

LEGAL ACTION OF WISCONSIN

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January 16, 2024

Dear Members of the Assembly Committee on State Affairs,

My name is Angel Kwaterski. I represent low-income consumer clients at Legal Action of Wisconsin and lead our Consumer Law unit. I apologize that I was unable to attend the Committee's public hearing on AB 337 last Wednesday, January 10th. I did hear about it from my colleague who testified, and I wanted to share some clarity on three points.

- 1) The bill ends up being a financial wash for our clients. Although our clients would benefit from no longer paying fees/costs potentially every 13 weeks (standard tends to be \$150), Section 812.33(2)—which AB 337 does not amend—requires garnishees (i.e. employers) to receive a \$3 fee for each check sent to the creditor. The \$3 fee is deducted from the amount sent to the creditor, and therefore is included in calculating the 20% garnishment limit. Under AB 337, the interaction between Section 812.33(2) and allowing multiple creditors to garnish simultaneously will have two main effects:
 - a) Debtors with multiple garnishments (many of our clients) will be paying \$3/check sent to each creditor. Therefore, instead of paying one \$3 fee, someone with six garnishments could be paying \$18 *per paycheck* in fees to the employer. Stretched out over time, these additional fees per paycheck negate the benefit of eliminating the fees/costs associated with the court process for garnishment.
 - b) Under current law, in which one judgment at a time is garnished, each judgment can collect up to 20% of an individual's wages until the debt is satisfied. Under AB 337, with multiple debts and multiple fees paid to the garnishee, in the example of \$18 being pulled from a paycheck, less money is being paid to satisfy judgments as fees plus interest keep accruing. Therefore, garnishments will last longer, and employer fees will last longer. Whether you call it attorney's fees up front that get added to a judgment, or garnishee fees that get taken out of the amount paid toward the judgments, it would end up being a financial wash for many of our clients. Some would end up paying more in garnishee fees under AB 337 than they would in attorney's fees/costs under current law.
- 2) There is no meaningful enforcement, as there are no clear remedies. It is correct that under AB 337, an individual could go to court if they do not receive a timely notice every 13 weeks, or a timely exemption every 180 days. There are two main problems with considering this as the solution to enforcement:
 - a) It puts the onus on people with low incomes—often surviving through multiple crises, working more than one job, and struggling to make ends meet just to feed their families and pay rent—to be the ones checking their calendar to make sure they've received two different timely notices — one "every 13 weeks," the other every "180 days." This is not a realistic burden for many to be able to bear. Additionally, for individuals receiving potentially various notices reflecting multiple garnishments, it may end up being difficult for someone to understand exactly how much they're paying in total.

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- b) There is no clear remedy even for a client who goes to court on week 14 to say they did not receive a notice. Under current law the court process for garnishment is, itself, what keeps the creditor accountable; if a creditor does not extend a garnishment after 13 weeks, no further wages are garnished. If they file in week 16, the garnishment is not retroactively applied to weeks 14-15. And, every 13 weeks, a debtor may file an answer to the garnishment and can present defenses or file for exemption. A debtor may still file an exemption form at any time, but there is no accountability under AB 337 for creditors who do not follow the law with respect to sending timely notices or exemption forms.
 - c) My colleague asked if I could reiterate the enforcement discussions we had (which occurred while she was on parental leave). Under the Wisconsin Consumers Act, if a creditor fails to send a proper notice of right to cure before suit, the consumer is entitled to have the action dismissed. We suggested an analogous remedy as a strong enforcement mechanism: if the creditor fails to send the required notices, a court could stop the garnishment and the creditor must return any money that was improperly garnished. We recognize this is the strongest enforcement for our clients, and also recognize that there is room for compromise which would incentivize creditors to follow the law without going so far as to dismiss the remainder of the garnishment. Unfortunately, this and any related ideas were dismissed without further discussion.
- 3) Sending the exemption form every 180 days is an unacceptable change for our clients.
- a) In our understanding, under Section 17 of the bill, AB 337 only requires the exemption to be served to a debtor as is currently required in 812.35(4), which requires the exemption form to be served at the commencement of an action every 13 weeks (it is possible that a creditor and debtor may agree to a 13-week stipulated extension, but that is rare for our clients whose financial statuses are often in flux). In other words, AB 337 would only require the exemption form to be served *one* time in the course of a particular garnishment. Rather than including the exemption form with AB 337's 13-week notice of continued garnishment, Amendment 1 to AB 337 would require creditors to send the exemption form every 180 days.
 - b) In discussions regarding the bill, Legal Action said we were willing to compromise to every 4 months, but every 6 months would be too long between notices. Current law includes the exemption form as part of the process of receiving a judgment and garnishment. Every 13 weeks, a consumer receives the exemption form prompting them to consider whether they are, in fact, exempt. For many experiencing garnishments over a period of time, the garnishments happen in the background while they focus on stretching their take-home income to pay for their rent, utilities, car payments, childcare, and medical appointments. People with low incomes are constantly under multiple stresses. Given how often a low-income consumer's financial security fluctuates, it is likely that they may qualify for an exemption at some point during garnishment. It is unlikely that, four and a half months after an exemption notice, when they qualify for food stamps, they will recall that four and a half months ago they received an exemption form that says they may now be exempt from garnishment. The reality under Amendment 1 is that many exemption-qualifying individuals

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will have their wages garnished simply because of the time span between notices. When they do file for exemption, it does not apply retroactively.

- c) It also may be confusing to many clients to be receiving the exemption form separately from the 13-week notice, including that the exemption form sent every 180 days must “omit[] the information regarding the total amount of the creditor’s claim.” Most low-income consumers do not have a lawyer at the ready, unfortunately, to explain the various notices they are receiving or how to interpret them. What may be obvious to some of us, is certainly far from obvious to all. Adding to the confusion, under AB 337, it is likely that debtors will be receiving different notices from multiple judgment creditors throughout the timeline, as the 13-week timeline for notices and the 180-days notice for the exemption may vary for each judgment creditor.

Additionally, it is worth noting that the bill also puts significant onus on employers. Employers are the ones who will be calculating the pro rata amount owed to each creditor. Meanwhile, they must continue to ensure that the total amount garnished does not exceed 20% of an individual’s wages, and they must continue to ensure that the amount garnished would not put the individual below 100% of the federal poverty line. This is less difficult for salaried employees, but many of Legal Action’s clients get paid an hourly rate, and so wages can fluctuate with missing work for childcare, illness, or weather, or with the changing needs of the employer. As a result, employers will be forced to juggle calculating the multiple garnishments, ensuring the amount garnished is up to but not exceeding 20% of an individual’s wages, sending out checks each pay period to multiple creditors, and potentially recalculating this amount frequently for low-income employees with fluctuating hours or wages.

Considering these factors, it is not possible for Legal Action of Wisconsin to be neutral on AB 337, even though we would like to be, as the bill and proposed Amendment 1 leave our consumer clients worse off than they are under current law. The fees paid to the garnishee in the instance of multiple garnishments neutralizes the financial benefit of the bill, while also offering no remedies if creditors fail to send timely notices and making it more onerous and unlikely that a low-income consumer will be aware that they qualify for an exemption.

Thank you for your time, thoughtfulness, and consideration on this matter. Please feel free to contact me with any further questions. I can be reached at ARK@legalaction.org or 920.233.6521 ext 4118.

Sincerely,



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Legal Action of Wisconsin