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## Civil Procedure; garnishment of wages

The University of the Pacific, McGeorge School of Law

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## Civil Procedure; foreign corporations

NEV. REV. STAT. § 80.210 (amended).  
AB 47 (Porter); 1989 STAT. Ch. 15

Existing law provides that a foreign corporation<sup>1</sup> not qualified to do business<sup>2</sup> in Nevada cannot maintain an action in any state court.<sup>3</sup> Chapter 15 allows an unqualified foreign corporation to bring an action if the relief sought<sup>4</sup> is an extraordinary remedy.<sup>5</sup> However, the action must be dismissed<sup>6</sup> if the corporation does not qualify to do business in Nevada within 45 days after the action is commenced.<sup>7</sup>

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1. See NEV. REV. STAT. § 80.010 1 (1987) (definition of a foreign corporation).
  2. See *id.* § 80.010 (1987) (requirements for doing business in Nevada). See also *In re Hilton Hotel*, 101 Nev. 489, 492-493, 706 P.2d 137, 139 (1985) (to qualify to do business in Nevada, a corporation must conduct a substantial part of its ordinary business in the state). One contract or an isolated business act by the corporation is not sufficient. *Id.*
  3. NEV. REV. STAT. § 80.210 1 (1987) (amended by 1989 Nev. Stat. ch. 15, sec. 1, at \_\_\_) (if a foreign corporation fails to meet state requirements, it cannot commence, maintain or defend any action).
  4. See 1989 Nev. Stat. ch. 15 sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 80.210) (the extraordinary remedy may be all or only part of the relief sought).
  5. *Id.* (the extraordinary remedy must be listed in Nevada Revised Statutes chapter 31).
  6. See *id.* (a dismissal without prejudice must be within 45 days after the action is commenced and without prejudice).
  7. *Id.* *Atlantic Commercial Dev. Corp. v. Boyles*, 103 Nev. Adv. Ops. No. 9 at \_\_\_, 732 P.2d 1360, \_\_\_ (February 24, 1987) (Nevada Revised Statute section 80.210 does not limit a corporation's rights beyond the plain language of the statute). A dismissal must be without prejudice if the corporation is in the process of complying with Nevada's statutes and the relevant statute of limitations has not run. *Id.*

## Civil Procedure; garnishment of wages

NEV. REV. STAT. §§ 28.\_\_\_\_, 31.\_\_\_\_, 40.\_\_\_\_ (new); §§ 21.112, 28.010, 31.249 (amended).  
AB 247 (Committee on Judiciary); 1989 STAT. Ch. 338

Existing law allows a court to order garnishment through a third party who has possession or control of the defendant's personal property.<sup>1</sup> Chapter 338 provides that if the garnishee is the defen-

dant's employer, the writ of garnishment will continue for 120 days or until the amount of the writ is satisfied, whichever occurs first.<sup>2</sup> Further, the employer may collect a fee from the plaintiff for each pay period which is garnished.<sup>3</sup> Chapter 338 penalizes any employer who: (1) Refuses to withhold the defendant's earnings;<sup>4</sup> (2) knowingly misrepresents the amount of the earnings;<sup>5</sup> or (3) discharges or punishes the defendant solely because of the garnishment.<sup>6</sup>

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1. NEV. REV. STAT. § 31.240 (1987) (a defendant's personal property that is under the control or possession of a third party may be applied against any judgment through a writ of garnishment). Personal property includes money, effects, credits, choses in action, and debts. *Id.* See *id.* §§ 31.249-.460 (defining procedures and scope of garnishment). See also 15 U.S.C.S. §§ 1671-1677 (Law. Co-op 1988) (federal laws concerning garnishment); *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969) (prejudgment garnishment without an opportunity to be heard is a violation of due process).

2. 1989 Nev. Stat. ch. 338, sec. 6, at \_\_\_\_ (enacting NEV. REV. STAT. § 31.\_\_\_\_).

3. *Id.* This fee is in addition to the \$5 fee provided in Nevada Revised Statutes section 31.270. *Id.* The employer may deduct \$3 per pay period, but no more than \$12 per month; however, no fee may be recovered for the first pay period which is garnished. *Id.* If the defendant's employment is terminated before the amount of the writ is satisfied, the employer is liable only for the defendant's unpaid earnings and must provide the plaintiff with the defendant's last known address and, if known, the name of the defendant's new employer. *Id.*

4. *Id.* sec. 7, at \_\_\_\_ (enacting NEV. REV. STAT. § 31.\_\_\_\_).

5. *Id.* If the employer cannot justify why the earnings were misrepresented or were not withheld, the court must order the employer to pay the amount of arrearages. *Id.* The court also may award up to \$1000 in punitive damages for each pay period that the defendant has misrepresented or refused to withhold earnings. *Id.*

6. *Id.* sec. 8, at \_\_\_\_ (enacting NEV. REV. STAT. § 31.\_\_\_\_).