

Representative Jack R. Draxler proposes the following substitute bill:

GARNISHMENT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill allows a person who is wrongfully served with a writ of garnishment to recover from the plaintiff.

Highlighted Provisions:

This bill:

- allows a person wrongfully served with a writ of garnishment to ask the court for redress from the plaintiff in an amount up to ~~500~~ **1,000** ; and
- provides guidelines for the court to determine whether the plaintiff was diligent in determining the identity and location of the judgment debtor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~78-7-44~~ **78A-2-216** , as renumbered and amended by Laws of Utah

~~2001~~ **2008** , Chapter ~~46~~ **3**

Be it enacted by the Legislature of the state of Utah:



26 Section 1. Section ~~H~~→ [78-7-44] 78A-2-216 ←~~H~~ is amended to read:

27 ~~H~~→ [78-7-44] 78A-2-216 ←~~H~~ . Fees for writ of garnishment -- Single or continuing.

28 (1) Any creditor who serves or causes to be served a writ of garnishment upon the
29 garnishee shall pay to the garnishee:

30 (a) \$10 for a single garnishment; and

31 (b) \$25 for a continuing garnishment.

32 (2) The creditor shall pay the fee directly to the garnishee.

33 (3) If a plaintiff attempts to garnish the property of a person other than the defendant by
34 serving a garnishment on a garnishee, that person may recover from the plaintiff an amount not
35 to exceed ~~H~~→ [\$500] \$1,000 ←~~H~~ if the person demonstrates to the court that the plaintiff
35a failed to exercise

36 reasonable diligence in determining that the person and defendant were the same individual.

37 (4) The following factors may be taken into consideration by the court in determining
38 whether the plaintiff exercised reasonable diligence in determining whether the person
39 garnished and the defendant were the same individual:

40 (a) similarities between the person and the actual judgment debtor, including:

41 (i) the spelling of each person's name;

42 (ii) addresses;

43 (iii) physical descriptions;

44 (iv) identifying information, including Social Security number or driver license
45 number; and

46 (v) family status;

47 (b) whether previous contact was made to determine whether the person was the
48 judgment debtor;

49 (c) how the determination of who the judgment debtor was, was made; and

50 (d) what information the plaintiff had access to or was provided with regarding the
51 actual judgment debtor from all available sources.

52 (5) An employer who receives a written request for verification of employment, which
53 includes a copy of the judgment and judgment information statement, shall ~~H~~→ [respond to the
54 request] provide verification ←~~H~~ within ~~H~~→ [five] ten ←~~H~~ days. The response shall indicate
54a whether or not the defendant identified in
55 the documentation is a current employee.

56 (6) A plaintiff is not liable for a violation of Subsection (3) regarding a wage

57 garnishment if the plaintiff transmitted a written request for verification of employment,
58 including a copy of the judgment and judgment information statement, to an employer and the
59 employer did not respond.

H.B. 92 1st Sub. (Buff) - Garnishment Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses, or local governments. The bill changes the amount a person wrongfully garnished may seek for redress from \$500 to \$1,000.
