

Research Bulletin No. 64-1  
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WAGE EXEMPTIONS AND TIME OF ACTION  
FOR GARNISHMENT: THE LAW IN  
WISCONSIN AND OTHER STATES

WISCONSIN

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PLEASE NOTE:

The Wisconsin Legislative Reference Library has changed its name.

Beginning August 1, 1963, Chapter 149, Laws of 1963, renamed us "Legislative Reference Bureau". We are no longer under the Free Library Commission, but an independent agency in the legislative branch of Wisconsin state government, under the policy direction of the Joint Committee on Legislative Organization. Our services remain the same.

With the change in name, we have changed our method of numbering the reports issued by this agency. The Informational Bulletin Series (IB) was closed off with number 230; the Research Bulletin Series (RB) was closed off with number 141 (No. 139 was not used).

Our new numbers begin with the last two digits of the current year (for 1963 we used 63), and number each series consecutively through a single year. Thus, the first new Research Bulletin was numbered RB-63-1, the second, RB-63-2, etc.



Section 2753. "Either at the time of the issuing of the summons, or at any time thereafter before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing, in any case, of an execution against property, and before the time when it is returnable, the plaintiff" may commence proceedings.

It is interesting to note that one of the requirements for commencement was that the principal defendant not have "property liable to execution, sufficient to satisfy the plaintiff's demand." This requirement has long since disappeared. Some other states still use this requirement, as noted in the section on garnishment in other states.

A revisors' note offers some explanation of this chapter and of the theory behind it. The following is the note prepared by the revisors of 1878 on this chapter:

"This chapter is new. The practice in garnishment is expensive, inconvenient and variable. It is desirable that it should be cheap, easy and certain. The effort is made to prescribe a practice which it is hoped will afford the desired ends.

"The statute in this state originally provided garnishment as a remedy in aid of attachment only. It is a sort of attachment in itself. Then it was extended to aid an execution, and subsequently it was provided as an auxiliary to an action independently of an attachment; thus making it a mere provisional remedy. It has been thought best to treat garnishment before execution issued as a provisional remedy, distinct from attachment. So provided it may be taken out either with or without a writ of attachment, and if such a writ be also issued, it no further affects the garnishment than that the officer having the writ may take any property discovered while he has the writ. This renders entirely unnecessary any provision for garnishment on attachment.

"Provisions for garnishment on an execution are combined with this chapter because with very slight modification the same practice can be applied to both, and the advantages of presenting the subject in one chapter outweigh the slight disturbance in analysis.

"In providing the practice it is believed the system of no particular state is followed; but the recommendation made is of a system combined from the different systems.

"Garnishment is not only an attachment of a debt due; it becomes also an action in which the plaintiff vicariously prosecutes the garnishee upon a demand of his defendant against the garnishee, and therefore must have the capacity of a civil action, and, as a result, all parties ought to be bound by the judgment and be brought in as parties competent to act.

"The idea upon which the chapter proceeds combines the notion of attaching a debt with that of collecting a debt, and throws the notice of warning to the debtor whose debt is attached into a form equally adapted to the purpose of an adversary action against him, after the fashion of the New England trustee process, in part. At the same time it must be preceded by an affidavit according to the

present condition of our law, and the summons is not the same as that by which the principal action is commenced, and the proceeding takes the form of a provisional remedy in the beginning. Should the plaintiff be dissatisfied and an issue be formed, the proceeding readily becomes an action in which the defendant may be said to be compelled to prosecute the garnishee for the use of the plaintiff, and the judgment may completely dispose of the controversy between them."

In 1885, the Legislature expanded Section 2753 by adding, in Chapter 286, Laws of 1885, that proceedings could begin at any time before final judgment or upon issuance of a summons "in any cause of action mentioned in section 2731." Section 2731 pertained to attachment proceedings.

In 1925, by Chapter 4, Laws of 1925, these sections were brought within the decimal system of statutory numbering as Sections 267.01 and 267.03, respectively, and, in 1935, by Chapter 541, the portions discussed here were combined in Section 267.01 to produce subsections (1) and (3) of that section:

267.01 (1) "Any creditor may proceed against any person (except a municipal corporation) who shall be indebted to or have any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace a judgment creditor and the term defendant a judgment debtor."

(3) "At any time before judgment in an action for damages, founded upon contract, or an action mentioned in section 267.03\*, or an action upon a judgment, or after issue of an execution against property and before its return, the plaintiff may commence a garnishee action."

The Wisconsin Supreme Court, under authority granted it by statute to change rules relating to pleading, practice and procedure, amended Section 267.01 (3), effective January 1, 1940, to read as follows:

267.01 (3) "At any time after the summons is issued in an action for damages, founded upon contract, or an action mentioned in section 266.03 or an action upon a judgment, or when an execution against property has issued or is issuable, the plaintiff may commence a garnishee action."

These have been the successful proposals which made changes in the provisions relating to: (1) who could bring garnishment actions, and (2) at what time proceedings could commence.

The unsuccessful bills in this area would have permitted garnishment only after judgment against certain, or all, debtors. Usually this restriction would have applied only to garnishment of wages or salary.

The bill index of the Legislative Reference Bureau shows only 2 attempts to generally restrict garnishment proceedings prior to 1949.

\*This reference was in error; a revisor's bill corrected it to read "266.03" (attachment proceedings) in 1939.

Those attempts were by Bill 130,A., in 1933, and by Bill 857,A., in 1935. Both would have required judgment in the principal action prior to commencement of garnishment proceedings in actions to recover less than \$200.

Since 1949, 17 attempts have been made to restrict garnishment prior to judgment. A brief summary of those attempts follows:

Table 1: Restrictions on Garnishment Proposed by Unsuccessful Bills 1949-1963

1949

250,S. To permit garnishment of wages or salary only after judgment in principal action.

1951

113,A. To permit garnishment of wages or salary only after judgment in principal action.

1953

493,A. To permit garnishment of wages or salary only after judgment in principal action.

666,A. To permit garnishment only after judgment, unless the whereabouts of the principal defendant is unknown, he is absent from the state or he has perpetrated or is about to perpetrate fraud.

203,S. To permit garnishment of wages or salary only after judgment in principal action.

1955

253,A. To permit garnishment of wages or salary only after judgment in principal action.

161,S. To permit garnishment of wages or salary only after judgment in principal action.

1957

202,A. To permit garnishment only after judgment, unless the whereabouts of the principal defendant is unknown, he is absent from the state or he has perpetrated or is about to perpetrate fraud.

387,A. To permit garnishment of wages or salary only after judgment in principal action.

420,A. To permit garnishment of wages or salary, checking accounts and proceeds from the sale of milk or milk products due a principal defendant who produced such milk or milk products only after judgment in the principal action.

91,S. To permit garnishment only after judgment, unless the whereabouts of the principal defendant is unknown, he is absent from the state or he has perpetrated or is about to perpetrate a fraud.

1959

108,A. To permit garnishment of wages or salary only after judgment in principal action.

69,S. To permit garnishment of wages or salary and proceeds from the sale of milk or milk products due a principal defendant who produced such milk or milk products only after judgment in the principal action.

1961

257,A. To permit garnishment of wages or salary only after judgment in principal action.

1963

351,A. To permit garnishment only after judgment in principal action.

363,A.\* To permit garnishment only after unsatisfied judgment in principal action.

229,S. To permit garnishment of wages or salary only after judgment in principal action.

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\*Pending in Assembly; subject matter referred to Joint Legislative Council for interim study.

This discussion has not attempted to note the proposals in this area which related only to certain occupational groups (e.g. former WPA workers) or to certain types of persons (e.g. women with young dependents) but it should be noted that under Section 267.22 only judgment creditors may maintain garnishment actions against the state or political subdivisions (except cities of the first class) for debts of their employes. Section 304.215 describes quasi-garnishment by judgment creditors of employes of cities of the first class (i.e. the City of Milwaukee).

## 2. Wages, Salary and Income Exempt from Garnishment

The Wisconsin Constitution provides: (Article I) Section 17. EXEMPTION OF PROPERTY OF DEBTORS. "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

The Legislature, acting under this mandate, has long exempted certain portions of wages or salary from being subject to garnishment. Surprisingly, however, it was 9 years after a garnishment statute was enacted in this state before a law pertaining to exemption of earnings appeared.

While garnishment procedures were enacted in 1849 for justice courts and while statutes exempting various belongings from court seizure are found in the 1849 Wisconsin Statutes, exemption of earning did not appear until 1858. In that year, in Chapter 148, Laws of 1858, the Legislature enacted the following:

"That the earnings of all persons for sixty days next preceding the issuing of any process from any court of record or justice of the peace against them shall...not be liable to be garnisheed..."

Chapter 280, Laws of 1861, restricted this exemption to married persons or persons who provided the entire support of a family residing in Wisconsin. The 1878 Revised Statutes made only grammatical changes in incorporating this exemption as Section 2982, subsection 15.

Chapter 317, Laws of 1882, increased the period of exemption to 3 months preceding commencement of the garnishment action. Chapter 141, Laws of 1883, inserted a limitation so that only \$60 a month for each of the 3 months was exempted. This was the first time the Legislature put a dollar maximum on the exemption. Such a limitation (in various amounts) has been with us ever since.

Chapter 93, Laws of 1893, clarified the \$60 a month exemption by declaring that the total exempted could not exceed \$180 including amounts earned during the previous 3 months which had already been paid to the debtor. It also added that earnings included "the earnings of any minor child or children whose earnings contribute to the support of such family." This law was the only one affecting the exemption for a 30-year period from 1883 to 1913.

In 1913, Chapter 187, Laws of 1913, added another clarification. It provided that the debtor not only had to have a family dependent upon him, but that he had to be "reasonably contributing according to his means" to their support before he gained the benefit of the exemption.

Chapter 380, Laws of 1927, repealed and recreated the earnings exemption. Its most significant change was to provide that only 60 per cent of earnings was exempt. The new wording was as follows:

272.18 (15) "Sixty per cent of the earnings of any person having a family dependent upon him for support at the time of the commencement of proceedings for the collection of debt, including the earnings of any minor child or children whose earnings contribute to the support of such family, but not exceeding sixty dollars for the month preceding the issue of any writ or attachment, execution, garnishment or the institution of proceedings supplementary to execution, and one hundred eighty dollars for the preceding three months, and an additional amount of ten dollars for such preceding month and thirty dollars for such preceding three months, for each child under sixteen years of age dependent upon him for support. In computing the foregoing exemptions, the earnings for any month shall be considered reduced by the amount of any sum recovered during that month in any action mentioned in this subsection. The debtor shall not be entitled to the exemption under this subsection, unless it shall be shown that he is actually and reasonably contributing according to his means and circumstance to the support of said family. The garnishee shall recover costs when the property to be reached is exempt from execution against the principal debtor at the time of serving the process on the garnishee."

The next change occurred in 1933, in the depths of the Great Depression. The law then in effect exempted not more than \$60 for the preceding month and \$180 for the preceding 3 months. These amounts became the new minimum exemptions. Chapter 69, Laws of 1933, retained the 60 per cent exemption but qualified that by exempting not less than \$60 nor more than \$100 for the previous month and not less than \$180 nor more than \$300 for the preceding 3 months. The law further provided that "crops, live stock, dairy products and all other products grown or produced by a person" and proceeds therefrom constituted "earnings" under the subsection.

The 1943 Legislature included the single individual by Chapter 366, Laws of 1943. The previous month's maximum exemption for a single person which it established was \$40 and the 3-month maximum was \$120. The way of computing what constituted the previous month and previous 3 months was changed so that these periods preceded the date of service rather than issue of the writ, etc. A more detailed procedure for computing the amount reached by garnishment was also established.

Chapter 563, Laws of 1951, repealed and recreated Section 272.18 (15). The subsection no longer specified the actions to which it applied, but merely referred to proceedings "to collect a debt."

The exemptions had previously been granted to "earnings" or parts thereof and this language had been interpreted by the Wisconsin Supreme Court to mean "gains of the debtor derived from his services or labor without the aid of capital."\*

Chapter 563 changed "earnings" to "income." It has not been determined yet whether this change has expanded the scope of the exemption.

The subsection, as affected by Chapter 563, Laws of 1951, reads as follows:

272.18 (15) (a) "A basic exemption of 60 per cent of the income of any individual without dependents for each 30-day period prior to service of process in the proceeding to collect a debt, but not less than \$75 nor more than \$100. The one claiming the exemption may elect to have the exemption computed on a 90-day basis.

(b) "A basic exemption of 60 per cent on the income of any individual with dependents for each 30-day period prior to service of process in the proceeding to collect a debt, but not less than \$100 nor more than \$120 plus an additional \$20 for each dependent. The amount allowed as exemption for dependents shall be limited to such an amount that the total amount exempt shall not exceed 85 per cent of the income. The one claiming the exemption may elect to have the exemption computed on a 90-day basis.

(c) "A dependent is any individual including a spouse who requires and is actually receiving substantial support and maintenance from the debtor. The use to which the income of anyone claimed as a dependent is put shall be considered by the court in determining whether the individual is in fact a dependent. All crops, live stock, dairy products and all other products grown or produced by a person to

\*Brown v. Hebard, 20 Wis. 326 (1866)

which his personal effort or that of his minor children has contributed, and all proceeds from the sale of such crops, live stock, dairy products, and other products shall be deemed earnings within the meaning of this subsection, but such definition of earnings shall not limit any other exemption provided by this section.

(d) "The amount which may be reached by seizure, sale or execution, provisional or final process or proceedings in aid thereof, except as otherwise specially provided in the statutes shall be computed as follows: The income for the 30- or 90-day period shall be considered reduced by the amount of any sum recovered during the 30- or 90-day period in any of said proceedings; from the income thus reduced for the 30- or 90-day period deduct the exemptions applicable thereto, subject to such prior proceedings and valid written assignments of nonexempt income. The amount subject to the proceedings before the court shall be the amount which remains after the above computations."

The 1955 Legislature created a new paragraph within Section 272.18 (15) relating specifically to garnishment. Bill 332, S., introduced by Senator Harry E. Franke, Jr., at the request of the Milwaukee Junior Bar Association, originally repealed and recreated all of Subsection (15) and exempted fixed amounts "per pay period week" of "wages," according to the number of dependents. Senator Franke later introduced Substitute Amendment 1, S., to the bill. The substitute amendment was adopted and became Chapter 490, Laws of 1955. Its effect on Section 272.18 (15) was, in Section 3 of the law, to create a new paragraph which provided as follows:

272.18 (15) (e) 1. "When wages or salary owing to the principal defendant are subjected to a garnishment action, the garnishee shall pay over to the principal defendant on the date when such wages or salary would normally be payable a subsistence allowance, out of the wages or salary then owing, in the sum of \$15 in the case of an individual without dependents or \$25 in the case of an individual with dependents; but in no event in excess of 50 per cent of the wages or salary owing. Said subsistence allowance shall be applied to the first wages or salary earned in the period subject to said garnishment action.

2. "If the court determines that the principal defendant is entitled to an exemption in excess of the subsistence allowance paid over or to be paid over pursuant to this subsection, such subsistence allowance shall be set off and applied against said exemption. If the court determines that the principal defendant is entitled to an exemption less than the subsistence allowance paid over or to be paid over pursuant to this subsection, such subsistence allowance shall be the exemption to which the principal defendant is entitled in such garnishment action.

3. "The garnishee shall serve an answer upon the plaintiff stating the amount owing by him to the principal defendant at the time of the service of the garnishee summons, the amount of the subsistence allowance paid over or to be paid over to the principal defendant and the balance held by the garnishee. For the purpose of determining the amount of the subsistence allowance due the principal defendant, the garnishee shall be entitled to rely on the records in its possession at the time of the garnishment, and no garnishee shall

be liable to any plaintiff if its determination of the amount of the subsistence allowance due the principal defendant is made in good faith and is based on such records."

This session law apparently caused some confusion in interpreting the subsection, so the Garnishment Committee of the Milwaukee Junior Bar Association took steps some time later to clarify the law by publishing an article in The Gavel, the official publication of the Milwaukee Bar Association. Appearing in the Fall 1955 issue, the article\* first noted that "the Committee did not anticipate that disagreement among those who came into contact with Chapter 490 would be as great as has now developed in the short span of time in which the law has been in effect. It has come to the notice of the Committee that interpretations of the law have been made in responsible quarters which, if permitted to develop into precedent, might pose a serious threat to the legitimate purpose and objective of the statute."

The article then posed a series of questions and answers, giving the committee's interpretation of the law. A portion of those questions and answers follows:

"Question 1 -- Has the wage exemption statute which was law prior to 1955 been repealed by Chapter 490?

"Answer -- No. The old law is still law. A new subsection (e) is added in which the concept of 'subsistence allowance' is introduced. It is Subsection 1 of 272.18 (15) (e) that is the real substance of the new law and which has been the core of the disagreement on meaning.

"Question 2 -- What is Subsistence Allowance?

"Answer -- Subsistence Allowance is that amount which is paid over to the wage-earner by the employer out of the monies that the wage-earner has earned and which have been subjected to a garnishment. The Subsistence Allowance is not a wage exemption. Its purpose is to provide the wage-earner with funds to enable him to live until either he has settled the action with his creditor or the action is heard and the exemption computed by the court.

"Question 3 -- Who determines the Subsistence Allowance?

"Answer -- The employer determines the wage-earners' subsistence allowance on the basis of the records in the possession of the employer.

"Question 4 -- Who determines the wage exemption?

"Answer -- The Court determines the wage exemption. The court will compute the wage exemption as it always has in accordance with 272.18 (15) (a through d) and, after arriving at the result, will then subtract what the employer has paid over to the wage-earner as a subsistence allowance and the difference is the amount still exempt from garnishment.

"Question 5 -- What amount is the Subsistence Allowance?

"Answer -- If the wage-earner is single he is entitled to a maximum of \$15.00 out of the money owed to him by the employer. If the wage-earner has dependents (any number) he is entitled to a maximum of \$25.00. Note that these are maximum amounts. Thus, if the wage-earner has owing to him \$100.00 by the employer, the employer will

\*"Subsistence Allowance' in Garnishment Cases," 17 Gavel 6 (Fall 1955)

still only pay him \$15.00 or \$25.00 as the case may be. If the wage-earner has any more money coming to him out of the \$100.00, it will be as a wage exemption determined by the court.

"Now the statute goes on to say, 'but in no event in excess of 50 per cent of the wages or salary owing.' This qualifying clause was included in the statute to assure the plaintiff-creditor that, regardless of how little the debtor had earned at the time the garnishment was served, the creditor would have a return of at least some of his cost money. This 50 per cent clause does not mean that if the amount owing to the wage-earner is \$100.00, he is entitled to \$50.00 as a subsistence allowance when garnisheed. The reason is that maximum amounts of \$15.00 or \$25.00 have been set. The 50 per cent clause means that in order to get the maximum of \$15.00, a single man must have owing him a minimum of \$30.00. And a wage-earner with dependents in order to get a maximum of \$25.00 must have owing him a minimum of \$50.00. If at the time of the garnishment, the wage-earner has owing to him the sum of \$25.00, he is entitled to a subsistence allowance of 50 per cent of that sum or \$12.50 and it makes no difference, in such a case, whether he is single or has dependents.

"The statute might have expressed the same intent by declaring the subsistence allowance to be 50 per cent of the wages or salary due and owing to the worker but, in no event, more than a maximum of \$15.00 if single or \$25.00 if with dependents. The effect would have been the same.

"Question 7 -- What is the effect of a hold-back system of wage payments on subsistence allowance payments?

"Answer -- Many employers have a hold-back period in their system of paying wages. Generally, the hold-back is for one week or two weeks, depending on the particular employer practice. Thus, on pay-day the wage-earner is paid for the work he did one week or two weeks previously. The statute states that the garnishee (employer) is liable to the plaintiff for all debts due or to become due to the defendant. Wages are 'to become due' and 'become owing' as they are earned. Wages are 'earned' as the wage-earner puts in his time on the job. Wages are 'due' when the wages earned and owing become payable (i.e. pay-day). In the sense of this statute, the wages are not due until the pay-day when the wages earned one week or two weeks previously become payable or, to use the words of the statute, 'normally payable.'

"Since a garnishment action 'catches' all wages earned by the defendant up to the time of the service of process, a garnishment action necessarily affects more than one pay-day of the defendant working under a hold-back system. The Committee is aware of the fact that the language of the statute is susceptible of two possible interpretations with respect to the number of times a subsistence allowance is payable under such circumstances. That is,

- (1) Only one subsistence allowance is payable out of the funds caught by a garnishment action.
- (2) A subsistence allowance is to be paid by the employer on each of the pay-days when monies earned and caught would be normally due and payable;

while the representatives of the Milwaukee Junior Bar favored the concept expressed in alternative number two above, it is the recollection of the Committee that, as a result of the long hours of discussion and compromise, the language used in the statute was intended to produce an interpretation as expressed in alternative number one above. This means that if interpretation number one above is adopted,

then out of the total wages caught, the employer will compute the subsistence allowance payable and then pay the amount at such times as the wages would be normally payable.

"Question 9 -- Is there not then an inequity created as between an employee paid weekly and one paid monthly?

"Answer -- Yes, it is obvious that the employee paid each week is entitled to a subsistence allowance of \$15.00 or \$25.00 each week and the employee paid once a month is entitled to a subsistence allowance of \$15.00 or \$25.00 only once a month. But the statute is not concerned with inequities as between classes of employees. It is concerned only with getting some money into the hands of the debtor to enable him to live for a few days until his case can be heard. The exemptions to which he is entitled should take care of additional sums for his needs.

"Question 11 -- Is payment of the subsistence allowance mandatory or merely permissible?

"Answer -- It is mandatory for the employer to pay a subsistence allowance."

The members of the Milwaukee Junior Bar Association, prior to enactment of this law, indicated to the Legislature their belief that the then-proposed law should be interpreted in the manner discussed in The Gavel article.

On May 11, 1955, while Bill 332,S., was still in committee and before the substitute amendment was introduced, the chairman of the Garnishment Committee of the Milwaukee Junior Bar Association wrote the Senate Judiciary Committee, where the bill then reposed. He explained that a compromise substitute amendment had been worked out by the various interested parties and enclosed it. The compromise was what later became Chapter 490. He described it thusly:

"You will note that the enclosed amendment departs considerably from the original bill, together with its amendment, No. 1,S., but it is the consensus of all parties concerned with this bill that this new amendment represents the best possible compromise while, at the same time, carrying out the ideas originally proposed by the Milwaukee Junior Bar Association. Essentially, the enclosed proposed substitute amendment involves retaining the present law as embodied in Section 272.18 (15) and simply adding, by way of amendment, the idea of paying over to the debtor who has been garnisheed a subsistence allowance which will assist him in living until such time as his case can be heard by the court. It is the intention of this bill that the exemption of the debtor be determined by the court and that the subsistence allowance or advance be considered by the court in computing the exemption under the present law as now in the statute book."

The Wisconsin Supreme Court has not ruled upon this subject since the enactment of the subsistence allowance. It is therefore impossible to state whether the high court would agree with the Garnishment Committee's analysis of the law.

The 1963 Legislature has made one change in the subsistence allowance law. By Chapter 396, Laws of 1963, it increased the sum to be paid over to the principal defendant to \$20 for an individual

without dependents and \$40 for an individual with dependents. The session law originated as Bill 63,A., and, as introduced, provided that the \$20 and \$40 subsistence allowances were "per week." The version which originally passed the Assembly contained this language, but it was subsequently stricken.

Since 1897, 35 unsuccessful proposals have been made to effect changes in this area. An itemized list and brief description of each bill is given in Table 2.

Table 2: A Brief Description of Wage Exemption Changes Proposed by Unsuccessful Bills 1897-1963

1897

136,A.\* To reduce monthly maximum exemption from \$60 to \$40 and 3-month exemption from \$180 to \$120.

535,A. To exempt all wages except in suit for payment for necessities; then \$40 and \$120 as above.

624,A. To reduce monthly exemption to \$26 and 3-month maximum to \$78.

1899

307,A. To reduce maximum exemptions to \$40 and \$120.

1903

92,A. To make 10 per cent of all wages (no exemption) subject to garnishment for payment for necessities.

1905

48,A.\* To set exemption limitations of \$30 (one month) and \$90 (3 months) on garnishment in suits for necessities.

1913

374,A. To eliminate the \$60 monthly maximum exemption and reduce exemption to one-half of earnings.

1915

23,A. To reduce maximum exemptions to \$40 (one month) and \$120 (3 months).

332,A. To increase maximum exemptions to \$80 (one month) and \$240 (3 months).

468,A. To reduce the exemption to 90 per cent of earnings subject to the same maximum limitations.

509,A. To abolish the maximum limitation on exemptions.

1917

182,S. To set monthly exemptions (depending on the number of dependents) from \$40 to \$80, the 3-month exemption to be 3 times the one-month exemption.

1919

446,A. To increase the monthly maximum exemption to \$75 and the 3-month maximum to \$225.

1931

207,A. To exempt \$30 from a single person's monthly earnings.

1933

196,A. To exempt all earnings, subject to the existing maximums.

236,A. To change the existing \$60 and \$180 maximums to minimum exemptions.

1935

157,A. To include a wife's earnings and to decrease monthly exemptions to not less than \$50 nor more than \$70 and \$150 to \$210 for 3-month periods.

822,A. To establish exemptions for single persons and additional exemptions for aged, crippled or invalid dependents.

286,S. To exempt an amount not exceeding \$10 a month for insurance policy premiums.

349,S. To exempt, until 1937, all wages of persons earning less than \$200 a month.

1939

296,S. To exempt the first \$90 monthly and \$270 in a 3-month period, and \$30 and \$90 for single persons.

1941

128,A. To reduce minimum and maximum exemptions by 40 per cent in suits for payment for necessaries.

130,A. To extend the existing exemptions to any debtor and to change the computing procedure.

508,A. To permit various exemptions by several categories of debtors.

1949

623,A. To change exemption limits to not less than \$100 nor more than \$200 monthly and \$300 to \$600 for 3 months for persons with dependents; to set \$80 (one month) and \$240 (3 months) maximums for persons without dependents; and to increase the exemption for each dependent to \$20 monthly and \$60 for 3 months.

1951

122,A. To change exemption limits to not less than \$100 nor more than \$200 monthly and \$300 to \$600 for 3 months for persons with dependents; to set \$80 (one month) and \$240 (3 months) maximums for persons without dependents; and to increase the exemption for each dependent to \$20 monthly and \$60 for 3 months.

1951 -- Continued

464,A. To change exemption limits to not less than \$100 nor more than \$200 monthly and \$300 to \$600 for 3 months for persons with dependents; to set \$80 (one month) and \$240 (3 months) maximums for persons without dependents; and to increase the exemption for each dependent to \$20 monthly and \$60 for 3 months.

1953

415,A. To change percentage of income exempted to 75 per cent; to change limits to not less than \$75 nor more than \$150 monthly for persons without dependents and to increase maximum monthly limit to \$150 for persons with dependents.

1955

284,A. To change exemptions to \$30 weekly or \$150 monthly for persons without dependents and \$35 weekly or \$140 monthly with dependents plus \$5 weekly or \$20 monthly for each dependent.

390,S. To exempt weekly, \$30 for a person without dependents and \$40 for a person with dependents plus \$10 for each dependent.

1959

547,S. To change subsistence allowances to \$25 weekly for single persons and \$50 weekly for married persons.

1961

101,A. To change subsistence allowances to \$25 weekly for individuals without dependents and \$45 weekly for persons with dependents.

562,A. To set the subsistence allowance at \$25 weekly plus \$15 for the first dependent and \$7 for each subsequent dependent not exceeding 75 per cent of the wages owing.

483,S. To set the subsistence allowance at \$25 weekly plus \$15 for the first dependent and \$7 for each subsequent dependent not exceeding 75 per cent of the wages owing.

1963

363,A.\*\* To change subsistence allowance to exempt 80 per cent of salary or wages.

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\*Vetoed  
\*\*Pending

GARNISHMENT IN OTHER STATES

The 2 areas of garnishment whose legislative histories were traced in the preceding part of this report comprise the very heart of garnishment law and, not suprisingly, the greatest controversy swirls around these vital questions of (1) when the right to garnishment should commence, and (2) what the exemptions for income should be.

This section will examine the law of the states in these 2 areas to see how Wisconsin compares with her sister states and to note the various approaches taken by others.

1. When May Garnishment Commence?

The garnishment process is known by various names in other states. Some call it "trustee process," others "foreign attachment," others make it a part of their attachment process. By whatever name it is known certain rough groupings can be made, as shown in the following list. In 15 states, garnishment is an aid to attachment. In 15 other states, the process may generally be used by judgment creditors (and usually at certain other times too, as shown in the following list). The remaining 20 states defy classification, except for 3 tiny subgroupings of a few states with similar laws.

Table 3: Garnishment in the Several States, by Type of Action

A. As an Aid to Attachment

Alaska	Nevada
California	North Carolina
Connecticut	Ohio
Idaho	Pennsylvania
Kentucky	Rhode Island
Maryland	South Carolina*
Montana	Utah
Nebraska	

B. Upon Judgment

Arkansas\*\*  
 Colorado (after return of unsatisfied judgment)\*\*  
 Delaware\*\*  
 Illinois (but action may not be brought for garnishment of wages following a judgment by confession)  
 Iowa\*\*  
 Louisiana\*\*  
 Mississippi\*\*  
 Missouri\*\*  
 New Jersey\*\*  
 New York (after return of unsatisfied execution)  
 Oregon\*\*  
 Tennessee\*\*  
 Virginia (with further restrictions on the garnishment of wages)  
 West Virginia\*\*  
 Wyoming\*\*

C. At Other Times

Arizona	} In aid of attachment or, where the defendant does not have sufficient property to satisfy a judgment, in a suit for debt or upon judgment.
New Mexico	
Texas	
Indiana	} In actions arising on contract, or upon judgment.
Kansas	
South Dakota	

C. At Other Times -- Continued

New Hampshire } Most personal actions may commence by  
Maine } garnishment.  
Pennsylvania }

Alabama - In pending suit for recovery of money or upon judgment.

Florida - In a suit to recover a debt or after judgment.

Georgia - In a pending action or after judgment, but only after judgment to garnishee wages.

Hawaii - At any time in a suit, but only after judgment to garnishee wages.

Michigan - In personal actions arising upon contract, or upon judgment, but only after judgment to garnishee wages.

Minnesota - In all actions on contract or in tort for the recovery of money.

North Dakota - In actions founded upon contract, upon judgment or in aid of execution.

Oklahoma - In any civil action, if the defendant doesn't have sufficient property to satisfy a judgment.

Vermont - At commencement of actions founded on contract or for an accounting and in most tort actions.

Washington - In aid of attachment, in a suit for just debt or upon an unsatisfied judgment.

Wisconsin - In an action founded on a contract, or for attachment, or upon a judgment or when an execution against property has issued or is issuable.

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\*An additional process is available to judgment creditors.  
\*\*Also an aid to attachment.

2. Wage Exemptions in the Several States

The 50 states differ greatly as to the amount of exemption of wages, salary or income which each allows in garnishment. The exemption is computed either as a percentage of the debtor's wages (usually for a stated time period) or as a fixed dollar maximum. Frequently the 2 systems are combined to exempt a certain percentage of wages, but not to exceed a stated sum. The various classifications and exceptions to the general exemption, which many states have established, make an attempt to classify the states according to patterns of exemption meaningless.

A brief description of the general statutory exemptions granted by each state follows, with the pertinent statute numbers quoted in parentheses. Note the word "general." The more limited exceptions (i.e. persons just off relief, minors for parents' debts, etc.) are not listed.

Table 4: Wage Exemptions in the Several States, by State

Alabama

60% of compensation of resident laborers or employes for personal services. (7-630)

Alaska

Earnings for previous 30 days if necessary for support, but not exceeding \$350 for the head of a family and \$200 for a single person. (09.35.080)

Arizona

50% of earnings for previous 30 days, if necessary for the support of the debtor's family. (12-1594)

Arkansas

All wages of laborers and mechanics for 60 days, provided the wages plus personal property owned does not exceed \$500 for a married resident or the resident head of a family and \$200 for a single resident. (30-207 and Arkansas Constitution, Article 9, Sections 1 and 2)

California

All earnings for previous 30 days, if necessary for the support of the debtor's family; if for necessities or wages of former or present employe, only 50% is exempt. (CCP 690.11)

Colorado

70% of earnings for the head of a family and 35% for a single person. (77-13-4)

Connecticut

Wages may not be garnished.

Delaware

90% of wages of resident of New Castle County, except for room and board bills up to \$50 and except for necessities or taxes. (10-4913)

60% of wages of resident of Kent or Sussex County, except for room and board bills up to \$50. (10-4913)

Florida

All wages due head of resident family. (222.11)

Georgia

\$3 wages per day and 50% of remainder. (46-208)

Hawaii

95% of first \$100 monthly, 90% of next \$100, 80% of remainder. (237-1)

Idaho

75% of earnings for previous 30 days if necessary for support of the debtor's family, reduced to 50% if claim is for necessities, but in no event more than \$100. (11-205)

Illinois

\$45 per week or 85% of gross wages, whichever is greater, but not more than \$200 per week. (62-33)

Indiana

\$25 of a householder's wages (3-505) and for resident householders, 90% of excess income. (2-4406)

Iowa

\$35 per week for resident head of family, exclusive of payroll deductions for taxes, plus \$3 weekly for each dependent under 18. There is no garnishment of wages for more than \$150 plus costs. (627.10)

Kansas

90% of earnings of resident for previous 3 months if necessary for support of the debtor's family, less up to \$4 court costs. (60-3495)

Kentucky

90% of income earned by labor, but not more than \$67.50 per month. (427.010)

Louisiana

80% of earnings, but not less than \$100. (13:3881)

Maine

\$130 of wages for previous month. (114-55)

Maryland

No amount is exempt for income taxes. Otherwise, \$100 in most counties and 75% in Caroline, Cecil, Kent, Queen Anne's and Worcester Counties. (Article 9, sections 31, 31A and 31B)

Massachusetts

\$50 of wages per week. (246.28)

Michigan

First garnishment issued in the case:

1. 60% of wages of a householder having a family, but not more than \$50 nor less than \$30 for one week or less and, if a greater time period, not more than \$90 nor less than \$60.
2. 40% of wages of a debtor who is not a householder having a family, but not less than \$20 nor more than \$50.

Subsequent garnishments:

1. 60% of wages of a householder having a family, but not more than \$30 nor less than \$12 for one week or less

Michigan -- Continued

and, more than one week to 16 days, not more than \$60 nor less than \$24 and if a greater time period, not more than \$60 nor less than \$30.

2. 30% of wages of a debtor who is not a householder having a family, but not less than \$10 nor more than \$20. (27A.7511)

Minnesota

50% of net wages. (550.37)

Mississippi

\$100 per month for the head of a family; \$50 per month for a single person. (307)

Missouri

90% of wages for previous 30 days to the resident head of a family. (525.030)

Montana

All earnings for the head of a family or a person over 60 years of age, if necessary for support, but only 50% of earnings if claim is for necessaries or gasoline. (93-5816, 93-5819)

All earnings for previous 30 days when claim is for \$10 or less. (93-5817)

Nebraska

90% of wages of the head of a family, except for persons who have or are about to abscond or leave the state. (25-1558)

Nevada

100% of earnings for previous 30 days when necessary for support of the debtor's resident family, but only 50% when the claim is for necessaries or the debtor is not supporting a resident family. (21.090)

New Hampshire

\$20 of wages per wage, but \$40 weekly when the claim is based on a loan contract. (512:21)

New Jersey

100%, if wages are less than \$18 weekly. (2A:17-50)

90% of wages, unless income exceeds \$2,500 annually, in which case the court may order a larger percentage to be subject to garnishment. (2A:17-56)

New Mexico

80% of wages of the resident head of a family for previous 30 days, if \$100 or less; if more, 75%. (26-2-27)

New York

100% of income if less than \$30 weekly and debtor works or resides in a city with a population of 250,000; otherwise 100% if debtor makes less than \$25 weekly. If the debtor makes more than these amounts, then 90%. (CPA, 684)

North Carolina

100% of earnings for previous 60 days, if necessary for the use of a family supported at least in part by the debtor. (1-362)

North Dakota

\$35 of wages per week of the resident head of a family. (32-09-02)

Ohio

\$100 of earnings of resident for previous 30 days; 80% of first \$300, but not less than \$150, and 60% thereafter of earnings of the head of a family or a widow for previous 30 days. (2329.62 and 2329.66)

Oklahoma

100 % of wages for previous 3 months if necessary for the support of the debtor's family (12-850 and 12-851); otherwise, 75% of earnings of a resident homeowner or head of a family for previous 3 months; and 75% of current earnings of persons who are not heads of families. (31-1 and 31-6)

Oregon

Wages for previous 30 days, but not exceeding \$175, if necessary for support of the debtor's family; 50% of such sum if the debt was incurred for family expenses. No exemption if debt occurred because of the debtor's fraud. (23.180)

Pennsylvania

No garnishment of wages. (42-886)

Rhode Island

\$30 of wages. (9-26-4)

South Carolina

100% of earnings for previous 60 days if necessary for support. The court has discretion to reduce the exemption by up to 15% or \$100, whichever is smaller, if the debt is for fuel, food or medicine. (10-1731)

South Dakota

Included in a general personalty exemption of \$1,500 to the head of a family and \$600 to a single person. (51.1803)

Tennessee

\$60 per month of wages of a resident head of a family (26-207), plus \$5 per month for each dependent child under 16. (26-208)

\$30 per month of wages of a resident, at least 18 years of age or emancipated, and not the head of a family. (26-209)

Texas

100% of the wages of a family member (2832) and a single person. (3832)

Utah

50% of earnings, but not less than \$50, of a married man or the head of a family for previous 30 days if necessary for the support of a resident family. (78-23-1)

Vermont

\$25 or 50% of wages, whichever is less. (12-3020)

Virginia

75% of wages of a laboring person who is a householder or the head of a family, but not less than \$100 nor more than \$150 for those paid monthly. (A table provides comparable exemptions for those paid at other time intervals.) For a laboring person who is not a householder or the head of a family, one-half of the exemption provided above. (34-29)

Washington

\$35 per week for a person having individuals dependent on him, plus \$5 per week for each dependent, but not more than \$50 weekly; \$25 per week for persons without dependents. (7.32.280)

West Virginia

80%, but at least \$20 of wages per week. (3834)

Wisconsin

See that portion of this bulletin which discusses Section 272.18 (15) of the statutes.

Wyoming

50% of earnings for previous 60 days if necessary for support of the resident family of the debtor. (1-422)

CONCLUSION

The law relating to commencement of garnishment has remained fairly stable in Wisconsin. Many unsuccessful attempts have been made, however, to require a judgment before garnishment may commence generally, or before wages may be garnished. These attempts have intensified in recent sessions but have, as yet, received insufficient support.

There appear to be 2 viewpoints current in the Legislature. One, the majority view so far, has been to retain the status quo on commencement of garnishment. Those adhering to this view have voted down every attempt in recent years to effect changes. The minority, which would change the law, has never won but has displayed tenacity of purpose by its repeated attempts.

The exemption laws in Wisconsin show no clear pattern. They have been liberalized and tightened depending on whether concern for the debtor or creditor was ascendant. In this era of continual

erosion of the dollar's value by inflation, one should remember that failure to increase exemptions actually lessens the real value of the exemption, fixed as it is to a dollar maximum. Except for the creation and increase of the subsistence allowance, the Legislature has not acted on the income exemption since 1951. An exemption worth \$100 in purchasing power in 1951 had a purchasing power of \$84.36 in October 1963, based on figures of the U.S. Department of Commerce. That means that the value of the exemption, by inaction, has been reduced by more than 15 per cent.

No pattern emerges from examining the exemption laws of other states. The laws range from prohibiting garnishment of wages to allowing only very small exemptions when wages are garnisheed, with no area of general agreement in between. Where exemptions are held to a dollar maximum, there has been a general trend to increase the maximums, but one cannot say whether this stems from a desire to really benefit the debtor or merely to keep abreast of inflation.

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