Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1477 (Wieckowski) – As Amended June 8, 2022

SENATE VOTE: 27-9

SUBJECT: ENFORCEMENT OF JUDGMENTS: WAGE GARNISHMENT

KEY ISSUE: GIVEN CALIFORNIA'S EVER-INCREASING COST OF LIVING, SHOULD STATUTORY FORMULAS BE ALTERED TO SAFEGUARD A GREATER PERCENTAGE OF DEBTORS' EARNINGS FROM WAGE GARNISHMENT?

SYNOPSIS

A wage garnishment is a seizure of a percentage of a debtor's paycheck in order to repay a creditor. Garnishment continues, paycheck after paycheck, until either the debt is repaid, or the debtor quits or is fired. This bill would preserve California's existing wage garnishment framework, while reducing the garnishment rate for most debtors. In so doing, the bill would safeguard a greater percentage of individuals' paychecks, allowing their debts to be repaid at a more gradual rate. Nothing in this bill would eliminate a debtor's legal obligation to repay debts.

This analysis compares the effect of this bill on three hypothetical debtors: a low-income debtor who earns the state minimum wage; a middle-income debtor who supports two children on the 2021 median income for a family of three in Sacramento County; and a high-income debtor who earns double the median income for an individual in Sacramento County.

The analysis goes on to answer the following questions:

1) *How would this bill change existing garnishment levels?*
2) *Why should more earnings be protected from garnishment?*
3) *How would this bill affect wage garnishment for unpaid child or spousal support?*

Ultimately, given the number of Californians who owe debts, and in the face of enormous increases in the cost of living, maintaining the present statutory garnishment formulas simply forces a substantial portion of the workforce into increased poverty, and likely, further into debt simply to survive.

This bill is co-sponsored by six nonprofit organizations: Center for Responsible Lending, East Bay Community Law Center, National Consumer Law Center, Public Counsel, Public Law Center, and Western Center on Law and Poverty, and supported by a variety of consumer, legal aid, labor, and charitable organizations. It is opposed by CalChamber; the California Association of Collectors and several companies in the debt collection and debt buying business; and multiple trade associations for the financial services industry, including California Bankers Association.

SUMMARY: Alters statutory formulas so as to protect a greater percentage of judgment debtors' earnings from wage garnishment. Specifically, **this bill**:

1) Enacts two different sets of formulas for wage garnishment of disposable earnings, one that applies to judgment debtors whose earnings are less than specified threshold amounts, and a second that applies to judgment debtors whose earnings are equal to or greater than these amounts.

2) Establishes, for judgment debtors who earn *less than* $1,800 per weekly pay period, $3,600 per biweekly pay period, $3,900 per semimonthly pay period, or $7,800 per monthly pay period, that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—if the judgment debtor is paid on a weekly basis—is the lesser of the following:

   a) Twenty-five percent of the judgment debtor's disposable earnings for that week; or

   b) Ten percent of the amount by which the judgment debtor's disposable earnings for that week exceeds 80 times the minimum hourly wage in effect at the time the earnings are payable. Further provides that, if a judgment debtor works in a locality in which the local minimum wage is higher than the state minimum hourly wage, the local minimum hourly wage is to be used for this calculation.

3) Provides, for judgment debtors whose earnings fall below the thresholds in 2), that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—if the judgment debtor is paid *other* than on a weekly basis—is to be calculated proportionally to the calculation described above in 2), as follows:

   a) For a daily period, the calculation is the same as in 2).

   b) For a biweekly period, the applicable hourly minimum wage is multiplied by 160 work hours.

   c) For a semimonthly period, the applicable hourly minimum wage is multiplied by $173^{1}/_{3}$ work hours.

   d) For a monthly pay period, the applicable hourly minimum wage is multiplied by $346^{2}/_{3}$ hours.

4) Establishes, for judgment debtors who earn *at least* $1,800 per weekly pay period, $3,600 per biweekly pay period, $3,900 per semimonthly pay period, or $7,800 per monthly pay period, that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—if the judgment debtor is paid on a weekly basis—is the lesser of the following:

   a) The amount by which the judgment debtor's disposable earnings for that week exceeds 80 times the minimum hourly wage in effect at the time the earnings are payable. Further provides that, if a judgment debtor works in a locality in which the local minimum wage is higher than the state minimum hourly wage, the local minimum hourly wage is to be used for this calculation; or

   b) A specified percentage of the judgment debtor's disposable earnings, based upon the judgment debtor's gross earnings, as follows:

i) 12 percent of the judgment debtor's disposable earnings if the judgment debtor's gross earnings are within the following ranges: $1,800 to $2,000 per weekly pay period, $3,600 to $4,000 per biweekly pay period, $3,900 to $4,333.33 per semimonthly pay period, or $7,800 to $8,666.67 per monthly pay period.

ii) 15 percent of the judgment debtor's disposable earnings if the judgment debtor's gross earnings are within the following ranges: $2,000.01 to $4,808 per weekly pay period, $4,000.01 to $9,616 per biweekly pay period, $4,333.34 to $10,417.33 per semimonthly pay period, or $8,666.68 to $20,834.67 per monthly pay period.

iii) 20 percent of the judgment debtor's disposable earnings if the judgment debtor's gross earnings are within the following ranges: $4,808.01 to $6,730 per weekly pay period, $9,616.01 to $13,460 per biweekly pay period, $10,417.34 to $14,581.67 per semimonthly pay period, or $20,834.68 to $29,163.33 per monthly pay period.

iv) 25 percent of the judgment debtor's gross earnings if the judgment debtor's gross earnings exceed $6,730 per weekly pay period, $13,460 per biweekly pay period, $14,581.67 per semimonthly pay period, or $29,163.33 per monthly pay period.

5) Provides, for judgment debtors whose earnings are at or above the thresholds in 4), that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—where the judgment debtor is paid *other* than on a weekly basis—is to be calculated proportionally to the calculation described above in 4), as follows:

   a) For a daily period, the calculation is the same as in 4).

   b) For a biweekly period, the applicable hourly minimum wage is multiplied by 160 work hours.

   c) For a semimonthly period, the applicable hourly minimum wage is multiplied by $173^1/_3$ work hours.

   d) For a monthly pay period, the applicable hourly minimum wage is multiplied by $346^2/_3$ hours.

6) Provides that the foregoing formulas shall take effect on September 1, 2023.

EXISTING LAW:

1) Defines "judgment creditor" as a person in whose favor a judgment is rendered. (Code of Civil Procedure Section 680.240. Unless otherwise noted, all further references are to this code.)

2) Defines "judgment debtor" as a person against whom a judgment is rendered. (Section 680.250.)

3) Defines "money judgment" as that part of a judgment, entered in a California court, which requires the payment of money. (Sections 680.230, 680.270.)

4) Specifies, except where the law provides otherwise, that all property of a judgment debtor is subject to enforcement of a money judgment. (Section 695.010.)

5) Enacts the Wage Garnishment Law, which establishes procedures for satisfaction of a money judgment through withholding of specified amounts of a judgment debtor's disposable earnings. (Sections 706.010-706.154.)

6) Defines, and distinguishes between, the following terms under the Wage Garnishment Law:

   a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise. (Section 706.011 (b).)

   b) "Disposable earnings" means the portion of earnings that remains after deducting all amounts required by law. (Section 706.011 (a).)

7) Establishes that the exclusive method for wage garnishment is service of an earnings withholding order on an employer. (Section 706.021.)

8) Provides that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—where the judgment debtor is paid on a weekly basis—is the lesser of the following:

   a) Twenty-five percent of the judgment debtor's disposable earnings for that week; or

   b) Fifty percent of the amount by which the judgment debtor's disposable earnings for that week exceed 40 times the minimum hourly wage in effect at the time the earnings are payable. Further provides that, if a judgment debtor works in a locality in which the local minimum wage is higher than the state minimum hourly wage, the local minimum hourly wage is to be used for this calculation. (Section 706.050 (a).)

9) Provides that the maximum amount of disposable earnings subject to garnishment under an earnings withholding order—where the judgment debtor is paid *other* than on a weekly basis—is to be calculated proportionally to the calculation described above in 8) b), as follows:

   a) For a daily period, the calculation is the same as in item 8).

   b) For a biweekly period, the applicable hourly minimum wage is multiplied by 80 work hours.

   c) For a semimonthly period, the applicable hourly minimum wage is multiplied by $86^{2}/_{3}$ work hours.

   d) For a monthly pay period, the applicable hourly minimum wage is multiplied by $173^{1}/_{3}$ hours. (Section 706.050 (b).)

10) Exempts from wage garnishment, with certain categorical exceptions, the portion of a judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or their family supported in whole or in part by the judgment debtor. (Section 706.051.)

11) Establishes the state minimum wage, which is currently set at $14 per hour for employers who employ 25 or fewer employees, and $15 per hour for employers who employ more than 25 employees. (Labor Code Section 1182.12.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: A wage garnishment is a seizure of a percentage of a debtor's paycheck in order to repay a creditor. Garnishment continues, paycheck after paycheck, either until the debt is repaid, or the debtor quits or is fired. This bill would preserve California's existing wage garnishment framework, while reducing the garnishment rate applied to most debtors. This change would safeguard a greater percentage of individuals' paychecks, allowing debts to be repaid at a more gradual rate. Nothing in this bill would eliminate a debtor's legal obligation to repay debts.

The question the bill poses is the appropriate balance that California's legal system ought to strike between the obligation to repay debts, and individuals' need to cover their day-to-day expenses. This isn't only a question of the balance between individual debtors and creditors; it has statewide implications. Shielding too much of debtors' incomes may ultimately reduce the availability and affordability of credit—including credit cards, auto loans, student loans, and mortgages—for all borrowers. But turning over too high a percentage of debtors' paychecks to creditors imposes costs on other actors in society—including family members, landlords, lenders, charities, and government—if debtors lack the incomes necessary to house, feed, and transport themselves every day.

According to the author:

> Family finances have been strained [by the pandemic], making them more vulnerable to having debts in collection that can further destabilize their economic security. At the end of 2020, nearly one-third (28%) of Californians in communities of color and 17% of Californians in white communities had a debt in collection. Wage garnishment, where creditors with a court order force an employer to send them a big chunk of a consumer's paycheck before they ever see it, is particularly harmful to low-income people as there is little or no leeway in their budgets. This means that a garnishment likely results in forgoing necessities like food, medicine, or rent. Increasing the amount of wages protected to a living wage…will help keep the most vulnerable California families above water.

How would this bill change existing garnishment levels? The details of California's current wage garnishment system are set forth in paragraphs 8 and 9 of **EXISTING LAW** above. This bill would replace this system with a two-tier system: one tier applying to judgment debtors who earn less than $1,800 per week (as set forth in paragraphs 2 and 3 of the **SUMMARY** above), and another tier applying to judgment debtors who earn $1,800 or more per week (as set forth in paragraphs 4 and 5 of the **SUMMARY** above).

Recognizing the complexity of these formulas, the following example compares the existing wage garnishment system with this bill's system, at three income levels:

- A low-income debtor earning $600/week or $31,200/year. In other words, a full-time worker earning $15/hour, the current state minimum wage required to be paid by large employers.

- A middle-income debtor supporting two children, earning $1576.92/week or $82,000/year, the 2021 median income for a household of three in Sacramento County. (*See* https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf.)

- A high-income debtor earning $2416.35/hour or $127,500/year, double the 2021 median income for an individual in Sacramento County. (*Ibid.*)

For simplicity's sake, the table below assumes that each debtor has 20% of their earnings withheld for payroll taxes, yielding their disposable earnings subject to garnishment.

Debtor	Earnings	Disposable Earnings	Current Earnings Post-Garnishment	SB 1477 Earnings Post-Garnishment
Low-income individual earning state minimum wage of $15/hr	$600.00/week	$480.00/week	$480.00/week (=$0/week garnished)	$480.00/week (=$0/week garnished)
Middle-income individual in Sacramento, supporting two children	$1576.92/week	$1261.54/week	$946.15/week (=$315.38/week garnished)	$1255.39/week (=$6.00/week garnished)
High-income individual in Sacramento	$2416.35/week	$1961.54/week	$1471.15/week (=$490.38/week garnished)	$1667.31/week (=$294.23/week garnished)

As can be seen, minimum-wage workers would remain garnishment-proof under this bill, maintaining an anti-poverty policy that originated a decade ago with the author's AB 1775 (Wieckowski, Chap. 474, Stats. 2012).

The bill's largest beneficiaries are middle-income debtors, who would still pay small amounts towards their debts, while retaining significantly more of their paychecks. The policy choice here is to maintain income stability for middle-class earners despite their debts.

High-income debtors would also retain more of their paychecks, while still paying a substantial portion of their incomes to their creditors. Under this bill, enhanced protections from garnishment phase out for debtors earning approximately $350,000 per year. Again, there is a policy choice to increase income stability for higher earners despite their debts.

Debtors, despite the ability to safeguard more of their earnings under this bill, will continue to suffer significant adverse consequences from having outstanding unpaid debts. These ongoing consequences include lower credit scores and resulting higher interest rates for loans. These consequences incentivize debtors to repay debts when they are financially able to, as appears to have occurred during the pandemic. According to the National Bureau of Economic Research, "Survey data on household behavior suggest that nearly 60 percent of the [initial round of] stimulus spending went to pay off debt or was saved." (*See* https://www.nber.org/digest/oct20/most-stimulus-payments-were-saved-or-applied-debt.) This demonstration—that debtors will repay their debts when they have adequate financial

resources—suggests that it makes sense to reduce involuntary seizures which, in turn, increase already-existing financial hardship.

Why should more earnings be protected from garnishment? The reason for protecting more earnings from garnishment is that California is among the most expensive states in the country in which to live. As is now well-understood, when accounting for the cost of living, California has the highest poverty rate in the nation. (Fox and Burns, *The Supplemental Poverty Measure: 2020*, U.S. Census Bureau (Sep. 2021), *available at* https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-275.pdf.)

According to the Massachusetts Institute of Technology's Living Wage Calculator, a living wage in California for an adult with two children stands at $54.95/hour or $2198/week. (*See* https://livingwage.mit.edu/states/06.) Compare this amount to the earnings of the middle-income debtor with two kids in the example above. Allowing garnishments to persist at present levels pushes this debtor's post-garnishment earnings to less than half the recommended living wage. Even the high-income individual would be deemed to be below the recommended living wage if that person were supporting two children.

The Legislature last adjusted garnishment thresholds in 2015. (*See* SB 501 (Wieckowski, Chap. 800, Stats. 2015.) Between July 1, 2016, when those thresholds took effect, and February 1, 2022, the last date on which state-specific data is available, California's Consumer Price Index has risen by 21.7%. (*See* https://www.dir.ca.gov/OPRL/CPI/CPICalculator/CpiCalculator.aspx.) This index encompasses a basket of commonly-purchased goods and services, including food, clothing, and transportation.

Over the same period, the average price of gasoline in the state increased from $3.81/gallon to $4.66/gallon—a nearly 19% increase. (*See* https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emm_epm0_pte_sca_dpg&f=m.) In the last three months, it has increased to $5.87/gallon, a further 26% increase. (*Ibid.*)

Arguably, given its necessity, cost, and scarcity, the most devastating change has been in the price of housing. According to private website RentData.org, the average fair market rent for a two-bedroom apartment in California increased from $1,182/month in 2016 to $1,526 in 2021, a 23% increase. (*See* https://www.rentdata.org/states/california/2016; https://www.rentdata.org/states/california/2021.) For prospective home buyers, the change was even worse. According to the California Association of Realtors, the statewide median home price in July 2016 was $509,830; in February 2022 it stood at $771,270, a 34% increase. (*See* https://www.prnewswire.com/news-releases/california-home-sales-and-median-price-decrease-in-july-as-affordability-crunch-puts-dent-in-housing-market-car-reports-300314194.html; https://www.car.org/en/aboutus/mediacenter/newsreleases/2022releases/feb2022sales.)

Given the number of Californians who owe debts, and in the face of these enormously-increased costs, to maintain the present statutory garnishment formulas is to force a substantial portion of the workforce into increased poverty, and likely, further into debt simply to survive.

How would this bill affect wage garnishment for unpaid child or spousal support? Concerns have been raised that this bill would reduce the ability to collect child or spousal support. These concerns are unfounded. The level of wage garnishment to collect delinquent support debts is largely dictated by federal law and the Family Code, and administered through Code of Civil Procedure Section 706.030. Garnishments for support are therefore unaffected by this bill.

ARGUMENTS IN SUPPORT: A coalition of two dozen nonprofit organizations, including the bill's sponsors, demonstrates the dramatic difference this bill would make for many working California families:

> For 2022, the U.S. Department of Housing and Urban Development considers $80,650 in pre-tax income to be low income for a family of four. That would roughly translate to $63,856 in net wages for a married earner claiming three allowances. Under current law, this earner could have just under $16,000 in wages seized over the course of the year. SB 1477 would allow approximately $145 a year to be garnished. As income increases to higher levels, garnishment increases as well.

ARGUMENTS IN OPPOSITION: A coalition of businesses in the debt collection industry and business trade associations, including California Association of Collectors and California Bankers Association, argues that the bill's income thresholds are too generous:

> SB 1477 would slash the allowable wage garnishment to 0% for $36/hr or less wage earners, needlessly exempting them from any wage garnishment, and making them judgment proof. In $17/hr. minimum wage localities, $41/hr. wage earners would be completely exempt. This exemption is not need-based and would apply to all debtors based on individual pay, no-questions-asked. The recent amendments only apply to those earning above $45/hr. which is not helpful considering our data shows most debtors are below this high individual income level.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Responsible Lending (co-sponsor)
East Bay Community Law Center (co-sponsor)
National Consumer Law Center (co-sponsor)
Public Counsel (co-sponsor)
Public Law Center (co-sponsor)
Western Center on Law & Poverty (co-sponsor)
Alliance of Californians for Community Empowerment (ACCE)
California Calls
Californians for Economic Justice
California Low-Income Consumer Coalition (CLICC)
Community Legal Services in East Palo Alto
Consumers for Auto Reliability and Safety (CARS)
Consumer Attorneys of California
Consumer Federation of California
Courage California
Ella Baker Center
Freedom 4 Youth
Fund Her
GRACE Inc.
Greater Sacramento Urban League
Indivisible California Statestrong
Katharine & George Alexander Community Law Center
Lawyers Committee for Civil Rights of the San Francisco Bay Area

Legal Aid at Work
NAACP California Hawaii State Conference
Root & Rebound
SEIU California
United Way Bay Area

Opposition

California Association of Collectors
California Bankers Association
CalChamber
California Credit Union League
California Creditors Bar Association
California Financial Services Association
California Judgment Preservation Alliance
Encore Capital Group
PRA Group
Receivables Management Association International

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