

---

## Judiciary Committee

---

### HB 1552

**Title:** An act relating to garnishment.

**Brief Description:** Concerning garnishment.

**Sponsors:** Representative Goodman.

#### Brief Summary of Bill

- Modifies the forms used in garnishment proceedings.
- Increases the exemption for wages from thirty times the federal minimum hourly wage to thirty times the state minimum hourly wage.
- Increases the minimum and maximum amounts that may be collected for the garnishment attorney fee.
- Makes other changes to garnishment laws, including: (1) extending the length of a writ for a continuing lien on earnings; (2) adding accrual of estimated interest in the writ of garnishment; and (3) amending provisions applicable to judgments against garnishees.

**Hearing Date:** 1/19/12

**Staff:** Trudes Tango (786-7384).

#### **Background:**

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). Under the process, a writ for continuing lien on earnings may be issued to require a debtor's employer to pay the creditor directly out of the debtor's paycheck. A writ of garnishment may also be used to reach other assets of the debtor, such as funds in 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 issues a writ of garnishment to the creditor. Following a judgment or court order in district court, the creditor's attorney, rather than the court clerk, may issue the writ of garnishment. 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. When the federal government is named as a garnishee, the clerk of the court must submit a special notice form to the garnishee.

A writ for continuing lien on earnings continues until the total amount stated on the writ is paid or for 60 days, whichever occurs first.

#### Answer to Writ of Garnishment.

The writ 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 to the garnishee.

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.

#### Exemptions.

The creditor must provide the debtor with a copy of the writ, a notice of the debtor's rights, and an exemption claim form, provided in statute. 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.

When a writ for continuing lien on earnings is served on an employer, the amount exempt from garnishment for each week of earnings is either 30 times the federal minimum hourly wage or 75 percent of the disposable earnings of the debtor. The federal minimum hourly wage is currently \$7.25. The state minimum hourly wage is \$9.04.

#### Judgment and Order to Pay.

If it appears from the garnishee's answer that the garnishee owes the debtor any amount, not exempt, at the time the writ of garnishment was served, the court must issue a judgment in favor of the creditor. The order directs the garnishee to pay the judgment amount directly to the creditor or the creditor's attorney.

#### **Summary of Bill:**

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

#### Garnishment forms.

Separate forms are created for writs for continuing liens on earnings and writs issued for other personal property, including separate answer and exemption claim forms. The notice form to be used whenever the federal government is the garnishee is modified to reflect that the creditor's attorney may issue the notice.

Duration of garnishment.

The duration for a writ for continuing lien on earnings is increased from 60 days to 120 days.

Exemptions.

The wage exemption for writs for continuing liens on earnings is increased to thirty times the state minimum hourly wage. The exemption claim form is modified to allow creditors to omit provisions that do not apply to the writ.

Estimated interest.

A writ 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. The writ must specify a dollar amount of estimated interest that may accrue during the garnishment process per day. The amount must be based on an interest rate of 12 percent or the rate established in the judgment, whichever amount is less.

Judgment and Order to Pay.

A creditor may apply for the judgment and order to pay ex parte. Ex parte fees are added to the list of recoverable costs in a garnishment proceeding.

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.

Other.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

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