



**To: Members, Assembly Committee on Financial Institutions**

**From: Attorney Vicky Selkove, Legal Action of Wisconsin**

**Re: 2017 Assembly Bill 476, eliminating the 13-week limit on the garnishment of earnings of certain debtors**

**Date: September 27, 2017**

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Legal Action of Wisconsin (LAW) is a nonprofit law firm. Our attorneys and staff provide free civil legal aid to low-income people in 39 Wisconsin counties, across a territory that extends from the southeastern corner of the state up through Brown County in the east and La Crosse County in the west.

Consumer law is one of LAW's priority areas and we work to counter the most egregious and predatory practices that target Wisconsin's low-income consumers. Many of the consumers we assist are people with disabilities, seniors, veterans, and low-income workers whose earnings are being garnished.

While the co-sponsorship memo introducing this bill describes it as helpful for victims seeking court-ordered restitution, if enacted, this bill would actually apply to all wage garnishments, not just those involving victims of a crime. While some judgment creditors, especially those represented by large and well-resourced law firms, might appreciate this change, we fear that overall this change will be harmful to low-wage workers and low-income debtors.

Our primary concern is that AB 476 will erode notice and protections currently provided to low-income debtors. The current 13-week limit on garnishment not only requires creditors to go back to court to 'refresh' or refile the garnishment action if payment has not been made in full after 13 weeks, but, just as important, it requires notice be sent to the worker whose wages are to be garnished. Every time the creditor obtains an earnings garnishment, under current law, the creditor must also deliver to the debtor a copy of that garnishment, a Debtor's Answer form, a blank copy of the Garnishment Exemptions Worksheet, and a blank copy of the Poverty Guidelines for Earnings. This is not an onerous process for the creditor: these documents can simply be sent via first class or certified mail to the debtor.

These protections and notices are particularly important for low-income debtors, whose incomes fluctuate frequently due to part-time, temporary, and seasonal work. Debtors whose household income is below the federal poverty level or who are receiving medical assistance, Food Share benefits, veterans benefits, or disability benefits are exempt from garnishment. The exemption is not automatic, though. The debtors have to be proactive and file a Debtor's Answer form with their employers, and, if needed, the creditors have a right to request proof at a hearing. These exemptions also do not erase the debtor's responsibility for judgments owed. However, these exemptions do protect the lowest-income workers and families from wage garnishments which would push them further into poverty, and often, into deciding to work underground instead,

depriving Wisconsin of income tax revenue, or to file for bankruptcy, denying all creditors any chance at payment of amounts owed.

Often, the first notice, Debtor's Answer form, and notice of these exemptions is sent to an old address – the address listed on the judgment itself, which may have been entered months or years prior to the wage garnishment action. Debtors frequently then do not receive this first notice, when the wage garnishment commences. But after the garnishment starts, the debtor will provide an updated address with the creditor, so at the end of the first 13 weeks of garnishment, the next garnishment notice does reach the debtor at a current address. This legislation's elimination of the 13-week time limit would also, unfortunately, eliminate that opportunity for notice to the debtor.

As an example:

We recently assisted a Rock County woman who called us wanting advice about filing for bankruptcy, which she saw as her only option against a wage garnishment. Her full-time job had been reduced to part-time hours, putting her income below the federal poverty level. Yet, she continued to have 20% of her paycheck garnished, leaving her unable to pay rent and having to move in with a friend. She had never received notice of the garnishment or the Debtor's Answer Form since her address had changed since the judgment had been issued. Due to this reduction in her earned income, we were able to help her file the Debtor's Answer form and prove that she was currently exempt. This stopped the garnishment for now and avoided bankruptcy, protecting her financial future, maintaining her employment, and ensuring that, in the future, her creditors have a better chance of getting payment.

We understand why some creditors might like the 13-week limit to be lifted; our concern about the impact of this change on low-income clients could be addressed simply by continuing to require creditors to still have to send notice, the Debtor's Answer form, and notice of exemptions to debtors at regular intervals, even if the creditor does not have to refile the garnishment action itself.

We appreciate the opportunity to share our concerns about this legislation with you today. Please do not hesitate to contact me if you would like to discuss this legislation in more detail. I can be reached at [vss@legalaction.org](mailto:vss@legalaction.org) or (608) 620-2011.



**State of Wisconsin • DEPARTMENT OF REVENUE**

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*Scott Walker*  
Governor

*Richard G. Chandler*  
Secretary of Revenue

September 27, 2017

**Testimony to the Assembly Committee on Financial Institutions on AB 476**

Chairman Katsma and members of the committee, thank you for the opportunity to testify on Assembly Bill 476, which eliminates the 13 week limit on the garnishment of earnings of certain debtors.

Currently, earnings garnishments are 13 weeks in duration, with ability to renew the garnishment at the end of the 13 week period. In some circumstances, the Department of Revenue (DOR) may file an earnings garnishments for delinquent taxes. If another creditor's garnishment is already in place at the time we send a garnishment to an employer, we wait until the end of that creditor's 13 week period before we start to collect. Then, at the end of our 13 week period, another creditor could start receiving payments. Therefore all creditors have the ability to receive some payment in a reasonable amount of time.

Under this bill, the first creditor to file an earnings garnishment would be able to collect on their debt until that creditor is paid in full. All subsequent creditors with garnishments would have to wait until the first creditor is paid. Therefore, if the first creditor has a very large debt balance, other creditors may have to wait a long time before trying to collect, and in fact may never receive payments. The first creditor to submit an earnings garnishment benefits the most as he will be paid in full before other creditors are paid. This may result in decreased collections to the Department.

Thank you again for the opportunity to discuss AB 476. I would be happy to take any questions.

# Rob Hutton

STATE REPRESENTATIVE • 13<sup>TH</sup> ASSEMBLY DISTRICT

September 27, 2017

To: The Assembly Committee on Financial Institutions  
From: Rep. Rob Hutton  
Re: Assembly Bill 476

## Testimony of Rep. Rob Hutton in Support of Assembly Bill 476

Mr. Chairman and members of the committee, thank you for giving Assembly Bill 476 a public hearing. This legislation comes as a result of one of my constituents bringing an issue to my attention that we thought had been resolved in previous legislation. Last session, 2015 WI Act 355, which was the result of a bill that I authored, was signed into law. This Act dealt with the prioritization of restitution payments and made changes to processes that would ease the burden on victims collecting restitution. One of these changes involved the process of wage garnishment. Prior to 2015 WI Act 355 if a victim filed to garnish the wages of an offender who owed them restitution they would have to refile every 13 weeks. This is a time consuming and paper work intensive process that also requires the victim to have to serve the offender with papers, every 13 weeks. The previous process led to victims having to choose between receiving what is rightfully owed to them or confronting their offender every 13 weeks. In order to make this friendlier to the victim and streamline the process of collecting restitution 2015 WI Act 355 eliminated the need to refile once every 13 weeks. Now someone who files will receive the wage garnishment until they receive their full amount owed.

Our intention was to have the 13 week refiling period eliminated across the board. However, Gerritt Holgerson, a constituent of mine, contacted my office earlier this year and inquired why he had to refile every 13 weeks. The previous legislation only affected wage garnishments of criminal restitution cases and not those in civil cases. AB 476, corrects this and eliminates the 13 week refiling period for all wage garnishments. I will also be introducing an amendment after discussion with DOJ that will prioritize criminal restitution wage garnishments over civil wage garnishments and debt collection, if more than one garnishment is filed, to maintain our commitment to helping victims become whole. Additionally, if multiple civil garnishments are filed on the same person this amendment would pay each entity equally based on the total amount that can be garnished. This will allow multiple entities to collect their owed garnishments, up to the total allowable percentage of garnished wages, instead of just a sole entity. This will prevent scenarios where one entity that is owed a large sum is the sole receiver of wage garnishments for an extended period of time while others who are owed receive nothing.

Thank you again for hearing AB 476 today. I believe this is an important change to ensure our commitment to helping make whole those who are victims of crimes and those who seek recourse through our civil justice system. I am happy to answer any questions that you may have.

Wisconsin State Assembly

Committee on Financial Institutions

Representative Rob Hutton

September 25, 2017

Re: Assembly Bill 476, Relating to: Eliminating the 13-week limit on garnishment of earnings of certain debtors

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I am Gerritt Holgerson, residing at 672 North 72<sup>nd</sup> Street, Wauwatosa, WI 53213

This statement follows my original contact to Representative Hutton's office on April 28, 2017. I regret that I am unable to attend the hearing, but offer this written statement.

I am a property owner with several residential rental units. I manage these directly, and follow the State of Wisconsin Department of Agriculture, Trade and Consumer Protection's "The Wisconsin Way – A Guide for Landlords and Tenants" in working with those who seek housing and ultimately rent from me. I generally do not need to use the court system leading to garnishment of wages, but have had more need to do so this past year.

State of Wisconsin Circuit Court Milwaukee County case number 2006SCO42005 Gerritt Holgerson vs David John Smejkal and Kelly Marie (Clemmer) Smejkal prompted my April 28 contact. After several periodic efforts over a near 10-year period to collect the unpaid judgment directly, I sought garnishment of David's wages. After much effort, I was successful in getting the initial 13-week garnishment on December 16, 2016. I collected \$601.03 of \$3,552.36 owed. The garnishment ended March 30, 2017, leaving \$2,951.33 uncollected.

I needed to obtain a judgment extension for an additional 10-year period, which I was granted on December 16, 2017, to have any hope of collecting this debt.

Again I initiated garnishment and received three checks totaling \$428.15. Because David's new spouse claimed to receive \$16.00 per month in FoodShare benefits, the garnishment checks stopped; garnishment ended June 12, 2017, leaving \$2,523.18 unpaid by the debtor.

I believe that, had the initial garnishment process continued, I would be on my way to collecting the whole amount due me. The initiation of a second garnishment effort caused the party to seek a way out of the garnishment, which he did successfully.

Anyone who has attempted to garnish wages knows that it takes much time, effort and patience, and maybe a little luck. I urge the Wisconsin Legislature will pass legislation that eliminates the 13-week limit on garnishment efforts.

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End.

September 27, 2017

Phillip Pratt  
Office of Rep. Hutton  
13<sup>th</sup> Assembly District

As President of the Wisconsin Victim witness Professionals, I would like to offer our support of LRB-3395/1.

We believe it is important to have consistency in the process for garnishments. Often times we encounter people who may not fall into the statutory definition of a "victim" but they must obtain a civil judgment against someone who may have wronged them.

As an example, in Sauk County a man driving a tractor down a public road crossed the center line and the equipment he was pulling cause \$13,000 damage to an oncoming truck. The driver of the tractor received a ticket for Operating Left of Center – a traffic forfeiture, not a crime.

He did not have insurance and she only had liability insurance on her truck. Her truck was an older vehicle that they had recently restored. NOW she is faced with this huge loss. She will need to get a civil judgment against this individual to recover her losses. In my eyes, she is still a victim. I think it's important that she be able to use the garnishment process with as little difficulty at possible. These amendments would lessen her involvement with the court process.

Again, thank you for allowing me the opportunity to provide this statement today. I was hoping to attend the hearing but other obligations here at the office did not allow that.

Thank you,

Laura Moffit  
Victim Witness Professionals President  
Sauk County Victim Witness