
Judiciary Committee

HB 2523

Title: An act relating to garnishment.

Brief Description: Concerning garnishment.

Sponsors: Representatives O'Brien and Angel.

Brief Summary of Bill

- Permits attorneys to issue writs of garnishments in district court that do not require answers to be filed with the court, court-issued judgments or orders to pay, or other court intervention.
- Modifies forms used in garnishment proceedings.
- Makes other changes to garnishment laws concerning: (a) holding estimated interest during garnishment; (b) default judgments against garnishees; (c) ex parte applications for a judgment and order to pay; and (d) the duration of continuing liens on earnings.

Hearing Date: 1/27/10

Staff: Courtney Barnes (786-7194).

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 a debtor's funds or property that are in the possession of a third person (garnishee). Garnishment is used to force a debtor's employer to pay the creditor directly out of the debtor's paycheck. Garnishment may also be used to reach other assets of the debtor, such as a bank account.

Writ of Garnishment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Following a judgment or court order, the creditor files an application with the court clerk, who is then required to issue a writ of garnishment to the creditor. The attorney of record for a creditor may issue a writ of garnishment following a judgment or court order from a district court. The creditor serves the writ on the garnishee. The form of the writ is provided in statute. Among other requirements, the writ must set forth the amount that the garnishee is required to hold, including the amount of the unsatisfied judgment plus other costs. These costs vary depending on whether the garnishment occurs before or after judgment against the debtor. Whenever the federal government is named as a garnishee, the clerk of the court must submit a special notice form to the garnishee.

Answer to Writ of Garnishment.

The writ of garnishment directs the garnishee to answer whether it holds funds or property owed to the debtor. The proper form for the answer, provided in statute, details the amount owed by the garnishee to the debtor and includes a worksheet for figuring the appropriate amounts exempted from garnishment. The creditor provides copies of this form along with postage-paid envelopes when serving the writ of garnishment to the garnishee. The garnishee's answer to the writ must be sent to the court issuing the writ, the creditor or creditor's attorney, and the debtor.

Controversion.

When a garnishee files an answer to the writ of garnishment, the creditor or debtor may controvert the garnishee's answer by filing an affidavit stating that the affiant has good reason to believe that the answer of the garnishee is incorrect. This affidavit must be filed with the court within 20 days of the filing of the garnishee's answer. The garnishee is given an opportunity to respond to the controverting affidavit. Upon expiration of the time for the garnishee's response, the matter may be brought before to court to determine whether a trial is required.

Judgments Against a Garnishee.

If it appears from the garnishee's answer that the garnishee is indebted to the debtor in any amount, not exempt, at the time the writ of garnishment was served, the court must render a judgment in favor of the creditor. In the case of district court garnishments, the order must direct the garnishee to pay the judgment amount directly to the creditor or the creditor's attorney. The court must inform the garnishee that the failure to pay the amount may result in execution of the judgment, including garnishment.

If the garnishee fails to answer the writ within 20 days after service, the court may enter judgment by default against the garnishee 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. The garnishee may make a motion to have this default judgment reduced to the amount owed to the debtor actually in possession of the garnishee, as long as the motion is made within seven days of the service of the first writ of execution or garnishment.

Claiming Exemptions.

When a writ is issued under a judgment, the creditor must provide the debtor with a copy of the writ, the affidavit supporting the writ, a notice of the debtor's rights, and a claim form that the

debtor may file with a court if he or she claims an exemption. If the debtor files an exemption claim form with the court, the creditor may file an objection to the claim and set the matter for a hearing. The hearing must be set within 14 days of the creditor receiving the claim.

Summary of Bill:

A number of changes are made to the laws governing garnishment proceedings.

Writ of Garnishment.

A writ of garnishment issued after judgment must direct the garnishee to hold interest estimated to accrue during the garnishment process not to exceed 30 days or 150 days for a writ for a continuing lien on earnings. Ex parte fees are added to the list of recoverable costs in a garnishment proceeding.

Separate forms are created for writs of garnishment issued for continuing liens on earnings and writs issued for other personal property of the debtor. The duration for a writ of garnishment for continuing liens on earnings is increased from 60 days to 120 days.

The attorney of record for a creditor may issue writs of garnishment in district court that do not require answers to be filed with the court, court-issued judgments or orders to pay to effect payment of non-exempt funds to the judgment creditor, or other court intervention in the absence of necessary hearings on exemption claims or controversies. A new writ form is created for garnishments that do not require a court-issued judgment for costs or order to pay to effect payment of withheld amounts by the garnishee to the creditor.

Whenever the federal government is named as a garnishee, the special notice form sent to the garnishee may be issued by the attorney for the creditor (instead of the court clerk).

Answer to Writ of Garnishment.

Separate answer forms are created for writs issued for continuing liens on earnings and writs issued for other personal property of the debtor. Modifications are made to the rules governing how many answer forms and envelopes must be sent to the garnishee to address situations where the writ does not require an answer to be filed with the court.

Controversion.

If a garnishee is not instructed to file an answer to the writ with the court, the creditor or debtor may controvert the garnishee's answer within 23 days after the garnishee mails or personally delivers the answer to the writ. The creditor or debtor must file the controverting affidavit with the court.

Judgments Against a Garnishee.

On application for a judgment against a garnishee, a creditor may apply for the judgment and order to pay ex parte.

New procedures are created to address a writ of garnishment that does not require a court-issued order to effect payment from the garnishee. These procedures address: (a) paying non-exempt funds directly to the creditor; (b) failing to pay non-exempt funds as directed; (c) awarding of recoverable garnishment costs and attorneys' fees to the creditor; (d) notifying the court at the conclusion of the writ of garnishment; and (e) notifying the garnishee to cease withholding funds if the garnishee continues to withhold funds after the judgment is satisfied.

When a default judgment is entered against the garnishee and the garnishee makes a motion to have this default judgment reduced, the garnishee must pay the accruing interest, costs, and attorneys' fees for any garnishment on the judgment against the garnishee.

A continuing lien on earnings has priority over any prior wage assignment, except an assignment for child support.

Claiming Exemptions.

If the creditor objects to the debtor's exemption claim and no hearing date is available within 14 days of the creditor receiving the claim, the creditor may schedule the hearing on the next available date.

The exemption claim form is modified to allow creditors to omit provisions that do not apply to the writ. For example, if the writ is not directed to a financial institution, the exemptions pertaining to bank accounts may be omitted from the claim form. An exemption claim form is deemed non-responsive in the following circumstances:

- the form is either submitted in blank or does not assert a claim of exemption, or both;
- an exemption specific to bank accounts is claimed and the writ is not directed to a bank;
- an exemption specific to child support is claimed and the writ is not issued for enforcement of a child support judgment;
- an exemption specific to pension or retirement benefits is claimed and the writ is not directed to the garnished party's pension or retirement benefit provider; or
- an exemption specific to personal property is claimed and the writ is directed to a bank, employer, or other holder of monetary amounts belonging to the garnished party.

A new form is created to provide notice to the debtor in cases where an exemption claim form is deemed non-responsive. A non-responsive exemption claim must be denied without a court hearing if the creditor files and serves a notice of non-responsive exemption claim and another exemption claim form, within seven days of receiving the exemption claim.

Other.

Changes are made to the organization of certain garnishment provisions. Some provisions covered in other sections are deleted.

Appropriation: None.

Fiscal Note: Requested on 1/22/10.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.