

**GARNISHMENT AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jack R. Draxler**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the fees an employer may receive for processing garnishments for employees, and allows a person who is wrongfully served with a writ of garnishment to recover from the plaintiff.

**Highlighted Provisions:**

This bill:

- ▶ shifts the fees paid to an employer from the creditor to the employee;
- ▶ allows an employer to charge a processing fee for a continuing garnishment not to exceed:
  - \$100 if the employer has 100 employees or less; or
  - \$50 if the employer has more than 100 employees;
- ▶ makes no change to the current fee amounts for nonemployers;
- ▶ 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; 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



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **78-7-44**, as renumbered and amended by Laws of Utah 2001, Chapter 46



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

33 Section 1. Section **78-7-44** is amended to read:

34 **78-7-44. Fees for writ of garnishment -- Single or continuing.**

35 (1) Any creditor who serves or causes to be served a writ of garnishment upon ~~[the]~~ a  
36 garnishee shall pay \$15 to the garnishee[?].

37 ~~[(a) \$10 for a single garnishment; and]~~

38 ~~[(b) \$25 for a continuing garnishment.]~~

39 ~~[(2) The creditor shall pay the fee directly to the garnishee.]~~

40 (2) An employer who is served with a garnishment may, after the requirements of Utah  
41 Rule of Civil Procedure 64D have been met:

42 (a) for a single garnishment, deduct a processing fee of not more than \$10 from the  
43 employee at the time the garnishment is satisfied; or

44 (b) for a continuing garnishment, deduct a processing fee subject to the limits in  
45 Subsections (3)(a) and (b).

46 (3) An employer who is served with a continuing garnishment may deduct a processing  
47 fee of up to \$25 each time a payment is made.

48 (a) If the employer has 100 employees or less on the business' payroll, the employer  
49 may not collect more than \$100 total from the employee under this Subsection (3) for a  
50 continuing garnishment from the same creditor.

51 (b) If the employer has 101 or more employees on the business' payroll, the employer  
52 may not collect more than \$50 total from the employee under this Subsection (3) for a  
53 continuing garnishment from the same creditor.

54 (4) The processing fee shall be deducted from the nonexempt amount subject to  
55 garnishment.

56 (5) Subsection (3) does not apply to income withholding for the collection of child  
57 support pursuant to Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Part  
58 5, Income Withholding in Non IV-D Cases.

59 (6) If a plaintiff attempts to garnish the property of a person other than the defendant by  
60 servicing a garnishment on a garnishee, that person may recover from the plaintiff an amount not  
61 to exceed \$500 if the person demonstrates to the court that the plaintiff failed to exercise  
62 reasonable diligence in determining that the person and defendant were the same individual.

63 (7) The following factors may be taken into consideration by the court in determining  
64 whether the plaintiff exercised reasonable diligence in determining whether the person  
65 garnished and the defendant were the same individual:

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

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

68 (ii) addresses;

69 (iii) physical descriptions;

70 (iv) identifying information, including Social Security number or driver license  
71 number; and

72 (v) family status;

73 (b) whether previous contact was made to determine whether the person was the  
74 judgment debtor;

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

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

78 (8) An employer who receives a written request for verification of employment, which  
79 includes a copy of the judgment and judgment information statement, shall respond to the  
80 request within five days. The response shall indicate whether or not the defendant identified in  
81 the documentation is a current employee.

82 (9) A plaintiff is not liable for a violation of Subsection (6) regarding a wage  
83 garnishment if the plaintiff transmitted a written request for verification of employment,  
84 including a copy of the judgment and judgment information statement, to an employer and the  
85 employer did not respond.

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**Legislative Review Note**  
as of 12-5-07 9:14 AM

**Office of Legislative Research and General Counsel**

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**H.B. 92 - Garnishment Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require \$30,000 from the General Fund, one-time in FY 2008 for programming costs at the Department of Administrative Services. State revenues will increase by \$3,000 in FY 2008 and \$20,000 annually beginning FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$20,000	\$20,000	\$20,000
General Fund, One-Time	\$30,000	\$0	\$0	(\$17,000)	\$0	\$0
<b>Total</b>	<b>\$30,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$3,000</b>	<b>\$20,000</b>	<b>\$20,000</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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