

ADMINISTRATIVE GARNISHMENT ORDER AMENDMENTS

2020 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; 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:



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

29 **63A-3-507. Administrative garnishment order.**

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

34 (2) The office may issue the administrative garnishment order if the order is:

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

36 (b) the underlying debt is for:

37 (i) nonpayment of a criminal judgment accounts receivable as defined in Section
38 77-32a-101; or

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

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

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

45 (a) contain a statement that includes:

46 (i) if known:

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

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

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

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

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

53 (v) that the plaintiff has attached or will serve the garnishee fee established in Section
54 78A-2-216;

55 (b) identify the defendant, including:

56 (i) the defendant's name and address; and

57 (ii) if known:

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

- 59 (B) the last four digits of the defendant's driver license; and
- 60 (C) the state in which the driver license was issued;
- 61 (c) include one or more interrogatories inquiring:
 - 62 (i) whether the garnishee is indebted to the defendant and, if so, the nature of the
 - 63 indebtedness;
 - 64 (ii) whether the garnishee possesses or controls any property of the defendant, and, if
 - 65 so, the nature, location, and estimated value of the property;
 - 66 (iii) (A) whether the garnishee knows of any property of the defendant in the
 - 67 possession or under the control of another; and
 - 68 (B) the nature, location, and estimated value of the defendant's property in possession
 - 69 or under the control of another, and the name, address, and phone number of the person with
 - 70 possession or control;
 - 71 (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim
 - 72 against the plaintiff or the defendant, a designation as to whom the claim relates, and the
 - 73 amount deducted;
 - 74 (v) the date and manner of the garnishee's service of papers upon the defendant and any
 - 75 third party;
 - 76 (vi) the dates on which previously served writs of continuing garnishment were served,
 - 77 if any; and
 - 78 (vii) any other relevant information the office may request, including the defendant's
 - 79 position, rate, and method of compensation, pay period, or computation of the amount of the
 - 80 defendant's disposable earnings;
 - 81 (d) notify the defendant of the defendant's right to reply to answers and request a
 - 82 hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and
 - 83 (e) state where the garnishee may deliver property.
 - 84 (5) (a) A garnishee who acts in accordance with this section and the administrative
 - 85 garnishment issued by the office is released from liability unless an answer to an interrogatory
 - 86 is successfully controverted.
 - 87 (b) Except as provided in Subsection (5)(c), if the garnishee fails to comply with an
 - 88 administrative garnishment issued by the office without a court or final administrative order
 - 89 directing otherwise, the garnishee is liable to the office for an amount ordered by the court,

90 including:

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

92 (ii) reasonable costs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (11) (a) The office may issue a continuing garnishment order against a nonexempt
123 periodic payment.

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

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

128 (i) the last periodic payment;

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

131 (iii) the office releases the order.

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

134 (i) answer each interrogatory;

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

137 (iii) deliver the property to the office.

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

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

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

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

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

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

151 (b) the amount by which the defendant's disposable earnings for a pay period exceeds

152 the number of weeks in that pay period multiplied by 30 times the federal minimum wage as
153 provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

154 (13) (a) In accordance with the requirements of this Subsection (13), the office may, at
155 its discretion, determine a dollar amount that a garnishee is to withhold from earnings and
156 deliver to the office in a continuing administrative garnishment order issued under this section.

157 (b) The office may determine the dollar amount that a garnishee is to withhold from
158 earnings under Subsection (13)(a) if the dollar amount determined by the office:

159 (i) does not exceed the maximum amount allowed under Subsection (12); and

160 (ii) is based on:

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

163 (B) previous garnishments issued to the garnishee by the office where payments were
164 received at a consistent dollar amount.

165 (c) The earnings information or previous garnishments relied on by the office under
166 Subsection (13)(b)(ii) to calculate a dollar amount under this Subsection (13) shall be:

167 (i) for one debtor;

168 (ii) from the same employer;

169 (iii) for two or more consecutive quarters; and

170 (iv) received within the last six months.

171 ~~[(13)]~~ (14) The administrative garnishment instituted in accordance with this section
172 shall continue to operate and require that a person withhold the nonexempt portion of earnings
173 at each succeeding earning disbursement interval until the total amount due in the garnishment
174 is withheld or the garnishment is released in writing by the court or office.