

Proposed Amendment

of

Calif. Stats. 1970, ch. 1523, sec. 19.

1.

Reason for Proposed Amendment

Cal. Stats. 1970, ch. 1523, sec. 19 provides:

"Section 690.6 is added to the Code of Civil Procedure to read:

690.6

(a) All the earnings of the debtor due or owing for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in section 690.50.

(b) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor due or owing for his personal services rendered at any time within 30 days next preceding the levy of execution shall be exempt from execution without filing a claim for exemption as provided in section 690.50.

(c) All of such earnings, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) ....

(2) ....

(d) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(e) Any creditor ....

A simple reading of the statute shows that it exempts only wages or portions of earnings that are "due or owing" and does not exempt wages

that are paid.

Subsections (a) and (b) refer expressly only to earnings "due or owing", while subsection (c) applies to "such" earnings, obviously referring to the earnings "due or owing", mentioned in subsection (b).

This change constitutes a departure from the mandates of the Federal Consumer Protection Act as well as from the prior law.

The Federal Consumer Protection Act, 15 U.S.C.A. §1673, prohibits the "garnishment" of disposable "earnings" of a debtor that are equal or less than an amount specified by two alternative tests and permits only the garnishment of an excess (i.e., amounts in excess of 75 percent or thirty times the Federal minimum hourly wage per weekly pay period, whichever is the greater amount exempted).

"Earnings" are defined as compensation paid or payable for personal services (15 U.S.C.A. §1672(a)).

"Garnishment" is defined as "any legal or equitable proceedings through which the earnings of any individual are required to be withheld for payment of any debt".

Unfortunately the Federal Act is not drawn with the desirable precision. On the one hand the statute defines earnings as compensation paid or payable, thereby including earnings that are paid over to the employee and perhaps paid into an account. On the other hand, the statute restricts only garnishments, defined as proceedings requiring the withholding of earnings for the payment of debts, thereby excluding the case where levy on a paycheck in the hands of a debtor is excluded but including possibly the case of earnings deposited in a bank account or the like.

No authoritative judicial or administrative interpretation seems to be available.

The issue of conformity could arise in two ways:

a) 15 U.S.C.A. §1673(c) provides that "no court of ... any State may make, execute or enforce any order or process in violation of this section". Hence the conformity of a state law may be challenged in a state or, perhaps, in a federal court, if the state enforces a garnishment statute that fails to conform to the federal minimum requirements such as - perhaps - garnishment of a bank account including deposited wages.

b) The Secretary of Labor may by regulation exempt from the provisions of section 1673(c) garnishments issued under state law, if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided under sec. 1673(a).

Pursuant to this regulatory power the Labor Department (Wage and Hour Division) on May 20, 1970 adopted a regulation providing for exemption of state regulated garnishment by adding Part 870, Subpart C to 29 CFR, Chapter V (35 F.R. 8226), 29 CFR, § 870.50-56. This regulation was amended on Sept. 4, 1970, 35 F.R. 14314. According to the regulation applications for exemption must be made by a duly authorized representative of the State as defined in §870.52 and 870.55. Notice of applications are published in the Federal Register.

Notice of applications by Kansas, Kentucky, New Hampshire, North Carolina, Ohio, South Carolina and Virginia were published on Sept. 11, 1970, 35 F.R. 14368. Similar action by Illinois was published on Oct. 6, 1970, 35 F.R. 15660.

The statutes of Kansas, Kentucky, New Hampshire, Ohio and Virginia are

Kan. Laws 1970, ch. 238, p. 777

Ky. Acts 1970, ch. 217, p. 775

N.H., Rev. Stat. Ann. sec. 512.21, 1970

Ohio, Page's Ohio Rev. Code, § 2329.62 and .621 Suppl. p. 63

Va. Acts 1970, ch. 428, p. 644, copies of which are appended.

The statutes of the three other jurisdictions were not available.

The Acts of Kansas, Kentucky and Virginia incorporate verbatim the federal provisions, including the definitions of earnings, disposable earnings and garnishment, K.S.A. § 60-2310 (a); Ky. Rev. Stat. ch. 427, new section; Va. Code, § 34-29 (d).

The New Hampshire Act was held not to qualify for the exemption from the provisions of section 1673(a), because it was determined that its restrictions on garnishment were not substantially similar to those provided in the federal act, W.H. Opinion Letter No. 1111 (W.H.-64) Poverty L. Rep. ¶ 12,211.

The Ohio Act likewise ran into trouble. The Act which went into effect on Sept. 16, 1970 exempts personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or the rendition of a judgment or order, under which the attempt be made to subject such earnings to payment, in an amount equal to the greater of the following amounts:

- (1) 175 times the applicable federal minimum hourly wage
- (2) 82-1/2 percent of the debtor's disposable earnings payable from a garnishee.

On Sept. 23, 1970 the U.S. Department of Labor initiated injunction proceedings in the U.S. District Court contending that the standards of state act violated the restrictions of the federal act.

The Secretary invoked his regulation of May 25, 1970 which provides that the exemptions must be predicated on pay periods translated into work weeks. The monthly exemption predicated on the federal minimum hourly wage is  $4\frac{1}{3} \times 30 \times 1.60 = \$208$ . If the monthly wage yields disposable earnings in excess of \$277.33, then 25% must be exempt. Poverty L. Rep. ¶ 12,120 based on U.S. Labor Dep't Release No. V-CL-105. On Sept. 25, 1970 the U.S. Distr. Ct., N.D. Ohio, granted a preliminary injunction against garnishment of earnings violative of the Ohio Act as construed in the opinion. The court held that despite the wording of the act the 30-day period was meant to be computed on the basis of the date of the garnishment and that the exemption applied to wages actually due and owing during the 30-day period for services rendered during that period, yielding a minimum exemption of 64.62 per work week, Pov. L. Rep. ¶ 12,278.

Since the California exemption period is measured with the date of the levy as the terminal date, the California act would be consistent with the judgment of the U.S. District Court. It is not certain, however, that the federal exemption does not apply to earnings due and owing or paid even where the services were rendered more than a month prior to the levy.

It is believed that the California law falls short of the federal restriction on two grounds:

- a) because it restricts the exemption to compensation earned during a preceding 30 day period
- b) because it does not accord the exemption to wages paid.

Prior to the 1970 amendment and since Cal. Stat. 1937, c. 578 § 1, California has granted a wage exemption to wages "received". Prior to that time the exemption was accorded to earnings without reference to their status as "owing" or paid over. The word "received" was construed as including accrued but unpaid wages, Medical Finance Ass'n v. Rambo, 33 C.A.2d Supp. 756, 86 P.2d 159 (Sup. Ct. L.A., App. Dep't 1938). The court stated: "We are not to be understood as saying that the exemption would not also attach to the proceeds of his earnings in the judgment debtor's hands, so long as they could be identified as such. That question is not before us and we express no opinion on it." (p. 757) In subsequent cases the California courts have at least sub silentio applied the wage exemption to a pay check in the hands of the employee, Medical Finance Ass'n v. Short, 36 C.A.2d Supp. 745, 92 P.2d 961 (Sup. Ct. L.A., App. Dep't 1939), involving a W.P.A. worker's pay check and Le Font v. Rankin, 167 C.A.2d 433, 334 P.2d 608 (1959) and Carter v. Carter, 55 C.A.2d 13, 130 P.2d 186 (1942), involving bank accounts. In the bank account cases the claimants of the exemption failed to establish that the accounts included deposits of earnings received for services rendered during the critical period.

It is recommended that the earnings exemption be again extended to earnings paid and either in the possession of the debtor or deposited by him or for him into a checking account.

It is further recommended that the 30-day limitation apply only to wages deposited in a bank account and to the full wage exemption of subsection c) and that such limitation be deleted with respect to wages still owed by the employer or wages paid over but in the hands of the debtor in identifiable form (pay checks).

Finally, it is recommended that the debtor be aided by presumptions which exempt certain minimum amounts of individual bank accounts.

Proposed Act

Section 690.5 subsections (a), (b) and (c) is amended to read:

a) From the levy of attachment,

- (1) all earnings of the debtor which are compensation for personal services and are due or owing to him or paid to him and in his possession in a form identifiable as compensation for personal services, without filing a claim for exemption as provided in section 690.50.
- (2) a checking account or checking accounts held in the individual name of the defendant, whether as sole or joint holder, in an amount equal to  $2\frac{1}{6} \times 30 \times$  the Federal minimum hourly wage, it being conclusively presumed for the purpose of this subsection that such an amount is derived from a deposit by him or for him of his earnings received for personal services.

A debtor may claim a greater amount of such account or accounts as exempt from levy of attachment, by filing a claim of exemption as provided in section 690.50 and by showing that such amount is derived from a deposit by him or for him of his earnings received for personal services rendered at any time within thirty days next preceding the date of the levy [and that such amount does not exceed the amount exempted by the laws of the United States from garnishment of disposable earnings for the pay period or periods for which such earnings were received or can be claimed as exempt as provided in subsection (c).]



b) From the levy of execution,

- (1) disposable earnings of the debtor as defined by the laws of the United States relating to restrictions on garnishment which are due or owing to him or paid to him and in his possession in a form identifiable as compensation for personal services in the amount that is exempted from garnishment by the laws of the United States, without filing a claim for exemption as provided in section 690.50;
- (2) a checking account or checking accounts as defined in subsection (a), in an amount claimed as exempt as provided in section 690.50 upon showing by the judgment debtor that such amount is derived from a deposit by him or for him of his earnings received for personal services rendered at any time within thirty days next preceding the date of the levy and that such amount does not exceed the amount exempted by the laws of the United States from garnishment of disposable earnings for the pay period or periods for which such earnings are received. [An amount equal to the sum specified in subsection (a)(2) shall be presumed to be exempt as earnings for personal services, without filing of a claim of exemption].

c) All of the earnings of the debtor being compensation for personal services rendered within thirty days next preceding the date of the levy and due or owing to the debtor or paid to him and in his hands in a form identifiable as such compensation or received by him and deposited by or for him in checking account or checking accounts as defined in subsection (a), if necessary for the use of the

debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

- (1) incurred by the debtor, his wife, or his family for the common necessities of life.
- (2) incurred for personal services rendered by any employee or former employee of the debtor.

# Kansas

Ch. 238]

PROCEDURE, CIVIL

777

## CHAPTER 238

House Bill No. 1996

AN ACT relating to attachment and garnishment proceedings; providing certain exemptions and restrictions; amending K. S. A. 60-701, 60-702, 60-703 and 60-715 and K. S. A. 1969 Supp. 60-717, 60-718, 60-2310, 61-2003, 61-2005 and 61-2006, and repealing the existing sections; also amending Form No. 8 of the appendix of forms following K. S. A. 1969 Supp. 61-2605.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K. S. A. 1969 Supp. 60-2310 is hereby amended to read as follows: 60-2310. (a) *Amount.* Ten percent (10%) of one month's salary and the actual court costs not to exceed ten dollars (\$10), and no more of the earnings of a debtor who is a resident of this state, for his personal services, may be taken and applied to the payment of his debts, when it is made to appear by the debtor's affidavit or otherwise, that the remainder of such earnings above the said ten percent (10%) and court costs, are necessary for the maintenance of a family supported wholly or partly by his labor; and such earnings of any such debtor, earned during any one calendar month, shall be subject to only one deduction of the amount herein made, and one application of such deduction in one action shall be a bar to any deduction in any other action for such calendar month, regardless of where or by whom the action may be brought.

(b) *Notice and affidavit.* At the time of filing such affidavit the debtor shall notify the plaintiff or his agent or attorneys by serving a copy of said affidavit on said plaintiff or his agent or attorneys. Nothing herein contained shall prevent the adverse party from controverting the matters sought to be proven by such affidavit by a counter affidavit, or, if sought to be proven in any other manner, the same may be controverted by any competent evidence. Such counter affidavit shall be filed within forty-eight (48) hours after the notice of the filing of the said debtor's affidavit, and final hearing shall be had thereon at a time to be fixed by the judge within ten (10) days from the notice of the filing of the debtor's affidavit. (c) *Definitions.* As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them herein:

(1) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise;

(2) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from such earnings of any amounts required by law to be withheld;

(3) "Wage garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and

(4) "Federal minimum hourly wage" means that wage prescribed by subsection (a) (1) of section 6 of the federal fair labor standards act of 1938, and any amendments thereto.

(b) *Restriction on wage garnishment.* Subject to the provisions of subsection (c) of this section, only the aggregate disposable earnings of an individual may be subjected to wage garnishment, and the maximum part of such earnings of any wage earning individual which may be subjected to wage garnishment for any workweek or multiple thereof may not exceed either (1) twenty-five percent (25%) of his aggregate disposable earnings for that workweek or multiple thereof, or (2) the amount by which his aggregate disposable earnings for that workweek or multiple thereof exceed an amount equal to thirty (30) times the federal minimum hourly wage, or equivalent multiple thereof for such longer period, whichever is less: Provided, No one creditor may issue more than one garnishment during any one month. Nothing in this act shall be construed as charging the plaintiff in any garnishment action with the knowledge of the amount of any defendant's earnings prior to the commencement of such garnishment action.

(c) *Sickness preventing work.* If any debtor is prevented, on account of being sick, or on account of the sickness of any member of his family, from working at his regular trade, profession or calling for any period greater than two (2) weeks and this fact is shown by the testimony of a regular admitted and practicing physician affidavit of the debtor, the provisions of this section shall not be invoked against any such debtor until after the expiration of two (2) months after his recovery from such sickness.

(d) *Assignment of account.* If any person, firm or corporation sells or assigns his account to any person or collecting agency, or sends or delivers the same to any collector or collecting agency for collection, then such person, firm or corporation or the assignees of either shall not have nor be entitled to the benefits of wage garnishment.

(e) *After judgment.* Nothing in this section shall be construed to hold or subject to execution, attachment or garnishment, any amount of such debtor's earnings above the amount of ten percent (10%) and court costs prescribed by subsection (a) of this section herein held to pay the debt of any such debtor, until after judgment may be obtained against such debtor, and any employer of any such debtor is authorized to pay to any such debtor at any time all of his earnings except the amount of ten percent (10%) and court costs herein made subject to pay his debts, and the taking of any of the earnings of any debtor, who is the head of a family, after judgment, shall be governed by the laws governing attachment and garnishment proceedings.

(f) *Restrictions on application.* Nothing herein shall be construed as exempting any of the earnings of any debtor who is not the head of a family dependent wholly or in part upon him for support.

(e) *Exceptions to restrictions on wage garnishment. The restrictions on the amount of disposable earnings subject to wage garnishment shall not apply in the following instances:*

- (1) *Any order of any court for child support;*
  - (2) *Any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act; and*
  - (3) *Any debt due for any state or federal tax.*
- (f) *Prohibition on courts. No court of this state may make, execute or enforce any order or process in violation of this section.*

*New Sec. 2. (a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to wage garnishment for any one indebtedness, but nothing herein shall be construed as prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to wage garnishment for more than one indebtedness.*

*(b) Any person who violates the provisions of subsection (a) of this section shall be guilty of a class A misdemeanor.*

*Sec. 3. K. S. A. 60-701 is hereby amended to read as follows: 60-701. Subject to the provisions of K. S. A. 60-703, as amended, the plaintiffs at or after the commencement of any civil action may, as an incident to the relief sought, have one or more attachments against the property of the defendant, or that of any one or more of several defendants, when the defendant whose property is to be attached,*

- (1) is a nonresident of the state or a foreign corporation, or*
- (2) has absconded or concealed himself so that summons cannot be served upon him, or is about to move out of this state with the intent of changing his domicile, or*
- (3) is about to remove his property or effects out of this state, or*
- (4) is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors, or*
- (5) has concealed, removed, assigned, conveyed or otherwise disposed of his property or effects so as to hinder or delay his creditors or is about to do so, or*
- (6) fraudulently contracted the debt or fraudulently incurred the liability, or*
- (7) is liable for damages for injuries arising out of the commission of some felony or misdemeanor, or the seduction of a female, or*
- (8) has failed to pay the price or value of any article or thing delivered which by contract he was bound to pay upon delivery.*

*Sec. 4. K. S. A. 60-702 is hereby amended to read as follows: 60-702. Subject to the provisions of K. S. A. 60-703, as amended, an action may be commenced on a demand not yet due and an attachment may issue upon a bond being given in any of the cases mentioned in the preceding section 60-701, except those in clauses number (1) and (2), but no judgment shall be rendered against the defendant until maturity of the demand.*

*Sec. 5. K. S. A. 60-703 is hereby amended to read as follows: 60-703. The order of attachment shall be issued by the clerk of the*

district court upon the filing of a petition stating the claim and the filing of an affidavit, or an affidavit and bond, as in this article required, *except that no order of attachment shall be issued before judgment on plaintiff's claim where the property of the defendant to be attached is in the possession of a third party and is in the form of earnings due and owing to the defendant.* The filing of an affidavit setting out one or more grounds of attachment is required in every case, and a bond is required except (1) in actions instituted on behalf of the state of Kansas or a county of the state, or (2) where the defendant is a nonresident of the state of Kansas or is a foreign corporation not qualified to do business in the state of Kansas and is not a common carrier or public utility. The order of attachment may be issued and executed on Sunday or on a legal holiday if the affidavit states that the party seeking the attachment will lose the benefit thereof unless the writ be issued or served on such day.

Sec. 6. K. S. A. 60-715 is hereby amended to read as follows: 60-715. An order of garnishment before judgment may be obtained and shall be issued by the clerk of the court where the action is pending, upon the filing of an affidavit showing a ground or grounds of attachment and the giving of a bond, if required, by this article for the procurement of an order of attachment, *except that garnishment shall not be commenced before judgment on plaintiff's claim in the principal action where such garnishment proceedings affect the earnings of the defendant.* The order of garnishment may be in lieu of, or in addition to, the order of attachment, as designated by the written direction of the party seeking the order.

Sec. 7. K. S. A. 1969 Supp. 60-717 is hereby amended to read as follows: 60-717. (a) *Form.* An order of garnishment issued independently of an attachment is declared to be sufficient if substantially in the following form:

"In the District Court of \_\_\_\_\_ County, Kansas, A. B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to said Garnishee: You are hereby ordered as a garnishee to file with the clerk of the above named court, within twenty (20) days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you file your answer, indebted to the defendant, or have in your possession or control any property belonging to the defendant, and stating the amount of any such indebtedness and description of any such property. You are further ordered to withhold the payment of any such indebtedness, or the delivery away from yourself of any such property, until the further order of the court. *Your answer on the form served herewith shall constitute substantial compliance with this order.*

"Failure to file your answer as aforesaid may entitle the plaintiff to judgment against you for the full amount of his claim and costs.

"Witness my hand and seal of said court at \_\_\_\_\_ in said county, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ Clerk of said court, \_\_\_\_\_ County."

(b) *Service and return.* The order of garnishment shall be served on the garnishee, together with two (2) copies of the form for the garnishee's answer prescribed in K. S. A. 1969 Supp. 60-718, as

amended, and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, said order shall also be served on the defendant, if he can be found, but failure to serve the defendant shall not relieve the garnishee from liability under said order.

(c) Effect. The order of garnishment shall have the effect of attaching (1) all property of the defendant which is in the possession or under the control of the garnishee, and all credits and indebtedness due from the garnishee to the defendant at the time of service of the order, and (2) all property coming into the possession or control of the garnishee and belonging to the defendant, and all credits and indebtedness becoming due to the defendant between the time of the serving of the order of garnishment and the time of the filing of the answer of the garnishee.

Sec. 8. K. S. A. 1969 Supp. 60-718 is hereby amended to read as follows: 60-718. Within twenty (20) days after service upon him of the order of garnishment the garnishee shall file his verified answer thereto with the clerk of the court stating the facts with respect to the demands of the order. *The answer of the garnishee is declared to be sufficient if substantially in the following form, but in no event shall the garnishee's answer contain less than that so prescribed in said form:*

ANSWER OF GARNISHEE

State of Kansas

} ss.

County of Shawnee

\_\_\_\_\_ being first duly sworn, say that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I was served with an order of garnishment in the above entitled action, that I have delivered no money, personal property, goods, chattels, stocks, rights, credits nor evidence of indebtedness belonging to the defendant, \_\_\_\_\_ to him since receiving said order of garnishment, and that the following is a true and correct statement:

(1) (Money or Indebtedness Due) I hold money or am indebted to said defendant, as of the date of this answer, in the following manner and amounts, to wit: \_\_\_\_\_

(2) (Personal Property in Possession) I have possession of personal property, goods, chattels, stocks, rights, credits, or effects of said defendant, as of the date of this answer, described and having an estimated value as follows, to wit: \_\_\_\_\_

(3) (To be answered if the relationship between the garnishee and the defendant is an employment relationship.)

(a) Defendant is paid weekly \_\_\_\_\_ every two weeks \_\_\_\_\_ semi-monthly \_\_\_\_\_ monthly \_\_\_\_\_ (designate one)

(b) This answer covers earnings (defined as wages, salary, bonus or commissions) for the period \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, through \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

(c) Total gross earnings due for the period covered by (b) above are \_\_\_\_\_ \$

(d) Amounts required by law to be withheld

1—Federal social security tax .....	\$ _____	_____
2—Federal income tax .....	\$ _____	_____
3—State income tax .....	\$ _____	_____
4—Railroad retirement tax .....	\$ _____	_____
Total .....	\$ _____	\$ _____

(Deduct only those items listed above)

(e) Disposable earnings for the period covered by (b) above  
are .....

(c minus d)

(f) Average gross earnings for normal pay period as designated  
in (a) above .....

(g) Average disposable earnings for normal pay period as desig-  
nated in (a) above after deduction of applicable items desig-  
nated to be withheld in (d) above but this time, compute an  
average of withholding for a normal pay period as in (a)  
above .....

I will hold the above described moneys or other items in my possession until the further order of the court.

\_\_\_\_\_  
(Signature), Garnishee

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

#### INSTRUCTIONS TO GARNISHEE

This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time prescribed in the order of garnishment.

The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within twenty (20) days after the filing of the answer the plaintiff or the defendant or both of them may reply thereto controverting any statement in the answer. If the garnishee fails to answer within the time and manner herein specified, the court may grant judgment against garnishee for the amount of the plaintiff's judgment or claim against the defendant, but if the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant: *Provided, however*, Said judgments may be taken only upon written motion and notice given in accordance with K. S. A. 60-206: *Provided further, however*, If the garnishee is a public officer for the state or any instrumentality thereof and the indebtedness sought by plaintiff to be withheld from defendant is an indebtedness to defendant incurred by or on behalf of the state or any instrumentality thereof, judgment against the state or such instrumentality shall be limited to an amount for claim and costs not exceeding the total amount of the indebtedness of the state or instrumentality thereof to defendant. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answer are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn state-



under, or in connection with any matter arising under KRS Ch. 141 of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document shall be guilty of a felony and, upon conviction thereof shall be fined not more than \$5,000, or imprisoned not more than three years, or both together with the costs of prosecution.

(15) [(14)] A return for the purpose of this section shall mean and include any return, declaration or form prescribed by the department and required to be filed with the department by the provisions of this chapter, or by the rules and regulations of the department or by written request for information to the taxpayer by the department.

Section 13. KRS 141.046 and 141.360 are hereby repealed.

Section 14. The provisions of this Act shall apply to taxable years beginning on or after January 1, 1971 except as otherwise provided in this Act.

Approved March 30, 1970

---

CHAPTER 217

(H. B. 318)

AN ACT relating to seizure of property under legal process and exemptions therefrom.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. A new section of Chapter 427 of the Kentucky Revised Statutes is created to read as follows:

As used in KRS Chapter 427:

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

Section 2. Section 427.010 of the Kentucky Revised Statutes is amended to read as follows:

(1) The following personal property of a person [or with a family or head of household] resident in this state is exempt from execution, attachment, garnishment, distress or fee-bill: All household furnishings, [and] *personal clothing and ornaments* not to exceed fifteen-hundred dollars in value; [and] tools, equipment and livestock, including poultry, of a person engaged in farming, not exceeding fifteen-hundred dollars in value; [are exempt from execution, attachment, garnishment, distress or fee-bill;] one motor vehicle and its necessary accessories, including one spare tire, *not exceeding in the aggregate fifteen hundred dollars in value*, of a person engaged in farming or of a person who uses *such motor vehicle* [his car] in his employment, or traveling to and from his place of employment [is exempt from execution, attachment, garnishment, distress or fee-bill].

(2) *Except as provided in subsection (3) and KRS 427.050, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of either:*

(a) *25 per centum of his disposable earnings for that week, or*

(b) *the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6 (a) (1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable.*

*In the case of earnings for any pay period other than a week, the multiple of the Federal minimum hourly wage equivalent to that set forth in subsection (2) (b) as prescribed by regulation by the Federal Secretary of Labor shall apply.*

[Wages, salaries, and other income from labor: Of net wages, net salary, net commission or net income of every such person, when earned by labor the following percentages shall be exempt from attachment: 75 percent of all in any pay period except if the judgment to be collected is for the furnishing of necessities and the verified complaint judgment and order of attachment so state then only 50 percent of all earnings in any pay period shall be exempt.]

(3) *The restrictions of subsection (2) do not apply in the case of:*

(a) *any order of any court for the support of any person.*

(b) *any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.*

(c) *any debt due for any state or Federal tax.*

[Necessities as used in this section shall be limited to articles of food, clothing (including shoes), medicine, medical services, drugs, rent, public utilities, furniture and household appliances.]

Section 3. A new section of Chapter 427 of the Kentucky Revised Statutes is created to read as follows:

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

Section 4. Section 427.050 of the Kentucky Revised Statutes is amended to read as follows:

(1) *The law of the state wherein wages are earned and payable relating to exemptions shall apply to all garnishments served in the State of Kentucky, except that Kentucky law shall exclusively apply*

(a) *where the defendant was personally served with process in the State of Kentucky, or*

(b) *where the defendant was a bona fide resident of the State of Kentucky when the subject debt arose, or*

(c) *where the defendant was a bona fide resident of the State of Kentucky when the cause of action arose.*

(2) *Where the law of a state other than Kentucky applies to a particular garnishment, the garnishee may plead such exemption law.*

[Wages earned and payable out of this state are exempt from attachment or garnishment if the cause of action arose out of this state. The garnishee in such case shall plead the exemption, unless the defendant is actually served with process.]

Section 5. Section 425.185 of the Kentucky Revised Statutes is amended to read as follows:

The plaintiff may, at or after the commencement of an action, having an attachment against the property of the defendant, including garnishees as is provided in KRS 425.325, as a security for the satisfaction of such judgment as may be recovered:

- (1) In an action for the recovery of money against:
  - (a) A defendant who is a foreign corporation or non resident of the state; or
  - (b) Who has been absent herefrom four months; or
  - (c) Has departed herefrom with intent to defraud his creditors; or
  - (d) Has left the county of his residence to avoid the service of a summons; or
  - (e) So conceals himself that a summons cannot be served upon him; or
  - (f) Is about to remove, or has removed, his property, or a material part thereof, out of this state, not leaving enough therein to satisfy the plaintiff's claim, or the claims of said defendant's creditors; or
  - (g) Has sold, conveyed, or otherwise disposed of, his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder or delay his creditors; or
  - (h) Is about to sell, convey, or otherwise dispose of, his property, with such intent. But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a nonresident of this state, for any claim other than a debt or demand arising upon a contract, express or implied, or a judgment or award.

(2) In an action for the recovery of money due upon a contract, judgment or award, if the defendant have no property in this state subject to execution, or not enough thereof to satisfy the plaintiff's demand, and the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found;

(3) In an action to recover the possession of personal property which has been ordered to be delivered to the plaintiff, and which property, or part thereof, has been disposed of, concealed, or removed, so that the order for its delivery cannot be executed by the sheriff.

(4) *Where the property sought to be attached prior to judgment is earnings, as defined in subsection (1) of Section 1 of this Act, the person seeking the order of attachment or garnishment must first make a demand in writing at, or after the time the suit is filed, by delivering such demand to the debtor or by sending it to him by registered or certified mail, return receipt requested, to his last known place of residence, at least 7 and not more than 60 days before such order is sought. The demand shall contain a statement in substance that the debtor has 7 days in which to petition the court for a hearing or in which to pay the claim in full, and that unless a hearing is set or the claim paid, an order of attachment or garnishment will be sought to subject his earnings to payment of the claim. The statement shall identify the court in which the suit has been filed, the grounds therefor, the date of the demand, the amount of the claim, and the name and address of the plaintiff and his attorney. An affidavit of the plaintiff or his attorney evidencing compliance with this section shall be filed before an order of attachment or garnishment shall be issued.*

Section 6. Section 425.190 of the Kentucky Revised Statutes is amended to read as follow:

(1) Any person in whose favor a final judgment in personam has been entered in any court of record of this state may, upon the filing of an affidavit by him or his agent or attorney in the office of the clerk of the court in which the judgment was entered, and in the same cause in which said judgment was obtained showing the date of the judgment and the amount due thereon, and that one or more named persons hold property belonging to, or are indebted to, the judgment debtor, obtain an order of garnishment directed to the sheriff, with as many copies as the plaintiff may direct, requiring him to summon the garnishees named in the affidavit to answer in the manner and at the time required for an answer by the Rules of Civil Procedure, and to make due return thereof. The order shall be made returnable as an order of arrest is directed to be returned.

(2) The judgment plaintiff shall not be required to execute bond to obtain the order.

(3) The order of garnishment shall be served on the persons named as garnishees in the manner provided in subsection (3) of KRS 425.225, and in addition a copy thereof shall be *delivered to the garnishee to the judgment debtor or mailed to him at his last known address [served on the judgment debtor]*.

(4) The judgment debtor may, on the return day, appear and claim the exemption of any property or debt that is exempt from execution, and on proof of exemption the garnishment shall be discharged as to the exempt property or debt.

(5) If the court finds that the garnishee was, at the time of service of the order upon him, possessed of any property of the judgment debtor, or was indebted to him, and the property or debt is not exempt from execution, the court shall order the property or the proceeds of the debt applied upon the judgment.

(6) Subsequent orders of garnishment against the same or other garnishees may be issued in the same manner until the judgment is satisfied.

(7) The provisions of KRS Chapter 427 [427.010 to 427.130] and KRS 425.210 [425.215] to 425.520 shall, as far as applicable, govern proceedings under the order.

Section 7. Section 425.210 of the Kentucky Revised Statutes is amended to read as follows:

[The order of attachment shall be in triplicate and addressed to the employer and shall have printed thereon the following information:]

(1) *An order of attachment or garnishment of earnings, as defined in subsection (1) of Section 1 of this Act shall create a lien on all non-exempt earnings earned during the pay period in which the order is served on the employer, and, where the pay period is for a period of less than two weeks, or where the employee has been paid in advance for the pay period in which the order is served, also on all non-exempt earnings earned during the next succeeding pay period.*

[(1) That all persons earning net wages, net salaries and other net incomes from labor shall be entitled to exemption;]

(2) Orders of attachment or garnishment of earnings shall have priority according to the date of service on the employer, each inferior order taking effect as if served at the commencement of the next succeeding pay period not subject to a prior order; provided that no creditor shall cause two orders to be served on the employer against the same employee in the same pay period.

[(2) The percentage of net wages and other net income that is to be paid to the employe and the percentage to be forwarded to the court;]

(3) The order shall be served on the employer in triplicate and shall have printed thereon an explanation of subsections (1) and (2), the percentage of the disposable earnings, as defined in subsection (2) of Section 1 of this Act, exempted from the order by KRS 427.010 (2), and the percentage to be forwarded to the court.

[(3) That net wages, net salaries or other net income shall consist of the total amount due as of the end of the employer's pay period during which the attachment or levy of execution is served less amounts withheld for taxes and fees due federal, state, and local governments, union dues, medical insurance and retirement programs.]

(4) The order shall have printed thereon the following directions to the employer:

(a) That a copy of the order shall be delivered to the employee, a copy retained by the employer for his records, and a copy returned by the employer to the court.

(b) that on the reverse side of the court copy shall be stated, under oath by the employer, the gross amount of earnings and the non-exempt amount of disposable earnings for the designated pay period subject to the order. If no funds are due, the reasons therefor shall be given.

(c) that the court copy of the order and the non-exempt amount of disposable earnings shall be forwarded to the court.

[(4) Directions that a copy of the attachment shall be delivered to the employe, a copy retained for the employer's records and the third copy shall be returned to the court;]

[(5) That the net amount due the employe shall be endorsed on the reverse side of the court copy of the attachment and shall be forwarded to the court along with the amount attached;]

[(6) That if no funds are due this fact shall be stated on the court copy of the attachment together with the reason why no funds are due.]

**Section 8.** A new section of Chapter 425 of the Kentucky Revised Statutes is created to read as follows:

The order of attachment or garnishment shall be directed and delivered to the sheriff, with as many copies thereof as the plaintiff may direct. It shall require him to attach and safely keep the property of the defendant in his county not exempt from execution, or so much thereof as will satisfy the plaintiff's claim specified in his affidavit, which shall be stated in the order, and the probable costs of the action; also to summon the garnishees to answer in the action in the manner and at the time required for an answer by the Rules of Civil Procedure, and to make due return thereof.

**Section 9.** A new section of Chapter 427 of the Kentucky Revised Statutes is created to read as follows:

Whoever willfully violates Section 3 of this Act shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Became law without signature April 1, 1970

## CHAPTER 218

(H. B. 319)

AN ACT relating to commissioners of expanded water districts.

*Re it enacted by the General Assembly of the Commonwealth of Kentucky:*

**Section 1.** Section 74.020 of the Kentucky Revised Statutes is amended to read as follows:

(1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four years, except as provided in this section:



New Hampshire

TRUSTEE PROCESS

512: 22

CHAPTER 512

TRUSTEE PROCESS

Charging of Trustee

ANNOTATIONS

Library references

Issue in garnishment as triable to court or to jury. 19 ALR3d 1393.

Exemption From Trustee Process

512: 21 List of Exemptions. The money, rights, and credits of the defendant shall be exempt from trustee process in the following instances, and the trustee shall not be chargeable therefor:

[No change in paragraph I.]

II. Except as otherwise provided in paragraph X of this section, wages of the defendant earned before the service of the writ upon the trustee shall be exempt except in actions founded upon a debt on a judgment issued by a New Hampshire court of competent jurisdiction. In such case the wages of the defendant earned before the service of a writ upon the trustee founded upon a debt on a judgment to the amount of fifty times the minimum hourly wage as established by the Fair Labor Standards Act for each week shall be exempt. The employer shall pay said exempted amount to the employee on the usual pay day unless other cause exists prohibiting such payment. [Amended 1969, 446: 1, eff. July 3, 1969.]

[No changes in paragraphs III-IX.]

X. Wages of the defendant earned before service of the writ upon the trustee if the defendant is a married woman and the action is founded upon any loan contract subject to the provisions of RSA 399-A on which her husband is or was at any time an obligor, jointly or severally, contingently or otherwise. [Amended 1969, 373: 1, eff. Aug. 31, 1969.]

Amendments--1969. Paragraph II: Paragraph X: Chapter 373 added phrase "or was at any time" an obligor. Amended generally by ch. 446.

ANNOTATIONS

Library references

Family allowance from decedent's

estate as exempt from attachment, garnishment, execution, and foreclosure. 27 ALR3d 863.

Procedure on Disclosure of Promissory Note

512: 22 Defendant's Deposition.

ANNOTATIONS

Library references

Family allowance from decedent's estate as exempt from attachment, gar-

nishment, execution, and foreclosure. 27 ALR3d 863.

2323.17 .....	49
2323.18 .....	50(B)
2323.18.1 .....	50(B)

§§ **2323.19, 2323.20** Repealed, 133 v H 1201, § 1 [GC §§ 11601-1, 11601-1a, 11602; RS § 5329; S&C 1054; 51 v 57; 121 v 366; 122 v 676; 123 v 445; 125 v 668; 129 v 582 (740)]. Eff 7-1-71.

See provisions, § 3 of HB 1201 (133 v —) following RC §§ 2323.01 to 2323.06.

RC § 2323.19 conflicts with Civil Rule 62; RC § 2323.20 with Civil Rule 54.

§ **2323.22** Repealed, 133 v H 1201, § 1 [GC § 11604; RS § 5331; S&C 1055; 51 v 57; 116 v 104]. Eff 7-1-71.

See provisions, § 3 of HB 1201 (133 v —) following RC §§ 2323.01 to 2323.06.

RC § 2323.22 conflicts with Civil Rule 58.

§§ **2323.37 to 2323.45** Repealed, 133 v H 1201, § 1 [GC §§ 11621-11629; RS §§ 5345-5352; RS of 1880, §§ 5073, 5348; S&C 979, 1117, 1118; 51 v 57; 83 v 86; 94 v 283; 122 v 676; 125 v 903; 127 v 1039 (1090)]. Eff 7-1-71.

This section was repealed by § 1 of House Bill 1201, effective July 1, 1971. Section 3 of the act provides "That the taking effect of the Rules of Civil Procedure on July 1, 1970, is prima-facie evidence that the sections of the Revised Code to be repealed by Section 1 are in conflict with such rules and shall have no further force or effect, ... unless a court shall determine that one of such sections, or some part thereof, has clearly not been superseded by such rules and that in the absence of such section or part thereof being effective, there would be no applicable standard of procedure prescribed by either statutory law or rule of court. The failure to repeal or amend any other section establishes no evidence concerning its conflict with such rules."

RC §§ 2323.37 through 2323.45 conflict with Civil Rule 54(D).

§§ **2325.01, 2325.02** Repealed, 133 v H 1201, § 1 [GC §§ 11631, 11632; RS §§ 5354, 5355; S&C 965, 1112, 1172; 51 v 57; 56 v 93; 74 v 115; 77 v 42, 46; 82 v 16, 34; 103 v 405 (426); 126 v 392]. Eff 7-1-71.

This section was repealed by § 1 of House Bill 1201, effective July 1, 1971. Section 3 of the act provides "That the taking effect of the Rules of Civil Procedure on July 1, 1970, is prima-facie evidence that the sections of the Revised Code to be repealed by Section 1 are in conflict with such rules and shall have no further force or effect, ... unless a court shall determine that one of such sections, or some part thereof, has clearly not been superseded by such rules and that in the absence of such section

or part thereof being effective, there would be no applicable standard of procedure prescribed by either statutory law or rule of court. The failure to repeal or amend any other section establishes no evidence concerning its conflict with such rules."

RC §§ 2325.01 and 2325.02 conflict with Civil Rule 60.

§§ **2325.04 to 2325.11** Repealed, 133 v H 1201, § 1 [GC §§ 11634-11641; RS §§ 5357-5363; S&C 1114, 1115; 51 v 57; 74 v 115; 83 v 74]. Eff 7-1-71.

See provisions, § 3 of HB 1201 (133 v —) following RC §§ 2325.01, 2325.02.

RC §§ 2325.04 through 2325.11 conflict with the following Civil Rules:

Revised Code Sec.	Civil Rules
2325.04 through 2325.07 .....	60
2325.08 .....	62(A)
2325.09 .....	62(A)
2325.10 .....	60(B)
2325.11 .....	60(B)

§§ **2325.13, 2325.14** Repealed, 133 v H 1201, § 1 [GC §§ 11643, 11644; RS §§ 5365, 5366; S&C 1060, 1115, 1149; 48 v 31; 51 v 57; 56 v 39]. Eff 7-1-71.

See provisions, § 3 of HB 1201 (133 v —) following RC §§ 2325.01, 2325.02.

RC § 2325.13 conflicts with Civil Rule 6(C); RC § 2325.14 with Civil Rule 5.

§§ **2325.21, 2325.22** Repealed, 133 v H 1201, § 1 [GC §§ 11651, 11652; RS §§ 5370, 5371; S&C 1139; 44 v 66; 51 v 397]. Eff 7-1-71.

See provisions, § 3 of HB 1201 (133 v —) following RC §§ 2325.01, 2325.02.

RC §§ 2325.21 and 2325.22 conflict with Civil Rule 71.

§ **2329.62** Property exempt from attachment.

Every person resident of the state, not included in section 2329.66 of the Revised Code, 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 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 three hundred dollars in value;

(C) 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 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.

\* HISTORY: 128 v 333 (ER 11-9-59); 132 v H 737 (ER 12-14-77); 138 v 325. ER 9-16-79.

§ 2319.62.11 § 2329.62.1 [Disposable earnings defined; federal law.]

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.

\* HISTORY: 133 v 325. ER 9-16-79.

§ 2329.66 Property of heads of families and widows exempt from attachment.

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 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 six hundred dollars in value;

(F) 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.

\* HISTORY: 128 v 333 (ER 11-9-59); 132 v H 737 (ER 12-14-77); 138 v 325. ER 9-16-79.

- (1) The family Bible.
- (2) Family pictures, school books and library for the use of the family.
- (3) A lot in a burial ground.
- (4) All necessary wearing apparel of the debtor and his family, all beds, bedsteads and bedding necessary for the use of such family, two dressers or two dressing tables, wardrobes, chifferobes or chests of drawers or a dresser and a dressing table; carpets, rugs, linoleum or other floor covering; and all stoves and appendages put up and kept for the use of the family not exceeding three.

(5) All cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale; one cow and her calf until one year old, one horse, six chairs, six plates, one table, twelve knives, twelve forks, two dozen spoons, twelve dishes, or if the family consists of more than twelve, then a plate, knife, fork and two spoons, and a dish for each member thereof; two basins, one pot, one oven, six pieces of wooden or earthenware; one dining room table, one buffet, china press, one icebox or refrigerator of any construction, one washing machine, one loom and its appurtenances, one kitchen safe or one kitchen cabinet or press, one spinning wheel, one pair of cards, one axe and provisions other than those hereinafter set out of the value of \* fifty dollars; two hoes; fifty bushels of shelled corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat; five bushels of wheat, or one barrel of flour; twenty bushels of potatoes, two hundred pounds of bacon or pork, three hogs, fowl not exceeding in value \* twenty-five dollars, all canned goods, canned fruits, preserved fruits or home-prepared food put up and prepared for use and consumption of the family, \* twenty-five dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, one sewing machine, and in case of a mechanic, the tools and utensils of his trade, and in case of an oysterman or fisherman his boat and tackle, not exceeding \* seven hundred fifty dollars in value; if the boat and tackle exceed \* seven hundred fifty dollars in value the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive \* seven hundred fifty dollars in lieu of such boat and tackle.

§ 34-27. If the householder be at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to wit: \* a pair of horses or mules \* unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select under this section only one, with the necessary gearing, one wagon or cart, one tractor, not exceeding in value \* one thousand dollars, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges and fertilizer and fertilizer material not exceeding in value four hundred dollars.

§ 34-29. \* \* \* (a) *Except as provided in subsection (b), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:*

- (1) *twenty-five per centum of his disposable earnings for that week,*
- or
- (2) *The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by Section 206 (a) (1) of Title 29 of the United States Code in effect at the time earnings are payable.*

(b) *The restrictions of subsection (a) do not apply in the case of*

- (1) *any order of any court for the support of any person.*

# Virginia

CHS. 428, 429]

ACTS OF ASSEMBLY

645

(2) any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or federal tax.

In the case of earnings for any pay period other than a week, the State Commissioner of Labor and Industry shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

(c) No court of the State may make, execute, or enforce any order or process in violation of this section.

The exemptions allowed herein shall be granted to any person so entitled without any further proceedings.

(d) For the purposes of this section

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, and

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(e) Every assignment, sale, transfer, pledge or mortgage of the wages or salary of an \* individual which is \* exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

(f) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

2. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

3. § 34-30 of this chapter is hereby repealed.

4. This act shall become effective October one, nineteen hundred seventy.

## CHAPTER 429

An Act to amend and reenact § 19.1-320 of the Code of Virginia, relating to clerk to make up statement of whole cost in criminal prosecutions; execution therefor; exception.

[S 171]

Approved April 2, 1970

Be it enacted by the General Assembly of Virginia:

1. That § 19.1-320 of the Code of Virginia be amended and reenacted as follows:

§ 19.1-320. Clerk to make up statement of whole cost, and issue execution therefor.—In every criminal case the clerk of the circuit or corporation court in which the accused is convicted, or, if the conviction be before a court not of record, the clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified