

HB0225S02 compared with HB0225S01

~~text~~ shows text that was in HB0225S01 but was deleted in HB0225S02.

text shows text that was not in HB0225S01 but was inserted into HB0225S02.

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Representative Kelly B. Miles proposes the following substitute bill:

ADMINISTRATIVE GARNISHMENT ORDER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by amending provisions relating to administrative garnishment orders.

Highlighted Provisions:

This bill:

- ▶ authorizes the Office of State Debt Collection to determine the dollar amount that a garnishee is to withhold from earnings and deliver to the office in a continuing administrative garnishment order in certain circumstances;
- ▶ specifies requirements for determining the dollar amount that a garnishee is to withhold from earnings in a continuing administrative garnishment;
- ▶ modifies provisions relating to administrative garnishment orders;
- ▶ authorizes the office to submit a motion for an order to show cause against a

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garnishee under certain circumstances;

- ▶ excuses a garnishee from providing withholdings information if the information was provided in the garnishee's initial response to an interrogatory requesting the information;
- ▶ authorizes a garnishee fee and establishes limits on the fee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-507, as last amended by Laws of Utah 2019, Chapter 269

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

Section 1. Section **63A-3-507** is amended to read:

63A-3-507. Administrative garnishment order.

(1) If a judgment is entered against a debtor, the office may, subject to Subsection (2), issue an administrative garnishment order against the debtor's personal property, including wages, in the possession of a party other than the debtor in the same manner and with the same effect as if the order was a writ of garnishment issued by a court with jurisdiction.

(2) The office may issue the administrative garnishment order if [~~the order is~~]:

(a) the order is signed by the director or the director's designee; and

(b) the underlying debt is for:

(i) nonpayment of a criminal judgment accounts receivable as defined in Section 77-32a-101; or

(ii) nonpayment of a judgment, or abstract of judgment or award filed with a court, based on an administrative order for payment issued by an agency of the state.

(3) An administrative garnishment order issued in accordance with this section is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 70C-7-103.

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(4) An administrative garnishment order issued by the office shall:

(a) contain a statement that includes:

(i) if known:

(A) the nature, location, account number, and estimated value of the property; and

(B) the name, address, and phone number of the person holding the property;

(ii) whether any of the property consists of earnings;

(iii) the amount of the judgment and the amount due on the judgment; and

(iv) the name, address, and phone number of any person known to the plaintiff to claim an interest in the property; [~~and~~]

~~[(v) that the plaintiff has attached or will serve the garnishee fee established in Section 78A-2-216;]~~

(b) identify the defendant, including~~[(i)]~~ the defendant's name and last known address; [~~and~~]

~~[(ii) if known:]~~

~~[(A) the last four digits of the defendant's Social Security number;]~~

~~[(B) the last four digits of the defendant's driver license; and]~~

~~[(C) the state in which the driver license was issued;]~~

~~[(c) include one or more interrogatories inquiring:]~~

~~[(i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;]~~

~~[(ii) whether the garnishee possesses or controls any property of the defendant, and, if so, the nature, location, and estimated value of the property;]~~

~~[(iii)(A) whether the garnishee knows of any property of the defendant in the possession or under the control of another; and]~~

~~[(B) the nature, location, and estimated value of the defendant's property in possession or under the control of another, and the name, address, and phone number of the person with possession or control;]~~

~~[(iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;]~~

~~[(v) the date and manner of the garnishee's service of papers upon the defendant and~~

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any third party;]

~~[(vi) the dates on which previously served writs of continuing garnishment were served, if any; and]~~

~~[(vii) any other relevant information the office may request, including the defendant's position, rate, and method of compensation, pay period, or computation of the amount of the defendant's disposable earnings;]~~

~~[(d)]~~ (c) notify the defendant of the defendant's right to reply to answers and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and

~~[(e)]~~ (d) state where the garnishee may deliver property.

(5) The office may, in the office's discretion, include in an administrative garnishment order:

(a) the last four digits of the defendant's Social Security number;

(b) the last four digits of the defendant's driver license number;

(c) the state in which the defendant's driver license was issued;

(d) one or more interrogatories inquiring:

(i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;

(ii) whether the garnishee possesses or controls any property of the defendant and, if so, the nature, location, and estimated value of the property;

(iii) whether the garnishee knows of any property of the defendant in the possession or under the control of another and, if so:

(A) the nature, location, and estimated value of the property; and

(B) the name, address, and telephone number of the person who has possession or control of the property;

(iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, whether the claim is against the plaintiff or the defendant, and the amount deducted;

(v) the date and manner of the garnishee's service of papers upon the defendant and any third party;

(vi) the dates on which any previously served writs of continuing garnishment were served; and

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(vii) any other relevant information, including the defendant's position, rate of pay, method of compensation, pay period, and computation of the amount of the defendant's disposable earnings.

~~[(5)]~~ (6) (a) A garnishee who acts in accordance with this section and the administrative garnishment issued by the office is released from liability unless an answer to an interrogatory is successfully controverted.

(b) Except as provided in Subsection ~~[(5)]~~ (6)(c), if the garnishee fails to comply with an administrative garnishment issued by the office without a court or final administrative order directing otherwise, the garnishee is liable to the office for an amount ~~[ordered]~~ determined by the court~~[, including:]~~.

(c) The amount for which a garnishee is liable under Subsection (6)(b) includes:

~~[(i) the value of the property or the value of the judgment, whichever is less;]~~

(i) (A) the value of the judgment; or

(B) the value of the property, if the garnishee shows that the value of the property is less than the value of the judgment;

(ii) reasonable costs; and

(iii) attorney fees incurred by the parties as a result of the garnishee's failure.

(c) If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(7) (a) If the office has reason to believe that a garnishee has failed to comply with the requirements of this section in the garnishee's response to a garnishment order issued under this section, the office may submit a motion to the court requesting the court to issue an order against the garnishee requiring the garnishee to appear and show cause why the garnishee should not be held liable under this section.

~~[(6) A creditor who files a motion for an order to show cause under this section]~~ (b) The office shall attach to [the] a motion under Subsection (7)(a) a statement that the [creditor] office has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.

~~[(7)]~~ (8) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a negotiable instrument if the instrument is not in the possession or control of the garnishee at the time of service of the administrative garnishment order.

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~~[(8)]~~ (9) (a) A person indebted to the defendant may pay to the office the amount of the debt or an amount to satisfy the administrative garnishment.

(b) The office's receipt of an amount described in Subsection ~~[(8)]~~ (9)(a) discharges the debtor for the amount paid.

~~[(9)]~~ (10) A garnishee may deduct from the property any liquidated claim against the defendant.

~~[(10)]~~ (11) (a) If a debt to the garnishee is secured by property, the office:

(i) is not required to apply the property to the debt when the office issues the administrative garnishment order; and

(ii) may obtain a court order authorizing the office to buy the debt and requiring the garnishee to deliver the property.

(b) Notwithstanding Subsection ~~[(10)]~~ (11)(a)(i):

(i) the administrative garnishment order remains in effect; and

(ii) the office may apply the property to the debt.

(c) The office or a third party may perform an obligation of the defendant and require the garnishee to deliver the property upon completion of performance or, if performance is refused, upon tender of performance if:

(i) the obligation is secured by property; and

(ii) (A) the obligation does not require the personal performance of the defendant; and

(B) a third party may perform the obligation.

~~[(11)]~~ (12) (a) The office may issue a continuing garnishment order against a nonexempt periodic payment.

(b) This section is subject to the Utah Exemptions Act.

(c) A continuing garnishment order issued in accordance with this section applies to payments to the defendant from the date of service upon the garnishee until the ~~[earlier]~~ earliest of the following:

(i) the last periodic payment;

(ii) the judgment upon which the administrative garnishment order is issued is stayed, vacated, or satisfied in full; or

(iii) the office releases the order.

(d) No later than seven days after the last day of each payment period, the garnishee

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shall with respect to that period:

(i) answer each interrogatory;

(ii) serve an answer to each interrogatory on the office, the defendant, and any other person who has a recorded interest in the property; and

(iii) deliver the property to the office.

(e) If the office issues a continuing garnishment order during the term of a writ of continuing garnishment issued by the district court, the order issued by the office:

(i) is tolled when a writ of garnishment or other income withholding is already in effect and is withholding greater than or equal to the maximum portion of disposable earnings described in Subsection ~~[(12)]~~ (13);

(ii) is collected in the amount of the difference between the maximum portion of disposable earnings described in Subsection ~~[(12)]~~ (13) and the amount being garnished by an existing writ of continuing garnishment if the maximum portion of disposable earnings exceed the existing writ of garnishment or other income withholding; and

(iii) shall take priority upon the termination of the current term of existing writs.

~~[(12)]~~ (13) The maximum portion of disposable earnings of an individual subject to seizure in accordance with this section is the lesser of:

(a) 25% of the defendant's disposable earnings for any other judgment; or

(b) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

(14) (a) In accordance with the requirements of this Subsection (14), the office may, at its discretion, determine a dollar amount that a garnishee is to withhold from earnings and deliver to the office in a continuing administrative garnishment order issued under this section.

(b) The office may determine the dollar amount that a garnishee is to withhold from earnings under Subsection (14)(a) if the dollar amount determined by the office:

(i) does not exceed the maximum amount allowed under Subsection (13); and

(ii) is based on:

(A) earnings information received by the office directly from the Utah Department of Workforce Services; or

(B) previous garnishments issued to the garnishee by the office where payments were

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received at a consistent dollar amount.

(c) The earnings information or previous garnishments relied on by the office under Subsection (14)(b)(ii) to calculate a dollar amount under this Subsection (14) shall be:

- (i) for one debtor;
- (ii) from the same employer;
- (iii) for two or more consecutive quarters; and
- (iv) received within the last six months.

(15) (a) A garnishee who provides the calculation for withholdings on a defendant's wages in the garnishee's initial response to an interrogatory in an administrative garnishment order under this section is not required to provide the calculation for withholdings after the garnishee's initial response if:

- (i) the garnishee's accounting system automates the amount of defendant's wages to be paid under the garnishment; and
- (ii) the defendant's wages do not vary by more than five percent from the amount disclosed in the garnishee's initial response.

(b) Notwithstanding Subsection (15)(a), upon request by the office or the defendant, a garnishee shall provide, for the last pay period or other pay period specified by the office or defendant, a calculation of the defendant's wages and withholdings and the amount garnished.

(16) (a) ~~{From the amount garnished}~~ A garnishee under an administrative garnishment order under this section ~~{, a garnishee may retain}~~ is entitled to receive a garnishee fee, as provided in this Subsection (16), in the amount of:

- (i) \$10 per garnishment order, for a noncontinuing garnishment order; and
- (ii) \$25, as a one-time fee, for a continuing garnishment order.

(b) ~~{Subject to Subsection (16)(c), a}~~ A garnishee ~~{shall}~~ may deduct ~~{a garnishee fee under Subsection (16)(a) from the amount remitted to the office.~~

~~—— (c) If~~ the amount of the garnishee fee from the amount to be remitted to the office under the administrative garnishment order ~~{ does not exceed}~~, if the amount to be remitted exceeds the amount of the ~~{garnishee fee under Subsection (16)(a), the garnishee:~~

- ~~—— (i) may not retain the garnishee fee;~~
- ~~—— (ii) shall notify the office that~~ fee.

(c) If the amount to be remitted to the office under ~~{the}~~ an administrative garnishment

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order does not exceed the amount of the garnishee fee:

(i) the garnishee shall notify the office that the amount to be remitted does not exceed the amount of the garnishee fee; and

(~~iii~~ii) (A) ~~for~~the garnishee under a noncontinuing garnishment order~~;~~ shall return the administrative garnishment order to the office~~;~~ and

~~(B) for~~, and the office shall pay the garnishee the garnishee fee; or

(B) the garnishee under a continuing garnishment order~~;~~ shall delay remitting to the office until the amount to be remitted exceeds the garnishee fee.

(d) If, upon receiving the administrative garnishment order, the garnishee does not possess or control any property, including money or wages, in which the defendant has an interest:

(i) the garnishee under a continuing or noncontinuing garnishment order shall, except as provided in Subsection (16)(d)(ii), return the administrative garnishment order to the office, and the office shall pay the garnishee the applicable garnishee fee; or

(ii) if the garnishee under a continuing garnishment order believes that the garnishee will, within 90 days after issuance of the continuing garnishment order, come into possession or control of property in which the defendant owns an interest, the garnishee may retain the garnishment order and deduct the garnishee fee for a continuing garnishment once the amount to be remitted exceeds the garnishee fee.

(~~d~~17) Section 78A-2-216 does not apply to an administrative garnishment order issued under this section.

[~~(13) The~~] (~~14~~18) An administrative garnishment instituted in accordance with this section shall continue to operate and require that a person withhold the nonexempt portion of earnings at each succeeding earning disbursement interval until the total amount due in the garnishment is withheld or the garnishment is released in writing by the court or office.