

HOUSE BILL ANALYSIS

ESSB 6295

Title: An act relating to garnishment proceedings.

Brief Description: Changing garnishment proceedings.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Heavey, McCaslin, Johnson, T. Sheldon, Swecker, Long and Deccio).

Brief Summary of Bill

- Provides a process for a judgment creditor to obtain a judgment against the debtor for garnishment costs and attorney fees.
- Allows garnishees to tender payment of funds in lieu of an answer to the writ and before any judgment against the garnishee is entered.
- Requires that if a debtor pays off a judgment during the pendency of a garnishment, the payment must include garnishment costs and attorney fees.
- Directs the garnishee to remit payment to the superior court registry for garnishments in superior court and directly to the creditor for garnishments in district court.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

There are several ways a creditor may satisfy a judgment against a debtor. The garnishment process is a remedy that allows a creditor to obtain the debtor's funds or property that are in the possession of a third person.

The creditor files a writ of garnishment on the third party (the garnishee), and the writ directs the garnishee to answer whether it holds funds or property owed to the debtor. The debtor can challenge the garnishee's answer. The garnishee may assert defenses in response to the creditor's writ of garnishment or the debtor's subsequent challenge to the garnishee's answer.

The writ of garnishment must set forth the amount that the garnishee is required to hold. The amount may include the amount of the judgment owed to the creditor, plus costs and attorney fees, and estimated costs of garnishment. Estimated costs of garnishment may include such things as the filing fee, service and affidavit fees, garnishment attorney fees, postage, and costs of certified mail.

The garnishee must answer the writ within 20 days after the service of the writ. The answer must state, among other things, the amount, if any, the garnishee owes the debtor. If the garnishee fails to answer the writ, the garnishee could be liable for the full amount of the judgment against the debtor, along with interest and costs, whether or not the garnishee owes anything to the debtor.

A recent state supreme court case held that the garnished amounts must be reduced to judgment against the garnishee, and that requiring payment of costs and other garnished amounts without a judgment violates the statutes.

Summary of Bill:

The garnishee is notified in the writ that judgment may be taken against the garnishee even if the writ is answered properly, but that the judgement will not exceed the amount the garnishee is holding for the debtor. The garnishee is also notified that a judgment for costs may be entered.

Costs recoverable in garnishment proceedings may include all other fees legally chargeable to the judgement creditor in the garnishment process.

For garnishment proceedings in superior courts, the garnishee must pay the plaintiff through the registry of the court. For garnishment proceedings in district court, the garnishee must pay the judgment amount directly to the plaintiff. In addition, a garnishee may tender funds to the creditor or the court in place of answering the writ or prior to having the amount reduced to judgment. Accepting the garnishee's tender of funds does not affect the rights a garnishee or a debtor has to challenge the writ or the answer.

Judgment for garnishment costs and attorney fees may be entered against the debtor. If, at the time the writ was issued, the garnishee did not employ the debtor or otherwise did not possess any funds or property of the debtor, then the creditor cannot obtain a judgment for garnishment costs and attorney fees.

If a debtor or third party pays off a judgment during the pendency of a garnishment, the costs and attorney fees associated with the garnishment must also be paid.

A standard garnishment judgment form is created and the existing standard writ of garnishment form is amended and simplified.

Fiscal Note: Available. New fiscal note requested on February 18, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research