

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL -- Third Year, 2005

AN ACTION

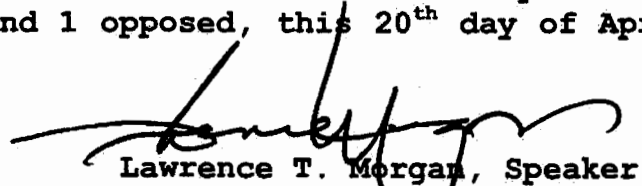
RELATING TO ETHICS, GARNISHMENT AND COURTS; ENACTING THE  
ETHICS IN GOVERNMENT LAW GARNISHMENT ACT OF 2005

BE IT ENACTED:

1. The Navajo Nation Council hereby enacts the Navajo Nation Ethics in Government Law Garnishment Act of 2005, attached hereto as Exhibit "A."
2. The Navajo Nation Council further approves amendments to the Ethics in Government Law as provided in Exhibit "B."
3. The Navajo Nation Council hereby declares that the remedy of garnishment as approved by these amendments shall become effective upon the enactment and promulgation of rules for garnishment proceedings pursuant to 7 N.N.C. §601.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 68 in favor and 1 opposed, this 20<sup>th</sup> day of April 2005.



Lawrence T. Morgan, Speaker  
Navajo Nation Council

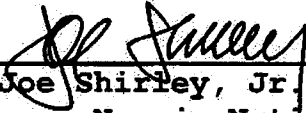
21 April 05

Date

Motion: Duane Tsinigine  
Second: Johnny Naize

**ACTION BY THE NAVAJO NATION PRESIDENT:**

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this \_\_\_\_\_ day of MAY 01 2005 2005.

  
\_\_\_\_\_  
Joe Shirley, Jr., President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2005 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Joe Shirley, Jr., President  
Navajo Nation

Chapter \_\_\_\_\_.

Subchapter \_\_\_\_\_.

The Navajo Nation Ethics in Government Law Garnishment Act of 2005

Sec. 1. Title

This Act shall be entitled and referred to as the Navajo Nation Ethics in Government Law Garnishment Act of 2005.

Sec. 2. Purpose

The purpose of this Act is to allow the remedy of garnishment in the collection of judgments issued by the Ethics and Rules Committee pursuant to the Navajo Nation Ethics in Government Law, 2 N.N.C. §3741 et seq.

Sec. 3. Findings

The Navajo Nation Council finds that:

- A. The Ethics and Rules Committee of the Navajo Nation Council conducts hearings for alleged violations of the Navajo Nation Ethics in Government Law, 2 N.N.C. §3741 et seq. These hearings involve public elected officials and Navajo Nation employees.
- B. Sanctions for violations of the Navajo Nation Ethics in Government Law include removal from or disqualification for elected office, termination of employment, payment of fines and restitution, reprimand and other penalties.
- C. Nonpayment of fines and restitution ordered pursuant to the Ethics in Government Law is a growing concern.

Sec. 4. General

- A. The remedy of Garnishment shall be available for only collection of civil damages, restitution, fines, and/or penalties pursuant to a judgment, i.e., order or decision, duly issued under the Navajo Nation Ethics in Government Law.
- B. The remedy of Garnishment is applicable to any of the following:
1. Nonrestricted earnings owing to a Judgment Debtor by a Garnishee.
  2. Nonrestricted assets, including nonrestricted monies, held by a Garnishee on behalf of a Judgment Debtor.
  3. Personal property of a Judgment Debtor that is in the possession of a Garnishee.
  4. Shares and securities of a corporation or a proprietary interest in a corporation belonging to a Judgment Debtor, if the Garnishee is a corporation.
- C. A Judgment Creditor, or the Navajo Nation Office of Ethics and Rules on behalf of a Judgment Creditor, in whose favor a money judgment is awarded by the Ethics and Rules Committee of the Navajo Nation Council for violations of the Navajo Nation Ethics in Government Law may apply for a Writ of Garnishment for its enforcement at any time within ten (10) years after entry of the judgment.
- D. A Judgment Creditor may apply for as many Writs of Garnishment as are necessary to collect the entire amount of the judgment.
- E. Jurisdiction over Garnishment actions initiated pursuant to a judgment issued under the Navajo Nation Ethics in Government Law shall lie solely with the Courts of the Navajo Nation.

Sec. 5. Definitions

For the purposes of Garnishment under this Act, the following words shall have the following meanings, unless the context otherwise requires:

- A. Assets. Interests in personal property and monies including, among other items, chattels, cash, bank accounts, securities, notes, and accounts receivable, but not including earnings or interests in real property.
- B. Disposable Earnings. That part of the earnings of a Judgment Debtor remaining after the deduction from those earnings of any amounts required by law to be exempted or withheld, e.g., FICA, Medicare, federal income tax.
- C. Earnings. Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise.
- D. Federal Minimum Hourly Wage Rate. The highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. It is immaterial whether the Garnishee is exempt from paying the federal minimum hourly wage rate.
- E. Garnishee. The third person or entity, including Navajo Nation enterprises, entities, authorities, and corporations, in control or possession of the earnings or assets which are the subject of the garnishment proceeding.
- F. Garnishment. Legal procedure through which the earnings or any other Asset of a Judgment Debtor are required to be withheld by a third party and, upon subsequent court order, released to a Judgment Creditor for payment of a debt which has been reduced to judgment under the Navajo Nation Ethics in Government Law.

- G. Judgment Creditor. A person or entity, including the Navajo Nation and its branches, divisions, departments, programs, enterprises, boards, commissions, and chapters, that has a money judgment in its favor pursuant to an order or decision duly issued under the Navajo Nation Ethics in Government Law that is due and unpaid.
- H. Judgment Debtor. A person against whom a money judgment has been awarded pursuant to an order or decision duly issued under the Navajo Nation Ethics in Government Law.
- I. Order of Garnishment. Court order directing the Garnishee to pay, transfer and/or release nonrestricted earnings or assets of the Judgment Debtor in the amount or a portion of the amount stated in the Writ of Garnishment plus costs and fees to the Judgment Creditor in a specified manner and at a specified time.
- J. Restricted Earnings and Assets. That portion of earnings and/or assets that are exempt from attachment in a Garnishment proceeding, including those earnings and assets deemed exempt and restricted by this Act.
- K. Writ of Garnishment. Preliminary court order issued through the Clerk of Court directing the Garnishee not to pay, transfer and/or release nonrestricted earnings or assets of the Judgment Debtor in the amount or a portion of the amount stated in the Writ of Garnishment and directing the Garnishee to file an Answer to the Writ of Garnishment and directing the Garnishee to serve the Writ of Garnishment on the Judgment Debtor.

Sec. 6. Issuance of Writ of Garnishment; Answer; Objection; Order

In accordance with the rules for garnishment proceedings, as enacted pursuant to 7 N.N.C. §601:

- A. Upon the filing of a proper petition, a Writ of Garnishment in the amount of the judgment or portion thereof as stated in the petition shall be issued by the Clerk of Court and directed to the Garnishee.
- B. The Garnishee shall file an Answer to the Writ of Garnishment and serve the Writ of Garnishment, as well as the Answer, on the Judgment Debtor.
- C. The Judgment Debtor or other interested person or entity may file an objection to the Writ of Garnishment or the Answer of the Garnishee.
- D. If the Answer shows that the Garnishee was holding nonexempt monies or personal property of the Judgment Debtor or that the Judgment Debtor is an employee of the Garnishee entitled to future earnings and if no objection to the Writ of Garnishment is filed, the court will, without hearing issue an Order of Garnishment.
- E. If an objection to the Writ of Garnishment is filed and/or the conditions precedent of subsection (D) are not met, the court will hear the matter without a jury prior to issuing an Order of Garnishment or ordering the Garnishment stopped.

Sec. 7. Limitations upon Transfers by Garnishee

- A. From and after service of the Writ of Garnishment and until the Court issues the Garnishment stopped, the Garnishee shall not pay, transfer or release any unrestricted asset in the Garnishee's possession or under the Garnishee's control to which the Judgment Debtor has an interest or pay and/or release unrestricted earnings owing to the Judgment Debtor.
- B. The Garnishee shall be liable to the Judgment Creditor for any such payment, transfer, or release prohibited above.

Sec. 8. Possession by Judgment Debtor

- A. At any time before an Order of Garnishment is issued, the Judgment Debtor may take possession of any earnings or assets withheld by the Garnishee by filing with the court (1) a bond payable to the Garnishee in the amount, including costs and fees, set forth in the application for the Writ of Garnishment, or (2) a bond payable to the Garnishee for the value of the earnings and assets to be garnished. The bond shall be conditioned upon the payment of any judgment that may be given against the Garnishee or for payment of the value of the property garnished.
- B. When the Judgment Debtor provides a bond, he may make any objection which the Garnishee could make in such action. With or without bond, the Judgment Debtor may assert any legal objections he may have to the Writ of Garnishment.
- C. If Judgment Debtor takes possession of property under this section and judgment on garnishment is given in favor of the Judgment Creditor, it shall be against the Judgment Debtor and the sureties on the Judgment Debtor's bond for the amount of such judgment.

Sec. 9. Restrictions on Discharge from Employment by Reason of Garnishment

- A. No employer may discharge any employee by reason of the fact that his or her earnings have been subject to garnishment.
- B. An employer who willfully violates subsection (A) of this section shall be assessed a civil liability of not more than one thousand dollars (\$1,000.00) payable to the employee.



Sec. 10. Exemptions and Restrictions

The following earnings and assets shall be restricted and exempt from Garnishment:

- A. Benefits paid by the Social Security Administration;
- B. Railroad Retirement benefits under the Railroad Retirement Act of 1974, 45 U.S.C. §231;
- C. Retirement benefits, including Civil Servant's Retirement benefits under 5 U.S.C. §8331 et seq. and benefits payable by the Navajo Nation pursuant to Navajo Nation defined contribution and/or defined benefit retirement plans;
- D. Military Annuities under 10 U.S.C. §1440;
- E. Social welfare benefits including, but not limited to:
  - 1. Aid to Families with Dependent Children, or its successor; and
  - 2. General Assistance;
- F. All monies received by or payable to the Judgment Debtor pursuant to a child support order;
- G. Earnings payable by the Judgment Debtor pursuant to a child support order;
- H. Earnings and assets restricted or excepted under 15 U.S.C. §1671 et seq.; and,
- I. Interests in real property.

Sec. 11. Maximum Allowable Earnings Garnishment

The maximum amount of earnings subject to Garnishment shall not exceed the lesser of:

- A. Fifteen percent (15%) of the Judgment Creditor's disposable income for any pay period; or
- B. The amount by which the Judgment Creditor's disposable income exceeds thirty (30) times the Federal Minimum Wage (based on a forty hour work week) in effect at the time the earnings are payable.

Amendment to Navajo Ethics in Government Law

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Subchapter 5. Sanctions and Penalties

§3780. Administrative sanctions; collection of judgments

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D. Judgments issued pursuant to the *Ethics in Government Law* which include the payment of money may be collected in any manner authorized for recovery of debts owed the Navajo Nation, including but not limited to garnishment proceedings as authorized by Navajo Nation law and offset provisions of the Navajo Nation *Business and Procurement Act*, 12 N.N.C. §1501 et seq.

