

#39.30

2/22/71

Second Supplement to Memorandum 71-6

Subject: Study 39.30 - Attachment, Garnishment, Execution (New Ohio Statute)

Attached is a copy of the new Ohio wage-garnishment statute. We understand that the federal authorities refused to grant an exemption from federal wage garnishment restrictions on the basis of the Ohio statute.

Also attached is a copy of a law review article discussing the new Ohio statute. The article points out the defects in the statute. It was previously distributed to you.

You should read the Ohio statute; you may find ideas in it that you believe should be considered for inclusion in our statute. We do not plan to discuss the statute as a separate item of consideration at the meeting. We will assume that you have read the statute.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

(Amended Substitute Senate Bill No. 85)

AN ACT

To amend sections 1911.34, 1911.35, 1911.37, 2323.13, 2329.62, 2329.66, 2329.67, 2715.01, 2715.02, 2715.13, 2715.17, 2715.19, 2715.29, and 2715.30, to enact sections 1911.331, 1911.332, 2329.621, 2715.111, and 2715.112, and new sections 1911.33 and 2715.11, and to repeal sections 1911.33, 1911.36, 1911.38, 1911.39, and 2715.11 of the Revised Code relative to the garnishment of personal earnings and the requirements of cognovit notes.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1911.34, 1911.35, 1911.37, 2323.13, 2329.62, 2329.66, 2329.67, 2715.01, 2715.02, 2715.13, 2715.17, 2715.19, 2715.29, and 2715.30 be amended, and sections 1911.331, 1911.332, 2329.621, 2715.111, and 2715.112 and new sections 1911.33 and 2715.11 of the Revised Code be enacted to read as follows:

Sec. 1911.33. (A) AN ACTION IN GARNISHMENT MAY BE COMMENCED IN A COUNTY COURT BY THE FILING OF AN OATH IN WRITING MADE BY THE PLAINTIFF, HIS AGENT, OR ATTORNEY SETTING FORTH:

- (1) THE NAME OF THE DEFENDANT;
- (2) THAT AFFIANT HAS GOOD REASON TO BELIEVE THAT THE PERSON, PARTNERSHIP, OR CORPORATION NAMED IN THE AFFIDAVIT AS THE GARNISHEE HAS PROPERTY OF THE DEFENDANT NOT EXEMPT UNDER SECTION 2329.62 OR 2329.66 OF THE REVISED CODE;
- (3) A DESCRIPTION OF THAT PROPERTY;
- (4) THAT THE DEMAND IN WRITING HAS BEEN MADE AS REQUIRED BY SECTION 2715.02 OF THE REVISED CODE;

(5) THAT THE PAYMENT DEMANDED IN THE NOTICE REQUIRED BY SECTION 2715.02 OF THE REVISED CODE HAS NOT BEEN MADE, NOR HAS A SUFFICIENT PORTION BEEN MADE TO PREVENT THE GARNISHMENT OF PERSONAL EARNINGS IN THE MANNER DESCRIBED IN SECTION 2715.02 OF THE REVISED CODE;

(6) THAT AFFIANT HAS NO KNOWLEDGE OF ANY APPLICATION BY DEFENDANT FOR THE APPOINTMENT OF A TRUSTEE SO AS TO PRECLUDE THE GARNISHMENT OF DEFENDANT'S PERSONAL EARNINGS.

(B) NO ACTION IN GARNISHMENT OF PERSONAL EARNINGS SHALL BE BROUGHT AGAINST A DEFENDANT SOONER THAN THIRTY DAYS AFTER THE FILING OF THE LAST SUCCESSFUL ACTION IN GARNISHMENT OF PERSONAL EARNINGS AGAINST SUCH DEFENDANT, REGARDLESS OF WHO BRINGS SUCH ACTION OR WHO BROUGHT THE LAST SUCCESSFUL ACTION.

Sec. 1911.331. THE AFFIDAVIT REQUIRED BY SECTION 1911.33 OF THE REVISED CODE SHALL BE ACCOMPANIED BY THE RETURN RECEIPT REQUESTED FOR THE WRITTEN DEMAND MADE PURSUANT TO SECTION 2715.02 OF THE REVISED CODE, THE UNCLAIMED LETTER, OR PHOTOGRAPHIC OR OTHER DIRECT IMAGE COPY OF SUCH RECEIPT OR LETTER, OR BY PROOF OF SERVICE BY THE COURT OF SUCH DEMAND AND BY ONE DOLLAR AS THE GARNISHEE'S FEE FOR COMPLIANCE WITH THE ORDER, NO PART OF WHICH SHALL BE CHARGED AS COURT COSTS.

Sec. 1911.332. THE OFFICER TO WHOM THE ORDER OF ATTACHMENT IS DIRECTED SHALL LEAVE WITH THE GARNISHEE THREE COPIES OF THE ORDER OF ATTACHMENT, TOGETHER WITH THE GARNISHEE'S FEE REQUIRED BY SECTION 1911.331 OF THE REVISED CODE AND A WRITTEN NOTICE THAT THE GARNISHEE ANSWER AS PROVIDED IN SECTION 1911.35 OF THE REVISED CODE.

WHEN THE GARNISHEE DOES NOT RESIDE IN THE COUNTY IN WHICH THE ORDER OR ATTACHMENT WAS ISSUED, THE PROCESS MAY BE SERVED BY THE PROPER OFFICER OF THE COUNTY IN WHICH HE RESIDES, OR BE PERSONALLY SERVED.

THE ORDER OF ATTACHMENT AND NOTICE TO APPEAR SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM AND THREE COPIES SHALL BE SERVED UPON THE GARNISHEE:

ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER

DOCKET NO.

CASE NO.

IN THE COURT

....., OHIO

THE STATE OF OHIO

COUNTY OF, SS

.....

.....

PLAINTIFF

VS.

.....

.....

DEFENDANT

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

TO:

.....

....., **GARNISHEE**

THE PLAINTIFF IN THE ABOVE CASE HAS FILED AN AFFIDAVIT, SATISFACTORY TO THE UNDERSIGNED, IN THE COURT STATING THAT YOU OWE THE DEFENDANT MONEY FOR PERSONAL EARNINGS AND THAT SOME OF THAT MONEY MAY NOT BE EXEMPT FROM EXECUTION OR ATTACHMENT UNDER THE LAWS OF THE STATE OF OHIO.

YOU ARE THEREFORE ORDERED TO COMPLETE SECTION B OF THIS FORM, RETURN THE ORIGINAL OF THIS FORM, TOGETHER WITH ANY AMOUNT SHOWN DUE THEREON, TO THE COURT NOT LATER

THAN DELIVER ONE COPY OF THIS FORM TO THE DEFENDANT. KEEP THE OTHER COPY OF THE FORM FOR YOUR FILES. THE TOTAL AMOUNT OF THE

A. PLAINTIFF'S JUDGMENT IS \$.....

B. THE ESTIMATED COURT COSTS ARE \$.....

C. THE TOTAL PROBABLE AMOUNT OWED IS \$..... WITNESS MY HAND AND THE SEAL OF THIS COURT THIS

..... DAY OF, 19..

..... JUDGE

**SECTION B. ANSWER OF EMPLOYER (GARNISHEE)
(ANSWER ALL PERTINENT QUESTIONS)**

NOW COMES THE EMPLOYER
HEREIN WHO SAYS:

1. DEFENDANT IS IN MY/OUR EMPLOY. YES NO
IF ANSWER IS "NO," GIVE DATE OF LAST EMPLOYMENT. (1)

2. HAS DEFENDANT BEEN GARNISHED WITHIN THE 30 DAYS PRECEDING THE DATE OF SERVICE OF THIS FORM? YES NO
IF ANSWER IS "YES," GIVE THE PRIOR COURT AND CASE NUMBER; THEN OMIT QUESTIONS 3, 4, 5, AND 6; SIGN THE FORM AND RETURN IT TO THE COURT. (2)
COURT CASE NO.

3. AMOUNT I/WE OWE DEFENDANT FOR SERVICES RENDERED BEFORE THIS FORM WAS RECEIVED. (3) \$.....

4. ENTER EARNINGS OF THE DEFENDANT, AFTER DEDUCTIONS REQUIRED BY LAW, FOR THE PREVIOUS MONTHLY PAY PERIOD (IF THE DEFENDANT HAS NOT BEEN EMPLOYED A FULL

MONTH, ENTER THE AMOUNT OF MONTHLY PAY AT PRESENT PAY RATE): (4) \$

5. ENTER THE LESSER OF (A) AN AMOUNT EQUAL TO 17.5% OF THE AMOUNT ON LINE 4; OR (B) THE AMOUNT BY WHICH THE AMOUNT ON LINE 4 EXCEEDS \$ (175 TIMES THE CURRENT FEDERAL MINIMUM HOURLY WAGE): (5) \$

6. ENTER THE SMALLEST OF THE AMOUNT ENTERED ON LINE 3; OR THE AMOUNT ENTERED ON LINE 5; OR THE AMOUNT ON LINE C OF SECTION A OF THIS FORM. PAY THIS AMOUNT INTO COURT WHEN RETURNING THIS FORM: (6) \$

I CERTIFY THAT THE STATEMENTS ABOVE ARE TRUE.

.....
(PRINT NAME OF EMPLOYER)

.....
(PRINT NAME AND TITLE OF
PERSON WHO COMPLETED
FORM)

SIGNED
(SIGNATURE OF PERSON COMPLETING FORM)

DATED THIS DAY OF, 19.....

SECTION A SHALL BE FILLED IN BEFORE SERVICE. SECTION B SHALL BE FILLED IN BY THE GARNISHEE AND THE ORIGINAL FILED WITH THE COURT AS HIS ANSWER. THE GARNISHEE MAY KEEP ONE COPY AND SHALL DELIVER THE OTHER TO THE DEBTOR AT THE TIME HE WOULD OTHERWISE PAY THE EARNINGS WHICH HE IS INSTEAD PAYING TO THE COURT.

Sec. 1911.34. If a garnishee is a person, the copy COPIES of the order of attachment and the notice mentioned REQUIRED in section ~~1911.33~~ 1911.332 of the Revised Code shall be served upon such person personally, or left at his usual place of residence. If a partnership is ~~garnisheed~~ GARNISHED by its company name,

THE COPIES OF such order and notice shall be left at its usual place of doing business, or be served personally on one of its members; if a corporation is garnished GARNISHED, THE COPIES OF such order and notice shall be left with the president or other principal officer, or its secretary, cashier, or managing agent. If such corporation is a railroad company, THE COPIES OF such order and notice may be left with any regular ticket or freight agent thereof in the county.

Sec. 1911.35. The garnishee shall appear before the county court judge in accordance with the command of the notice referred to in section 1911.33 1911.332 of the Revised Code, and THE GARNISHEE SHALL answer under oath all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, AND REGARDING PERSONAL EARNINGS OWED TO DEFENDANT FOR SERVICES RENDERED BEFORE SERVICE OF THE NOTICE. Such garnishee shall disclose the amount which he owes to the defendant, whether due or not. If a corporation is the garnishee, such corporation shall disclose any stock therein held by or for the benefit of the defendant, at or after the service of such notice.

Sec. 1911.37. A garnishee [may] SHALL pay the money which he owes the defendant, or so much thereof as the county court orders, to the officer having the order of attachment, or into such court. Such garnishee is discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim, and shall not be subjected to costs beyond those caused by his own resistance of the claim against him. If such garnishee discloses the property in his hands, or the true amount owing by him, and delivers or pays the same according to the order of such court, such garnishee must be allowed his costs.

Sec. 2323.13. (A) An attorney who confesses judgment in a case, at the time of making such confession, must produce the warrant of attorney for making it to the court before which he makes the confession; which shall be in the county where the maker or any one of several makers resides or in the county where the maker or any one of several makers signed the warrant of attorney authorizing confession of judgment, any agreement to the contrary notwithstanding, and the . NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, IF THE MAKER OR ANY OF SEVERAL MAKERS RESIDES WITHIN THE TERRITORIAL JURISDICTION OF A MUNICIPAL COURT ESTABLISHED UNDER SECTION 1901.01 OF THE REVISED CODE, OR SIGNED THE WARRANT OF ATTORNEY AUTHORIZING

CONFESSION OF JUDGMENT IN SUCH TERRITORY, JUDGMENT ON SUCH WARRANT OF ATTORNEY SHALL BE CONFERRED IN THE MUNICIPAL COURT HAVING JURISDICTION IN SUCH TERRITORY, PROVIDED THE COURT HAS JURISDICTION OVER THE SUBJECT MATTER; OTHERWISE, JUDGMENT MAY BE CONFERRED IN ANY COURT IN THE COUNTY WHERE THE MAKER OR ANY OF SEVERAL MAKERS RESIDES OR SIGNED THE WARRANT OF ATTORNEY. THE original or a copy of the warrant shall be filed with the clerk.

(B) The attorney who represents the judgment creditor shall include in the petition a statement setting forth to the best of his knowledge the last known address of the defendant.

(C) Immediately upon entering any such judgment the court shall notify the defendant of the entry of the judgment by personal service or by registered or certified mail LETTER mailed to him at the address set forth in the petition.

(D) A WARRANT OF ATTORNEY TO CONFESS JUDGMENT CONTAINED IN ANY PROMISSORY NOTE, BOND, SECURITY AGREEMENT, LEASE, CONTRACT, OR OTHER EVIDENCE OF INDEBTEDNESS EXECUTED ON OR AFTER JANUARY 1, 1971, IS INVALID AND THE COURTS ARE WITHOUT AUTHORITY TO RENDER A JUDGMENT BASED UPON SUCH A WARRANT UNLESS THERE APPEARS ON THE INSTRUMENT EVIDENCING THE INDEBTEDNESS, DIRECTLY ABOVE OR BELOW THE SIGNATURE OF EACH MAKER, OR OTHER PERSON AUTHORIZING THE CONFESSION, IN SUCH TYPE SIZE OR DISTINCTIVE MARKING THAT IT APPEARS MORE CLEARLY AND CONSPICUOUSLY THAN ANYTHING ELSE ON THE DOCUMENT:

"WARNING—BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU OR YOUR EMPLOYER REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE."

Sec. 2329.62. Every person resident of the state, not included in section 2329.66 of the Revised Code of Ohio, may hold property exempt from execution, attachment, or sale to satisfy a judgment or order as follows:

(A) Wearing apparel to be selected by him not exceeding in value ~~one~~ THREE hundred dollars;

(B) The tools and implements of the debtor for carrying on his profession, trade, or business, including agriculture, to be selected by him, not exceeding ~~two~~ THREE hundred dollars in value;

(C) Personal EXCEPT AS PROVIDED IN SECTION 3115.23 OF THE REVISED CODE, earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine, or amercement, in an amount up to but not in excess of two hundred dollars EQUAL TO THE GREATER OF THE FOLLOWING AMOUNTS:

(1) ONE HUNDRED SEVENTY-FIVE TIMES THE MINIMUM HOURLY WAGE IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE, AS PRESCRIBED BY THE "FAIR LABOR STANDARDS ACT OF 1939," 52 STAT. 1060, 29 U.S.C. 206 (A) (1), AND ANY AMENDMENTS OR ADDITIONS THERETO OR REENACTMENTS THEREOF;

(2) EIGHTY-TWO AND ONE-HALF PER CENT OF THE DEBTOR'S DISPOSABLE EARNINGS PAYABLE FROM A GARNISHEE, OR, WHEN THE EXEMPTION IS CLAIMED BY THE DEBTOR PURSUANT TO A PROCEEDING IN BANKRUPTCY, EIGHTY-TWO AND ONE-HALF PER CENT OF THE DEBTOR'S GROSS EARNINGS FOR THE THIRTY-DAY PERIOD ENDING ON THE TENTH DAY PRIOR TO FILING THE PETITION IN BANKRUPTCY.

Sec. 2329.621. AS USED IN SECTIONS 2329.62 AND 2329.66 OF THE REVISED CODE, "DISPOSABLE EARNINGS" MEANS NET EARNINGS AFTER THE GARNISHEE HAS MADE DEDUCTIONS REQUIRED BY LAW, EXCLUDING THOSE ORDERED PURSUANT TO SECTION 3115.23 OF THE REVISED CODE.

TITLE III OF THE "CONSUMER CREDIT PROTECTION ACT," 82 STAT. 146 (1968), 15 U.S.C. 1671, PROVIDES FOR RESTRICTIONS ON GARNISHMENT OF PERSONAL EARNINGS TO BECOME EFFECTIVE JULY 1, 1970, TO SUPERSEDE THE LAWS OF ANY STATE WHICH DO NOT PROVIDE DEBTORS WITH PROTECTION AT LEAST EQUAL TO THE MINIMUM PROTECTION PROVIDED IN THAT FEDERAL ACT. IT IS THE INTENTION OF THE GENERAL ASSEMBLY TO AVOID THE INEVITABLE CONFUSION WHICH WILL RESULT IF ANY PART OF THE FEDERAL ACT IS SUPERIMPOSED ON OHIO LAW, BY ENACTING GARNISHMENT LAWS WHICH PROVIDE PROTECTION TO DEBTORS WHICH EQUALS OR EXCEEDS THAT CONTAINED IN THE FEDERAL LAW, AND

ALL THE LAWS OF THIS STATE AFFECTING SUCH GARNISHMENTS SHALL BE CONSTRUED SO AS TO EFFECT THIS PURPOSE.

Sec. 2329.66. Every person who is the chief support of a family, or who is a person paying alimony, maintenance, or other allowance for the support of a divorced or separated spouse, or for the support of a minor child, or is the chief support of any dependent person, and every widow may hold property exempt from execution, attachment, or sale, for debt, damage, fine, or amercement, as follows:

(A) The wearing apparel of such person or family, the beds, bedsteads, and bedding for their use, one cooking stove and pipe, one stove and pipe used for warming the dwelling, and fuel sufficient for a period of sixty days, actually provided and designed for use of such person or family;

(B) Livestock or household furnishings not exceeding [five] SIX hundred dollars in value to be selected by the debtor;

(C) All books used in the family, and all family pictures;

(D) Provisions actually provided and designed for the use of such person; or family, not exceeding ONE HUNDRED AND fifty dollars in value, to be selected by the debtor;

(E) The tools and implements of the debtor necessary for carrying on his profession, trade, or business, including agriculture, to be selected by him, not exceeding five SIX hundred dollars in value;

(F) [~~1~~] When the debtor is paid weekly, thirty per cent of the average weekly earnings of the debtor for personal services rendered for the four week period before the issuing of an attachment or other process to subject such earnings to the payment of a debt, damage, fine, or amercement;

~~(2)~~—When the debtor is paid biweekly or semi-monthly, sixty-five per cent of the average biweekly or semi-monthly earnings, as the case may be, of the debtor for personal services rendered for the two pay periods before the issuing of an attachment or other process to subject such earnings to the payment of a debt, damages, fine, or amercement;

~~(3)~~ When the debtor is paid monthly, eighty-two and one-half per cent of the personal earnings of the debtor for the services rendered the month before the issuing of an attachment or other process to subject such earnings to the payment of a debt, damages, fine, or amercement;

~~(G)~~] All articles, specimens, and cabinets of natural history or science, whether animal, vegetable, or mineral, except such as are kept or intended for show or exhibition for money or pecuniary gain;

(G) EXCEPT AS PROVIDED IN SECTION 3115.23 OF THE REVISED CODE, PERSONAL EARNINGS OF THE DEBTOR FOR SERVICES RENDERED WITHIN THIRTY DAYS BEFORE THE ISSUING OF AN ATTACHMENT OR OTHER PROCESS, THE RENDITION OF A JUDGMENT, OR THE MAKING OF AN ORDER, UNDER WHICH THE ATTEMPT MAY BE MADE TO SUBJECT SUCH EARNINGS TO THE PAYMENT OF A DEBT, DAMAGE, FINE, OR AMERCEMENT, IN AN AMOUNT EQUAL TO THE GREATER OF THE FOLLOWING AMOUNTS:

(1) ONE HUNDRED SEVENTY-FIVE TIMES THE MINIMUM HOURLY WAGE IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE, AS PRESCRIBED BY THE "FAIR LABOR STANDARDS ACT OF 1938," 52 STAT. 1060, 29 U.S.C. 206 (A) (1), AND ANY AMENDMENTS OR ADDITIONS THERETO OR REENACTMENTS THEREOF.

(2) EIGHTY-TWO AND ONE-HALF PER CENT OF THE DEBTOR'S DISPOSABLE EARNINGS PAYABLE FROM A GARNISHEE, OR, WHEN THE EXEMPTION IS CLAIMED BY THE DEBTOR PURSUANT TO A PROCEEDING IN BANKRUPTCY, EIGHTY-TWO AND ONE-HALF PER CENT OF THE DEBTOR'S GROSS EARNINGS FOR THE THIRTY-DAY PERIOD ENDING ON THE TENTH DAY PRIOR TO FILING THE PETITION IN BANKRUPTCY.

[(H) Proceedings to subject the personal earnings of the defendant to satisfy a claim shall not be brought by any creditor sooner than thirty days after the preceding successful proceedings against the defendant.]

Sec. 2329.67. The exemption of one hundred dollars or less EXEMPT PERSONAL EARNINGS provided for in section SECTIONS 2329.62 AND of the Revised Code and the minimum exemption of one hundred fifty dollars or more provided for in section 2329.66 of the Revised Code are not subject to the payment of the cost of any proceedings brought to recover a judgment for a debt nor for any proceedings to satisfy said judgment.

Sec. 2715.01. In a civil action for the recovery of money, at or after its commencement, the plaintiff may have an attachment against the property, OTHER THAN PERSONAL EARNINGS, of the defendant upon any one of the following grounds:

(A) Excepting foreign corporations which by compliance with the law therefore are exempted from attachment as such, that the defendant or one of several defendants is a foreign corporation;

(B) That the defendant is not a resident of this state;

(C) That the defendant has absconded with the intent to defraud his creditors;

(D) That the defendant has left the county of his residence to avoid the service of a summons;

(E) That the defendant so conceals himself that a summons cannot be served upon him;

(F) That the defendant is about to remove his property, in whole or part, out of the jurisdiction of the court, with the intent to defraud his creditors;

(G) That the defendant is about to convert his property, in whole or part, into money, for the purpose of placing it beyond the reach of his creditors;

(H) That the defendant has property or rights in action, which he conceals;

(I) That the defendant has assigned, removed, disposed of, or is about to dispose of, his property, in whole or part, with the intent to defraud his creditors;

(J) That the defendant has fraudulently or criminally contracted the debt, or incurred the obligations for which suit is about to be or has been brought;

(K) That the claim is for work or labor, or for necessaries+;

(L) That the defendant has not complied with the provisions of sections 1306.01 to 1306.09, inclusive, of the Revised Code, relating to bulk transfers.

An attachment shall not be granted on the ground that the defendant is a foreign corporation or not a resident of this state for any claim, other than a debt or demand arising upon contract, judgment, or decree, or for causing damage to property or death or personal injury by negligent or wrongful act.

AN ATTACHMENT AGAINST THE PERSONAL EARNINGS OF A DEFENDANT, THROUGH AN ACTION IN GARNISHMENT, MAY BE GRANTED AFTER A JUDGMENT HAS BEEN OBTAINED BY THE PLAINTIFF.

NO PERSON SHALL DISCHARGE AN EMPLOYEE SOLELY BY REASON OF SUCH EMPLOYEE'S PERSONAL EARNINGS FROM SUCH PERSON HAVING BEEN ATTACHED THROUGH NO MORE THAN ONE ACTION IN GARNISHMENT IN ANY TWELVE-MONTH PERIOD.

Sec. 2715.02. The person seeking an order of attachment against personal earnings or an order in aid of execution against personal earnings must make the following demand in writing for the excess OF THE AMOUNT OF THE JUDGMENT over the

amount of personal earnings exempt from execution, attachment, or sale to satisfy a judgment or order, or so much thereof as will satisfy the claim JUDGMENT:

**STATUTORY DEMAND FOR PAYMENT OF
DEBT AND NOTICE OF PENDENCY OF
GARNISHMENT PROCEEDINGS**

..... The undersigned demands payment
(Name and address of debtor)

on your obligation to
(creditor)

To satisfy this demand you must pay the amount due, which is
..... or the balance of your personal earnings net
(amount due)

exempt from attachment or garnishment, whichever is less. The amount of your personal earnings not exempt from attachment or garnishment is computed as follows:

(A)—If you are the chief support of a family, or a person paying alimony, maintenance, or other allowance for the support of a divorced or separated spouse, or for the support of a minor child, or the chief support of any dependent person, or if you are a widow, and:

(1)—Are paid weekly, you must pay at least seventy per cent of your average weekly earnings as determined by the weekly earnings for the four pay periods immediately preceding receipt of this demand;

(2)—Are paid biweekly or semi-monthly, you must pay at least thirty-five per cent of your average biweekly or semi-monthly earnings as determined by the two pay periods immediately preceding the receipt of this demand;

(3)—Are paid monthly, you must pay at least seventeen and one-half per cent of the monthly earnings as determined by your earnings for the pay period immediately preceding the receipt of this demand;

(B)—If you are not the chief support of a family, nor a person paying alimony, maintenance, or other allowance for the support of a divorced or separated spouse, or for the support of a minor child, nor the chief support of any dependent person, nor a widow, you must pay at least the excess over and above two hundred dollars of your personal earnings for the thirty days immediately preceding the date of receipt of this demand.

UNLESS THIS DEMAND IS COMPLIED WITH WITHIN FIFTEEN DAYS, or within fifteen days you apply in court for the appointment of a trustee to receive that portion of your earnings which is not exempt from attachment or garnishment, **THE UNDER-**

SIGNED WILL SEEK AN ORDER OF ATTACHMENT OR AN ORDER IN AID OF EXECUTION TO SUBJECT YOUR PERSONAL EARNINGS TO PAYMENT OF THE ABOVE CLAIM.

.....
(Signed by the creditor or his agent)

.....
(Name and address of creditor)²

"NOTICE OF COURT ACTION TO COLLECT DEBT

DATE OF MAILING

TO:
(NAME OF DEBTOR)

.....
(ADDRESS OF DEBTOR)

YOU OWE THE UNDERSIGNED
(NAME OF CREDITOR)
\$....., FOR WHICH A JUDGMENT WAS OBTAINED
AGAINST YOU IN THE COURT ON
....., PAYMENT OF WHICH IS HEREBY
DEMANDED.

IF YOU DO NOT PAY WITHIN FIFTEEN DAYS OF THE DATE OF THE MAILING OF THIS NOTICE WE WILL GO TO COURT AND ASK THAT YOUR EMPLOYER BE ORDERED TO WITHHOLD MONEY FROM YOUR EARNINGS AND PAY IT TO THE COURT TO SATISFY YOUR DEBT. THIS IS CALLED GARNISHMENT.

IT IS TO YOUR ADVANTAGE TO AVOID IT BECAUSE THE PLACING OF THE EXTRA BURDEN ON YOUR EMPLOYER CAN CAUSE YOU TO LOSE YOUR JOB.

YOU CAN AVOID THE GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE NEXT FIFTEEN DAYS:

- (1) PAY TO US THE AMOUNT DUE;**
- (2) COMPLETE THE ATTACHED FORM ENTITLED "PAYMENT TO AVOID GARNISHMENT" AND RETURN IT TO US WITH THE PAYMENT, IF ANY, SHOWN DUE ON IT; OR**

(3) APPLY TO YOUR LOCAL MUNICIPAL OR COUNTY COURT FOR THE APPOINTMENT OF A TRUSTEE TO RECEIVE THE PART OF YOUR EARNINGS THAT IS NOT EXEMPT FROM GARNISHMENT. YOU WILL BE REQUIRED TO LIST YOUR CREDITORS, AND THE AMOUNT YOU WILL THEN PAY TO YOUR TRUSTEE EACH PAYDAY WILL BE DIVIDED AMONG THEM UNTIL THE DEBTS ARE PAID OFF. THIS CAN BE TO YOUR ADVANTAGE BECAUSE IN THE MEANTIME NONE OF THOSE CREDITORS CAN GARNISH YOUR WAGES.

.....
(NAME OF CREDITOR)

.....
(SIGNATURE OF CREDITOR OR HIS AGENT)

.....
(ADDRESS OF CREDITOR)

.....
PAYMENT TO AVOID GARNISHMENT

TO:
(NAME OF CREDITOR)

.....
(ADDRESS OF CREDITOR)

TO AVOID THE GARNISHMENT OF WHICH YOU HAVE GIVEN ME NOTICE I ENCLOSE \$ TO APPLY TOWARDS MY INDEBTEDNESS TO YOU. THE AMOUNT OF THE PAYMENT WAS COMPUTED AS FOLLOWS:

1. TOTAL AMOUNT OF INDEBTEDNESS DEMANDED: (1) \$.....

2. ENTER THE AMOUNT OF YOUR EARNINGS AFTER DEDUCTIONS REQUIRED BY LAW, FOR THE PREVIOUS MONTHLY PAY PERIOD (IF NOT EMPLOYED A FULL MONTH, ENTER A FULL MONTH'S PAY AT YOUR PRESENT PAY RATE): (2) \$.....

3. ENTER THE LESSER OF — (A) AN AMOUNT EQUAL TO 17.5% OF THE AMOUNT ON LINE 2; OR (B) THE AMOUNT BY WHICH THE AMOUNT ON LINE 2 EXCEEDS \$..... (175 TIMES THE CURRENT FEDERAL MINIMUM HOURLY WAGE): (3) \$.....

4. ENTER THE LESSER OF THE AMOUNTS ON LINES 1 AND 3. SEND THIS AMOUNT TO THE CREDITOR ALONG WITH THIS FORM AFTER YOU HAVE SIGNED IT: (4) \$.....

I CERTIFY THAT THE STATEMENTS CONTAINED ABOVE ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

.....
(SIGNATURE OF DEBTOR)

.....
(PRINT NAME AND ADDRESS OF DEBTOR)"

I CERTIFY THAT THE AMOUNT SHOWN ON LINE 2 IS A TRUE STATEMENT OF THE DEBTOR'S EARNINGS.

.....
(PRINT NAME OF EMPLOYER)

.....
(SIGNATURE OF EMPLOYER OR AGENT)

The demand shall be made AFTER JUDGMENT IS OBTAINED BY DELIVERING SUCH DEMAND TO THE DEBTOR BY PERSONAL SERVICE BY THE COURT OR BY SENDING IT TO THE DEBTOR BY REGISTERED OR CERTIFIED LETTER, RETURN RECEIPT REQUESTED, AT HIS USUAL PLACE OF RESIDENCE at least fifteen and not more than ~~thirty~~ FORTY-FIVE days before such order of attachment or order in aid of execution is sought: ~~by delivering such demand to the debtor by personal service by the court or by sending it by registered or certified letter, return receipt requested, to his usual place of residence.~~

Sec. 2715.11. (A) AN ACTION IN GARNISHMENT MAY BE COMMENCED IN A COURT OF COMMON PLEAS BY THE FILING OF AN OATH IN WRITING MADE BY THE PLAINTIFF, HIS AGENT, OR ATTORNEY SETTING FORTH:

- (1) THE NAME OF THE DEFENDANT;

(2) THAT AFFIANT HAS GOOD REASON TO BELIEVE AND DOES BELIEVE THAT THE PERSON, PARTNERSHIP, OR CORPORATION NAMED IN THE AFFIDAVIT AS THE GARNISHEE HAS PROPERTY OF THE DEFENDANT NOT EXEMPT UNDER SECTION 2329.62 OR 2329.66 OF THE REVISED CODE;

(3) A DESCRIPTION OF THAT PROPERTY;

(4) THAT THE DEMAND IN WRITING HAS BEEN MADE AS REQUIRED BY SECTION 2715.02 OF THE REVISED CODE;

(5) THAT THE PAYMENT DEMANDED IN THE NOTICE REQUIRED BY SECTION 2715.02 OF THE REVISED CODE HAS NOT BEEN MADE NOR HAS A SUFFICIENT PORTION BEEN MADE TO PREVENT THE GARNISHMENT OF PERSONAL EARNINGS AS DESCRIBED IN SECTION 2715.02 OF THE REVISED CODE;

(6) THAT AFFIANT HAS NO KNOWLEDGE OF ANY APPLICATION BY DEFENDANT FOR THE APPOINTMENT OF A TRUSTEE SO AS TO PRECLUDE THE GARNISHMENT OF DEFENDANT'S PERSONAL EARNINGS.

(B) NO ACTION IN GARNISHMENT OF PERSONAL EARNINGS SHALL BE BROUGHT AGAINST A DEFENDANT SOONER THAN THIRTY DAYS AFTER THE FILING OF THE LAST SUCCESSFUL ACTION IN GARNISHMENT OF PERSONAL EARNINGS AGAINST SUCH DEFENDANT, REGARDLESS OF WHO BRINGS SUCH ACTION OR WHO BROUGHT THE LAST SUCCESSFUL ACTION.

Sec. 2715.111. THE AFFIDAVIT REQUIRED BY SECTION 2715.11 OF THE REVISED CODE SHALL BE ACCOMPANIED BY THE RETURN RECEIPT REQUESTED FOR THE WRITTEN DEMAND MADE PURSUANT TO SECTION 2715.02 OF THE REVISED CODE, THE UNCLAIMED LETTER, OR PHOTOGRAPHIC OR OTHER DIRECT IMAGE COPY OF SUCH RECEIPT OR LETTER, OR BY PROOF OF SERVICE BY THE COURT OF SUCH DEMAND AND BY ONE DOLLAR AS THE GARNISHEE'S FEE FOR COMPLIANCE WITH THE ORDER, NO PART OF WHICH SHALL BE CHARGED AS COURT COSTS.

Sec. 2715.112. THE OFFICER TO WHOM THE ORDER OF ATTACHMENT IS DIRECTED SHALL LEAVE WITH THE GARNISHEE THREE COPIES OF THE ORDER OF ATTACHMENT, TOGETHER WITH THE GARNISHEE'S FEE REQUIRED BY SECTION 2715.111 OF THE REVISED CODE AND WITH A WRITTEN NOTICE THAT THE GARNISHEE APPEAR AND ANSWER AS PROVIDED IN SECTION 2715.29 OF THE REVISED CODE. WHEN THE GARNISHEE DOES NOT RESIDE IN

THE COUNTY IN WHICH THE ORDER OR ATTACHMENT WAS ISSUED, THE PROCESS MAY BE SERVED BY THE PROPER OFFICER OF THE COUNTY IN WHICH HE RESIDES, OR BE PERSONALLY SERVED.

IF THE GARNISHEE IS A PERSON, THE COPIES OF THE ORDER AND NOTICE SHALL BE SERVED UPON HIM PERSONALLY, OR LEFT AT HIS USUAL PLACE OF RESIDENCE. WHEN A PARTNERSHIP IS GARNISHED BY ITS COMPANY NAME, THE COPIES OF THE ORDER AND NOTICE SHALL BE LEFT AT ITS USUAL PLACE OF DOING BUSINESS, OR WITH A MEMBER OF SUCH PARTNERSHIP. IF THE GARNISHEE IS A CORPORATION, THE COPIES OF THE ORDER AND NOTICE SHALL BE LEFT WITH THE PRESIDENT OR OTHER PRINCIPAL OFFICER OF THE CORPORATION OR WITH ITS SECRETARY, CASHIER, OR MANAGING AGENT. IF SUCH CORPORATION IS A RAILROAD COMPANY, THE COPIES OF THE ORDER AND NOTICE MAY BE LEFT WITH A REGULAR TICKET OR FREIGHT AGENT THEREOF, IN ANY COUNTY IN WHICH THE RAILROAD IS LOCATED.

THE ORDER OF ATTACHMENT AND NOTICE TO APPEAR SHALL BE IN SUBSTANTIALLY THE FORM PRESCRIBED IN SECTION 1911.832 OF THE REVISED CODE, AND THREE COPIES THEREOF SHALL BE SERVED UPON THE GARNISHEE.

SECTION A OF THE FORM SHALL BE FILLED IN BEFORE SERVICE. SECTION B OF THE FORM SHALL BE FILLED IN BY THE GARNISHEE AND THE ORIGINAL FILED WITH THE COURT AS HIS ANSWER. THE GARNISHEE MAY KEEP ONE COPY AND SHALL DELIVER THE OTHER TO THE DEBTOR AT THE TIME HE WOULD OTHERWISE PAY THE EARNINGS WHICH HE IS INSTEAD PAYING TO THE COURT.

Sec. 2715.13. The answer of the garnishee required by section ~~2715.14~~ 2715.112 of the Revised Code shall be made before the clerk of the court of common pleas of the county in which the garnishee resides, or, if he resides out of the state, before the clerk of the county where he was served, or where the action is pending. A special examination of the garnishee shall be had, and actions against him for failing to appear, or to answer satisfactorily, or to comply with the order of the court in the premises, shall be brought in the county in which he resides.

Sec. 2715.17. When property is under attachment, attachments thereon under subsequent orders of attachment must be as follows:

(A) If it is real property, it shall be attached in the manner prescribed for executing attachment.

(B) If it is personal property, it shall be attached as in the hands of the officer, and be subject to any previous attachment.

(C) If a person is made a garnishee more than once with respect to the same indebtedness or liability, ~~a copy~~ COPIES of the order and notice mentioned in section ~~2715.11~~ 2715.112 of the Revised Code shall be left with him in the manner prescribed by such section for serving a garnishee.

Sec. 2715.19. An order of attachment shall bind the property attached from the time of service. A garnishee shall be liable to the plaintiff in attachment for all property of the defendant in his hands, and money and credits due from him to the defendant, from the time he is served with the written notice mentioned ~~REQUIRED~~ in section ~~2715.11~~ 2715.112 of the Revised Code. When property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

Sec. 2715.29. After the written notice is issued as provided in section ~~2715.11~~ 2715.112 of the Revised Code, the garnishee shall appear and answer within the time allowed the defendant to answer the petition upon which the attachment was granted. Under oath, he shall answer all questions put to him touching property of every description, and credits of the defendant in his possession or under his control ~~and~~ AND REGARDING PERSONAL EARNINGS OWED TO DEFENDANT FOR SERVICES RENDERED BEFORE SERVICE OF THE NOTICE. THE GARNISHEE SHALL truly disclose the amount owing by him to the defendant whether due or not, and in the case of a corporation, any stock held therein by or for the benefit of the defendant, at or after the service of notice.

Sec. 2715.30. A garnishee ~~may~~ SHALL pay the money owing by him to the defendant, or so much thereof as the court orders, ~~to the officer having the attachment or into court.~~ He shall be discharged from liability to the defendant for money so paid, not exceeding the plaintiff's claim, and shall not be subjected to costs beyond those caused by his resistance of the claims against him. ~~If he discloses the property in his hands, or the true amount owing by him, and delivers or pays it according to the order of the court, he shall be allowed his costs. When any part of the earnings of the debtor is not exempt, the garnishee process shall remain in force from the time of its service until the trial of the cause to determine the claim, debt, or demand of the creditor and bind all such earnings due at the time of service, and which become due from that time until the trial of such cause. The garnishee may pay to the debtor an amount equal to ninety per cent of such personal earnings, due when the process is served or becoming due thereafter until trial, and be released from any liability to such creditor therefor.~~

SECTION 2. That existing sections 1911.34, 1911.35, 1911.37, 2323.13, 2329.62, 2329.66, 2329.67, 2715.01, 2715.02, 2715.13, 2715.17, 2715.19, 2715.29, and 2715.30, and sections 1911.33, 1911.36, 1911.38, 1911.39, and 2715.11 of the Revised Code are hereby repealed.

CHARLES F. KURFESS,
Speaker of the House of Representatives.

JOHN W. BROWN,
President of the Senate.

Passed June 5, 1970.

Approved June 17, 1970.

JAMES A. RHODES,
Governor.

The sectional numbers herein are in conformity with the Revised Code.

OHIO LEGISLATIVE SERVICE COMMISSION
DAVID A. JOHNSTON, *Director.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 17th day of June, A. D. 1970.

I hereby certify that the foregoing is a true copy of the enrolled bill.


TED W. BROWN,
Secretary of State.