

SENATE BILL REPORT

HB 1816

As of March 21, 2003

Title: An act relating to garnishments.

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

Sponsors: Representatives Lantz and Carrell.

Brief History:

Committee Activity: Judiciary: 3/27/03.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

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). 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.

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 includes a worksheet for figuring the appropriate amounts exempted from 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 form for the garnishee's answer is altered, creating a worksheet with calculation instructions. 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

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