



## New Law Protects Low-Wage Workers from Over-Zealous Debt Collection SB 501 (Wieckowski)

Beginning July 1, 2016, low-wage workers with wage garnishments will have relief from the current garnishment rate. SB 501 (Wieckowski), signed into law by Governor Jerry Brown, will now allow workers to have their wages garnished only if they are earning more than the local minimum wage, and the rate at which their wages can be garnished will vary based on their disposable earnings, with lower-income workers being garnished less.

**Current Wage Garnishment Law:** Current California law allows garnishment of income for debt owed once a court order is served on the worker's employer. Current law sets the maximum garnishment amount at the lesser of (a) 25% of the individual's post-tax earnings or (b) any money that exceeds the state minimum wage. The perverse result of this formula is that a worker who earns \$11, or \$12 an hour only takes home the state minimum wage of \$10 and the rest of it is garnished – all of it. This is the case even when a worker lives in a community that has voted for a higher minimum wage.

Taking 100% of wages earned between \$10 and \$12 an hour undermines workers, and – in the case of cities with a higher minimum wage – it also shows a disregard for local decision making. Low-income workers want to honor and pay back their debts like everyone else, but a 100% taking on these earnings discourages work and contributes to poverty among working families, putting life essentials – food, rent, utilities – out of reach. When low-income workers' wages are garnished, they often face severe setbacks, losing their assets and falling into further debt to credit card companies or predatory lenders.

**How SB 501 Changes the Law:** SB 501 makes two important changes to California's wage garnishment law.

- **SB 501 Honors Local Minimum Wage Ordinances:** Current law ties the garnishment calculation to the state minimum wage. SB 501 changes this if there is a local minimum wage ordinance that is higher. As of July 1, 2016, workers cannot be garnished until their paycheck is higher than someone would earn working full-time at the local minimum wage.
- **SB 501 Graduates the Garnishment Rate:** As of July 1, 2016, the garnishment rates will be tapered so people who earn less than twice the supplemental poverty rate for a family of three pay less in garnishment and workers who are the poorest pay the lowest rates of garnishment.

**SB 501 Does Not Apply to Child Support or Government Debt:** SB 501 will only reduce the garnishment rate of consumer debt (including medical debt).

**SB 501 Supports Workers to Pay Debt in Full:** Although it reduces the garnishment rate, SB 501 does not reduce the obligation to pay the debt. In fact, allowing workers to retain more of their wages makes them able to improve their work stability, resulting in fewer bankruptcies and an increased likelihood that the debt will be paid in full. Also, limiting the garnishment rate does not limit workers' ability to pay down their debt faster if they decide to do so. It simply limits how much in wages is automatically removed by order of the court.

**SB 501 Reduces Burden on Courts & Legal Services:** Current law allows for a claim of exemption for workers who can prove hardship, but the process can be lengthy, requires a court action, and adds to the workload of already overburdened Legal Services providers.

For more information about this new law and how it will impact your clients or constituents, contact Jessica Bartholow at [jbartholow@wclp.org](mailto:jbartholow@wclp.org) or Ted Mermin at [TMermin@publicgoodlaw.org](mailto:TMermin@publicgoodlaw.org)



# Protecting People From Debt-Collection On Debts They Don't Owe SB 641 (Wieckowski)

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## **Beginning January 1, 2016, people sued for a debt they don't owe will get their day in court.**

SB 641 (Wieckowski) provides that someone who finds out that there's an incorrect court judgment against her – usually because her wages have been garnished or her bank account has been emptied – can file a motion to set aside the default or default judgment and for leave to defend the action.

**Current Law (Before January 1, 2016):** Under existing law, a consumer who has been sued by a debt buyer can't ask a court to set aside a default judgment if the judgment is more than two years old, even if the consumer never received actual notice of the lawsuit and even if she doesn't actually owe the debt.

**New Law (After January 1, 2016):** Under SB 641 Californians who never got a chance to defend a debt buyer's lawsuit against them will be allowed to file a motion to set aside the default judgment and to bring their cases before a judge, so long as they take action within 180 days of receiving actual notice and within six years of the default judgment. In cases of identity theft and mistaken identity, the six year limit does not apply – because no one should be forced to pay someone else's debt, at any time. To get relief pursuant to SB 641, a person has to state under penalty of perjury that she did not learn about the case against her in time to respond. And she has to file a motion and a proposed response to the complaint. It's then up to the judge to decide if the person has a good defense, and if the case should be reopened.

**Background:** In 2013, the Legislature passed the Fair Debt Buying Practices Act (SB 233), which requires debt buyers – debt collectors who buy customer accounts at a huge discount from credit-card banks and other creditors – to make sure that the person they are pursuing is actually responsible for the debt.. However, the Act does not help consumers with debts purchased by debt buyers before January 1, 2014. Legal service providers throughout the state are helping Californians who are still being harmed every day by unscrupulous debt buyers. These practices are so egregious that the Consumer Federal Protection Bureau recently filed and settled a lawsuit against the nation's two largest debt buyers for abusive debt collection tactics.

Many thousands of Californians, including members of this Legislature, have been contacted by debt buyers trying to collect debts that are owed by people with similar names or that were incurred by identity thieves or that were already paid. Because existing law only allows a consumer two years to set aside a judgment, even one she never heard about, after two years a consumer would need to pay for a lawyer to bring a whole new lawsuit – and that is something most Californians simply cannot afford to do. SB641 helps fix this problem.

## **The text of the new law can be found at:**

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB641](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB641)

**To learn about the CFPB law suit filed against Encore Capital Group (a group that lead the opposition of SB 641) and others in the \$200B debt-buying industry, go to:** <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/>

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