

HOUSE BILL REPORT

HB 1816

As Passed House:

March 11, 2003

Title: An act relating to garnishments.

Brief Description: Allowing attorney issued garnishments and simplifying garnishment answer forms.

Sponsors: By Representatives Lantz and Carrell.

Brief History:

Committee Activity:

Judiciary: 2/27/03, 2/28/03 [DP].

Floor Activity:

Passed House: 3/11/03, 92-0.

Brief Summary of Bill

- Allows attorneys for creditors to issue writs of garnishment following a district court judgment against a debtor.
- Allows attorneys in district court and superior court to release a garnishment without a court order.
- Changes the format of the worksheet used by a garnishee to answer a writ of garnishment.
- Allows a garnishee to make a motion to reduce a default judgment only on the first writ of garnishment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Aaron Anderson (786-7119), Edie Adams (786-7180).

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.

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 creditor serves the writ on the third party garnishee. In superior court, the creditor also sends a copy of the writ and a copy of the judgment to the debtor. In district court, the creditor sends a copy of the writ and a copy of the creditor's application for the writ to the debtor. Service may be in person or by certified mail. Service on a government entity is by the same manner as service of a summons for a civil action, meaning that certified mail is not acceptable.

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 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 when serving the writ of 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 interests 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 writ of execution or garnishment.

Summary of Bill:

The attorney of record for a creditor may issue a writ of garnishment following a judgment or court order from a district court. This writ follows the same form as that used when the court issues such writ, and the clerk of the court docket the case in the same manner as when the court issues the writ. The form of an attorney-issued writ incorporates changes to accommodate the signature of the attorney and to note that the writ requires the same compliance as a court-issued writ.

The service provisions are modified so that government entities may be served by certified mail. The provisions for service in superior court are modified to require mailing of a copy of the creditor's application for garnishment, rather than a copy of the judgment, to the debtor.

The form for the garnishee's answer is altered, creating a worksheet with calculation instructions. The formulas used are not changed. The garnishee's ability to make a motion for reduction of a default judgment within seven days of the writ of execution or garnishment is limited to the first such writ.

Attorneys for creditors are authorized to release exempted funds from garnishment, and a form is provided for such a release. Attorneys for creditors may also dismiss a garnishment. Payments to a creditor may be made either to the creditor or the creditor's attorney.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The big issue in this bill is the issuance of a writ of garnishment by an attorney. The court clerk's role in the writ of garnishment is a rubber stamp. This change frees up time for the court clerk, and speeds up the process. Courts will still docket the case, and all the existing safeguards would remain in place. Oregon has made this change, and it works well there. The change is limited to district court, which is where the delays are occurring. Allowing reduction of a default judgment only after the first writ against a garnishee forces garnishees to respond promptly to a writ of garnishment. Employers don't understand the current form for answering a writ of garnishment, and the current system is especially confusing for small businesses. The new form is easier to understand. The Office of Financial Management pointed out some issues with the bill. County clerks don't have an opinion on attorney issuance of writs as long as it is limited to district court. Clerk involvement in superior court is a last-ditch check and balance to protect the debtor.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Kevin Underwood and Patty Encinas, Washington State Collectors Association; and Debbie Wilke, Washington State Association of County Clerks.