

The Exemption of Wages from Garnishment: Some Comparisons and Comments

Harry Abrahams

Edward S. Feldman

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Harry Abrahams & Edward S. Feldman, *The Exemption of Wages from Garnishment: Some Comparisons and Comments*, 3 DePaul L. Rev. 153 (1954)

Available at: <https://via.library.depaul.edu/law-review/vol3/iss2/1>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

DE PAUL LAW REVIEW

Volume III

SPRING-SUMMER 1954

Number 2

THE EXEMPTION OF WAGES FROM GARNISHMENT: SOME COMPARISONS AND COMMENTS

HARRY ABRAHAMS AND EDWARD S. FELDMAN

"Small debts are like small shot; they are rattling on every side, and can scarcely be escaped without a wound; great debts are like cannon, of loud noise but little danger."

—SAMUEL JOHNSON (in a letter to Joseph Simpson).¹

I. INTRODUCTION

INTEREST in problems of the small debtor² is strongly correlated with variations in the business cycle. A spate of literature on the subject will be found during the years of the Great Depression

¹ "In fact, only small debts are really dangerous. On a large scale debts are credit, and if your credit is very large your creditors themselves can't afford to drive you to bankruptcy, where only a small percentage of their claims could be recovered. I know another great publishing house in Munich which had grown to enormous dimensions only because its enterprising proprietor had found out that the easiest way of placating affiliated entrepreneurs was to give them new and larger orders. When it came to the worst, the printers, binders or paper manufacturers would get a share in the enterprise. The very bulk of a large boat keeps it afloat, even in a stormy sea, where a small boat is easily sunk." Franz Schoenberner, *Confessions of a European Intellectual*, at 140-1 (1946).

² We are indebted to Professor Walton H. Hamilton for this happy phrase: see *In re the Small Debtor*, 42 Yale L. J. 473 (1933).

MR. ABRAHAMS received his LL.B. from De Paul University College of Law. He is an Associate Professor of Law at De Paul University College of Law, has been admitted to practice before the United States Supreme Court and the Illinois Supreme Court, and is a member of the American, Federal, Chicago and Illinois Bar Associations, the National Academy of Arbitrators, the Committee on Railway Labor Act of the A.B.A., and the Standing Subcommittee of the Section on Civil Practice and Procedure of the Illinois State Bar Association.

MR. FELDMAN received his LL.B. from De Paul University College of Law. He is a member of the Illinois and California Bars and is Chairman of the Committee on Social, Labor and Industrial Legislation, Section on International and Comparative Law, American Bar Association.

and immediately following,³ and a dearth of material is easily noticeable until quite recently.⁴ We may reasonably expect to be concerned with these problems for some time to come.⁵

Practitioners are too well aware of the difficulties of enforcement of judgments.⁶ In the case of smaller wage earners a seeking of an appropriate balance between the interest of society in providing needed consumer credit for them by providing adequate security to suppliers of credit and not impoverishing the users of that credit has led to a wide variety of statutes creating exemptions from execution after judgment. We propose to examine the exemption statutes of the States, to compare them for better understanding, and to suggest some changes to the end that justice is done the debtor, while the creditors obtain such security as will provide the necessary flow of credit to maintain our economy.

II. NATURE OF THE GARNISHMENT EXEMPTION

Garnishment,⁷ we have been told many times over,⁸ is a statutory remedy. This historical truth, then, permits us to obtain an accurate view of the law of wage and salary exemptions by examination of the

³ No point is served by collecting references here. However, citation should be made to the symposium on credit for urban employees contained in 42 *Yale L. J.* beginning at 473 (1933).

⁴ The collection of articles touching on *The Loan Shark Problem Today* in 19 *Law and Contemp. Prob.* (1954) will serve to illustrate the point. It is also interesting to note the kind of literature to be found in typical and influential periodicals of today which presumably reflect consumer interest: D. Reddy, "Before the Bill Collector Shows Up," 135 *Cosmopolitan* 46-7 (September, 1953); S. Nichols, "How to Protect Yourself Against Bill Collectors," 137 *Good Housekeeping* 62 (September, 1953): "... You should ascertain the true strength of the collector's weapons. He will try to bluff you into thinking that they are stronger than they actually are. His biggest stick is the garnishment of your salary. This would hurt you, but it isn't necessarily the catastrophe your collector would have you think. In most states (sic), except in a few unusual situations, not more than 10 per cent of your pay check can be garnished at any one time, regardless of how many creditors are after it. Each has to wait his turn, which means that you can virtually call your own signals after the first garnishment. Each garnishment, of course, involves court costs and attorney's fees, which you will have to pay eventually." *Ibid.*, at 200.

⁵ *Family Debt is Rising*, 60 *American Federationist* 24 (July, 1953).

⁶ See Symposium, *Judgments in Illinois*, [1951] *The University of Illinois Law Forum* 1 et seq. (1951).

⁷ Garnishment is known as "trustee process" in several New England states, and as "suggeestee execution" in West Virginia.

⁸ For example, see, Cardozo, J., dissenting in *Sanders v. Armour Fertilizer Works*, 292 U. S. 190, 208 (1934); Millar, *Civil Procedure of the Trial Court in Historical Perspective* 447 (1952); and see the brilliant analysis by Mussman and Riesenfeld, *Garnishment and Bankruptcy*, 27 *Minn. L. Rev.* 1, 8 (1942): garnishment proceedings "are truly blue-blooded legal institutions that can claim a family tree reaching back into the Middle Ages."

statutes in the various jurisdictions and perusal of the decisions of the respective courts.

Probably the most common use of this remedy has been to reach directly, or perhaps by indirection, the wages or salary of employees who have not paid their bills.⁹ As a solution to the problems of either the debtor or the creditor, however, the remedy has been of varying and usually indifferent success.¹⁰ Since debt is no isolated phenomenon to be found in only a few societies, we need not be surprised that the numerical supremacy of debtors as they gained political power should lead to the demand for relief from onerous collection procedures. Perhaps it might be stretching historical knowledge to attribute the Lord's release¹¹ to extended suffrage but the exemption statutes of the various states of the United States can probably only be explained in this way.¹² As Professor Hamilton put it, "As debt became more popular, and the people came into greater political power, the risk was shifted to the lender."¹³

Nevertheless, it may not be a simple matter to discover any concomitant relationship between the size and nature of the exemption of earnings in garnishment statutes and the ease with which credit may be obtained.¹⁴ Even though the tendency, as we shall see, is to greater protection of the debtor, it is quite obvious that the institution of installment selling has not failed to grow. Perhaps this very growth

⁹ At least the studies published to date make it appear so. Nugent, Hamm and Jones, *Wage Executions for Debt*, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 622, Washington, Government Printing Office (1936); Blanshard, *Report to the Mayor on Garnishment Executions Against City Employees: A Study by the Department of Investigation and Accounts*, New York (1937).

¹⁰ The charge has been made that the severity of the Michigan statute, Mich. Stat. Ann., § 27.3399, contributed to undue hardship of debtors in Detroit between 1929 and 1932. Nugent, *Devices for Liquidating Small Claims in Detroit*, 2 *Law & Contemp. Prob.* 259, 260 (1935). On the other hand, the study by Nugent, Hamm and Jones, *op. cit. supra note 9*, leads to the conclusion that the large majority of creditors not only filed few garnishment executions, but did so only on the larger debts. The late Professor Radin in his classic article, "Debt," in 5 *Encyc. Soc. Sci.* 32, 36 (1931), suggested that the frustrations of the burdens and difficulties of enforcing collection from an unwilling debtor were often great enough to induce the creditor to write the debt off rather than attempt to collect it, which, of course, merely places the burden upon the shoulders of the debtors who do meet their obligations.

¹¹ Old Testament, Deuteronomy, XV, 1, 2: "At the end of every seven years thou shalt make a release. And this is the manner of the release: Every creditor that lendeth ought to his neighbor shall release it; he shall not exact it of his neighbor, or of his brother; because it is called the Lord's release."

¹² See, as examples, Ga. Code Ann., § 51-1301 and Iowa Code Ann., § 627.6. See also Hamilton, *op. cit. supra note 2*, at 479.

¹³ *Op. cit. supra note 2*, at 481.

¹⁴ See *Wage Exemption Statutes*, 11 *Neb. L. Bull.* 342 (1932).

of credit selling, which is so much responsible for the expansion of our American economy, with its inherent pressure upon the consumer to overextend himself,¹⁵ contributes the reasons for the necessity to save the small debtor from becoming a charge on society.¹⁶

In any event, the several states¹⁷ have approached the matter in their individual ways but with a certain discernible series of patterns.¹⁸ Some states have felt quite strongly about the matter,¹⁹ others are not particularly perturbed.²⁰

III. LIMITATIONS ON THE AMOUNT OF WAGES OR SALARY EXEMPTED

An examination of the legislation does not seem to reveal any particular reasoning by which the legislatures have arrived at the amounts of wages or salaries exempted from garnishment proceedings. Of course, if they are designed to protect the family, or even only the individual debtor, it would seem that they should revolve around some relatively common point and within a relatively limited range, dictated by historical considerations, geographical placement of the state and, yes, the cost of living.

However, it does not appear that we can explain the exemptions in these terms at all, although we may sense a realization of the effects of inflation on increases in the exemption statutes contained in recent amendments.²¹

¹⁵ Efforts to Eliminate Some Evils of Unrestricted Credit for Wage Earners, 45 *Harv. L. Rev.* 1102 (1932).

¹⁶ "The reason for having an exemption is a familiar reason which is manifest throughout our law that at a certain point the social interest in not having a debtor pushed below the line of bare living into pauperism intervenes and becomes superior to the rights of the creditor and is recognized by law. It is on this ground that the minima of decent living are exempted from attachment or execution, that ten or twenty dollars a week are exempted from trustee process, and that even when a man is a voluntary bankrupt it is considered wiser to let the bankrupt keep the clothes on his back than oblige him to surrender them to the trustee for the benefit of creditors." Smith, *The History and Purpose of the Wage Assignment Statutes With a Suggestion for an Amendment*, 5 *Mass. L. Q.* 479, 485 (1920).

¹⁷ We find similar legislation in the various provinces of Canada. *Labour Legislation in Canada*, Canadian Department of Labour (1948).

¹⁸ Kistler and Machal, *A Discussion of Garnishment and Its Exemptions*, 27 *Dicta* 453 (1950).

¹⁹ Texas has a constitutional provision which provides that "No current wages for personal service shall ever be subject to garnishment." *Tex. Const. Art. 16, § 28.*

²⁰ The Vermont exemption is but \$10.00: *Vt. Stat. (Rev. ed., 1947) § 1808, V.* The West Virginia exemption is the same amount: *W. Va. Code (1949) § 3834 (3).*

²¹ See the historical note following *Ill. Stat. Ann. (Smith-Hurd, 1951) c. 62, § 14*, listing the increases in the exemption from \$8.00 per week to the present \$30.00 to the head of the family.

A. THE FLAT AMOUNT EXEMPTION

A popular, and simple to enact, method of setting an exemption of wages from garnishment procedure is by establishing a flat number of dollars and cents which shall be free from garnishment or attach-

FLAT AMOUNT EXEMPTIONS

<i>State or Territory</i>	<i>Exemption</i>	<i>Limiting Period</i>
Alaska ²²	\$100.00	30 days prior to levy
Connecticut ^{22a}	15.00	per week
Illinois ²³	30.00	per week
Indiana ²⁴	25.00	at any one time
Maine ²⁵	20.00	one month
Maryland ²⁶	100.00	
Massachusetts ²⁷	30.00	each week
Minnesota ²⁸	50.00	30 days prior to levy
Mississippi ²⁹	50.00	per month for single persons
Mississippi ²⁹	100.00	per month for head of family
New Hampshire ³⁰	20.00	each week
Ohio ³¹	30.00	30 days prior to levy for unmarried persons
North Dakota ³²	27.50	per week
Oregon ³³	125.00	per week
Rhode Island ³⁴	30.00	
Tennessee ³⁵	30.00	per month for persons not heads of families
Tennessee ³⁵	60.00	per month for heads of families
Vermont ³⁶	10.00	
West Virginia ³⁷	10.00	per week

²² Alaska Comp. L., § 55-9-78.

^{22a} Conn. Gen. Stat. (1949) V. III, § 8102.

²³ Ill. Stat. Ann. (Smith-Hurd, 1951) c. 62, § 14. The amount here is exclusive of payroll deductions "in the form of taxes." Commissions and profit allowances are also exempted to the amount of \$30.00 per week.

²⁴ Ind. Stat. Ann., § 3-505.

²⁵ Rev. Stat., c. 101, § 55, VI. This is the maximum amount which is exempted. A minimum amount of \$10.00 is also established.

²⁶ Ann. Code, Art. 9, § 33.

²⁷ Mass. L. Ann., c. 246, § 28.

²⁸ Minn. Stat. Ann. (1951) c. 550.37 (16). To the principal amount add \$10.00 for each dependent, but the maximum exemption may not exceed \$100.00.

²⁹ Miss. Code Ann. (1942) § 307, Tenth (a).

³⁰ Rev. L., c. 412, § 21, II.

³¹ RCS, § 2329.62 (C). We shall note later the percentage limitation coupled with a minimum amount in the case of heads of families and widows.

³² N.D. Rev. Code, § 32-0902.

³³ Ore. Rev. Stat., § 23.180. We shall note later the percentage limitation imposed when debts are incurred for "family expenses."

³⁴ Gen. L., c. 557, § 1, ¶ 12 (c).

³⁶ Vt. Stat. (Rev. ed., 1947) § 1808, V.

³⁵ Tenn. Code Ann., §§ 7711, 7712.

³⁷ W. Va. Code (1949) § 3834 (3)..

ment. We find that the exemption ranges from \$10.00 to \$125.00. Frequently, this flat rate is coupled with a provision that the only wages or salaries exempted are those earned for services rendered 30, 60 or 90 days preceding the levy of execution. This last provision apparently gives some small measure of comfort, if not real protection, to the creditor. After all, as most wages are paid at intervals of not longer than a month, it is not likely that the employer will be holding any wages or salaries due the debtor for a time longer than that which the statute exempts. The table on the preceding page sets out the various exemptions together with the limiting periods, if any.

If it be granted that some amount of a debtor's wages or salaries should be available to his creditor, what is to be said for this hodge-podge of flat amount exemptions? For whatever it is worth, it may be noted that these flat amount exemptions tend to cluster about twenty-five or thirty dollars a week. One is hard put to believe that the head of a family can keep that family together on that amount of money at this time in our economic milieu. (The Minnesota statute seems more realistic in this respect, by allowing ten dollars more for each dependent.³⁸)

What this points up, primarily, is that the legislative process, being a relatively inflexible one, is perhaps a poor means of carrying a policy of exempting some portion of wages or salary from garnishment execution. As to those states which mean to retain this system, however, it would seem that a revision and increase in the amounts are called for and the suggestion is made that more realistic flat amounts be set, which are more consonant with the cost of living. After all, it is the small debtor with whom we are concerned here, and he is usually a small wage earner. Further, he is, therefore, most frequently affected by changes in the cost of living. But this speedy reflection of changes in the cost of living is not matched by a similar rapidity in the legislative process.

True, in a period of declining economic activity the cost of living will fall, and the exemption may be unrealistically high. The inflexibility works both ways, with equally poor results.

B. THE FLAT PERIOD EXEMPTIONS

An exemption may be established in terms of the period during which wages or salaries are earned. Thus, several states specify that wages or salaries earned within an indicated period of, say, thirty,

³⁸ Minn. Stat. Ann. (1951) c. 550.37 (16).

sixty or ninety days before the levy of execution is issued shall be exempted from the garnishment process.

The hourly worker or incentive wage earner is not likely to have a constant wage during this period, so that the amount exempted, therefore, is not a constant *amount*. Of course, the effect is probably the same as exempting all wages because wages and salaries are usually paid, as we have noted, within those intervals, leaving no money due the employee-debtor in the hands of the employer which can be levied upon by the creditor.³⁹

FLAT PERIOD EXEMPTIONS

<i>State or Territory</i>	<i>Exemption</i>
Arkansas ⁴⁰	60 days
Iowa ⁴¹	90 days
Montana ⁴²	45 days
Nevada ⁴³	30 days
North Carolina ⁴⁴	60 days
Oklahoma ⁴⁵	3 months
South Carolina ⁴⁶	60 days
South Dakota ⁴⁷	60 days
Washington ⁴⁸	60 days

³⁹ These statutes are sometimes vague as to whether the indicated period covers the period of services or the time of payment. In *Johnson v. Williams*, 235 Iowa 688, 17 N.W. 2d 405 (1945), the creditors sought to reach a sum paid the debtor within ninety days for work performed over three months preceding the levy. The money was held to be non-exempt. The statute may then be read as saying: "The earnings of a debtor, who is a resident of the State and the head of a family, for his personal services, or those of his family, [performed] at any time within ninety days next preceding the levy, are exempt from liability for debt." Kennedy and Brooks, *Ten Years of Creditors' Rights in Iowa*, 38 Iowa L. Rev. 410, 413 (1953), remark that "The result seems entirely reasonable and not unfair to the debtor in view of the manifest purpose to limit the exemption to current and recent earnings." A different conclusion, they point out, would have enabled the debtor and his employer to minimize a large amount by postponing the payment and receipt of earnings. *Ibid.*, at 413, note 18. We can agree with the authors that a different conclusion would have worked a hardship on the creditor, but we are not sure that simply because the services were performed a long time ago that the debtor therefore does not need those earnings for present existence. The Montana and Nevada statutes, notes 42 and 43 *infra*, for example, are explicit that it is the period during which the services are rendered which is significant.

⁴⁰ Ark. Stat. (1947) § 30-207.

⁴¹ Iowa Code Ann., § 627.10. No earnings are exempt, however, from any decree rendered in Iowa for the support of minor children. *Ibid.*, at § 627.12. But see the discussion of *Johnson v. Williams*, 235 Iowa 688, 17 N.W. 2d 405 (1945), at note 39 *supra*.

⁴² Mont. Rev. Code Ann. (1947) § 93-5816. Where the action is for ten dollars or less, wages for personal services rendered within thirty days of the commencement of the action are exempt. *Ibid.*, at § 93-5817. But, where necessities are the reason for the indebtedness, one-half of the earnings are subject to execution. *Ibid.*, at § 93-5816.

See following page for balance of footnote 42 and footnotes 43-48.

If the legislature is seeking to exempt all or most wages from garnishment process, this is probably as good a way to do it as any. Again, though, there is no rationale which can be used to explain why the periods should vary from thirty days to three months. However, no charge of legislative inflexibility can here be leveled, as it appears that a policy of complete exemption has been effectuated by this kind of statute.

We do find that these statutes are generally coupled with provisions that the debtor must be the head of a family, a resident of the state, and that if the indebtedness arises out of the purchase of "necessities," "necessaries" or "common necessities," et cetera, then only a fraction of the wages or salaries are exempted.⁴⁹ We shall take up these provisions separately below.

C. FLAT RATE EXEMPTIONS

Instead of setting a flat amount of money which cannot be touched or earnings during a given recent period, the legislature may exempt wages and salaries up to a certain percentage due or to become due. The rate may vary from zero per cent to one hundred per cent. In the former case this would mean no exemption at all—a situation which does not exist in any state. In the latter case would be meant total exemption—a situation which does exist in at least three states.

Quantitative studies would be desirable in these latter instances to enable us to determine whether or not, if wages are not subject to garnishment, the availability of credit to the wage earner or lower salaried worker is restricted in any way. On the surface, and not reasoning from experience, it would seem that creditors would per-

While this is a head-of-family type exemption, unmarried men or women over age sixty are similarly entitled to exemptions. *Ibid.*, at § 93-5819.

⁴⁸ Nev. Comp. L. (Supp., 1931-1941) § 8844, ¶ 8. This is a head-of-family exemption and if debts are incurred for the "common necessities of life" one-half the stated earnings are subject to garnishment.

⁴⁴ N.C. Gen. Stat., § 1-362.

⁴⁵ Okla. Stat. Ann., Tit. 12, § 850. Tit. 31, § 1, ¶ 17, dealing with homesteads and exemptions generally, provides, however, that only seventy-five per cent of all current wages or earnings for personal or professional services earned during the last ninety days should be exempt from attachment or execution. Although this section was adopted subsequently to the adoption of Tit. 12, § 850, it has been held that the latter section was not repealed thereby. *Norton Motor Sales Co. v. Johnson*, 110 Okla. 174, 237 Pac. 128 (1925).

⁴⁶ S.C. Code (1952) § 10-1731.

⁴⁷ S.D. Code (1939) § 33.12404.

⁴⁸ Wash. Rev. Code, § 7.32.280.

⁴⁹ See the Montana and Nevada statutes, notes 42 and 43 *supra*.

force seek other security which in most instances the individual debtor-to-be would not have. Have creditors been ready to assume the risks here involved, or is other security available?

We may note before passing to a tabular presentation of the statutory provisions that no minimum or maximum limitations have been coupled with the percentages exempted. (Such statutes are presented in the next section.) Thus, no matter how small the earnings of the debtor, the creditor may be able to obtain some part of them as satisfaction of his claim. Conceivably, hardship may be unduly imposed on the debtor, and it would appear that some minimum flat amount should be set up in the statute, where this kind of exemption is retained, below which earnings are not subject to execution.

On the other hand, the percentage statute, either with or without limitations, does give the debtor having larger earnings from wages or salaries a better break than the flat amount kind of statute. In the latter instance, if the exemption is quite low, the exposure of the balance of his earnings to garnishment execution is quite broad. The percentage limitation minimizes that hardship.

1. *Flat Rate Exemptions (with No Limitations).—*

<i>State or Territory</i>	<i>Rate of Exemption</i>
Alabama ⁵⁰	60 per cent
Florida ⁵¹	100 per cent
Hawaii ⁵²	90 per cent of wages of \$100 or under; 80 per cent of wages in ex- cess of \$100
Nebraska ⁵³	90 per cent
Pennsylvania ⁵⁴	100 per cent
Texas ⁵⁵	100 per cent

⁵⁰ Ala. Code, Tit. 7, § 630. The garnishee must hold forty per cent of wages, salaries, and other compensation until such time as the sum shown to be due is accumulated.

⁵¹ Fla. Stat. Ann., § 222.11. The exemption accrues only to the head of a family.

⁵² Hawaii Rev. L. (1945) § 10303.

⁵³ Neb. Rev. Stat. (1943, reissued 1948) § 25-1558. The exemption accrues only to the head of a family.

⁵⁴ Pa. Stat. Ann. (Purdon) Tit. 42, § 886.

⁵⁵ Tex. Const. Art. 16, § 28; Tex. Civ. Stat. Ann. (Vernon, rev. ed., 1925) Art. 4099. The Constitution and statute exempt "current wages." "Current wages" are compensation for personal services to be paid periodically or from time to time. *Radford Grocery Co. v. McKean*, 41 S. W. 2d 639 (Tex. Civ. App., 1931). Past due wages left with an employer because they could not be collected by the wage earner have been held to be current wages, while exempt but past due wages voluntarily left with the employer have been held not to be current wages. See *Davidson v. Logeman Chair Co.*, 41 S. W. 824 (Tex. Civ. App., 1897).

2. *Flat Rate Exemptions (with Limitations)*.—By far the most popular type of exemption statute is the flat percentage rate of exemption with some minimum amount reserved to the debtor when the earnings fall below a certain level. This limitation would seem to be the most suitable kind of protection to the debtor, while still giving creditors some security, of all the kinds examined to this point. We may repeat that the percentage exemption does help the larger wage earner more than the flat amount exemption, and to that extent in inflationary periods or in times of genuine prosperity works substantial justice without requiring statutory change. The exemption by percentage rate, therefore, does not require the legislature constantly to examine changes in the business cycle.

The limitations may be expressed in minimum and maximum amounts of money. Thus, so many per cent of wages may be exempted, but if wages earned fall below X dollars the entire amount shall be exempted, and if the wages earned exceed Y dollars, no amount over Y dollars shall be exempted.

The limitations may also be expressed in terms of time, so that only Z per cent of wages earned within the thirty, sixty or ninety days preceding the levy are available as security to the creditor.

The limitations may also be varied depending upon whether the purchases are for necessities and so on. These provisions will be discussed as a group below.

Footnotes to chart on page 163:

⁵⁶ Ariz. Code (1939) § 25-217.

⁵⁷ Code of Civil Procedure (Deering) § 690.11.

⁵⁸ Colo. Stat. Ann. (1935) c. 93, § 16.

⁵⁹ Del. Code Ann., Tit. 10, § 4913.

⁶⁰ Ga. Code Ann., § 46-208.

⁶¹ Idaho Code, § 11-205, ¶ 7.

⁶² Kan. Gen. Stat. Ann. (1949) § 60-3494-95.

⁶³ Ky. Rev. Stat. (1953) § 427.010 (2) and (3).

⁶⁴ Mich. Stat. Ann., § 27.3399.

⁶⁵ Mo. Stat. Ann. (Vernon) § 525.030. This is a head of family exemption.

⁶⁶ N. J. Stat. Ann., 2A: 17-56.

^{66a} N.M. Stat. (1941) § 22-227.

⁶⁷ Utah Code Ann. (1953) § 78-23-1. This is a head of family exemption.

⁶⁸ Va. Code (1950) § 34-29.

⁶⁹ Wis. Stat. (1951) § 272.18.

⁷⁰ Wyo. Comp. Stat. (1945) § 3-4713. This is a head of family type exemption.

FLAT RATE EXEMPTIONS (WITH LIMITATIONS)

<i>State or Territory</i>	<i>Rate of Exemption</i>
Arizona ⁵⁶	50 per cent (30 days)
California ⁵⁷	50 per cent (30 days)
Colorado ⁵⁸	60 per cent (not less than \$5 per week)
Delaware ⁵⁹	90 per cent in New Castle County 60 per cent in Kent or Sussex County (maximum of \$50)
Georgia ⁶⁰	50 per cent (not less than \$1.25 of daily, weekly or monthly wages)
Idaho ⁶¹	75 per cent (30 days; maximum of \$100 at any one time)
Kansas ⁶²	90 per cent plus \$4 court costs (3 months)
Kentucky ⁶³	90 per cent of earnings of \$75.00 per month or less; \$67.50 maximum in all other cases
Michigan ⁶⁴	60 per cent (minimum of \$12 per week, maximum of \$30 per week; minimum of \$24 bi-weekly, maximum of \$60 bi-weekly; minimum of \$30 beyond, maximum of \$60 beyond all above for householder with family. Non-householder has minimum of \$10 and maximum of \$20.)
Missouri ⁶⁵	90 per cent (30 days)
New Jersey ⁶⁶	90 per cent (where income exceeds \$2500 per year court may order larger percentage)
New Mexico ^{66a}	80 per cent of \$75 or less for last 30 days' service plus all above \$75
Utah ⁶⁷	50 per cent (not less than \$50)
Virginia ⁶⁸	75 per cent (minimum of \$50 per month, maximum of \$150 per month). Non-head of family has one-half this exemption.
Wisconsin ⁶⁹	60 per cent (for individual without dependents, 30 days. Minimum of \$75, maximum of \$100. Exemptions may be computed on 90 days basis at election of debtor. For individual with dependents the minimum is \$100 and the maximum is increased by \$20 per dependent not to exceed 85 per cent of income of debtor.)
Wyoming ⁷⁰	50 per cent (60 days)

D. FINAL COMMENTS ON AMOUNTS OF EXEMPTION

Having set out rather comprehensively the kinds of exemption statutes, we may note at least one state not mentioned, but which perhaps has the most sensible and flexible approach to the problem. The statute in Louisiana provides that in the event of garnishment "a judgment shall be rendered by the court of competent jurisdiction in which the garnishment proceedings may be pending fixing the portion of such wage, salary, commission or other compensation as may be exempt, as provided by law and providing for the payment of the seizing creditor, of whatever sum for which judgment may be obtained, out of the portion of such compensation which is not exempt."⁷¹

No flat amount, rate, or limitations are there to bind the court in seeking an equitable solution to the distress of the debtor and requirements of the creditor. If some standards were established for the court to be governed by, it would make more certain that justice would be dispensed equally in all cases. Thus, the court might be required to consider the circumstances of the defendant, including his family status, any other actions pending or judgments outstanding against him, the amount of defendant's income and the amount of the claim or demand.

In New Jersey an exemption of 90 per cent is given but the court has discretion to decrease the percentage in cases where the debtor earns more than \$2500 per year.⁷² This discretion is unfettered and subject, therefore, to arbitrary decision.

IV. SOME OTHER PHASES OF THE EXEMPTION STATUTES

We have seen from the preceding tables that statutes have other provisions qualifying the arithmetical computations to be made. These include the kind of services for which the earnings are due, the dependency status of the defendant and what the purchases by the defendant or others were made for.

A. SERVICES PAID FOR

In almost every state it is specified that the wages or salaries exempted from garnishment process must be for personal services. Where the phrase "personal services" is not set out in these words

⁷¹ La. Rev. Stat., § 13:3921. A similar provision exists as to commission employees. *Ibid.*, at § 13-3926.

⁷² Statute cited note 66 *supra*.

there can be no mistake that such is intended.⁷³ However, no particular problems seem to have arisen in the reported cases where the kind of services rendered has been a serious issue.⁷⁴

B. DEPENDENCY STATUS OF THE DEBTOR

The large majority of statutes provide that the exemption accrues only to the "householder," "head of a family," or debtor whose labor supports a family. Apparently, the debtor who is none of these has no problem of existence as far as these statutes are concerned. We think, however, that it is time that states provide similar exemptions in the case of single persons who may have no dependents and who may become a charge on society as easily as may the head of the family. To hold otherwise is to continue a ridiculous and unsound policy.⁷⁵

C. THE NECESSITY FOR THE EXEMPTION

Examination of the statutes reveals further that the exemptions will not be permitted to accrue to the debtor in many cases unless he can demonstrate by affidavit that the money exempted is necessary to support either himself or his family. Where the statute requires the debtor to be the head of a family before the exemption accrues, it seems rather doubtful that any creditor could successfully disprove the affiant's claims. In any event, it will be a debtor utterly devoid of literary ability who could not affirm that the statutory exemption is needed to survive. Most jurisdictions still require a showing, however, as follows: Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Idaho, Kansas, Montana, Nevada, North Carolina,

⁷³ So in Arkansas the exemption exists for the "wages of all laborers and mechanics," Ark. Stat. (1947) § 30-207; in Colorado "wages or earnings of any debtor," Colo. Stat. Ann. (1935) c. 93, § 16; in Delaware "labor or service," Del. Code Ann., Tit. 10, § 4913.

⁷⁴ The accrued salary of a corporation executive for the performance of purely managerial duties was exempt from garnishment as a sum of money due for "personal labor or services." *White v. Johnson*, 59 So. 2d 532 (Fla., 1953).

⁷⁵ States or territories providing no exemptions for single persons without dependents are: Alaska, Arizona, Colorado, Florida, Idaho, Illinois (the debtor must also be residing with the family of which he is the head), Indiana, Iowa (see the interesting discussion of attempts to liberalize the Iowa exemptions: Note, *Personal Property Exemptions in Iowa: An Analysis and Some Suggested Changes*, 36 Iowa L. Rev. 76, 82, 84 (1950); Fisher, *A Practitioner's View of Iowa Exemption Laws*, 36 Iowa L. Rev. 525 (1951), Kansas, Missouri, Montana (however unmarried men and women over age sixty are entitled to the same exemptions! Mont. Rev. Code Ann. (1947) § 93-5817), Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington and West Virginia.

Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington and Wyoming.

D. THE EXEMPTION AS LIMITED BY THE PURCHASE OF NECESSARIES

A conception will be found in the statutes that where the purchases leading to the indebtedness for which the garnishment is sought have been made for items characterized as necessary, all or at least a great part of the debtor's earnings should be exposed to the creditor. There is sound reason for this, it would appear, since the exemption of wages from garnishment is not intended to be a haven to protect the debtor from just claims, but is to keep him and his family from becoming charges on society. If the indebtedness is for those very things which keep the family in existence, such as food, clothing and shelter, why should not the debtor pay for them? The amount exempted in the first place is presumably left to him for that very purpose.

The statutes usually declare that the exemption does not accrue to the same extent as set out above in the event the debts are founded upon actual necessities furnished to the defendant, say, for his family or his dependents. Necessaries may be simple "necessaries of life,"⁷⁶ "necessities of life,"⁷⁷ "common necessities of life,"⁷⁸ "actual necessities,"⁷⁹ or "family expenses."⁸⁰ Further, in some states,⁸¹ an order to support minor children will lose for the defendant his exemption. In a few states the exemption will be set aside if the indebtedness is incurred for "board or lodging" or both.⁸²

Finally, several states will not exempt from garnishment proceedings indebtedness arising out of wages due for manual labor from the judgment debtor to the creditor.⁸³

⁷⁶ Del. Code Ann., Tit. 10, § 4913 (B). This applies only in New Castle County.

⁷⁷ N.M. Stat. (1941) § 22.227.

⁷⁸ Cal. Code of Civil Procedure (Deering) § 690.11(a). See Los Angeles Finance Co. v. Flores, 110 Cal. App. 2d Supp. 850 (1952), holding that a watch sold to debtor's wife to present to defendant as a birthday gift was not a "common necessary of life" which means "those things which are commonly required by persons for the sustenance of life regardless of their employment or status." *Ibid.*, at 856. See also Mont. Rev. Code Ann. (1947) § 93-5816 (one half earnings); Nev. Comp. L. (Supp., 1931-1941) § 8844, ¶ 8 (one half of earnings).

⁷⁹ Idaho Code Ann., § 11-205, ¶ 7.

⁸⁰ Ore. Rev. Stat. (1953) § 23-180 (one half of earnings).

⁸¹ For example, Iowa. See Iowa Code Ann., § 627.12.

⁸² Thus even Pennsylvania, which exempts all wages from garnishment, permits attachment in this case. Pa. Stat. Ann. (Purdon) Tit. 42, § 621. See also Del. Code Ann., § 4913.

⁸³ Pennsylvania is good example, again. Pa. Stat. Ann. (Purdon) Tit. 42, § 232.

E. EXEMPTION OF WAGES OF MINORS

As the earnings of minors may well be the property of the parents, some states have exempted these earnings from garnishment proceedings against the parents. So the Virginia statute⁸⁴ reads that "The wages of a minor shall not be liable to garnishment or otherwise liable to the payment of the debts of the parents."

F. REQUIREMENT OF RESIDENCE

Frequently, it is required that before the exemption accrues the debtor must be a resident of the state.⁸⁵ This by no means is a universal condition to exemption and we are not sure that it serves any useful purpose in light of the avowed purposes of the exemptions.

Statutes are also found which provide that where the wages are earned and payable outside the state and where the cause of action arose outside the state no garnishment procedure is available if the garnishee pleads the exemption.⁸⁶

G. WAIVER OF THE EXEMPTION

Some differences exist among the states as to whether the debtor may waive the exemption. On principle it does not seem that such waiver should be permitted, as the purpose of the exemptions is to benefit society by keeping the debtor and his dependents from becoming charges on society. It is not too difficult to obtain from a wage-earning purchaser a consent to waive the exemption, and to permit the waiver would seem to be permitting an overreaching on the part of potential creditors which is not needed or desirable.

In Maryland, the Court of Appeals had held⁸⁷ that the exemption from the attachment of wages could be waived by an employee. The Legislature promptly repealed and reenacted the statute, declaring in the preamble to the Act as follows:⁸⁸

The Court of Appeals of Maryland in a recent decision has held that a wage earner may, by stipulation in a promissory note authorizing judgment by confession without summons or trial, waive his one hundred dollar wage exemption granted by Statute. It is the sense of the General Assembly that

⁸⁴ Va. Code (1950) § 34-33. Wages of wife and minors are exempt: Maine Rev. Stat. (8th Revision) c. 101, § 55, VI; N.H. Rev. L., c. 412, § 21, III.

⁸⁵ For example, Iowa. Iowa Code Ann., § 627.10.

⁸⁶ Kentucky is an illustration. Ky. Rev. Stat. (1953) § 427.050.

⁸⁷ In *Lawrence v. Commercial Banking Corporation*, 165 Md. 559, 169 Atl. 69 (1933).

⁸⁸ Md. L. (Special Sess., 1933) c. 104, at 294.

the real legislative intent in the passage of this Exemption Statute as amended from time to time, was to create a hundred dollar wage exemption which the laborer or wage earner might not waive, and it is the intent and desire of the General Assembly by the repeal and re-enactment of this Exemption Statute so to change the wording of this Statute that it clearly and unmistakably expresses the intention which the General Assembly believes was sought to be expressed in the passage of the original Act and amendments thereto. It is the sense of the General Assembly that to permit a wage earner to waive this exemption would frequently result in depriving not only the wage earner, but his dependents of the necessities of life, thus rendering him and such dependents a charge upon the community.

On the other hand, Minnesota expressly permits the waiver.⁸⁹ We believe the interests of society are best served by not permitting the waiver.

V. CONCLUSIONS

In this brief recounting of the law on exemptions in garnishment, it should be apparent that the wide diversity of laws has served of value in enabling us to discover the best means of accomplishing our objectives. But we will be the first to observe that this review is only a piece-meal approach to the problem of the defaulting small debtor. Without question, consideration of this area of collection devices should be made in conjunction with the subjects of wage assignments and bankruptcy. What, for example, is the real effect on society of the laws of a state which exempts wages from garnishment completely, but on the other hand permits the assignment of one hundred per cent of these wages? Further, of what comfort is it to the debtor, or of what aid is it to the community interests involved, if garnishment may issue only after judgment, if the debtor has signed a confession of judgment note requiring no process or notice, thus permitting little bargaining between debtor and creditor as to a payment plan.

Nevertheless, our examination, although only a preliminary and tentative approach to these problems, does point out to the reader issues which, while they may not be of the most crucial nature at this time, are matters which touch the average American in a most sensitive area. His contact with judicial administration at this point may leave a healthy or distasteful impression. We can, by the changes indicated, work a just result both to debtor and creditor while serving the interests of society and thus enhance the high opinion in which our Anglo-American system of jurisprudence is justly held.

⁸⁹ Minn. Stat. Ann., c. 550.37 (16).