

# SENATE BILL REPORT

## SHB 1552

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As of February 21, 2012

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

**Brief Description:** Concerning garnishment.

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

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

**Committee Activity:** Judiciary: 2/21/12.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Aldo Melchiori (786-7439)

**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.

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 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.

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.

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

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exempted from garnishment. The creditor provides copies of this form to the garnishee and provides 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.

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. 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. The federal minimum hourly wage is currently \$7.25.

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.

**Summary of Bill:** 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.

A continuing lien on earnings has priority over any prior wage assignment, except an assignment for child support. The wage exemption for writs for continuing liens on earnings is increased from 30 to 35 times the federal minimum hourly wage. The exemption claim form is modified to allow creditors to omit provisions that do not apply to the writ.

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.

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

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 7 which takes effect January 1, 2018.

**Staff Summary of Public Testimony:** PRO: This is a comprehensive rewrite of the garnishment statutes. It is designed to clean up the wage garnishment process. The bill is an attempt to balance between expediting the process and preserving judicial oversight to protect debtors.

OTHER: The district and municipal court judges association is in favor of the bill in the form it passed out of the House. Possible changes being discussed might limit judicial oversight that is useful in preventing errors.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Representative Nealey.

OTHER: Judge Sam Meyer, District and Municipal Judges Assn.