

First Supplement to Memorandum 72-55

Subject: Study 39.30 - Attachment, Garnishment, Execution (Wage Garnishment and Related Matters)

The staff suggests in the revised statute attached to Memorandum 72-55 that the Commission's proposal to provide a withholding table based on gross earnings be abandoned and that no effort be made in the revised statute to do any more than to adopt the federal restrictions on earnings garnishment. The adoption of this suggestion would deprive employers of most of the advantages of the proposed system but would avoid the complexity of the employer having to compute the amount to be withheld under both the state and federal rules.

The staff believes that the withholding table system could be used in the vast majority of cases since more would be protected than under the federal rules (highly paid employees under a public retirement system being a possible exception). At the same time, the Judicial Council would be in the position of having to provide the employer with instructions governing treatment of various forms of earnings, such as tips and commissions earned over a period of time, and (since the federal rules make little sense in some cases and the federal authorities have shown no sympathy to alternative state schemes) this would not be a task I personally would like to undertake.

For your information, I am attaching a copy of an Illinois statute I recently discovered. To me, it is the ultimate in ignoring the problems of the employer in developing a workable earnings garnishment procedure. Note that the Illinois statute requires application of three different rules to determine how much, if any, is to be withheld from earnings.

I am also attaching an interesting Alaska statute. Note the last paragraph which requires the court to prepare an informational pamphlet somewhat analogous to the "employer's instructions" we had provided for in our original earnings garnishment proposal.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

ILLINOIS

Sec. 3. [S.H.A. ch. 62, § 73]

Wages, salary, commissions, bonuses and periodic payments pursuant to a retirement or pension plan are exempt and not subject to collection under a deduction order, in the amount of (a) \$65 per week in the case of an employee who is the head of a family and contributes substantially to its support and \$50 per week in the case of an employee who is not the head of a family, or (b) 85% of gross wages, salary, commissions, bonuses and periodic payments pursuant to a retirement or pension plan, whichever is greater or (c) amounts prescribed by Title III of the Federal Consumer Credit Protection Act,¹ whichever amount is greater. This exemption (and no other) applies irrespective of the place where the compensation was earned or payable and the State where the employee resides. All compensation above the exempt amount is subject to collection under a deduction order, and no payroll deductions required by law to be withheld may be taken from the non-exempt amount. An employer, in determining whether his employee is a head of a family and contributing substantially to its support for purposes of this Section, may rely on a written statement to that effect signed by the employee and incurs no liability if the employee is entitled to the \$50 rather than the \$65 exemption.

¹ 15 U.S.C.A. § 1601 et seq.

Sec. 4. [S.H.A. ch. 62, § 74]

Upon the filing by a judgment creditor of (a) an affidavit that the affiant believes any person is indebted to the judgment debtor for wages due or to become due, as herein provided, and includes the last address of the judgment debtor known to the affiant as well as the name of the judgment debtor, and (b) written interrogatories to be answered by that person with respect to the indebtedness, the clerk of the court in which the judgment was entered shall issue summons against the person named in the affidavit as employer commanding the employer to appear before the court and answer the interrogatories in writing under oath. Such summons shall be accompanied by a copy of the underlying judgment or a certification by the clerk of the court issuing the judgment, or by the attorney for the judgment creditor, setting forth the amount of the judgment, the name of the court and the number of the case and a copy of Title III of the Federal Consumer Credit Protection Act.

Sec. 18. [S.H.A. ch. 62, § 85]

No employer may discharge or suspend any employee by reason of the fact that his earnings have been subjected to a deduction order for any one indebtedness. Any person violating this Section shall, upon conviction, be fined not more than \$1,000 or imprisoned in a penal institution other than a penitentiary for not more than one year, or both.

Approved Sept. 24, 1971.

ALASKA

Sec. 09.35.035. Default judgment or nonappearance of attorney for judgment debtor. When a judgment has been obtained by default, or no attorney has appeared on behalf of the judgment debtor in the action in which the judgment was rendered, no execution upon the judgment debtor's property may be obtained except in accordance with the following procedures:

(1) Real property or personal property not capable of physical seizure by a peace officer may not be sold or otherwise disposed of until 15 days after service of notice of execution upon the judgment debtor and proof of service of the notice has been filed with the court, or until ordered by the court if the judgment debtor files a claim for exemption of the property before its sale or disposition.

(2) Personal property capable of physical seizure, including money, evidence of indebtedness, or other documents, shall be retained by the peace officer or paid into the court to be held in escrow until 15 days after service of notice of execution upon the judgment debtor and proof of service of the notice has been filed with the court, or until such further disposition as the court orders if the judgment debtor files a claim for exemption of the property before its sale or other disposition.

(3) Notice of execution required by this section shall specify the property as to which execution is sought, and shall name the person who has possession of the property, and in addition shall include:

(A) a brief explanation, in lay terminology, of the availability of exemptions from execution which exist under state or federal law, in the form and content prescribed by the state supreme court;

(B) blank forms which shall be used by the judgment debtor for asserting claims for exemption, together with simplified instructions for their use, all in substantially the following form:

NOTICE

The Court of the State of Alaska, Judicial District, has issued a judgment that you must pay to the sum of \$. A writ of execution has been issued against you, a copy of which is attached to this form. This writ is an order of the court by which your property can be taken from you and sold to pay the judgment and any court costs which have been assessed against you.

The following property, believed to be yours, has been seized and is now being held by the court:

Description	Person in Possession at Time of Levy	Date of Levy
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Both federal and state law provide that certain types of property (up to specified dollar evaluations) and certain percentages and types of wages are exempt from execution. Details of legal exemptions to which you may be entitled are available to you at [name and address of court issuing judgment], or you may contact any attorney of your choice, or other available legal service, for an explanation of your rights.

After having determined whether or not you are entitled to an exemption on the property described above, please complete and sign the following form and deliver or mail it to the court **WITHIN 15 DAYS** of the receipt of this notice: *

TO BE COMPLETED BY DEBTOR:

I have investigated my rights as to exemption from execution on the property described above, now in possession of the court, and find that (1) I AM (2) AM NOT entitled to an exemption. (Complete the following **ONLY** if you have checked block #1, indicating that you claim an exemption.) Therefore, I claim an exemption up to the amount (or evaluation) of \$..... on property or money presently in custody of the court.

Signature of Debtor

***IF YOU HAVE CLAIMED NO EXEMPTIONS, OR IF YOU FAIL TO RETURN THE ABOVE FORM TO THE COURT WITHIN 15 DAYS OF THE RECEIPT OF THIS NOTICE, THE PROPERTY DESCRIBED ABOVE WILL BE SOLD TO SATISFY THE JUDGMENT AGAINST YOU IN THIS CASE. Any**

money in possession of the court which was seized to satisfy this judgment will be turned over to the judgment creditor. If you claim an exemption, and that exemption is disputed by the judgment creditor, a hearing on your claim will be held within three days after the claim for exemption is filed or as soon thereafter as practicable.

Please retain one copy of this form for your records and submit the other to the court as requested above.

(4) When a claim for exemption from execution is filed by a judgment debtor, a hearing on the claim shall be held within three days or as soon as practicable. When distance or other factors make a prompt hearing impracticable, the court shall make such arrangements for disposition of the matter as are just under the circumstances.

(5) If the judgment creditor cannot, after due diligence, locate the judgment debtor, he may file an affidavit of that fact with the court, and upon application, the court may authorize him to serve the notice required under this section by mailing the notice by certified mail to the last known address of the judgment debtor.

(6) Each court which issues writs of execution shall, by order, designate a trustee or other individual as the officer for administration of this section. This individual shall receive funds paid into the court, and is the appropriate person for service of claims for exemption by the judgment debtor and for performance of other duties that the court may direct.

(7) The supreme court shall prescribe a pamphlet containing information, in lay terminology, as to the various exemptions which exist under state and federal law. This pamphlet shall be kept at the offices of all district and superior court clerks for use by judgment debtors wishing to determine possible exemptions to which they may be entitled in regard to property or money seized in satisfaction of a judgment. The pamphlet shall also be kept available for public distribution. (§ 1 ch 175 SLA 1970; am §§ 1, 2 ch 99 SLA 1971)