

**OFFICE OF STATE DEBT COLLECTION - WRIT OF
GARNISHMENT**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Brian S. King

LONG TITLE

General Description:

This bill authorizes the Office of State Debt Collection to issue a writ of garnishment for a wage claim debt or criminal restitution debt.

Highlighted Provisions:

This bill:

- ▶ authorizes the Office of State Debt Collection (the office) to issue a writ of garnishment for a wage claim debt or criminal restitution debt;
- ▶ requires the office to include certain information in the writ;
- ▶ releases a garnishee from liability if the garnishee acts in accordance with the garnishment;
- ▶ limits the amount collected by the office in certain circumstances; and
- ▶ enacts other applicable provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63A-3-507, Utah Code Annotated 1953



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

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

63A-3-507. Administrative writ of garnishment.

(1) If a judgment or final administrative order is entered against a debtor, the office may, subject to Subsection (2), issue a writ of garnishment against the debtor's personal property and wages in the possession of a third party in the same manner and with the same effect as if the writ were issued on a judgment of a district court.

(2) The office may issue the writ of garnishment if:

(a) the writ is:

(i) signed by the director or the director's designee; and

(ii) served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure; and

(b) (i) the underlying debt is for nonpayment of restitution as defined in Section 77-38a-102; or

(ii) the underlying debt is for nonpayment of an order for payment issued by the Labor Commission, established in Section 34A-1-103, for wage claims.

(3) A writ of garnishment 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.

(4) An administrative writ of garnishment 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;

(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;

- 59 (b) identify the defendant, including:
60 (i) the defendant's name and address; and
61 (ii) if known:
62 (A) the last four digits of the defendant's Social Security number;
63 (B) the last four digits of the defendant's driver license; and
64 (C) the state in which the driver license was issued;
65 (c) include one or more interrogatories inquiring:
66 (i) whether the garnishee is indebted to the defendant and, if so, the nature of the
67 indebtedness;
68 (ii) whether the garnishee possesses or controls any property of the defendant, and, if
69 so, the nature, location, and estimated value of the property;
70 (iii) (A) whether the garnishee knows of any property of the defendant in the
71 possession or under the control of another; and
72 (B) the nature, location, and estimated value of the defendant's property in possession
73 or under the control of another, and the name, address, and phone number of the person with
74 possession or control;
75 (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim
76 against the plaintiff or the defendant, a designation as to whom the claim relates, and the
77 amount deducted;
78 (v) the date and manner of the garnishee's service of papers upon the defendant and any
79 third party;
80 (vi) the dates on which previously served writs of continuing garnishment were served,
81 if any; and
82 (vii) any other relevant information the office may request, including the defendant's
83 position, rate, and method of compensation, pay period, or computation of the amount of the
84 defendant's disposable earnings;
85 (d) notify the defendant of the defendant's right to reply to answers and request a
86 hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and
87 (e) state where the garnishee may deliver property.
88 (5) (a) A garnishee who acts in accordance with this section and the administrative
89 garnishment issued by the office is released from liability unless an answer to an interrogatory

90 is successfully controverted.

91 (b) Except as provided in Subsection (5)(c), if the garnishee fails to comply with an
92 administrative garnishment issued by the office without a court or final administrative order
93 directing otherwise, the garnishee is liable to the office for an amount ordered by the court,
94 including:

95 (i) the value of the property or the value of the judgment, whichever is less;

96 (ii) reasonable costs; and

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

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

100 (6) A creditor who files a motion for an order to show cause under this section shall
101 attach to the motion a statement that the creditor has in good faith conferred or attempted to
102 confer with the garnishee in an effort to settle the issue without court action.

103 (7) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a
104 negotiable instrument if the instrument is not in the possession or control of the garnishee at
105 the time of service of the writ of garnishment.

106 (8) (a) A person indebted to the defendant may pay to the office the amount of the debt
107 or an amount to satisfy the administrative garnishment.

108 (b) The office's receipt of an amount described in Subsection (8)(a) discharges the
109 debtor for the amount paid.

110 (9) A garnishee may deduct from the property any liquidated claim against the
111 defendant.

112 (10) (a) If a debt to the garnishee is secured by property, the office:

113 (i) is not required to apply the property to the debt when the office issues the writ of
114 garnishment; and

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

117 (b) Notwithstanding Subsection (10)(a)(i):

118 (i) the writ of garnishment remains in effect; and

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

120 (c) The office or a third party may perform an obligation of the defendant and require

121 the garnishee to deliver the property upon completion of performance or, if performance is
122 refused, upon tender of performance if:

123 (i) the obligation is secured by property; and

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

125 (B) a third party may perform the obligation.

126 (11) (a) The office may issue a writ of continuing garnishment against a nonexempt
127 periodic payment.

128 (b) (i) This section is subject to an applicable exemption established in Section
129 78B-5-505.

130 (ii) If there is a conflict between a provision in this section and a provision in this part,
131 the provision in the part governs.

132 (c) A writ of continuing garnishment issued in accordance with this section applies to
133 payments to the defendant from the date of service upon the garnishee until the earlier of the
134 following:

135 (i) the last periodic payment;

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

138 (iii) the office releases the writ.

139 (d) No later than seven days after the last day of each payment period, the garnishee
140 shall with respect to that period:

141 (i) answer each interrogatory;

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

144 (iii) deliver the property to the office.

145 (e) If the office issues a writ of continuing garnishment during the term of another writ
146 of continuing garnishment, the writ issued by the office:

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

150 (ii) is collected in the amount of the difference between the maximum portion of
151 disposable earnings described in Subsection (12) and the amount being garnished by the other

152 writ of continuing garnishment if the maximum portion of disposable earnings exceed the
153 existing writ of garnishment or other income withholding; and

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

155 (12) The maximum portion of disposable earnings of an individual subject to seizure in
156 accordance with this section is the lesser of:

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

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

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

Legislative Review Note
as of 1-16-13 10:20 AM

Office of Legislative Research and General Counsel