

HOUSE BILL REPORT

SHB 1552

As Passed Legislature

Title: An act relating to garnishment.

Brief Description: Concerning garnishment.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Goodman).

Brief History:

Committee Activity:

Judiciary: 1/19/12, 1/30/12 [DPS].

Floor Activity:

Passed House: 2/10/12, 92-4.

Senate Amended.

Passed Senate: 3/1/12, 46-0.

Passed House: 3/5/12, 56-41.

Passed Legislature.

Brief Summary of Substitute Bill

- Modifies the forms used in garnishment proceedings.
- Increases the exemption for wages and specifies that certain public employee pensions are exempt from garnishment.
- Increases the minimum and maximum amounts that may be collected for the garnishment attorney fee.
- Makes other changes to garnishment laws, including: (1) adding accrual of estimated interest in the writ of garnishment; (2) amending provisions applicable to garnishee defendants; and (3) eliminating the multiple envelopes and forms the creditor is required to provide the garnishee defendant.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Chandler, Eddy, Hansen, Kirby, Klippert, Nealey, Orwall and Roberts.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea, Assistant Ranking Minority Member; Rivers.

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.

Following a judgment or court order, the creditor files an application with the court clerk, who issues a writ of garnishment to the creditor. 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.

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 and multiple envelopes for the garnishee to use for mailing the answer to the creditor and debtor.

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.

Garnishment Attorney Fee.

Costs that are recoverable in garnishment proceedings include a garnishment attorney fee in the amount of a minimum of \$50 or 10 percent of the unsatisfied judgment, and a maximum of \$250.

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 the greater of 30 times the federal minimum hourly wage or 75 percent of the disposable earnings of the debtor.

In February 2012, the state Supreme Court issued Anthis v. Copland, holding that certain public employee pensions are not exempt from garnishment once the funds have been paid to the retiree. The court emphasized that the exemption statute for federal pensions explicitly states the funds are exempt "whether the same be in the actual possession of such person or be deposited or loaned" but that the public employee pension statutes do not contain such language.

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 Substitute 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. The creditor is no longer required to provide multiple copies of forms and envelopes to the garnishee defendant, and the garnishee defendant may use its own answer form containing specific information.

The exemption claim form is amended to add a check box for debtors to claim an exemption for the cash amounts allowed under current law and to specify that federally qualified pensions, such as state or federal pensions, IRAs, and 401K plans are exempt when deposited into a bank account. The changes to the exemption claim form will expire January 1, 2018.

Garnishment Attorney Fee.

The garnishment attorney fee is changed to a minimum of \$100 or 10 percent of the unsatisfied judgment and a maximum of \$300.

Exemptions.

The wage exemption for writs for continuing liens on earnings is increased to 35 times the federal minimum hourly wage.

The statutes for certain public employee pensions are amended to provide that such pensions are exempt when in the possession of the person or deposited in a bank account.

Estimated Interest.

A writ must direct the garnishee to hold interest estimated to accrue during the garnishment process. 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: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 8, relating to the notice of garnishment sent to the debtor, which takes effect January 1, 2018.

Staff Summary of Public Testimony:

(In support) This bill cleans up the process and makes it better for both the debtors and the creditors. It increases the exemption amount so more money is left for the debtor to live on. The Division of Child Support does not use garnishments, but it is important that citizens pursuing child support enforcement through this process have remedies that are consistent with the remedies the Division of Child Support uses so as to not risk federal funding.

(In support with concerns) The exemption issue must balance garnishment with the ability of families to support themselves. Other states limit garnishment on primary wage earners, allow the court some discretion on exemptions, and have other options. The exemption does not leave the debtor enough money. Washington used to have an exemption at 40 times the state minimum wage, but that was changed. The exemption protects low wage workers. The bill is not about whether people should pay their debt. The question is how much does a low income worker get to keep. Those making \$9 to \$12 per hour are not the folks this exemption is affecting. Washington is one of 15 other states with such a low exemption. At least 11 states have 40 times the federal minimum wage. Nine states allow a higher percentage of wages to be kept. The consumers have already given in on many issues, such as the 12 percent interest. The Legislature has already passed numerous laws to make the process faster and cheaper for the collection agencies.

(Opposed) Collectors represent all types of people who are owed money, including "mom and pop" stores and government entities. Ninety percent of the bill is acceptable but the exemption is controversial. If the exemption were raised to 40 times the federal minimum wage, it would result in tens of thousands of dollars loss for agencies. This would impact the

ability to collect on behalf of all the creditors in the state, but it would be especially devastating for eastern Washington businesses. There would be millions of dollars that would not be collectable. At 35 percent of the federal minimum wage as an exemption, the creditor would still be able to collect and the debtor would keep more. The 120 day extension is good for the debtor because it saves the debtor money and makes the process more efficient. Breaking up the forms creates a more efficient process. The garnishment attorney fee has not been raised in many years. Debtors do not realize they are not paying off the entire amount because of the accruing interest, and the bill allows that accruing interest to be listed in the writ.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Wally McClire, Department of Social and Health Services; and Majken Ryherd, Statewide Poverty Action Network.

(In support with concerns) Bruce Neas, Columbia Legal.

(Opposed) Kevin Underwood, Washington Collectors Association; and Dave Grimm, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.