

MODEL CONSUMER AMENDMENTS TO UNIFORM WAGE GARNISHMENT ACT

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Deletions are in ~~strike through~~. Additions are underlined.

AMENDMENT TO PROTECT MORE WAGES FROM GARNISHMENT THAN THE FEDERAL MINIMUM

Amend UWGA § 13 to read:

SECTION 13. LIMIT ON WAGE GARNISHMENT.

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

(1) ~~{} Ten~~ Ten percent of disposable earnings for a workweek; or

(2) the amount by which disposable earnings for a workweek exceed sixty ~~insert~~ ~~state multiple~~ times the applicable ~~insert~~ ~~federal~~ ~~state~~ minimum wage required by ~~Section 6(a) of the Fair Labor Standards Act, 29 U.S.C. Section 206(a)]~~, as amended. The applicable minimum wage is that required by [Section 6(a) of the Fair Labor Standards Act, 29 U.S.C. Section 206(a)], as amended, [insert cross-reference to state minimum wage law], or any local minimum wage ordinance, whichever is highest.

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

Current federal law protects only 75% of the worker's paycheck, or 30 times the minimum wage, whichever is greater. This means that wage garnishment will not reduce a debtor's paycheck below \$217.50 (thirty times the current federal minimum wage of \$7.25). But a weekly paycheck, of \$217.50 places even a single individual who has no dependents below the federal poverty level. For a family of four, \$217.50 per week is less than half of the federal poverty guideline (\$466.34 per week). Debt collectors should not be allowed to reduce a family to below the poverty level.

By protecting 90% of the worker's wages or sixty times the minimum wage, the state will reduce the harm that wage garnishment causes to struggling families. Protecting more than the federal minimum is consistent with the approach of the majority of states: all but 21 states protect more than the federal minimum, although some of these protect only slightly more. See National Consumer Law Center, No Fresh Start: How States Let Debt Collectors Push Families into Poverty (Oct. 2013) at 31-32.

This amendment bases the calculation on the state minimum wage, or any minimum wage established by a local ordinance, if it exceeds the federal minimum wage. If a state or city has determined that more than the federal minimum is necessary for workers in the state or city, then it should also base its garnishment protections on that amount.

Note that the calculation worksheet in Section 13 will need to be revised to reflect these limits on garnishment.

AMENDMENT TO PREVENT GARNISHMENT OF PAYROLL CARDS

Add new subsection (d) to UWGA § 13:

(d) Payments that a debtor’s employer makes by an electronic fund transfer to a payroll card account as defined in regulations implementing the Electronic Fund Transfers Act, 15 U.S.C. § 1693 et seq., are exempt and can be garnished only while in the hands of the debtor’s employer. The recipient of a garnishment order for a payroll card account shall respond to a garnishment by informing the judgment creditor that the funds are exempt and will not be paid over.

This amendment prevents creditors from evading the restrictions on wage garnishments by sending the garnishment order to a payroll card provider rather than the debtor’s employer, thereby potentially seizing all of the debtor’s wages. Under this amendment, wage garnishment is still allowed for workers who are paid through payroll cards, but the garnishment can be accomplished only by serving the garnishment order on the debtor’s employer, who would be required to calculate the amount of wages that are protected.

The language of this amendment protects all “payments” made to a payroll card, not just “earnings.” By doing so, it makes it easier to apply and enforce, because complicated tracing procedures are unnecessary. It does not interfere at all with the judgment creditor’s rights, because if an employer is making payments to a payroll card that do not constitute wages or fall within some other exemption, they are garnishable while in the hands of the employer. This amendment only means that the wages on the payroll card cannot be reached by serving a garnishment on the payroll card provider rather than on the employer.

AMENDMENT TO ALLOW CONSIDERATION OF HARDSHIP

Add new subsection (e) to UWGA § 13:

(e) The portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt

from levy. The debtor has the burden of seeking a hearing under Section 18 to invoke this protection.

This language is adapted from Cal. Code Civ. Proc. §706.051(b). Oklahoma and Vermont have similar provisions, and several other states exempt an extra amount for each of the debtor's dependents.

AMENDMENT TO PROTECT MINIMUM AMOUNT IN BANK ACCOUNT
Add new UWGA § 13A:

SECTION 13A. SELF-EXECUTING PROTECTION OF MINIMUM AMOUNT IN BANK ACCOUNT

(a) Definition of protected amount. The protected amount is 240 times the applicable minimum wage.

(b) An attachment, garnishment, or other legal or equitable process relating to a judgment debtor that is issued to a financial institution shall be ineffective as to the protected amount. If the judgment debtor's deposits are less than or equal to the protected amount, the financial institution shall respond to the attachment by indicating that the entire amount is exempt, and shall not restrict the judgment debtor's access to the funds on deposit or turn over any funds in response to the process. If the judgment debtor's deposits total more than the protected amount, the financial institution shall respond to the attachment by indicating that the protected amount is exempt, and shall not restrict the judgment debtor's access to that portion of the funds on deposit or turn over that portion of the funds in response to the process. The judgment debtor has the right to assert grounds for exemption of any additional portion of the deposit by [statutory section specifying procedure to claim exemption].

The growth of direct deposit of wages makes protective limits on wage garnishment increasingly ineffective. Where a debtor is paid by direct deposit, a judgment creditor can evade any limits on wage garnishment by directing a garnishment order to the debtor's bank account instead, unless there are protections for bank account deposits. One approach is to provide that deposited wages retain their exemption after deposit, and a number of states do provide that deposited wages remain exempt for a period such as 30 or 60 days after deposit. However, that approach requires deposits of wages to be traced, which places a significant burden on courts, creditors, banks, and debtors. A more effective and less burdensome approach is simply to protect a minimum dollar amount in a bank account. Protecting a minimum amount in a bank account also has the benefit of

protecting debtors whose earnings do not come through wages but through sale of crafts, handyman jobs, chores, and the like.

Even when a state protects a minimum amount in a bank account, the procedure for invoking that protection is often less than satisfactory. Most states do not provide for automatic protection of the minimum amount, but require the debtor to assert the exemption. The process can be slow, expensive, and cumbersome, and essentially impossible for many low-income or elderly debtors who do not have ready access to legal assistance. The seizure of the funds often causes great hardship to debtors, because their access to the account is frozen until the claim of exemption is resolved. Their rent checks bounce and they cannot withdraw money to pay for essentials such as medicine, child care, or food.

Recognizing this problem, in 2010 the federal government adopted a rule that requires banks to protect Social Security and other federal benefit payments that are direct-deposited into a bank account. The procedure is immediate and automatic, and does not require the debtor to assert a claim or a court to adjudicate it. Even before the federal rule was adopted, New York enacted a statute that requires banks to protect a debtor's bank account up to 240 times the minimum wage. The state had previously protected deposited wages, but the procedure for asserting the exemption was enormously complicated, and the statute now protects that amount regardless of its source.

This amendment is modeled on the New York statute, N.Y. Civil Practice Law & Rules § 5222(i). It requires the bank to protect 240 times the applicable minimum wage, equivalent to six weeks of full-time work at the minimum wage. If there are additional exemptions that the debtor can claim, the bank does not have the duty to protect them automatically, but the debtor has the right to go through the regular exemption procedure to claim them. (For example, many states allow a "wildcard" exemption greater than 240 times the minimum wage. A debtor could apply a wildcard exemption to protect a larger amount by invoking the regular exemption procedure, but those funds would be frozen until the court ruled.)

AMENDMENT TO PROHIBIT MOST WAGE GARNISHMENT

Add new subsection (c) to UWGA § 13:

(c) Notwithstanding any other provision of law, all earnings are exempt from garnishment except for the following types of debts:

(1) support orders;

(2) a debt due for a federal, state, or city tax[; and

(3) _____].

North Carolina, Pennsylvania, South Carolina, and Texas prohibit wage garnishment in most circumstances. Prohibiting wage garnishment altogether protects families from destitution and promotes the work ethic by giving the worker the benefit of his or her wages. Exceptions are appropriate for family support obligations and certain debts that reflect obligations to society.

If a state enacts this amendment but adds other types of debts to the list of debts for which wage garnishment is not prohibited, it would make sense to retain the other provisions of the UWGA, in order to provide rules to govern wage garnishment for those debts. Retaining the other provisions of the UWGA is unnecessary, however, if the state allows wage garnishment only for support orders and taxes, because the UWGA already provides that it does not apply to wage garnishment for support orders or for taxes. In that case, the state may wish to frame this provision as a free-standing statute rather than as an amendment to the UWGA.