



Ohio Legislative Service Commission

122nd Senate Bill Analysis

S.B. 170
122nd General Assembly
(As Introduced)

Sen. Cupp

- Eliminates the 30-day limitation upon successive wage garnishment proceedings.
- Authorizes county and municipal courts and courts of common pleas to issue a continuous order of garnishment of personal earnings in satisfaction of a judgment debt, court costs, judgment interest, and, if applicable, prejudgment interest.
- Requires an employer to file an Interim Report and Answer of Garnishee when paying to the court the personal earnings withheld under the continuous order of garnishment of personal earnings.
- Specifies the circumstances under which a continuous order of garnishment of personal earnings ceases to be in effect and requires the employer to file a Final Report and Answer of Garnishee in those circumstances.
- Generally provides that a previous continuous order of garnishment of personal earnings ceases to be in effect upon the issuance of the subsequent order but permits in specified circumstances personal earnings to be withheld under the previous order for up to 182 days after the employer began to process the previous order.
- Prohibits a county or municipal court or court of common pleas from modifying or interrupting the processing of a continuous order of garnishment of personal earnings unless specified criteria are met.
- Expands the authority of a court to serve process relative to orders of garnishment of personal earnings to employers and orders of garnishment of property other than personal earnings to garnishees outside the court's territorial jurisdiction.
- Makes other changes to the Wage Garnishment Law.

CONTENT AND OPERATION

Existing law--overview

In Ohio, the personal earnings of an individual may be garnished only after a judgment has been obtained against him. Wage garnishment can occur only in accordance with procedures set forth in Chapter 2716. of the Revised Code, and they can be prevented by judgment debtors taking specified courses of action. Additionally, there are limitations upon wage garnishments, one of which is that an action for the garnishment of a judgment debtor's wages cannot be commenced sooner than 30 days after the filing of the last successful wage garnishment action against that judgment debtor, regardless of who brings the action or who brought the last successful action. (Secs. 2716.02 to 2716.06.)

Under existing law, if a judgment debtor cannot satisfy the debt owed to the judgment creditor by a single wage garnishment, the judgment creditor must bring successive wage garnishment actions against the judgment debtor until the debt is satisfied. Each wage garnishment action involves a specified procedure, including (secs. 2716.02 to 2716.06):

(1) The person seeking an order of garnishment must make a written demand upon the judgment debtor to satisfy the debt in whole or in part or to take other specified action in order to prevent the garnishment of the judgment debtor's wages (sec. 2716.02).

(2) A judgment creditor commences a proceeding in garnishment of personal earnings by filing a specified affidavit with a

municipal or county court or court of common pleas (hereafter an "appropriate court") (sec. 2716.03).

(3) The judgment creditor must serve the judgment debtor's employer with an "Order and Notice of Garnishment and Answer of Employer" form, the employer must complete the answer, and generally the employer must pay a portion of the personal earnings *owed* the judgment debtor into the court (sec. 2716.05).

(4) The employer must deliver to the judgment debtor a "Notice to the Judgment Debtor" form, a copy of the employer's answer, and a "Request for Hearing" form (secs. 2716.05 and 2716.06).

(5) If the judgment debtor delivers a timely request for a hearing, the court must hold a hearing on the amount of wages of the judgment debtor that are in the hands of his employer and that can be used to satisfy all or part of the debt owed to the judgment creditor (sec. 2716.06).

(6) Following a hearing or if a hearing is not held, the court must issue an appropriate order to the employer of the judgment debtor relative to the amount of wages that are to be garnished (sec. 2716.06).

Overview of changes proposed by the bill

The bill eliminates the above-described 30-day limit on the garnishment of personal earnings actions and instead provides for continuous orders for the garnishment of personal earnings. The bill establishes procedures to obtain a continuous order for the garnishment of personal earnings and prescribes forms to further those procedures. The bill also establishes procedures to be followed if more than one order for the garnishment of a judgment debtor's personal earnings is issued and makes certain other changes to the Wage Garnishment Law.

Procedural changes proposed by the bill

Under the bill, a judgment creditor may obtain an order for the garnishment of personal earnings that would order an employer to deduct a sum of money from each *future* paycheck of a judgment debtor until the debt owed the judgment creditor is paid in full or, if applicable, is paid to a certain extent (secs. 2716.02, 2716.03(B), and 2716.041(B)). The bill thus permits a judgment creditor to secure a single order for the garnishment of personal earnings for the entire amount of the debt owed to the judgment creditor. The procedure involved would be as follows:

Demand

Under existing law, a judgment creditor seeking an order for the garnishment of personal earnings must make a written demand in a specified manner upon the judgment debtor to satisfy in whole or in part the debt owed or to take other action to prevent the garnishment of the judgment debtor's personal earnings. Under the bill, the demand must inform the judgment debtor that if the judgment debtor does not do one of three things to avoid garnishment the judgment debtor's employer will be ordered to withhold money from the judgment debtor's personal earnings until the judgment is paid in full or, if applicable, is paid to a certain extent. (Sec. 2716.02.) (An example of the new statutorily prescribed demand for payment form may be found in **COMMENT 1**.)

Actions judgment debtor may take to avoid garnishment

Under existing law, the judgment debtor may take several actions to avoid the garnishment order, including paying the amount due to the judgment creditor, completing the "Payment to Avoid Garnishment" form and paying the amount calculated pursuant to the form, and applying to the appropriate municipal or county court for the appointment of a trustee to receive the part of the judgment debtor's earnings that are not exempt from garnishment and notifying the judgment creditor of the application. If the judgment debtor chooses this latter method of avoiding garnishment, the judgment debtor must list the judgment debtor's creditors, and the amount the judgment debtor will pay to the trustee each payday is divided among all the creditors until the debts are paid off.

Under the bill, the judgment debtor continues to be able to avoid garnishment by taking one of the three specified actions described above. If the judgment debtor applies to a court for the appointment of a trustee, the judgment debtor continues to be required to list the judgment debtor's creditors; however, he also must list the amounts of the creditor's claims and the amounts due on their claims. (Secs. 2329.70 and 2716.02.)

Affidavit and accompanying fee

Under existing law, a judgment creditor commences garnishment proceedings by filing with the appropriate court a specified affidavit made by the judgment creditor or the judgment creditor's agent. The affidavit must contain specified statutorily required information and must be accompanied by specified items related to the judgment creditor's demand. In addition, the affidavit must be accompanied by a fee of \$1 that is paid to the employer for the employer's services in complying with the garnishment order. No part of this fee is permitted to be charged as court costs.

The bill does not change the requirements for the affidavit that is filed to commence a wage garnishment proceeding. However, it does require the affidavit to be made by the judgment debtor or his attorney and increase the fee that must accompany the affidavit and that is paid to the employer from \$1 to \$10 and provides that the fee is to be charged as court costs. (Secs. 2716.03 and 2716.04.)

Continuous order of wage garnishment

The bill provides that when a municipal, county, or common pleas court issues an order of garnishment of personal earnings following a judgment creditor's filing of an affidavit and the judgment creditor's submission of proof of service and payment of the garnishee's fee, the order operates as a continuous wage garnishment order and must be served upon the garnishee, be answered by the garnishee, and be served upon the judgment debtor. The order is a continuous order that requires the garnishee to withhold a specified amount from the judgment debtor's personal earnings during each pay period of the judgment debtor following the garnishee's receipt of the order until the judgment in favor of the judgment creditor and the associated court costs, judgment interest, and, if applicable, prejudgment interest awarded to the judgment creditor have been paid in full. The order must specify the total probable amount due on the judgment, must state that the total probable amount due includes the unpaid portion of the judgment in favor of the judgment creditor and must specify that unpaid portion, must state that that total probable amount due includes judgment interest and, if applicable, prejudgment interest and must specify the applicable interest rate, and must state that that total probable amount due includes the court costs awarded to the judgment creditor and must specify the amount of those court costs. (Sec. 2716.041(A) and (B).)

As long as a continuous order of garnishment of personal earnings with respect to a particular judgment debtor and a particular judgment creditor remains in effect or, if the order is no longer in effect but the specified amount under that order continues to be withheld pursuant to the procedures described in "**Procedure for when wage garnishment order ceases to be in effect**," below, the particular judgment creditor may not file in any municipal, county, or common pleas court another affidavit to begin garnishment proceedings that pertain to the particular judgment debtor and the same judgment that underlies the order (sec. 2716.041(C)(3)).

Order and Notice of Garnishment and Answer of Employer form

Under existing law, an employer (garnishee) must be served with an "Order and Notice of Garnishment and Answer of Employer" form and two copies of the notice to the judgment debtor and hearing request form. The bill continues this requirement, additionally requires that the employee be served with one copy of the "Interim Report and Answer" form and one copy of the "Final Report and Answer" form, and modifies the "Order and Notice of Garnishment and Answer of Employer" form in several respects. The major modification is to indicate that the garnishment order is a continuous order that subjects future wages to garnishment (not, as under existing law, due wages) until the judgment, judgment interest, and court costs have been paid in full, requires the employer generally to pay the specified amount to the court clerk within 30 days after the end of each of the judgment debtor's pay periods, and requires the employer to include an "Interim Report and Answer of Garnishee" with each payment and to file a "Final Report and Answer of Garnishee" when the garnishment order ceases to be in effect (see "**Circumstances in which the continuous garnishment order ceases to be in effect**," below). The form also apprises the employer that special stacking, priority of payment, and manner of payment rules apply if the employer receives more than one order of garnishment of personal earnings with respect to the judgment debtor. (An example of the new statutorily prescribed form for the "Order and Notice of Garnishment and Answer of Employer" may be found in **COMMENT 2**.)

The "Order and Notice of Garnishment and Answer of Employer" form requires the employer to file one completed and signed copy of the form with the court clerk within five business days after the employer receives the order of garnishment as the garnishee's answer together with the amount of money determined in accordance with the Answer of the Employer. The form also requires the employer to deliver one completed (existing law) and signed (new) copy of the form and specified accompanying documents to the judgment debtor. The employer also must keep a completed (existing law) and signed (new) copy of the form for the employer's own files. (Secs. 2716.05, 2716.07, and 2716.08.)

Under existing law, a court of common pleas that issues an order of garnishment of personal earnings has jurisdiction to serve process of the order and the related forms upon a garnishee who does not reside within the "jurisdiction" of the court. A county or municipal court only has jurisdiction to serve process upon a garnishee who resides in any county that is contiguous to that in which the court is located. If the garnishee does not reside within the jurisdiction of the court that issued the order, the process may be served upon the garnishee by the proper officer of the county in which the garnishee resides. Under the bill, a municipal, county, or common pleas court that issues an order of garnishment of personal earnings has jurisdiction to serve process upon a garnishee who does not reside within the "territorial jurisdiction" of the court and also may serve the process upon the garnishee by personal service by the court, by sending it to the garnishee by certified mail, return receipt requested, or by sending it to the garnishee by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail. (Secs. 1901.19(C)(1) and 2716.05.)

Notice of Garnishment and Request for Hearing

Under existing law, the employer must deliver a "Notice to the Judgment Debtor" form and a "Request for Hearing" form to the judgment debtor. The bill continues this requirement but requires the "Notice to the Judgment Debtor" form to instruct the judgment debtor that some of the judgment debtor's personal earnings will be used in satisfaction of the judgment debtor's debt to the judgment creditor, as opposed to the personal earnings *now in the possession of the judgment debtor's employer* being used to satisfy *some of the debt*. (Sec. 2716.06(A).) (An example of the new statutorily prescribed form for the "Notice to the Judgment Debtor" may be found in **COMMENT 3**.)

As under existing law, a judgment debtor is entitled to a hearing if the judgment debtor submits a request for it within five business days after the judgment debtor receives the notice of garnishment; the hearing generally must be scheduled within 12 days; and a notice of the hearing must be sent to the judgment debtor. These rights remain unchanged, but the statutorily prescribed form is revised to reflect other changes made by the bill. (Sec. 2716.06(B) and (C).) (An example of the new statutorily prescribed form for the judgment debtor's Request for a Hearing may be found in **COMMENT 4**.)

Garnishee's Interim Report and Answer

Generally, a garnishee to whom a municipal, county, or common pleas court issues a continuous order of garnishment of personal earnings must pay to the court within 30 days after each pay period of the judgment debtor ends the amount that the order specifies to be withheld from the judgment debtor's personal earnings during each pay period of the judgment debtor following the garnishee's receipt of the order. The payment to the court of that amount must be accompanied by an "Interim Report and Answer of Garnishee" form that must contain the information described in the statutorily prescribed form for the "Interim Report and Answer of Garnishee." A garnishee must prepare each "Interim Report and Answer of Garnishee" in triplicate, submit one complete and signed copy of that document to the court along with each payment of withheld personal earnings, retain one complete and signed copy of that document for the garnishee's records, and deliver one complete and signed copy of that document to the judgment debtor. To prepare the interim reports and answers, the garnishee may photocopy the "Interim Report and Answer of Garnishee" form that the court sends to the garnishee with the Notice of Garnishment. (Secs. 2716.041(C)(4) and 2716.07.) (An example of the new statutorily prescribed form for the "Interim Report and Answer of Garnishee" may be found in **COMMENT 5**.)

Final Report and Answer of Garnishee

Generally, if a continuous order of garnishment of personal earnings ceases to remain in effect because of a circumstance described in "**Circumstances in which the continuous garnishment order ceases to be in effect**," the garnishee must file with the court that issued the order the "Final Report and Answer of Garnishee" that must be substantially in the statutorily prescribed form for the "Final Report and Answer of Garnishee" and must contain the information set forth in that form. The garnishee must prepare each "Final Report and Answer of Garnishee" in triplicate, submit one complete and signed copy of that document to the court, retain one complete and signed copy of that document for the garnishee's records, and deliver one complete and signed copy of that document to the judgment debtor. (Sec. 2716.041(C)(5).) (An example of the new statutorily prescribed form for the "Final Report and Answer of Garnishee" may be found in **COMMENT 6**.)

When a continuous garnishment order ceases to be in effect

Circumstances in which the continuous garnishment order ceases to be in effect

A continuous order of garnishment of personal earnings remains in effect until whichever of the following first occurs (sec. 2716.041(C)(1)):

- (1) The total probable amount due on the judgment described in the order is paid in full to the judgment creditor as a result of the garnishee's withholding of the specified amount from the judgment debtor's personal earnings during each pay period of the judgment debtor following the garnishee's receipt of the order.
- (2) The judgment creditor files with the court that issued the order, and serves upon the garnishee and judgment debtor in the same manner as a summons is served, a written notice that the total probable amount due on the judgment has been paid in full to the judgment creditor in the manner described in paragraph (1) or otherwise has been satisfied.
- (3) A municipal or county court appoints a trustee for the judgment debtor and issues to the garnishee an order that stays the continuous order of garnishment of personal earnings.
- (4) A bankruptcy court of the United States issues to the garnishee an order that stays the continuous order of garnishment of personal earnings.
- (5) A municipal, county, or common pleas court issues to the garnishee another order of garnishment of personal earnings that relates to the same judgment debtor and a different judgment creditor, and the law of Ohio or of the United States

provides that the other order of garnishment of personal earnings has a higher priority than the pending continuous order of garnishment of personal earnings. A higher priority order of that nature may include, but is not limited to, a support order and an Internal Revenue Service levy.

(6) A municipal, county, or common pleas court issues to the garnishee another order of garnishment of personal earnings that relates to the same judgment debtor and a different judgment creditor and that is not described in paragraph (5), above.

If the circumstances described in paragraphs (5) or (6), above, apply to a continuous order of garnishment of personal earnings, the procedures described in "***Procedure for when garnishment order ceases to be in effect***," below, also apply to the garnishee and that order (sec. 2716.041(C)(2)).

Procedure for when garnishment order ceases to be in effect

Subsequent order is a higher priority order. If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor, if, at the time of the receipt of that order, the garnishee is the subject of one or more previously received continuous orders of garnishment of personal earnings with respect to the same judgment debtor, and if the law of Ohio or of the United States provides that the subsequent order has a higher priority than the previous order or orders, the previous order or orders cease to remain in effect, and the garnishee must withhold from the judgment debtor's personal earnings during each pay period the amount specified in the subsequent order. However, if the maximum amount of the personal earnings of the judgment debtor that legally may be garnished during each pay period is not exceeded after withholding the amount specified in the subsequent order, the garnishee must withhold from the judgment debtor's personal earnings during each pay period the amount specified in one or more of the previous orders, in their order of priority, until the maximum amount of the personal earnings of the judgment debtor that legally may be garnished during each pay period is reached and as long as 182 days have not expired from the date the garnishee began processing the previous order and the previous order has not ceased to remain in effect for another reason listed in "***Circumstances in which the continuous garnishment order ceases to be in effect***." Upon the expiration of that period, the garnishee must file a Final Report and Answer. (Sec. 2716.041(D)(2) and (D)(3)(c).)

If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor and that order has a higher priority than a previously received continuous order of garnishment of personal earnings with respect to the same judgment debtor, the garnishee promptly must notify the judgment creditor associated with the previous order of the receipt of the higher priority order (sec. 2716.041(E)).

If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor and, if at the time of the receipt of that order, the garnishee is the subject of one or more previously received continuous orders of garnishment of personal earnings with respect to the same judgment debtor, the garnishee must include in its Answer of Employer in relation to the subsequent order specified information in relation to the previous order or orders (name of court that issued orders, case numbers, date of receipt of orders, and balance due under orders) (sec. 2716.041(F)).

Subsequent order is not a higher priority order. If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor, if, at the time of the receipt of that order, the garnishee is the subject of a previously received continuous order of garnishment of personal earnings with respect to the same judgment debtor, and if the subsequent order is not of a higher priority than the previous order, the previous order ceases to remain in effect. However, until at least 182 days have expired from the date that the garnishee began processing the previous order, the garnishee must withhold the specified amount from the judgment debtor's personal earnings in accordance with the previous order. During that period, the previous order is deemed a higher priority order. Upon the expiration of that period, the garnishee must file a "Final Report and Answer of Garnishee." (Sec. 2706.041(D)(1).)

If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor, if, at the time of the receipt of that order, the garnishee is the subject of a previously received continuous order of garnishment of personal earnings with respect to the same judgment debtor, and if the previous order has a higher priority, the garnishee must do both of the following: (sec. 2716.041(D)(3)(b)): (1) the garnishee must withhold from the judgment debtor's personal earnings during each pay period the amount specified in the previous order for the requisite 182-day period or until the previous order ceases to remain in effect for a reason listed in "***Circumstances in which the continuous garnishment order ceases to be in effect***," and (2) if the maximum amount of the personal earnings of the judgment debtor that may be garnished during each pay period under the law of Ohio or of the United States is not exceeded after withholding under the previous order, the garnishee must withhold from the judgment debtor's personal earnings during each pay period the amount specified in one or more of the subsequent orders, in their order of priority, until the maximum amount of the personal earnings of the judgment debtor that may be legally garnished during each pay period is reached and as long as the requisite 182-day processing period has not expired with respect to a subsequent order and the subsequent order has not ceased to remain in effect for a reason listed in "***Circumstances in which the continuous garnishment order ceases to be in effect***."

If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor and if, at the time of the receipt of that order, the garnishee is the subject of a previously received continuous order of garnishment of personal earnings with respect to the same judgment debtor, the garnishee must do both of the following (sec. 2716.041(D)(3)(a)): (1) the garnishee must process the subsequent order in the order in which the garnishee receives it and only after all previously received orders of garnishment of personal earnings with respect to the same judgment debtor have been processed for a 182-day period or have ceased to remain in effect for a reason listed in "**Circumstances in which the continuous garnishment order ceases to be in effect,**" and (2) when, pursuant to the procedure required by the preceding clause for the stacking of orders of garnishment of personal earnings with respect to the same judgment debtor, the subsequent order reaches highest priority, the garnishee must process the subsequent order for a 182-day period or until the subsequent order ceases to remain in effect for a reason listed in "**Circumstances in which the continuous garnishment order ceases to be in effect.**"

If a garnishee receives an order of garnishment of personal earnings with respect to a particular judgment debtor and, if at the time of the receipt of that order, the garnishee is the subject of one or more previously received continuous orders of garnishment of personal earnings with respect to the same judgment debtor, the garnishee must include in its "Answer of Employer" in relation to the subsequent order specified information in relation to the previous order or orders (name of court that issued order, case number, date of receipt of order, and balance due under order) (sec. 2716.041(F)).

Jurisdiction of a court to modify or interrupt the processing of a wage garnishment order

The bill specifies that a municipal, county, or common pleas court does not have jurisdiction to modify and interrupt the processing of an order of garnishment of personal earnings that the court issued in a proceeding in garnishment of personal earnings under the Wage Garnishment Law unless all of the following apply (sec. 2716.09):

- (1) The judgment creditor and the judgment debtor associated with that order jointly apply to that court for the modification and interruption.
- (2) The judgment creditor and judgment debtor jointly agree that the amount of the judgment debtor's personal earnings that is required to be withheld during each pay period under that court's order should be modified to a mutually agreed upon and specified amount and that the garnishee should withhold that specified amount until the judgment in favor of the judgment creditor and the associated court costs, judgment interest, and, if applicable, prejudgment interest awarded to the judgment creditor have been paid in full or until that court's order otherwise ceases to remain in effect for a reason described in "**Circumstances in which the continuous garnishment order ceases to be in effect.**"
- (3) The court enters an order that approves of the modification described in the preceding paragraph and causes a copy of that order to be served upon the garnishee in the same manner as process is served.

Miscellaneous changes

Ability of creditors who are not judgment creditors to garnish wages

The bill eliminates the authority of a creditor of an officer or employee of the state, as opposed to a judgment creditor, to garnish the personal earnings of such a person (sec. 124.10).

Agent of judgment debtor

Under the bill, a judgment creditor's agent is no longer authorized to send the debtor a demand for payment or initiate wage garnishment proceedings, but the bill still permits the judgment creditor or the judgment creditor's attorney to initiate wage garnishment proceedings (secs. 2716.02, 2716.03, and 2716.11).

Answer of garnishee to order and notice of garnishment of property other than personal earnings

Under existing law, if a judgment creditor garnishes property of a judgment debtor other than the judgment debtor's personal earnings, the court sends the garnishee an "Order and Notice of Garnishment of Property Other Than Personal Earnings" and in response to that order and notice the garnishee must file a completed "Answer of Garnishee" with the court and deliver a completed copy of the answer to the judgment debtor; existing law permits the garnishee to keep a completed copy of the answer. Under the bill, the garnishee must file with the clerk of the court a completed *and signed* copy of the answer and deliver a completed *and signed* copy of the answer to the judgment debtor. The garnishee is permitted to keep a completed *and signed* copy of the answer as well.

Similar to the change in jurisdiction for serving process for garnishment of personal earnings, under the bill a court serving process regarding the garnishment of property other than personal earnings also has jurisdiction to serve process upon a garnishee who does not reside within the "territorial jurisdiction" of the court and may serve the process upon the garnishee by personal service by the court, by sending it to the garnishee by certified mail, return receipt requested, or by sending it to the garnishee by regular mail evidenced by a properly completed and stamped certificate of mailing by regular

mail. (Secs. 1901.19(C)(2) and 2716.13.)

Technical changes

The bill makes several technical revisions and conforming changes to reflect the changes made by the bill (secs. 124.10, 2329.66(A)(13), 2329.70, 2333.21, 2716.01, 2716.02, 2716.03, 2716.04, 2716.05, 2716.06, 2716.11, 2716.13, 2716.21, 3111.23, and 3113.21).

COMMENT

The bill revises several of the statutorily prescribed forms used in existing Wage Garnishment Law and creates a number of new forms to be used in that Law:

1. Form for Demand for Payment

Under the bill, the demand that a judgment debtor must serve upon the judgment debtor prior to commencing a wage garnishment proceeding must be in the following form (sec. 2617.02):

NOTICE OF COURT PROCEEDING TO COLLECT DEBT

Date of mailing or date of service by the court _____

To: _____
(Name of Judgment Debtor)

(Last Known Residence Address of Judgment Debtor)

You owe the undersigned _____ \$ _____, including interest
(Name of Judgment Creditor)

and court costs, for which a judgment was obtained against you or certified in the _____ court on _____, payment of which is hereby demanded.

If you do not do one of the three things listed below within fifteen days of the date of the mailing of this notice or of its service by the court, we will go to court, unless we are otherwise precluded by law from doing so, and ask that your employer be ordered to withhold money from your earnings until the judgment is paid in full or, if applicable, is paid to a certain extent and to pay the withheld money to the court in satisfaction of your debt. This is called garnishment of personal earnings.

It is to your advantage to avoid garnishment of personal earnings because the placing of the extra burden on your employer possibly could cause you to lose your job.

YOU CAN AVOID THE GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE FIFTEEN-DAY PERIOD:

(1) Pay to us the amount due;

(2) Complete the attached form entitled "Payment to Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or

(3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment, and notify us that you have applied for the appointment of a trustee. You will be required to list your creditors, the amounts of their claims, and the amounts due on their claims, and the amount you then will pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

You also may contact a budget and debt counseling service described in division (D) of section 2716.03 of the Revised Code for the purpose of entering into an agreement for debt scheduling. There may not be enough time to set up an agreement for debt scheduling in order to avoid a garnishment of your wages based upon this demand for payment, but entering into an agreement for debt scheduling might protect you from future garnishments of your wages. Under an agreement for debt scheduling, you will have to regularly pay a portion of your income to the service until the debts subject to the agreement are paid off. This portion of your income will be paid by the service to your creditors who are owed debts subject to the agreement. This can be to your advantage because these creditors cannot garnish your wages while you make your payments to the service on time.

(Name of Judgment Creditor)

(Signature of Judgment Creditor)

(Address of Judgment Creditor)

PAYMENT TO AVOID GARNISHMENT

To: _____
(Name of Judgment Creditor)

(Address of Judgment Creditor)

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

1. Total amount of indebtedness demanded: (1) \$ _____

2. Enter the amount of your personal earnings after deductions required by law, earned by you during the current pay period (that is, the pay period in which this demand is received by you): (2) \$ _____

3. Enter your pay period (weekly, biweekly, semimonthly, monthly): (3) _____

4. Enter an amount equal to 25% of the amount on line (2): (4) \$ _____

5. (A) The current federal minimum hourly wage is _____ (to be filled in by Judgment Creditor)

(You should use the above figure to complete this portion of the form.) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: 5(A) \$ _____

(B) Enter the amount by which the amount on line (2) exceeds the amount on line 5(A): 5(B) \$ _____

6. Enter the smallest of the amounts on lines (1), (4), or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: (6) \$ _____

I certify that the statements contained above are true to the best of my knowledge and belief.

(Signature of Judgment Debtor)

(Print Name and Residence
Address of Judgment Debtor)

I certify that the amount shown on line (2) is a true statement of the judgment debtor's earnings.

(Print Name of Employer)

2. Form for Order and Notice of Garnishment and Answer of Employer

Under the bill, the Order and Notice of Garnishment and Answer of Employer must be in substantially the following form (sec. 2716.05):

ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER

Docket No. _____

Case No. _____

In the _____ Court
_____, Ohio

The State of Ohio

County of _____, ss

_____, Judgment Creditor

vs.

_____, Judgment Debtor

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

To: _____, Garnishee

The judgment creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this court stating that you owe the judgment debtor money for personal earnings and that some of that money may not be exempt from garnishment under the laws of the State of Ohio or the Laws of the United States.

You are therefore ordered to complete the "**Answer of Employer (Garnishee)**" in section B of this form. Return one completed and signed copy of this form to the clerk of this court within five (5) business days after you receive this order of garnishment together with the amount determined in accordance with the "**Answer of Employer (Garnishee)**." Deliver one completed and signed copy of this form and the accompanying documents entitled "NOTICE TO THE JUDGMENT DEBTOR" and "REQUEST FOR HEARING" to the judgment debtor. Keep the other completed and signed copy of the form for your files.

The total probable amount now due on this judgment is \$ _____. The total probable amount now due includes the unpaid portion of the judgment in favor of the judgment creditor, which is \$ _____; interest on that judgment and, if applicable, prejudgment interest relative to that judgment at the rate of _____% per annum payable until that judgment is satisfied in full; and court costs in the amount of \$ _____.

This order of garnishment of personal earnings is a continuous order that generally requires you to withhold a specified amount, as determined in accordance with the "**answer of employer (garnishee)**," from the judgment debtor's personal earnings during each pay period of the judgment debtor following your receipt of the order until the judgment in favor of the judgment creditor and the associated court costs, judgment interest, and, if applicable, prejudgment interest awarded to the judgment creditor as described above have been paid in full. You generally must pay that specified amount to the clerk of this court within thirty (30) days after the end of each pay period of the judgment debtor and must include with that specified amount an "**interim report and answer**" substantially in the form set forth in section 2716.07 of the Ohio Revised Code. A copy of the "**interim report and answer**" is attached to this order of garnishment of personal earnings, and you may photocopy it to use each time you pay the specified amount to the clerk of this court.

This order of garnishment of personal earnings generally will remain in effect until one of the following occurs:

- (1) The total probable amount due on the judgment as described above is paid in full as a result of your withholding of the specified amount from the judgment debtor's personal earnings during each pay period of the judgment debtor following your receipt of the order.

(2) The judgment creditor files with this court a written notice that the total probable amount due on the judgment as described above has been satisfied.

(3) A municipal or county court appoints a trustee for the judgment debtor and issues to you an order that stays this order of garnishment of personal earnings.

(4) A federal bankruptcy court issues to you an order that stays this order of garnishment of personal earnings.

(5) A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor, and Ohio or federal law provides the other order with a higher priority than this order.

(6) A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor and that does not have a higher priority than this order.

Under any of the circumstances listed above, you are required to file with this court a **"final report and answer"** substantially in the form set forth in section 2716.08 of the Ohio Revised Code. A copy of the **"final report and answer"** is attached to this order of garnishment of personal earnings. Under the circumstances listed in (5) and (6) above, you must cease processing this order of garnishment one hundred eighty-two (182) days after you began processing it.

Special stacking, priority of payment, and manner of payment rules apply when a garnishee receives multiple orders of garnishment with respect to the same judgment debtor. These rules are set forth in section 2716.041 of the Ohio Revised Code. You should become familiar with these rules.

Witness my hand and the seal of this court this _____ day of _____, _____.

Judge

SECTION B. ANSWER OF EMPLOYER (GARNISHEE)

(An employer is one who is required to withhold payroll taxes out of payments of personal earnings made to the judgment debtor.)
(Answer all pertinent questions)

Now comes _____, the employer (garnishee) herein, who says:

1. This order of garnishment of personal earnings was received on _____.

Yes No

2. The judgment debtor is in my/our employ. _____

If answer is "No," give date of last employment. (2) _____

3. (A) Is the debt to which this order of garnishment of personal earnings pertains the subject of an existing agreement for debt scheduling between the judgment debtor and a budget and debt counseling service and has the judgment debtor made every payment that was due under the agreement for debt scheduling no later than Yes No forty-five days after the date on which the payment was due? _____

If the answer to both parts of this question is "Yes," give all available details of the agreement, sign this form, and return it to the court. 3(A) _____

(B) Were you, on the date that you received this order of garnishment of personal earnings, withholding moneys from the judgment debtor's personal earnings pursuant to another order of

garnishment of personal earnings that Ohio or federal law provides with a higher priority than this order of garnishment of personal earnings (such as a support order or Internal Revenue Service levy)? Yes No _____

If the answer to this question is "Yes," give the name of the court that issued the higher priority order, the associated case number, the date upon which you received that order, and the balance due to the relevant judgment creditor under that order. 3(B) _____

(C) Did you receive prior to the date that you received this order of garnishment of personal earnings one or more other orders of garnishment of personal earnings that are not described in question 3(B), and are you currently processing one or more of those orders for the statutorily required 182-day period or holding one or more of those orders for processing for a 182-day period Yes No in the sequence of their receipt by you? _____

If the answer to this question is "Yes," give the name of the court that issued each of those previously received orders, the associated case numbers, the date upon which you received each of those orders, and the balance due to the relevant judgment creditor under each of those orders. List first the previously received order(s) that you are currently processing, and list each of the other previously received orders in the sequence that you are required to process them. 3(C) _____

4. (A) State whether the pay period of the judgment debtor is weekly, biweekly, semimonthly, or monthly (do not enter a pay period of more than one month): 4(A) _____

(B) Enter the disposable earnings of the judgment debtor earned during the judgment debtor's present pay period. ("Disposable earnings" means earnings after deductions required by law. "Present pay period" means the pay period in which you receive this order of garnishment of personal earnings.) 4(B)\$ _____

(C) If the judgment debtor's pay period is weekly, enter on line 4(C)

an amount equal to six and one-quarter per cent (6.25%) of the judgment debtor's disposable earnings set forth on line 4(B). If the judgment debtor's pay period is biweekly or semimonthly, enter on line 4(C) an amount equal to twelve and one-half per cent (12.5%) of the judgment debtor's disposable earnings set forth on line 4(B). If the judgment debtor's pay period is monthly, enter on line 4(C) an amount equal to twenty-five per cent (25%) of the judgment debtor's disposable earnings set forth on line 4(B). 4(C) _____

5. (A) If the judgment debtor is paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: 5(A)\$ _____

(B) Enter the amount by which the amount on line 4(B) exceeds the amount on line 5(A): 5(B)\$ _____

6. Enter on line 6 the smallest of the amount entered on line 4(C); or the amount entered on line 5(B); or the total probable amount now due on the judgment, including interest and costs, as indicated in section A of this form. Pay the amount entered on line 6 into this court when returning this form: 6\$ _____

I certify that the statements above are true.

(Print Name of Employer)

(Print Name and Title of Person
Who Completed Form)

Signed _____
(Signature of Person Completing Form)

Dated this _____ day of _____, _____.

3. Form for "Notice to the Judgment Debtor"

Under the bill, the "Notice to the Judgment Debtor" must be in substantially the following form (sec. 2716.06):

(Name and Address of the Court)

Case No. _____

(Case Caption)

NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that this court has issued an order in the above case in favor of (name and address of judgment creditor), the judgment

creditor in this proceeding, directing that some of your personal earnings be used in satisfaction of your debt to the judgment creditor instead of being paid to you. This order was issued on the basis of the judgment creditor's judgment against you that was obtained in (name of court) in (case number) on (date).

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of creditors. The documents entitled "ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER" that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **No objections to the judgment itself will be heard or considered at the hearing.** The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you feel that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the judgment creditor.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association.

Clerk of the Court

Date

4. Form for Judgment Debtor's Request for a Hearing

Under the bill, the judgment debtor's "Request for Hearing" form must be in substantially the following form (sec. 2716.06(B)):

(Name and Address of Court)

Case Number _____ Date _____

REQUEST FOR HEARING

I dispute the judgment creditor's right to garnish my personal earnings in the above case and request that a hearing in this matter be held no later than twelve days after delivery of this request to the court.

I _____ feel that the need for the hearing is an emergency.
(insert "do" or "do not")

I dispute the judgment creditor's right to garnish my personal earnings for the following reasons:

(Optional)

I understand that No objections to the judgment itself will be heard or considered at the hearing.

(Name of Judgment Debtor)

(Signature)

(Date)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING, AND SOME OF YOUR PERSONAL EARNINGS WILL BE PAID TO (JUDGMENT CREDITOR'S NAME) in satisfaction of YOUR DEBT TO the judgment creditor.

5. Form for "Interim Report and Answer of Garnishee"

Under the bill, the "Interim Report and Answer of Garnishee" must be in substantially the following form (sec. 2716.07):

interim report and answer of garnishee

Case No. _____

In the _____ Court

_____, Ohio

_____, Judgment Creditor

vs.

_____, Judgment Debtor

The garnishee, _____ in the above case states as follows:

1. The date that the garnishee received the order of garnishment of the judgment debtor's personal earnings was _____.
2. The total probable amount due on the judgment, including court costs, judgment interest, and, if applicable, prejudgment interest, as stated in section A of the order of garnishment of the judgment debtor's personal earnings is \$ _____.
3. The amount that has been withheld from the judgment debtor's personal earnings during the judgment debtor's present pay period (which amount represents the amount specified on line 6 of the "answer of employer (garnishee)" unless otherwise stated) and that is submitted with this "interim report and answer" is \$ _____.

I certify that the statements above are true.

(Print Name of Employer)

(Print Name and Title of Person
Who Completed Form)

Signed
(Signature of Person Completing Form)

Dated this _____ day of _____, _____.

6. Form for Final Report and Answer of Garnishee

Under the bill, the Final Report and Answer of Garnishee must be in substantially the following form (sec. 2716.08):

final report and answer of garnishee

Case No. _____

_____, Judgment Creditor

vs.

_____, Judgment Debtor

The garnishee, _____ in the above case states as follows:

1. The date that the garnishee received the order of garnishment of the judgment debtor's personal earnings was _____.
2. The total probable amount due on the judgment, including court costs, judgment interest, and, if applicable, prejudgment interest, as stated in section A of the order of garnishment of the judgment debtor's personal earnings, is \$ _____.
3. The total amount that has been withheld from the judgment debtor's personal earnings and paid to the court while the order of garnishment of the judgment debtor's personal earnings remained in effect is \$ _____.
4. (When applicable) the total probable amount due on the judgment (as stated in 2 above) is not equal to the total amount that has been withheld (as stated in 3 above), and the reason for that difference is that the order of garnishment of the judgment debtor's personal earnings ceased to be in effect for the following statutorily prescribed reason(s) (check whichever apply):

(a) _____ A municipal or county court appointed a trustee for the judgment debtor and issued an order that stays the order of garnishment of the judgment debtor's personal earnings.

(b) _____ A federal bankruptcy court issued an order that stays the order of garnishment of the judgment debtor's personal earnings.

(c) _____ A municipal or county court or a court of common pleas issued another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor, and Ohio or federal law provides the other order a higher priority. (Set forth the name of the court that issued the higher priority order, the associated case number, the date that the higher priority order was received, and the balance due to the relevant judgment creditor under that order): _____

(d) _____ A municipal or county court or a court of common pleas issued another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor and that is not described in 4(c) above. (Set forth the name of the court that issued the subsequently received order, the associated case number, the date that the subsequent order was received, and the balance due to the relevant judgment creditor under that order): _____

I certify that the statements above are true.

(Print Name of Employer)

(Print Name and Title of Person
Who Completed Form)

Signed _____
(Signature of Person Completing Form)

Dated this _____ day of _____, _____.

HISTORY

ACTION DATE JOURNAL ENTRY

Introduced 09-09-97 p. 1161

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