currently have and may prefer to keep other fee structures. This note will provide a*
13 *roadmap for states that want to pursue any of the other three fee possibilities (no fee, per-*
14 *payment fee only, up-front and per-payment fees). The no-fee option requires only that*
15 *subsection (d)(2) be deleted, but the two options that include a per-payment fee require changes*
16 *to a number of provisions of the act.*

17
18 **Reporter’s Notes**

19
20 ***General comment on structure.*** In general, garnishment can commence in one of two ways: (1)
21 as a method of execution on a judgment that is part of the original action against the debtor (so it
22 would begin with something called a motion or a writ to implead the employer) or (2) as an
23 independent action against the employer to collect on a prior judgment (so it would begin with a
24 complaint). Our act is neutral on which method a state uses and is intended to accommodate
25 either or, indeed, any approach a state specifies for beginning a garnishment action. Hence, the
26 bracketed “[complaint][motion]” construction. A legislative note will instruct legislative drafters
27 that they should insert for “[complaint][motion]” the appropriate action specified by state law for
28 commencing a garnishment action.

29
30 A professional responsibility issue provides one rationale for the extra-judicial nature of most of
31 this procedure. Professional responsibility rules prohibit non-attorneys from responding in court
32 to garnishment proceedings. Thus, when garnishment enters a court, a strict application of those
33 rules would require employers to retain a lawyer, which greatly increases the cost of garnishment
34 for employers. (For a time, this was a contentious issue in Georgia.) The solution here is a
35 procedure which permits the garnishee/employer to respond and comply outside of court.
36 Consequently, in a normal, uncomplicated garnishment, an employer would be able to have non-
37 lawyer payroll administrators manage the process and avoid the need for an attorney.

1 This extra-judicial procedure is analogous to a normal interrogatory process. In most states,
2 interrogatories can be served with a complaint and the responses do not need to be filed in court.
3 As a result, a procedure like this should not be unfamiliar in most states.
4

5 **Subsection (b)(1).** The “reasonable diligence” language tracks language in the Model Registered
6 Agents Act, § 13(b), which also requires service on the registered agent if the agent can be
7 served with reasonable diligence, but otherwise permits service according to applicable judicial
8 rules and procedures.
9

10 **Subsection (d)(1)(A).** This information is necessary to enable employers, especially large
11 employers, to determine the person’s identity. On the other hand, the information is confidential
12 and subject to abuse. This section requires the creditor to provide the information to the
13 employer, but in a manner that otherwise protects its confidentiality. Most states have practices
14 and procedures for dealing with this type of information. *See, e.g.,* Neb. Ct. Rules art. 15 § 6-
15 1521 (providing a special form and procedure for dealing with this type of information). This
16 subsection will be accompanied by a legislative note that asks drafters to align this requirement
17 with the particular practices and procedures in their states for dealing with this type of sensitive
18 information.
19

20 **Subsection (d)(1)(B).** Employers may not have birth dates and social security numbers for
21 “employees” who are covered by the Act under Section 102(12)(B). However, the creditor may
22 have other information about those individuals that will help the employer ensure identity, such
23 as an employer identification number or an individual taxpayer identification number. This
24 subsection encourages but does not require creditors to provide additional information to assist
25 identification.
26

27 **Comment on administrative fees, subsection (d)(2).** Currently, most states provide for
28 administrative fees (31 states), although a substantial minority do not (19). Of those that provide
29 for administrative fees, 9 states have a one-time, up-front fee; 18 have some variation of a per-
30 payment fee; and 2 have both an up-front and a per-payment fee. (Two states have per-payment
31 fees that are limited idiosyncratically.) The drafting committee had divergent views on what to
32 do about fees, but the final resolution was to have the act provide for a one-time up-front fee.
33

34 On the issue of whether there should be a fee at all, there was general consensus on the
35 committee that some fee was appropriate. The employer in these situations is a third party
36 mediating between its employee and a creditor. The committee thought it made sense to relieve
37 the employer of at least some of the cost of this uninvited mediation service.
38

39 Having made that determination, the committee decided that a one-time up-front fee was
40 preferable to the alternatives of either per-payment fees alone or both an up-front fee and per-
41 payment fees. For the employer, a one-time fee can provide the same relief from the unwelcome
42 costs of garnishment as per-payment fees if the one-time up-front fee is set at a level that
43 approximates the total returns of the multiple-fee alternative. But the one-time fee approach has
44 two advantages. First, it is significantly more efficient both because it only has to be paid once
45 and because it does not necessitate a variety of additional provisions at other points of the act to
46 accommodate it. (As indicated by the legislative note, per-payment fees require changes to

1 several other provisions of the act.) Second, it is fairer in some circumstances. For example, a
2 large number of payments may be required when individual payments are low because debtors
3 do not make much money. Indeed, it is possible in some circumstances, that the fee could exceed
4 the amount paid to the creditor to service the debt. As a result, the poorest debtors may often pay
5 the highest fees under a per-payment fee schedule. This possibility troubled the committee.

6
7 But having determined that it preferred a one-time up-front fee, the committee also recognized
8 that some states already have per-payment fees and will want to continue them. Incorporating a
9 per-payment fee schedule into the act is not uncomplicated as it involves changes to several
10 provisions of the act. Thus, to accommodate those states, the legislative note will provide a set of
11 changes that incorporates per-payment fees into the act.

12 13 **SECTION 204. GARNISHEE INITIAL RESPONSE TO GARNISHMENT**

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

16 (1) if one of the following grounds applies, the garnishee shall send to the agent named
17 under Section 203(c)(6) a notice stating the applicable ground:

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

19 (B) the debtor's principal place of work is not in this state;

20 (C) the [complaint][motion] does not contain all the information required by
21 Section 203(c);

22 (D) the [complaint][motion] is not accompanied by the separate document
23 required by Section 203(d)(1) or the document does not contain all the required information; or

24 (E) the [complaint][motion] is not accompanied by the fee required by Section
25 203(d)(2); or

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

27 (A) send the agent named under Section 203(c)(6) a notice that includes:

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

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

1 (iii) the name of and contact information for the garnishee's agent to
2 whom the creditor must send information if required by Section 206(d) and (f) or 213(b)(2); and

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

6 (B) send the employee a copy of the notices provided to the garnishee under
7 Section 203(c)(4) and (5).

8 **SECTION 205. BEGINNING OF GARNISHMENT.** If Section 204(2) applies, the
9 employer shall begin garnishment on the first payday that occurs at least [30] days after the
10 employer sends the employee the notices under Section 204(2)(B).

11 **SECTION 206. ACTION DURING PENDENCY OF GARNISHMENT.**

12 (a) Not later than [five] business days after withholding an amount from the earnings of
13 an employee pursuant to a garnishment action, the employer shall send the amount to the creditor
14 at the mailing address specified under Section 203(c)(7) or, at the employer's option, by another
15 means specified by the creditor under Section 203(c)(7).

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

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

21 (d) At any time before termination of a garnishment action under Section 207(b), a
22 creditor may send to an employer a notice requiring the employer to change its records to
23 indicate an increase or decrease in the amount owed. The creditor shall send the notice to the

1 agent named under Section 204(2)(A)(iii).

2 (e) An employer that receives a notice under subsection (d) shall send the employee a
3 copy of the notice or a completed calculation worksheet under Section 210.

4 (f) For each payday on which a garnishment occurs, the employer shall maintain a record
5 sufficient to prepare for each creditor a calculation worksheet under Section 210. At any time, an
6 employee or creditor may request in a record a completed calculation worksheet. The creditor
7 shall send the request to the agent named under Section 204(2)(A)(iii). Not later than [five]
8 business days after receipt of a request, the employer shall send without charge a calculation
9 worksheet for the most recent payday. The employer is not required to provide:

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

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

14 **SECTION 207. TERMINATION OF GARNISHMENT ACTION.**

15 (a) Not later than [21] days after receiving notice under Section 204(1), a creditor shall
16 seek dismissal of the garnishment action or a prompt hearing under Section 402 to determine
17 whether the garnishee is required to proceed under Section 204(2).

18 (b) A garnishment begun under Section 205 terminates when:

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

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

22 (c) Not later than [21] days after the first day on which a debtor is no longer an employee
23 of the garnishee, the garnishee shall send the agent named under Section 203(c)(6) notice of the

1 cessation of employment.

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

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

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

6 **SECTION 208. NOTICE TO EMPLOYEE OF GARNISHMENT; FORM.**

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

9 (b) The notice required by Section 203(c)(4) must be in substantially the following form:

1 **Notice of Garnishment:**
2 **Money Might Be Taken from Your Pay Because You Owe Money**
3

4
5 You are getting this notice because [name of creditor] says you
6 owe them money.

7
8
9
10
11
12
13 **1. Why Am I**
14 **Getting This**
15 **Notice?**

- [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.
- [Name or shortened name of creditor] filled out this form. 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 your pay is being garnished.

16
17
18
19
20
21
22
23 _____ The amount you owe originally comes from a debt you
24 owed to [insert name of original creditor].

25
26
27
28 **2. How Much**
29 **Do I Owe?**

[Name or shortened name of creditor] says you currently owe \$[state amount]. The amount could go up if there are more court costs or additional interest. The amount also could go down if you make payments to [name or shortened name of creditor].

30
31
32
33
34
35
36
37 **3. How Will**
38 **The Amount I**
39 **Owe Be Paid?**

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.

The rules about how much of your pay can be taken are explained in the Notice of [insert name of state] Rules About Garnishment that you received with this notice.

40
41
42
43
44
45 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.

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27

You have three options:

1. *Contact [insert name or shortened name of creditor].* You should consider doing this first because 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]

**4. What Options
Do I Have?**

2. *Get 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]

3. *Ask the court to hold a hearing.* A hearing could be helpful if there are any disagreements about the garnishment, for example, if you don’t think you owe money. To ask for a hearing, contact the court and [insert name or shortened name of creditor]:

- Write to [insert name and address of Clerk of Courts]. You can do this without a lawyer.
- Send a copy of your request to [insert name or shortened name of creditor].

**5. What If I
Don’t Do
Anything?**

If you don’t do anything, the law requires that money be taken out of your pay every payday and given to [insert name or shortened name of creditor]. This process continues until you have paid off your debt.

1 **Reporter’s Notes**

2
3 *Expert Advice.* This notice form reflects advice we received from experts. The ULC aided by
4 generous grants from the ULF and the American Payroll Association engaged the services of the
5 Plain Language Group, which helped develop this notice and then tested it with a focus group of
6 individuals drawn from target populations. The notice was then revised to take into account the
7 reactions of the focus group.

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

18 **SECTION 209. NOTICE OF [INSERT NAME OF STATE] RULES ABOUT**

19 **GARNISHMENT.** The notice required by Section 203(c)(5) must:

20 (1) have a heading stating that it is the Notice of [insert name of state] Rules About

21 Garnishment; and

22 (2) reasonably inform an employee of:

23 (A) the limits on wage garnishment under Section 211;

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

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

27 **Reporter’s Notes**

28 *Due Process.* [Note that proper notice of this information is required by the due process clause,
29 citing cases.]

30 *Readability.* [This note will emphasize how important it is to ensure that this notice and other
31 notices required by the act are easy to read. To ensure that notices are easy to read, drafters must
32 take into consideration a variety of factors including whether the notice will appear in print or
33 on-line, font size, background colors and shading, paper weight, headers, formatting, access for
34 those with visual disabilities, and accessibility for non-native speakers. A related consideration is

1 to ensure that the forms are easy to scan and store electronically, which may raise additional
2 considerations relating to paper size and margins. Large payroll processors often maintain these
3 types of records electronically.]
4

5 **Non-Uniformity.** This form will be non-uniform for two reasons. First, as we discuss in section
6 211 below, we intend to permit states to provide varying levels of protection to debtor/employees
7 under the standard exemption provision. Second, states currently have a variety of other
8 exemptions. We do not anticipate suggesting to states that they eliminate these other exemptions.
9 States will need to customize the form to accommodate their own particular set of exemptions.
10 We anticipate that a standard form will be prepared in each state that reflects that state's
11 particular set of limits and exemptions.
12

13 **SECTION 210. CALCULATION WORKSHEET.** A calculation worksheet required

14 under Section 206(e) or (f) must be in substantially the following form:

15 **Notice of Garnishment**

16 Debtor:
17 Creditor:
18 For Earnings Paid on:
19

20 **Calculation of Amount Garnished for this Payday**

21 Disposable Earnings:

- 22
23
- | | | | |
|----|----|---------------------------------|---------|
| 24 | 1. | Gross Earnings Paid to Debtor | \$_____ |
| 25 | | | |
| 26 | 2. | Amounts Withheld: | |
| 27 | | | |
| 28 | | a. Federal social security tax: | \$_____ |
| 29 | | b. Federal Medicare tax: | \$_____ |
| 30 | | c. Federal income tax: | \$_____ |
| 31 | | d. State income tax: | \$_____ |
| 32 | | e. City or local tax | |
| 33 | | f. Railroad retirement tax: | \$_____ |
| 34 | | g. Other: | \$_____ |
| 35 | | | |
| 36 | 3. | Total Amounts Withheld | \$_____ |
| 37 | | (Sum of items in line 2) | |
| 38 | | | |
| 39 | 4. | Disposable Earnings | \$_____ |
| 40 | | (Line 1 minus line 3) | |
| 41 | | | |

1 Garnishment Calculation:

- 2
- 3 5. [__]% of Disposable Earnings (line 4) \$_____
- 4
- 5 6. Exemption Amount \$_____
- 6
- 7 7. Line 4 minus line 6 (if less than \$0, enter \$0) \$_____
- 8
- 9 8. Enter smaller of line 5 or line 7 \$_____
- 10
- 11 9. Amounts of Other Current Garnishments with Higher
- 12 Priority (if none, enter \$0) \$_____
- 13
- 14 10. Subtract line 9 from line 8 (if less than \$0, enter \$0) \$_____
- 15
- 16 11. Enter the number of Other Current Garnishments
- 17 with the Same Priority, plus one _____
- 18
- 19 12. Divide line 10 by line 11 \$_____
- 20

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

22

23 **Statement of Amount Due and Paid**

24

- 25 13. Total Amount Currently Claimed by Creditor: \$_____
- 26
- 27 14. Amounts Paid Through Garnishment:
- 28
- 29 a. Prior Garnishments \$_____
- 30
- 31 b. This Garnishment \$_____
- 32 (Line 12)
- 33
- 34 c. Total Garnishments \$_____
- 35
- 36
- 37 15. Net Amount Owed After \$_____
- 38 Garnishments to Date
- 39 (Line 13 minus line 14c)
- 40

41 **SECTION 211. LIMITS ON WAGE GARNISHMENT.**

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

43 of:

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

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

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

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

13 **Reporter’s Notes**

14
15
16 **Bracketed numbers.** We would provide guidance to states on the bracketed blank in subsection
17 (a)(1) and the bracketed “state multiple” in subsection (a)(2). First, states cannot make the
18 bracketed percentage more than 25%, nor can they decrease the bracketed multiple below 30
19 times the federal minimum wage. Federal law requires at least these levels of protection. On the
20 other hand, federal law permits state garnishment law to provide greater protection for
21 debtor/employees. So, for example, if a state wants to permit only 20% of disposable earnings to
22 be subject to garnishment or wants to limit garnishment to amounts above 40 times the federal
23 minimum wage, those adjustments would be permissible.

24
25 **Subsection (b).** The four-and-one-third calculation is the one specified by the Department of
26 Labor under the Consumer Credit Protection Act, 29 CFR § 870.10(c)(2).

27 **SECTION 212. MULTIPLE ORDERED DEDUCTIONS.**

28
29 (a) If more than one ordered deduction is in effect against an employee of an employer,
30 the following rules apply:

31 (1) For ordered deductions with higher priority than a garnishment, the garnishee
32 shall send withheld earnings to persons entitled to the deductions before sending any withheld

1 earnings under paragraph (2) or (3). The garnishee shall send any amounts remaining after
2 payment under this paragraph in accordance with paragraphs (2) and (3).

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

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

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

12 **Reporter's Notes**

13
14 The examples below help explain how these priorities would work:

15
16 Example 1. On a given payday, the following garnishments are in effect with employer
17 against employee: one by Creditor A, commenced a year ago with a remaining unpaid claim of
18 \$5,000; one by Creditor B, commenced four months ago with a remaining unpaid claim of \$500;
19 and one by Creditor C, commenced 45 days ago with a total claim of \$150 which is wholly
20 unpaid. No other ordered deductions are in effect against employee and on this payday \$300 is
21 available for remittance. Subsection (a)(2) requires the employer to pay \$100 each to Creditors
22 A, B and C.

23
24 Example 2. Same facts as in Example 1, except that the payments in Example 1 have
25 already been made; consequently Creditor A is now owed \$4,900, Creditor B \$400, and Creditor
26 C \$50. The next payday has now arrived and on this payday another \$300 is available for
27 remittance. Subsection (a)(2) requires the employer to pay \$50 to Creditor C, \$125 to Creditor
28 A, and \$125 to Creditor B.

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

33

1 **SECTION 213. COMPLIANCE PROCESS.**

2 (a) In this section, “receiving the motion” means:

3 (1) in the case of a claim against a garnishee by a debtor, receiving the motion
4 filed under subsection (b)(1); and

5 (2) in the case of a claim against a garnishee by a creditor, receiving a copy of the
6 motion pursuant to subsection (b)(2).

7 (b) A garnishee is not liable for a sanction under Section 214 unless:

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

10 (2) if a creditor files the motion under paragraph (1), the creditor sends a copy of
11 the motion to the agent named under Section 204(2)(A)(iii); and

12 (3) the garnishee fails:

13 (i) to send the information required by Section 204(1) or (2)(A), or (2)(B),
14 as applicable, not later than [10] business days after receiving the motion;

15 (ii) to begin garnishment under Section 205 not later than [21] days after
16 receiving the motion or, if no payday occurs between [six] and [21] days after receiving the
17 motion, on the next payday later than [21] days after receiving the motion; or

18 (iii) to remit to the creditor, not later than [five] business days after
19 receiving the motion, the amount that has been withheld from the earnings of the debtor since
20 garnishment began under Section 205 but not properly remitted to the creditor under Section
21 206(a).

22 (c) For good cause, the court may waive all or any part of the amounts otherwise due
23 under Section 214.

1 **SECTION 214. GARNISHEE SANCTIONS FOR NONCOMPLIANCE.**

2 Subject to Section 213, the following rules apply:

3 (1) A garnishee that fails to comply with Section 204 is liable to the creditor for \$[20] for
4 each day beginning [22] days after service of the [complaint][motion]:

5 (A) until the garnishee sends the information required by Section 204(1); or

6 (B) until the earlier of the day the garnishee sends the information required by
7 Section 204(2) or garnishment is required to begin under Section 205.

8 (2) A garnishee that fails to comply with Section 205 is liable to the creditor for the
9 amount that should have been withheld pursuant to that section and sent to the creditor.

10 (3) A garnishee that fails to comply with Section 206(a) is liable to the creditor for:

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

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

16 (4) A garnishee that fails under Section 206(e) to send a calculation worksheet or a copy
17 of the notice received from the creditor is liable to the employee for \$[5] for each day beginning
18 on the payday when the worksheet or notice should have been sent and ending the day before the
19 garnishee sends the worksheet or notice.

20 (5) A garnishee that fails to comply with a request for a calculation worksheet under
21 Section 206(f) is liable to the employee or creditor for \$[5] for each day beginning [six] business
22 days after the request and ending the day before the garnishee sends the worksheet.

23 (6) A garnishee that fails to comply with Section 207(c) is liable to the creditor for \$[5]

1 for each day beginning [22] days after the first day on which the debtor is no longer an employee
2 of the garnishee and ending the day the notice is sent.

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

7 **Reporter's Notes**

8
9 **Amounts.** The amounts are bracketed because the need for uniformity is low. In setting them,
10 however, it is important to keep in mind that they do not represent compensation for harm;
11 rather, since they go to reduce debt, any amounts paid are a windfall for debtors. The key
12 consideration in setting them is to encourage garnishees to comply with the act. The amounts
13 would be most successful if they ensured proper behavior and, as a result, never needed to be
14 paid.

15
16 **Paragraph (7).** The issue of what to do when the sanctions exceed the debt presents two issues.
17 First, should a payment be required at all in this circumstance? On the one hand, the debt seems
18 like a reasonable limit on the scope of the garnishee's liability. On the other hand, these penalties
19 are intended to encourage garnishees to follow the rules. If they are waived when they exceed the
20 amount of the debt, the penalties would not provide much of a compliance incentive for small
21 debts or at the end of the life of a garnishment. Second, if the determination is made that an
22 amount ought to be paid even if it exceeds the amount of the debt (to create the proper set of
23 incentives), then a decision would have to be made about who would get the money. Since the
24 money is to incentivize the garnishee rather than to compensate someone for an injury, the
25 amount would be a windfall for whoever received it. The drafting committee decided to limit the
26 amount of the sanction to the amount of the debt (the first issue); consequently, it did not need to
27 consider the second issue.

28 **[ARTICLE] 3**

29 **GARNISHMENT OF BANK ACCOUNTS**

30 **Reporter's Notes**

31
32
33 This article arose out of concern that debtors would be little better off if the garnishment statute
34 protected part of their wages, but then the creditor could immediately recoup the rest by
35 garnishing the debtor's bank account. Our consumer and banker representatives noted that if that
36 were a possibility it would also discourage employees from participating in the banking system.

37
38 The article is structured to follow the federal regulation on garnishment of bank accounts

1 containing federal benefit payments, such as social security and railroad retirement benefits.
2 Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. parts 212.1 *et seq.*
3 That regulation requires banks to do an “account review” and protects federal benefits deposited
4 into accounts during a “lookback period.” The definitions of those terms in this act follow the
5 definitions in the federal regulations. The procedures of Sections 302 and 303 also closely track
6 the federal regulation. The federal regulation is non-preemptive and specifically recognizes the
7 validity of state laws that are consistent with federal law and more protective. *Id.* at part
8 212.9(b). As a result, the procedure and concepts here should be both permissible under federal
9 law and familiar to banks.

10
11 We have structured the article to closely align with our primary mission, which is regulation of
12 wage garnishment. As a result, the exemption only applies if the account contains earnings that
13 have already been subjected to some type of prior garnishment within the lookback period,
14 including garnishments governed by Article 2. Similarly, the amount protected under this article
15 is closely tied to those earnings.

16
17 Thirty-five states currently provide some type of garnishment protection for bank depositors. But
18 the nature and scope of the protection varies considerably between states. *See* National
19 Consumer Law Center, No Fresh Start, at 23-26, 39-40 (2013), available at
20 www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf. In addition to providing needed
21 additional protection for debtors, this section would also supply national uniformity to the bank-
22 garnishment system.

23
24 **SECTION 301. BANK OBLIGATION WHEN ORDER ACCOMPANIED BY**

25 **NOTICE.** If a bank is served with a bank-garnishment order from the United States or a state
26 child support enforcement agency accompanied by a notice of right to garnish federal benefits,
27 the bank shall follow its customary procedures for handling the order and has no obligation
28 under this [article].

29 **SECTION 302. FREEZING OF FUNDS; ACCOUNT REVIEW.**

30 (a) Except as provided in Section 301, a bank served with a bank-garnishment order not
31 later than two business days after being served with the order shall perform an account review
32 for each account subject to the order.

33 (b) If the bank determines from an account review that the funds in the account are equal
34 to or less than the federally protected amount, the bank shall follow its customary procedures for
35 handling the bank-garnishment order and has no further obligation under this [article].

1 (c) If subsection (b) does not apply and the account contains a federally protected
2 amount, the bank shall provide the account holder full and customary access to the federally
3 protected amount and shall freeze the remaining funds in the account.

4 (d) If subsection (b) does not apply and the account does not contain a federally protected
5 amount, the bank shall freeze all funds in the account.

6 (e) Subsections (c) and (d) are subject to [Section 4-303 of the Uniform Commercial
7 Code].

8 (f) If subsection (c) or (d) applies, the bank shall send the notice required by Section
9 303(a)(1) or (2).

10 **Reporter's Notes**

11
12 The timing of the freezing of the account follows the federal regulation. That regulation requires
13 that financial institutions perform the account review prior to taking “any other actions” related
14 to the garnishment that may affect funds in the account. Garnishment of Accounts Containing
15 Federal Benefit Payments, 31 C.F.R. part 212.5(e). Thus, under federal law, as under this act, the
16 account is only frozen after the initial (and quick) account review. The federally protected
17 amount in an account, if any, is never frozen.

18
19 The federal regulation permits one exception to the time limit of two business days. It permits an
20 unspecified longer period of time in cases where the financial institution receives “a batch of a
21 large number of orders,” provided that the creditor who initiated the orders permits the longer
22 review period and it is consistent with the terms of the garnishment orders. *Id.* at 212.5(a)(2).
23 The federal regulation provides no guidance on the meaning of a “batch of a large number of
24 orders,” but the exception appears to be designed to address orders that come from government
25 agencies, such as state child support agencies, which might be inclined to permit a longer time
26 period for comity reasons. *See* Ted Teruo Kitada, The Updated Federal Garnishment Rule, at 12
27 (Jan. 7, 2014). Since the exception requires creditor approval, it would be unlikely to apply to
28 debt garnishment orders. Thus, we have not included it in this article.

29 **SECTION 303. NOTICE TO ACCOUNT HOLDER.**

30
31 (a) Not later than three business days after an account review required by Section 302(a),
32 a bank shall:

33 (1) if Section 302(c) applies, send to the account holder the notice required by

1 federal law amended to include:

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

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

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

6 (2) if Section 302(d) applies, send to the account holder a notice that contains:

7 (A) a statement that the bank has been served with a bank-garnishment
8 order;

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

10 (C) a succinct explanation of garnishment;

11 (D) the account subject to the order;

12 (E) a statement that the bank is required by state law to freeze funds in the
13 account to satisfy the order and of the amount frozen, if any;

14 (F) the amount of any garnishment fee charged to the account;

15 (G) a statement of the account holder’s right to claim under this [article]
16 an exempt amount;

17 (H) an explanation of the process for claiming the exempt amount;

18 (I) the beginning date of the lookback period;

19 (J) the right of the account holder to consult an attorney or legal aid
20 service;

21 (K) the name of the creditor and, if contact information is included in the
22 bank-garnishment order, the means of contacting the creditor; and

23 (L) the means of contacting the bank.

1 (b) A notice complies with subsection (a)(1)(A) through (C) or (a)(2)(G) through
2 (I) if it states substantially the following:

3 Are any earnings from work that were deposited into my account protected from
4 garnishment?

5 Earnings from work which have been deposited into your account are exempt
6 from garnishment if:

7 (1) money was deducted from the earnings to pay a
8 creditor; and

9 (2) the deposit was made on or after [bank to insert beginning date
10 of lookback period].

11 [Bank to add the following if the notice is issued pursuant to subsection (a)(1):

12 Any amounts protected from garnishment for this reason are in addition to
13 amounts protected from garnishment because they are federal benefit payments.]

14 What do I have to do to show that funds in my account are protected from garnishment?

15 To claim this protection, you must send us copies of pay records from
16 your work. If the account is jointly held, you may also send us copies of the pay
17 records of a joint account holder. The pay records must be for a payday that was
18 on or after [bank to insert beginning date of lookback period]. The pay records
19 must show that money was deducted to pay a creditor.

20 Send copies of the pay records to [bank to insert address to which pay
21 records must be sent].

22 You should act quickly. We must receive copies of the pay records not
23 later than [15] business days after the date this notice was sent to you. We will

1 review the pay records to determine whether any of the amounts in your account
2 are protected from garnishment.

3 If you do not send us pay records, your funds will remain frozen and may
4 be paid to your creditor. If you send us pay records, we may unfreeze some or all
5 of the funds and make them available for your use.

6 **Reporter's Notes**

7
8 This section closely follows the notice requirements contained in the federal regulation.
9 Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. part 212.7. This will
10 make it easy for banks to comply.

11
12 For subsection (a)(1), banks are directed to use the federal notice form that is included as
13 Appendix A to the federal regulation. The federal rules explicitly permit the form to be amended
14 to integrate information about a state's bank garnishment rules and protections. *Id.* at part
15 212.7(d).

16
17 Subsection (a)(2) applies in situations where federal law does not require the federal form to be
18 sent (because there is no federally protected amount). But the requirements of (a)(2) closely
19 follow the federal form, omitting only the parts that are specific to the federally protected
20 amount. The general idea is that banks will be able to comply easily by copying the federal form,
21 while omitting a paragraph or two to eliminate references to the federally protected amount and
22 adding a paragraph or two to integrate the state-based information.

23
24 To avoid confusion about our intention, we have copied the federal format even in circumstances
25 where our own preferences (and normal Uniform Law Commission practice) might ordinarily
26 push us in a different direction. For example:

- 27
- 28 • Subparagraph (a)(2)(C) calls for a "succinct explanation" of garnishment. Ordinarily,
29 we would be tempted to say a bit more to flesh out the meaning of "succinct." But we
30 left the statement as it was because (a) that is how it appears in the federal regulation;
31 (b) the form that is a part of the federal regulation provides a very good succinct
32 explanation of garnishment so using precisely the same language in the act will
33 permit banks to copy that part of the form with confidence that it will satisfy this
34 requirement; and (c) if we expanded on the language in this subparagraph, it would
35 call into question our treatment of other subparagraphs where we did not change the
36 federal language.
 - 37
38 • The notice form of subsection (b) is in a question-and-answer format. We may not
39 have done that otherwise, but the idea here is that this language can be inserted into
40 the federal form. The federal form uses a question-and-answer format. It should be
41 noted that the notice form in Section 208, produced with the help of a plain-language

1 expert, also uses a question-and-answer format; this is an approach the ULC might
2 consider for forms in other acts.

3
4 **SECTION 304. PROCESS FOR CLAIMING EXEMPT AMOUNT.**

5 (a) An account holder may claim an exempt amount by sending pay records that relate to
6 deposits made during the lookback period to the bank that maintains the account.

7 (b) There is no exempt amount if the bank does not receive the pay records required by
8 subsection (a) not later than [15] business days after the bank sends the notice required by
9 Section 303(a)(1) or (2).

10 (c) If there is no exempt amount, the bank shall follow its customary procedures for
11 handling the bank-garnishment order and has no further obligation under this [article].

12 **SECTION 305. BANK'S DETERMINATION OF EXEMPT AMOUNT;**
13 **ACCOUNT HOLDER'S RIGHT TO EXEMPT AMOUNT.**

14 (a) If a bank receives pay records under Section 304(a) within the time required by
15 Section 304(b), the bank not later than [five] business days after receipt shall examine each pay
16 record to determine whether:

17 (1) the pay record clearly reports an ordered deduction; and

18 (2) a deposit was made during the lookback period which corresponds with the
19 amount indicated by the pay record.

20 (b) An exempt amount is equal to the sum of all deposits reported on pay records that
21 satisfy subsection (a).

22 (c) An exempt amount includes deposits that satisfy subsection (b) even if:

23 (1) the person seeking the bank garnishment is different from the person that
24 received the payment from an ordered deduction reported under subsection (a)(1); and

25 (2) for an account with more than one account holder, the deposit is reported on

1 the pay record of an account holder other than the account holder named in the bank-garnishment
2 order.

3 (d) If a bank determines that an account contains an exempt amount, the bank not later
4 than [two] business days after the determination shall release the freeze required by Section
5 302(c) or (d) on the amount and provide the account holder with full and customary access to the
6 amount.

7 (e) An account holder is entitled to an exempt amount in addition to any federally
8 protected amount.

9 **SECTION 306. NO CONTINUING GARNISHMENT.** A bank may not garnish an
10 amount deposited or credited to an account following the date of an account review. The bank
11 may not freeze any funds subsequently deposited or credited to the account unless the bank is
12 served with a new or different bank-garnishment order.

13 **SECTION 307. SAFE HARBORS.**

14 (a) A bank's good-faith determination of an exempt amount is not subject to review.

15 (b) A bank that complies in good faith with this [article] is not liable:

16 (1) to a creditor that serves a bank-garnishment order on the bank for failing to
17 honor the order with respect to the amount the bank determines is the exempt amount;

18 (2) to an account holder for lack of access to frozen funds or customary clearing
19 and settling adjustments caused by the freezing of funds;

20 (3) for any penalties under law of this state other than this [act] for failing to
21 honor the bank-garnishment order with respect to the amount the bank determines to be the
22 exempt amount; or

23 (4) for errors that occur in complying with this [article] if the bank has reasonable

1 procedures to prevent errors.

2 (c) A bank is not required to disclose to a creditor or any other person information
3 contained in or obtained from pay records provided to the bank under this [article].

4 **Reporter's Notes**

5
6 Subsections (a) and (b) closely track the protections provided by federal law for banks when
7 dealing with federal benefit payments. 31 C.F.R. part 212.10.

8
9 Subsection (c) protects the privacy of account holders by insulating banks from any obligation to
10 disclose information contained in a pay record provided to them under this article.

11
12 **[ARTICLE] 4**

13 **GENERAL PROVISIONS**

14 **SECTION 401. CREDITOR SANCTIONS.**

15 (a) If a court determines that a creditor acted in bad faith in seeking a garnishment or
16 bank garnishment under this [act], the creditor is liable for:

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

18 (2) any amounts due under subsection (c); and

19 (3) reasonable attorney's fees, as determined by the court, of the garnishee and the
20 individual whose earnings or funds the creditor sought to garnish.

21 (b) A creditor acts in bad faith if it receives from a garnishee or an individual whose
22 earnings or funds the creditor sought to garnish a notice in a record stating that the garnishment
23 is wrongful and fails within [7] business days after receiving the notice to either:

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

27 (2) file a motion with the court requesting an expedited hearing to determine

1 whether the garnishment was wrongful.

2 If the creditor is represented by an attorney, the garnishee or individual must send the notice to
3 the attorney.

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

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

12 (e) For good cause, a court may waive all or part of the amounts otherwise due under
13 subsection (a).

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

17 **Reporter's Notes**

18
19 This section provides sanctions for creditor misconduct. Subsection (f) makes clear that it is not
20 intended to preempt other remedies that might be available under state tort law, or otherwise.
21 Additional remedies may also be available under the federal Fair Credit Protection Act, 15
22 U.S.C. §§ 1601 et seq.

23
24 **SECTION 402. HEARING.**

25 (a) A garnishee, creditor, debtor, or bank may request the court to hold a hearing at any
26 time to determine any issue arising under this [act].

27 (b) A debtor may request the court to hold a hearing at any time to claim an exemption

1 from or limit on garnishment or bank garnishment under law of this state other than this [act].

2 (c) A hearing requested under this section must be held promptly. The court may enjoin,
3 suspend, revise, or continue a garnishment or bank garnishment until the hearing can be held.

4 **SECTION 403. PROTECTION OF EMPLOYEE SUBJECT TO GARNISHMENT.**

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

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

9 **Reporter's Notes**

10
11 This type of provision is common in state garnishment statutes. The federal Consumer Credit
12 Protection Act also contains a provision like this, but this protection is broader in several
13 respects. This section provides protection regardless of the number of actual or potential
14 garnishments (the CCPA provides protection for only one garnishment); it provides protection
15 for both actual and attempted garnishments; and it provides protection for all adverse
16 employment actions, not just discharges. *Compare* CCPA, 15 U.S.C. § 1674(a). The employer
17 representatives on the drafting committee have expressed support for this expansion.

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

23
24 There are two main advantages of using a cross-reference to define these enforcement
25 procedures. First, it means this language can be short and sweet for a provision that is not likely
26 to be used very often. Second, it means that procedural issues that might arise under this statute
27 are likely to have already been well-ventilated under the state's fair employment practices
28 statute. Because Title VII defers to state discrimination procedures, all states (except Alabama)
29 have state procedures that cover the types of discrimination prohibited by Title VII. Alabama has
30 discrimination statutes that prohibit other types of employment discrimination (age and
31 disability). Thus, every state will have procedures to which reference could be made under this
32 section.

33
34 **SECTION 404. OTHER LAWS NOT LIMITED.** This [act] does not limit any law of
35 this state other than this [act] that otherwise limits or prohibits garnishment or bank garnishment.

1 **Reporter’s Notes**

2
3 This section preserves restrictions on garnishment or bank garnishment found elsewhere in state
4 law, including prohibitions on garnishment. Some states have such restrictions in their current
5 law. For example, South Carolina does not permit wage garnishments for debts arising from
6 consumer credit sales, consumer leases, consumer loans, or consumer rental-purchase
7 agreements. S.C. Code Ann. § 37-5-104. Thus, unless other changes are made, this provision
8 would preserve these limitations on garnishment. Similarly, several states prohibit wage
9 garnishment of people who receive public assistance or have “wild card” exemptions that might
10 apply.

11 **[ARTICLE] 5**

12 **MISCELLANEOUS PROVISIONS**

13 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

16 **SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
17 AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
18 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
19 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
20 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
21 U.S.C. Section 7003(b).

22 **Reporter’s Notes**

23
24
25 This is a standard section in Uniform Law Commission acts that provides an express defense for
26 this state act against preemption by the federal Electronic Signatures in Global and National
27 Commerce Act, 15 U.S.C. §§ 7001 et seq. (“ E-Sign”). E-Sign, enacted into federal law in 2000,
28 governs the legal validity of electronic records and signatures in private and governmental
29 transactions in the United States. In most circumstances, it applies to permit electronic signatures
30 to satisfy the statute of frauds even in states that otherwise retain paper or manual signature
31 requirements. 15 U.S.C. § 7001.

32
33 E-sign expressly permits states to “modify, limit, or supersede” its requirements if (a) the state
34 law is consistent with E-sign and (b) the state law makes “specific reference” to E-sign. 15
35 U.S.C. § 7002(a). This act has provisions that permit electronic records and signatures to be

1 used. Consequently, this provision is the “specific reference” required to ensure that these
2 provisions are covered by the non-preemption provision of E-sign. The probability of conflict
3 preemption for this act is very limited to non-existent in any event since the act has been drafted
4 to be consistent with E-Sign and the Uniform Electronic Transactions Act. But this standard
5 section satisfies the express technical requirements of E-sign to qualify for non-preemption, so it
6 provides even greater assurance that the act is not preempted by federal law. Finally, this
7 provision makes clear that this act does not attempt to modify, limit, or supersede provisions of
8 E-sign that permit states to continue to require non-electronic records and signatures in certain
9 situations. These situations include certain consumer contracts, notices to cancel important
10 services (such as utilities and health insurance), and notices of product recalls. 15 U.S.C. §§
11 7001(c), 7003(b). Since this act does not apply to those situations, these disclaimers are not
12 essential, but they are included anyway to protect against confusion and because this is a
13 standard ULC provision.

14
15 **SECTION 503. SAVINGS CLAUSE.** This [act] does not affect the validity or effect of
16 a garnishment action or an action seeking a bank garnishment order filed on or before [the
17 effective date of this [act]].

18 **SECTION 504. SEVERABILITY.** If any provision of this [act] or its application to
19 any person or circumstance is held invalid, the invalidity does not affect other provisions or
20 applications of this [act] which can be given effect without the invalid provision or application,
21 and to this end the provisions of this [act] are severable.

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

24
25 **SECTION 505. REPEALS; CONFORMING AMENDMENTS.**

- 26 (a)
- 27 (b)
- 28 (c)

29 *Legislative Note: Include in this section repeal of current state law regarding garnishment of*
30 *employers and any conforming amendments to general garnishment law and other creditor-*
31 *remedy statutes.*

32
33 **SECTION 506. EFFECTIVE DATE.** This [act] takes effect