



## 2023 ASSEMBLY BILL 337

June 30, 2023 - Introduced by Representatives TUSLER, ALLEN, BEHNKE, CONLEY, GUSTAFSON, KITCHENS, MURPHY, O'CONNOR, PENTERMAN, RETTINGER, ROZAR, SPIROS and WICHGERS, cosponsored by Senators HUTTON, CABRAL-GUEVARA, WANGGAARD, BALLWEG and STROEBEL. Referred to Committee on State Affairs.

**AN ACT** *to repeal* 812.40, 812.405 and 812.42 (2) (b); *to renumber and amend*

812.39 (1) and 812.39 (2); *to amend* 812.33 (1), 812.35 (5), 812.35 (6), 812.38 (2), 812.44 (3) and 812.44 (4); and *to create* 812.39 (1) (a), 812.39 (1) (b), 812.39 (1) (c), 812.39 (2) (b), 812.39 (2m) and 812.395 of the statutes; **relating to:** eliminating the 13-week limit on the garnishment of earnings of certain debtors.

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### ***Analysis by the Legislative Reference Bureau***

This bill eliminates the 13-week limit imposed on the garnishment of earnings of certain debtors. Under current law, a creditor may file a garnishment notice with a court and pay a fee to a garnishee for the purpose of collecting an unsatisfied judgment for money damages from earnings owed to the debtor by the garnishee. Current law limits the number of weeks in which the earnings of a debtor, other than a debtor who is an employee of the state or a political subdivision of the state, may be garnished to 13 weeks.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**ASSEMBLY BILL 337****SECTION 1**

**SECTION 1.** 812.33 (1) of the statutes is amended to read:

812.33 (1) The creditor shall pay a \$15 fee to the garnishee for each earnings garnishment ~~or each stipulated extension of that earnings garnishment, except that~~ there is no fee for a garnishment to satisfy an order for restitution under s. 973.20 (1r). This fee shall be included as a cost in the creditor's claim in the earnings garnishment.

**SECTION 2.** 812.35 (5) of the statutes is amended to read:

812.35 (5) Upon being served, the garnishee shall determine whether the garnishee may become obligated to the debtor for earnings earned within pay periods beginning ~~within 13 weeks~~ after the date of service. If it is unlikely that the garnishee will become so obligated, the garnishee shall send a statement of that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment form under sub. (3). The creditor shall send a copy of this statement to the court within 7 business days after receipt of the statement.

**SECTION 3.** 812.35 (6) of the statutes is amended to read:

812.35 (6) If the garnishee may become obligated to the debtor for earnings earned within pay periods beginning ~~within 13 weeks~~ after the date of service, but one or more earnings garnishments against the debtor have already been served on the garnishee and not terminated, the garnishee shall ~~retain the earnings garnishment form and place the garnishment into effect the pay period after the last of any prior earnings garnishments terminates.~~ The garnishee shall notify the debtor of the amount of the garnishment and shall notify the creditor ~~of the amount owed on the pending garnishments~~ that one or more earnings garnishments are in

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effect against the debtor by the end of the 7th business day after receipt of the garnishment form under sub. (3). Unless s. 812.39 (2) or (2m) applies to the debtor, the garnishee shall recalculate the amount to pay to each creditor for which an earnings garnishment remains in effect using the procedure under s. 812.39 (1). If s. 812.39 (2) or (2m) applies, the garnishee shall recalculate the amount to pay to each creditor for which an earnings garnishment remains in effect using the procedure under s. 812.39 (2) or (2m), whichever applies. After making the recalculation required under this subsection, the garnishee shall, subject to the exemption under s. 812.34 (2) and the limits under s. 812.39 (2) and (2m) on the total earnings that may be garnished, place the garnishment into effect for the pay period falling after the 7th business day after receipt of the garnishment form. If, before the earnings garnishment takes effect, the garnishee determines that it is unlikely that the garnishee will continue to be obligated to the debtor for earnings, the garnishee shall notify the creditor and court under sub. (5) within 7 business days after making that determination.

**SECTION 4.** 812.38 (2) of the statutes is amended to read:

812.38 (2) A motion or petition under sub. (1) may be made at any time during the pendency of the earnings garnishment. Within 5 business days after a motion or petition is filed under sub. (1), the court shall schedule the matter for a hearing to be held as promptly as practicable. The court shall notify the parties of the time and place of the hearing. Upon conclusion of the hearing, the court shall make findings of fact and conclusions of law. The court shall make such order as required by these findings and conclusions. ~~If the order permits the garnishment to proceed,~~

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~~the date on which the order is served upon the garnishee shall substitute for the original date of service of the garnishment upon the garnishee under s. 812.35 (3) for the purpose of determining any 13 week period under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the order is served upon him or her the garnishee.~~

**SECTION 5.** 812.39 (1) of the statutes is renumbered 812.39 (1) (intro.) and amended to read:

812.39 (1) (intro.) Between 5 and 10 business days after the payday of each pay period in which the debtor's earnings are subject to the earnings garnishment, the garnishee shall, subject to the exemption under s. 812.34 (2) and except as provided in subs. (2) and (2m), pay the creditor that portion of the debtor's nonexempt disposable earnings to which the creditor is entitled. If the debtor's earnings are already being garnished by one or more earnings garnishments when the garnishee is served under s. 812.35 (3) (b) by a creditor with a garnishment form to recover an amount owed by that debtor, the garnishee shall, subject to the exemption under s. 812.34 (2) and except as provided in subs. (2) and (2m), do all of the following:

**SECTION 6.** 812.39 (1) (a) of the statutes is created to read:

812.39 (1) (a) Determine 20 percent of the debtor's disposable earnings.

**SECTION 7.** 812.39 (1) (b) of the statutes is created to read:

812.39 (1) (b) Divide the quotient under par. (a) by the total number of creditors.

**SECTION 8.** 812.39 (1) (c) of the statutes is created to read:

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812.39 (1) (c) Pay each creditor the amount determined under par. (b).

**SECTION 9.** 812.39 (2) of the statutes is renumbered 812.39 (2) (a) and amended to read:

812.39 (2) (a) Court-ordered assignments of the debtor's earnings for support or maintenance under ch. 767, regardless of the date the garnishee first receives notice of the assignment, take priority over an earnings garnishment under this subchapter.—If and take priority over a garnishment to satisfy an order for restitution under s. 973.20 (1r). Except as provided in par. (b), if the debtor's earnings are subject to assignment under s. 767.75, the creditor, including a creditor entitled to an earnings garnishment to satisfy an order for restitution under s. 973.20 (1r), shall not be entitled to an amount greater than 25 percent of the debtor's disposable earnings less the amount assigned under s. 767.75. If the garnishee determines that the amount to be garnished pursuant to an order under s. 767.75 is equal to or greater than 25 percent of the debtor's disposable earnings, the garnishee shall notify the creditor and the court under s. 812.35 (5) within 7 business days after making that determination.

**SECTION 10.** 812.39 (2) (b) of the statutes is created to read:

812.39 (2) (b) If one or more earnings garnishments are in effect for a debtor whose earnings are subject to assignment under s. 767.75, the garnishee shall, if the amount assigned under s. 767.75 is less than 25 percent of the debtor's disposable earnings, do all of the following:

1. Determine the difference between 25 percent of the debtor's disposable income and the sum of the following:

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a. The amount assigned under s. 767.75.

b. The amount, if any, to be garnished to satisfy an order for restitution under s. 973.20 (1r).

2. a. If the difference determined under subd. 1. is less than 25 percent of the debtor's disposable income, divide the difference under subd. 1. by the number of creditors.

b. Pay each creditor the amount determined under subd. 2. a.

3. If the difference determined under subd. 1. is 25 percent or more of the debtor's disposable income, notify the creditor and court under s. 812.35 (5) within 7 business days after making that determination.

**SECTION 11.** 812.39 (2m) of the statutes is created to read:

812.39 (2m) (a) Court-ordered garnishment of the debtor's earnings to satisfy an order for restitution under s. 973.20 (1r), regardless of the date the garnishee first receives notice of the court-ordered garnishment, takes priority over an earnings garnishment under this subchapter. Subject to sub. (2), and except as provided in pars. (b) and (c), if the debtor's earnings are subject to garnishment under s. 973.20 (1r), the creditor shall not be entitled to an amount greater than 20 percent of the debtor's disposable earnings less the amount to be garnished pursuant to court order under s. 973.20 (1r).

(b) If one or more earnings garnishments are in effect for a debtor who owes restitution under s. 973.20 (1r), the garnishee shall, subject to sub. (2) and except as provided in par. (c), do all of the following:

1. Determine the difference between 20 percent of the debtor's disposable

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income and the amount to be garnished to satisfy an order for restitution under s. 973.20 (1r).

2. Divide the difference under subd. 1. by the number of creditors.

3. Pay each creditor the amount determined under subd. 2.

(c) If the garnishee determines that the amount to be garnished pursuant to court order under s. 973.20 (1r) is equal to or greater than 20 percent of the debtor's disposable earnings, the garnishee shall notify each creditor and court under s. 812.35 (5) within 7 business days after making that determination.

**SECTION 12.** 812.395 of the statutes is created to read:

**812.395 Garnishment of earnings remains in effect; notice to debtor.**

(1) A garnishment of earnings payable to a debtor, including a debtor who owes victim restitution ordered under s. 973.20 (1r), remains valid and effective until the judgment is satisfied, unless sooner terminated by order of the court.

(2) For a garnishment of earnings that extends beyond a 13-week period, following the first 13-week period the creditor shall, at least 3 business days before the payday of the first pay period of each subsequent 13-week period during the effective period of a garnishment and until the judgment is satisfied or the garnishment is terminated by order of the court, serve the earnings garnishment form issued by the clerk of courts under s. 812.35 (2) upon the debtor by one of the following means:

(a) First class mail.

(b) Certified mail, return receipt requested.

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(c) Any means permissible for the service of a summons in a civil action, other than publication.

**SECTION 13.** 812.40 of the statutes is repealed.

**SECTION 14.** 812.405 of the statutes is repealed.

**SECTION 15.** 812.42 (2) (b) of the statutes is repealed.

**SECTION 16.** 812.44 (3) of the statutes is amended to read:

812.44 (3) The earnings garnishment form issued by the clerk under s. 812.35 (2) shall be in substantially the following form:

STATE OF WISCONSIN

CIRCUIT COURT: .... County

\_\_\_\_\_

A.B., Creditor

vs.

File or Reference Number ....

C.D., Debtor

EARNINGS

and

GARNISHMENT

E.F., Garnishee

\_\_\_\_\_

THE STATE OF WISCONSIN, To the garnishee:

The creditor has been awarded a court judgment that has not been paid. As a result, the creditor claims that a total of \$.... is owed by the debtor, as follows:

A. Unpaid balance on judgment	\$....
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B. Unpaid postjudgment interest	\$....
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C. Costs of this earnings garnishment	
(estimated)	\$....

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TOTAL

\$....

The creditor believes that you will owe the debtor for earnings ~~within the next 13 weeks~~ after the date on which you receive this form. If the \$15 fee is tendered with these papers, you are directed by the court to do the following:

**DETERMINE WHETHER YOU WILL****OWE THE DEBTOR EARNINGS**

1. Determine if you are likely to owe the debtor for earnings ~~in pay periods beginning within the next 13 weeks~~ earned on or after the date on which you receive this form.

2. If you are not likely to owe the debtor for earnings ~~in pay periods beginning within the next 13 weeks~~ earned on or after the date on which you receive this form, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms.

**IF THE DEBTOR SENDS YOU AN ANSWER**

3. Whenever you receive a debtor's answer form from the debtor, mail a copy of the answer form to the creditor by the end of the 3rd business day after receipt of that form. Include the date you received the answer form on the copy sent to the creditor.

4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

**MULTIPLE EARNINGS GARNISHMENTS**

5. If the debtor's earnings are already being garnisheed when you receive this

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earnings garnishment, ~~place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify~~ notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. ~~If there are no prior pending earnings garnishments against the debtor's earnings, Determine the amount you will pay to each creditor using the method described in the section titled "PAYING THE CREDITOR; PAYING MULTIPLE CREDITORS" and~~ place this earnings garnishment into effect the pay period that begins at the end of the 7th business day after you receive it.

**EARNINGS GARNISHMENTS****~~LAST 13 WEEKS, EXCEPT~~****~~FOR PUBLIC EMPLOYEES AND~~****~~EXCEPT FOR GARNISHMENTS TO~~****~~SATISFY AN ORDER FOR VICTIM~~****~~RESTITUTION REMAIN IN EFFECT~~****UNTIL THE JUDGMENT IS SATISFIED**

6. The garnishment of the earnings of employees ~~of the state of Wisconsin and its political subdivisions,~~ and a garnishment to satisfy an order for victim restitution under s. 973.20 (1r) for victim restitution remains in effect until the judgment is satisfied. ~~The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnisheed. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's~~

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~~earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.~~

**PAYING THE CREDITOR; PAYING MULTIPLE CREDITORS**

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor, before paying any creditor, first determine 20% of the debtor's disposable earnings for the pay period and then divide that amount equally between all creditors. Payment is complete upon mailing.

**EFFECT OF COURT-ORDERED**

**ASSIGNMENTS FOR SUPPORT**

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtor's disposable earnings is assigned for support by court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned ~~and garnished,~~ earnings garnished to satisfy an order for restitution under s. 973.20 (1r), this wage garnishment, and all other wage garnishments in

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effect for this debtor does not exceed 25% of the debtor's disposable earnings. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor and if 25% or more of the debtor's disposable earnings is assigned for support by court order, do not pay any part of the debtor's earnings to any creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor and if less than 25% of the debtor's disposable earnings is assigned for support by court order, determine the amount each creditor must be paid by first determining the difference between 25% of the debtor's disposable earnings and the amount assigned for support by court order and then dividing the difference by the number of creditors. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor and if less than 25% of the debtor's disposable earnings is assigned for support by court order and if this debtor's earnings are also being garnished to satisfy an order for restitution under s. 973.20 (1r), determine the amount each creditor must be paid by first determining the difference between 25% of the debtor's disposable earnings and the sum of the amount assigned for support by court order and the amount garnished to satisfy an order for restitution. Then, divide the difference by the number of creditors.

**EXTENSIONS EFFECT OF A GARNISHMENT****TO SATISFY AN ORDER FOR RESTITUTION**

~~9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this~~

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~~earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.~~ If the earnings payable to a debtor who owes restitution under a court order are being garnished to satisfy that order for restitution, those restitution payments take priority over this earnings garnishment. If 20% or more of the debtor's disposable earnings is being garnished to satisfy an order for restitution, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 20% of the debtor's earnings is being garnished to satisfy an order for restitution, the amount the creditor must be paid is reduced so that the total of earnings garnished for restitution and garnished under this earnings garnishment and any other earnings garnishments in effect for this debtor does not exceed 20% of the debtor's disposable earnings. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor and if 20% or more of the debtor's disposable earnings is being garnished to satisfy an order for restitution, do not pay any part of the debtor's earnings to any creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If this earnings garnishment is one of 2 or more earnings garnishments issued for this debtor, and if less than 20% of the debtor's disposable earnings is being garnished to satisfy an order for restitution, determine the amount each creditor must be paid by first

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determining the difference between 20% of the debtor's disposable earnings and the amount being garnished to satisfy an order for restitution and then dividing the difference by the number of creditors.

**SECTION 17.** 812.44 (4) of the statutes is amended to read:

812.44 (4) The notice of exemption served upon the garnishee under s. 812.35 (4) shall be in substantially the following form:

STATE OF WISCONSIN

CIRCUIT COURT: .... County

\_\_\_\_\_  
A.B., Creditor

vs.

File or Reference Number ....

C.D., Debtor

EXEMPTION NOTICE

and

EARNINGS GARNISHMENT

E.F., Garnishee

\_\_\_\_\_  
To the debtor:

The creditor was awarded a judgment against you or your spouse by .... (County Circuit or Federal District) Court on the .... day of ..., .... (year). That judgment not having been fully paid, the creditor has now filed a garnishment proceeding against your earnings from the garnishee. This means that the creditor is seeking to take some of your earnings to satisfy part or all of the judgment against you or your spouse.

The total amount of the creditor's claim is as follows:

Unpaid balance on judgment

\$....

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Unpaid postjudgment interest \$....

Costs:

a. Garnishment filing fee \$....

b. Garnishee fee \$....

c. Service of process (estimate) \$....

**TOTAL** \$....

By law, you are entitled to an exemption of not less than 80% of your disposable earnings. Your “disposable earnings” are those remaining after social security and federal and state income taxes are withheld.

Your earnings are completely exempt from garnishment if:

1. Your household income is below the federal poverty level. See the enclosed schedules and worksheet to determine if you qualify for this exemption.

2. You receive aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under section s. 59.53 (21) of the Wisconsin Statutes, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 USC 1501 to 1562 or section 45.351 (1) of the Wisconsin Statutes, or have received these benefits within the past 6 months.

3. At least 25% of your disposable earnings are assigned by court order for support.

If the garnishment of 20% of your disposable income would result in the income of your household being below the poverty line, the garnishment is limited to the amount of your household’s income in excess of the poverty line.

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If you qualify for a complete exemption or for a limit on the amount of the garnishment to the amount that your household's income exceeds the poverty line, you must give or mail a copy of the enclosed debtor's answer form to the garnishee in order to receive that increased exemption.

If your circumstances change while the garnishment is in effect, you may file a new answer at any time.

If you do not qualify for a complete exemption, but you will not be able to acquire the necessities of life for yourself and your dependents if your earnings are reduced by this earnings garnishment, you may ask the court in which this earnings garnishment was filed to increase your exemption or grant you other relief.

**IF YOU NEED ASSISTANCE****CONSULT AN ATTORNEY**

If you have earnings that are being ~~garnisheed~~ garnished that are exempt or subject to a defense, the sooner you file your answer or seek relief from the court, the sooner such relief can be provided. This earnings garnishment affects your earnings in pay periods beginning ~~within 13 weeks~~ after it was served on the garnishee. ~~You may agree in writing with the creditor to extend it for additional 13-week periods until the debt is paid.~~

**PENALTIES**

If you wrongly claim an exemption or defense in bad faith, or if the creditor wrongly objects to your claim in bad faith, the court may order the person who acted in bad faith to pay court costs, actual damages, and reasonable attorney fees.

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**SECTION 18**

**SECTION 18. Initial applicability.**

(1) This act first applies to an earnings garnishment proceeding commenced on the effective date of this subsection.

**(END)**