

GARNISHMENT FOR DEBT COLLECTION

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to a writ of garnishment.

Highlighted Provisions:

This bill:

- ▶ authorizes a plaintiff to obtain a writ of continuing garnishment in certain circumstances;
 - ▶ establishes a time line for payments applicable to a writ of continuing garnishment;
- and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-2-216, as last amended by Laws of Utah 2008, Chapter 149 and renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78A-2-216** is amended to read:



28 **78A-2-216. Duration and fees for writ of garnishment -- Single or continuing.**

29 (1) Upon obtaining a final judgment against a defendant, a plaintiff may obtain a writ
30 of continuing garnishment against any periodic payment, unless the payment is exempt as
31 described in Section 78B-5-505.

32 (2) A writ of continuing garnishment applies to payments to the defendant from the
33 effective date of the writ of continuing garnishment until the earlier of the following:

- 34 (a) 12 months;
- 35 (b) the last periodic payment;
- 36 (c) the judgment is stayed, vacated, or satisfied in full; or
- 37 (d) the writ is discharged.

38 [~~1~~] (3) Any creditor who serves or causes to be served a writ of garnishment upon the
39 garnishee shall pay to the garnishee:

- 40 (a) \$10 for a single garnishment; and
- 41 (b) \$25 for a continuing garnishment.

42 [~~2~~] (4) The creditor shall pay the fee directly to the garnishee.

43 [~~3~~] (5) If a plaintiff attempts to garnish the property of a person other than the
44 defendant by serving a garnishment on a garnishee, that person may recover from the plaintiff
45 an amount not to exceed \$1,000 if the person demonstrates to the court that the plaintiff failed
46 to exercise reasonable diligence in determining that the person and defendant were the same
47 individual.

48 [~~4~~] (6) The following factors may be taken into consideration by the court in
49 determining whether the plaintiff exercised reasonable diligence in determining whether the
50 person garnished and the defendant were the same individual:

- 51 (a) similarities between the person and the actual judgment debtor, including:
 - 52 (i) the spelling of each person's name;
 - 53 (ii) addresses;
 - 54 (iii) physical descriptions;
 - 55 (iv) identifying information, including Social Security number or driver license
56 number; and
 - 57 (v) family status;
- 58 (b) whether previous contact was made to determine whether the person was the

59 judgment debtor;

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

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

63 [~~5~~] (7) An employer who receives a written request for verification of employment,
64 which includes a copy of the judgment and judgment information statement, shall provide
65 verification within 10 days. The response shall indicate whether [~~or not~~] the defendant
66 identified in the documentation is a current employee.

67 [~~6~~] (8) A plaintiff is not liable for a violation of Subsection [~~3~~] (5) regarding a wage
68 garnishment if the plaintiff transmitted a written request for verification of employment,
69 including a copy of the judgment and judgment information statement, to an employer and the
70 employer did not respond.

Legislative Review Note

as of 1-16-13 10:59 AM

Office of Legislative Research and General Counsel