



# American Payroll Association

Government Relations • Washington, DC

August 28, 2017

The Honorable «FirstName» «LastName»

«Title» «Committee»

Nebraska Unicameral Legislature

Room #«Room»

P.O. Box 94604

Lincoln, NE 68509

Re: Proposed garnishment legislation — Recommendations for 2018 Session:

- LB 37 to adopt the Uniform Wage Garnishment Act
- LB 136 to change provisions relating to garnishment proceedings
- LB 229 to change provisions relating to garnishments
- LB 526 to change provisions relating to debtor's rights, garnishment, attachment, and other debt collection procedures

Dear Senator «LastName»:

The American Payroll Association (APA) offers the following comments for your consideration on LB 37, LB 136, LB 229, and LB 526, introduced in January 2017 and referred to the Judiciary Committee. We recognize that the session for 2017 ended, but wanted to bring our recommendations to your attention in preparation for the 2018 session.

## **ABOUT THE APA**

Established in 1982, APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to help payroll professionals understand their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers.

The GRTF Subcommittee on Child Support and Other Garnishments seeks legislative and regulatory solutions to improve garnishment processes and procedures and create standardization among states. In turn, these improvements increase compliance levels for the benefit of all stakeholders.

## LEGISLATIVE BILL 37

### Support for LB 37

APA supports the Uniform Wage Garnishment Act (UWGA) as approved by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission). Therefore, we are pleased to support LB 37, as introduced, with some recommended changes.

APA recommends passage of LB 37 because the UWGA:

- Creates standard definitions and procedures for increased understanding by creditors, employers, and employees;
- Streamlines the wage garnishment process by putting employers and creditors in direct contact with each other, and limits, to the extent possible, the involvement of the courts once a garnishment begins;
- Resolves choice-of-law issues by requiring court jurisdiction in the state where the employee works;
- Reduces or eliminates service issues by requiring creditors to deliver the garnishment order to the employer's registered agent, when reasonably possible;
- Allows a creditor and employer to agree on the method by which payments will be transmitted to the creditor (e.g., electronically);
- Authorizes employers with more than one wage garnishment order payable to the same creditor to make a single payment that combines the total amount;
- Eliminates held or delayed payments by employers to creditors by requiring that all amounts withheld from employees' wages be paid to creditors in a timely manner;
- Requires that employee debtors receive plain-language notices and sufficient time to ensure that they understand their legal rights and can respond to creditor garnishment orders appropriately;
- Resolves priority issues related to multiple garnishment orders by allowing more than one creditor at a time to collect payments from an employee;
- Eliminates procedurally confusing expiration dates on creditor garnishment orders by requiring wage withholding until the amount owed has been paid in full, the debtor is no longer an employee, or the creditor seeks dismissal;

- Offers additional notification and time so employers can correct errors before sanctions are applied and favors employee debtors in these situations by applying sanction amounts to employee obligations; and
- Imposes sanctions on creditors only when a court determines that they acted in bad faith.

### Changes to LB 37

APA is concerned about inconsistencies between the UWGA and LB 37. The following are recommendations to adjust these differences.

- **Employer administrative fees:** APA recommends that Nebraska implement an up-front employer administrative fee of \$20 and a per-payment fee of \$3.50 in order to adequately and fairly cover an employer's costs. The UWGA recognizes that employers serve as faultless third parties between creditors and employee debtors. Therefore, the UWGA allows for reasonable and equitable employer administrative fees to recover some of the costs for receiving, processing, and implementing creditor garnishments. These fees were not included in LB 37.

APA members report that the labor costs associated with an employer receiving, processing, and implementing a garnishment order, on average, exceed \$10. To ensure effective and efficient receipt of service, LB 37, like the UWGA, includes use of employers' registered agents. This doubles the labor costs. APA members also calculated that the per-payment cost to process a garnishment order equals on average \$3.59.

- **Employer response and penalty times:** APA recommends that employers receive the same deference to response and penalty times as afforded to debtors and creditors in LB 37. In the process of developing the UWGA, time frames for processing creditor garnishment orders were discussed extensively among participants to reach a reasonable conclusion. With the exception of the affidavit to employers, LB 37 maintains all other timeframes recommended by the UWGA.

Employers require sufficient time to review an affidavit to determine whether the affidavit identifies an existing employee, the applicable jurisdiction, or is missing information. Payroll professionals also need time to prepare a response. LB 37 Section 6 provides only 10 days for a garnishee (employer) to respond to an affidavit in a garnishment action. The UWGA recommends that garnishees receive 21 days to respond. Under LB 37 Section 16(1), a garnishee is liable to the creditor for failure to act after 11 days of service of the affidavit when the UWGA recommends 22 days.

To clarify further, the task of initial response by an employer may not seem difficult, but when information from a creditor is incomplete or inaccurate, identifying the employee may not be easy. For example, an affidavit identifying John Smith as the debtor that does not include a social security number or date of birth is received by a company with three

possible employees (John Smith Sr., John Smith Jr., and Jon Smith). This problem multiplies for large companies, companies with multiple divisions, and companies operating in more than one state and nationally. Some employers may only receive a few wage garnishment orders each year. Other employers may receive hundreds or thousands of orders.

- ***Limits on the amount of earnings subject to garnishment:*** APA, like the UWGA, is not recommending a particular limit on the amount of disposable earnings subject to creditor wage garnishments, but points out a consistency issue in Nebraska legislation. LB 37 Section 13(a)(1) limits the amount of disposable earnings subject to garnishment to 20 percent for a workweek. Current Nebraska law provides for a 25 percent limit on disposable earnings. In LB 526, the percentage would change to 15 percent or 25 percent if an individual is not a head of a family. Variations in viewpoint about the appropriate limit on disposable earnings seems to suggest a need for more analysis.

### **Further Discussion on LB 37 and the UWGA**

Some opposition was reported regarding LB 37 and the UWGA because of concerns about the role of courts, accurate recordkeeping, priority order of creditor garnishments, and bad faith provisions. APA brings to your attention that the UWGA was developed over a numbers of years. In addition to the commissioners appointed by each state to serve on the Uniform Law Commission, participants included consumers, creditors, and members of APA. Together, we scrutinized many different options to find those that would provide the greatest benefits for all stakeholders. These concerns are explained below.

- ***Role of courts:*** The UWGA reduced court involvement to relieve already overburdened court systems, cut the cost of legal representation for consumers, and eliminate added time for creditors to receive owed money. For example, an employer served with an affidavit will answer directly to the creditor rather than the court and will remit amounts owed directly to the creditor. The cost of using the court is typically charged to employee debtors and is unnecessary in these situations. Therefore, the UWGA process in LB 37 reduces these costs as well as the cost of attorney fees for employers.

In practice, once a court issues an order, the creditor calculates the amount owed and the court clerk facilitates to transfer the payments submitted by the employer to the creditor, but without verifying the accuracy of the amount. The UWGA does not block a court challenge. Instead, the UWGA removes the court clerk as an intermediary.

- ***Recordkeeping:*** The process in LB 37 does not jeopardize recordkeeping because creditors, employers, and employees all account for payments made and still owed. Creditors and employers are required to complete and share several notices and calculation worksheets that are distributed to employees to ensure accurate records. None of the provisions in LB 37 would force courts to rely only on employer records. Currently, account records kept by court clerks are just one piece of evidence in disputes and even those can be challenged.

Under LB 37, court clerks would not have account records, but all other valid evidence could be presented should a dispute arise.

- **Priority of multiple orders:** The Uniform Law Commission considered retaining the first-come-first-served system for creditors and it was rejected in favor of payments to all creditors. In addition to creditors receiving payments sooner, this process offers employee debtors a more effective method to pay down owed amounts. LB 37 also eliminates confusion for employers responsible for tracking the number of different processes among states regarding creditor priority order. Employers can avoid conflicts in attempting to determine which creditor was first. Further, under current Nebraska law, a first creditor may not have an advantage over a second creditor if an employee does not have funds available within the first 120 days.
- **Bad faith:** Bad faith requirements are not new to laws involving arrangements between parties. Payroll professionals are keenly aware of penalties incorporated into current wage garnishment laws. Employers serve as innocent third parties in disputes between employees and creditors and, yet, are penalized for not complying with wage garnishment orders. For this reason, notice requirements were added to the UWGA to ensure that employers have every opportunity to comply before penalties are assessed. This makes sense because the process should be designed to make every effort to provide payments to creditors.

To protect consumers, provisions were added to curb the behavior of some creditors that act unreasonably in seeking payments. To protect creditors, employee consumers must prove bad faith in court. In addition, creditors should not benefit from mistakes by employers that generate penalties. Therefore, the UWGA requires that penalties apply to pay down employees' debt.

While the UWGA and LB 37 include bad faith provisions, the recommended processes and procedures do not dwell on bad actors. Instead, they are designed to encourage good behavior. Concerns about collusion between employers and employees to avoid creditors, especially in family-owned and operated businesses, are unproven. In fact, other federal laws protect against these problems. For example, hiring, termination, and rehiring of employees must be reported. This would prevent an employee from leaving employment on one day only to be rehired the next day to avoid paying a creditor. An employer in this type of situation could not legitimately respond to a creditor that the named debtor is not an employee.

## LEGISLATIVE BILL 136

APA suggests that LB 136 be reconciled with the provisions of LB 37 for wage garnishments. We ask the Judiciary Committee to remove from and not add to Nebraska's statutes any language that may cause confusion with the UWGA. For example, under LB 37, the legislature removes language

associated with wages under Section 25-1056(1), (2), and (3). LB 136 renumbers Section 25-1056(2) and revises Section 25-1056(2)(c) regarding the release of funds, credits, or indebtedness.

### LEGISLATIVE BILL 229

LB 229 is focused on financial institutions and does not impact payroll departments. However, the changes proposed to Section 25-1010(1) include an administrative fee for financial institutions to process a garnishment summons. The terms in LB 229 include language that financial institutions may already charge processing fees to customers. With this in mind, APA emphasizes the need for employers to receive reasonable administrative fees in managing garnishment orders under LB 37.

### LEGISLATIVE BILL 526

If LB 526, as introduced, is reconsidered in 2018, APA suggests that the provisions be reconciled with LB 37 for wage garnishments. Under LB 37 Section 13, the amount of disposable earnings subject to garnishment is limited to the lesser of 20 percent or the amount by which disposable earnings exceed 40 times the federal minimum wage. Under LB 526 Section 2, amending Section 15-1558(1), the amount of disposable earnings subject to garnishment is limited to the lesser of 15 percent, the amount by which disposable earnings exceed 30 times the state minimum wage, or 25 percent if the individual is not a head of a family.

In addition, under LB 526 Section 2, amending Section 25-1558(7), a change is proposed to use the state instead of the federal minimum wage for garnishments of individuals earning wages in pay periods other than weekly. These changes to using the state minimum wage rather than the federal minimum wage to determine the amount of disposable earnings subject to creditor garnishment are inconsistent with LB 37.

### CONCLUSION

APA's GRTF Subcommittee on Child Support and Other Garnishments would be pleased to discuss these proposed bills and the role of employers in wage garnishments with you further. We support passage of LB 37 with suggested changes and recommend reconciling other garnishment proposals and existing statutes accordingly.

Sincerely,

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