

benefits when the debtor is financially crippled. A more powerful exemption law will help keep the debtor from sinking further into a financial abyss and losing his job. At the same time it will protect the creditors to the extent that it allows the debtor to keep going and to avoid bankruptcy. Incidental credit grantors such as doctors, lawyers and small businessmen lose when a small loan company garnishes wages and causes the debtor to be fired or run for bankruptcy. A law with more exemption protection will encourage the commercial credit grantors to be more careful in choosing their credit risks. If the creditor will do this, he will reduce his bad debt losses. This induced care may result in some reduction of overall credit granted, but the reduction will probably be small and will be justified by the decrease in human misery caused by extreme credit problems. Finally, an exemption law can be tailored to encourage the debtor to find a program which will help him to find his way out of a bad financial situation and into a better one.¹⁷³

The Judiciary Committee report made no specific proposals.

B. Recommendations

Wage garnishment should be abolished as a harmful and unnecessary collection device. If a more conservative approach is preferred, the exemption should be made adequate and the use of garnishment carefully restricted so as to minimize its undesirable consequences. Specifically:

(1) Wage garnishment should not be permitted prior to judgment, that is, under writs of attachment. Even collection agencies agree that garnishment before judgment is unfair.¹⁷⁴ How much the defendant owes and, indeed, whether he owes anything is undetermined until judgment is entered.

(2) After judgment, ninety per cent of earnings should be automatically exempt. A debtor in average circumstances needs at least that much of his wages to avoid undue hardship and to stay relatively current on his obligations. The income of debtors varies and it is tempting to scale the exemption to income (for example, one hundred per cent of the first four hundred dollars per month, ninety per cent of the next two hundred dollars and seventy-five per cent of the excess). This is not recommended because such a provision is likely to require frequent revision as the cost of living rises; without revision it will tend to give less and less protection. Also, as already noted, it is more complex to administer and can involve uncertainties of computation; the employers' interests are entitled to consideration here.

(3) The remaining ten per cent should be garnishable after judgment under the following conditions: (a) No garnishment would be permitted where the underlying indebtedness arose from installment credit, whether

¹⁷³ ASSEMBLY INTERIM COMM. ON JUDICIARY, FINAL REPORT 50 (Jan. 1965).

¹⁷⁴ Note 43 *supra*.