

# HOUSE BILL No. 1369

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-9.6.

**Synopsis:** Garnishment of state tax refunds. Provides that if a debt has been reduced to a judgment in Indiana and the judgment has not been satisfied, set aside, or discharged in bankruptcy, the judgment creditor may garnish a state tax refund otherwise due to the debtor. Specifies the procedures that the judgment creditor must follow in obtaining the garnishment from the department of state revenue.

**Effective:** July 1, 2014.

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January 15, 2014, read first time and referred to Committee on Judiciary.

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Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1369

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A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-8.1-9.6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]:

4 **Chapter 9.6. Garnishment of State Tax Refunds**

5 **Sec. 1. As used in this chapter, "debt" means any amount due**  
6 **and owing under a judgment.**

7 **Sec. 2. As used in this chapter, "debtor" means any person or**  
8 **legal entity who owes money to another, if:**

9 (1) the debt has been reduced to a judgment in Indiana; and

10 (2) the judgment has not been:

11 (A) satisfied by court order;

12 (B) set aside by court order; or

13 (C) discharged in bankruptcy.

14 **Sec. 3. As used in this chapter, "state tax refund" includes the**  
15 **amount of a state tax credit that is otherwise refundable to a**  
16 **person.**



1           **Sec. 4. If a debtor owes a debt reduced to a judgment in Indiana,**  
2 **the judgment creditor may:**

3           **(1) have the department garnish a state tax refund payable to**  
4 **the debtor; and**

5           **(2) have the state tax refund applied against the judgment**  
6 **debt;**

7 **as provided in this chapter.**

8           **Sec. 5. (a) To obtain a garnishment under this chapter, a**  
9 **judgment creditor must file a writ of garnishment with the court**  
10 **in which the original judgment lies.**

11           **(b) A writ of garnishment under this chapter must set forth the**  
12 **following:**

13           **(1) The full name of the debtor.**

14           **(2) The last known address of the debtor.**

15           **(3) The cause number of the original action on the debt.**

16           **(4) The full Social Security number of the defendant, in**  
17 **compliance with the provisions of the Indiana rules of trial**  
18 **procedure and judicial administrative rules concerning the**  
19 **filing of documents and information that are excluded from**  
20 **public access and are confidential.**

21           **(5) The date on which the judgment was entered.**

22           **(6) The present balance of the judgment after all payments**  
23 **have been applied.**

24           **(7) A notice to the debtor of the debtor's right to object to the**  
25 **garnishment of the state tax refund not more than fourteen**  
26 **(14) days after receipt of the disclosure as described in section**  
27 **6 of this chapter. The notice must also contain a box for the**  
28 **debtor to check to waive the debtor's right to a hearing and to**  
29 **waive the debtor's right to any objections under this chapter.**

30           **(c) The judgment creditor shall serve a writ of garnishment**  
31 **under this chapter on the debtor:**

32           **(1) by certified mail, return receipt requested; or**

33           **(2) through service by the county sheriff.**

34           **(d) The judgment creditor shall serve a writ of garnishment**  
35 **under this chapter on the department:**

36           **(1) by certified mail, return receipt requested, at an address**  
37 **specified by the department; or**

38           **(2) in person at the main office of the department in**  
39 **Indianapolis.**

40           **(e) Upon receipt of a writ of garnishment under this chapter**  
41 **that is signed by the court, the department shall do the following:**

42           **(1) Calculate the total amount available to be refunded to the**



1 debtor for the tax year.

2 (2) File with the court a verified disclosure that identifies the  
3 amount of the refund available after subtracting any setoff,  
4 counterclaim, or other demand of the state against the  
5 defendant. The verified disclosure under this subdivision is  
6 not required to be made under oath.

7 (3) Serve a copy of the verified disclosure on:

8 (A) the judgment creditor or the judgment creditor's  
9 representative; and

10 (B) the debtor or the debtor's representative.

11 Sec. 6. (a) Any objection to the writ of garnishment of the tax  
12 refund must be filed with the court not later than fourteen (14)  
13 days after the date of service of the disclosure on the defendant.

14 (b) If an objection is not filed under subsection (a) not later than  
15 fourteen (14) days after the date of service of the disclosure on the  
16 defendant, the department shall deposit the amount available for  
17 garnishment under the terms of the writ with the plaintiff's  
18 attorney of record in the garnishment action, or, if the plaintiff is  
19 not represented by an attorney, with the plaintiff or the plaintiff's  
20 designee.

21 Sec. 7. (a) If one (1) or more writs of garnishment are received  
22 by the department for the same debtor, the department shall give  
23 priority to the writ of garnishment that is received first by the  
24 department.

25 (b) The department shall process each writ of garnishment in  
26 order of the date of receipt until the state tax refund of the debtor  
27 has been applied in its entirety.

28 (c) After the debtor's state tax refund has been applied in its  
29 entirety under a garnishment under this chapter, the department  
30 shall:

31 (1) file with the court a verified disclosure in the manner  
32 described in section 5(e)(2) of this chapter; and

33 (2) serve a copy of a verified disclosure in the manner  
34 described in section 5(e)(3) of this chapter;

35 stating that there is no remaining state tax refund to garnish on  
36 any remaining writs of garnishment not satisfied.

37 Sec. 8. A judgment creditor must pay to the department a  
38 processing fee of five dollars (\$5) that is chargeable to the debtor  
39 for each writ of garnishment under this chapter that is served on  
40 the department. The judgment creditor must pay the fee at the  
41 time the writ of garnishment is served on the department.

42 Sec. 9. (a) The department's liability to the plaintiff under a writ



1 of garnishment under this chapter is limited to the amount of the  
2 state tax refund due to the defendant for the period the writ of  
3 garnishment is in effect, less any setoff, counterclaim, or other  
4 demand of the state against the defendant.

5 (b) After the department has deposited the amount available  
6 under section 6(b) of this chapter, the department has no further  
7 liability in the matter unless:

8 (1) a writ of garnishment is received by the department for a  
9 subsequent year; or

10 (2) the amount deposited by the department under section  
11 6(b) of this chapter is in question.

12 **Sec. 10.** A setoff by a claimant agency under IC 6-8.1-9.5 or of  
13 a child support obligation under IC 6-8.1-9.5 has priority over a  
14 garnishment or any other action under this chapter.

