

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5589-01
Bill No.: HB 1612
Subject: Civil Procedure; Credit and Bankruptcy; Business and Commerce; Employees - Employers
Type: Original
Date: February 25, 2014

Bill Summary: This proposal modifies provisions relating to the garnishment process in Missouri.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	Up to \$1,977,950	Up to \$2,373,540	Up to \$2,373,540

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration (OA)** assume there is an unknown cost to the state from this proposal with the waiver of sovereign immunity in respect to garnishment of pay. OA currently receives approximately 5,000 writs per year. Currently, all writs are paid to the Cole County Sheriff. If any entity can serve OA by mail, it will complicate the process of garnishing wages and paying vendors. Should this bill pass, Accounting would be required to pay any servicing entity which could include 152 counties and any vendor who would contract with those counties.

Oversight assumes OA-Accounting is provided with core funding to handle a certain amount of activity each year. Oversight assumes OA-Accounting could absorb the costs related to this proposal. If multiple bills pass which require duties at substantial costs, OA-Accounting could request funding through the appropriation process.

Officials at the **Office of the State Courts Administrator (CTS)** assume the proposed legislation allows circuit court clerks to charge and collect a surcharge of up to \$10 in cases where a garnishment is granted.

Based on data for the past four years, FY09 through FY12, CTS assumes that the average is approximately 237,354 executions and garnishments on which this surcharge could be applied. CTS assumes all circuit courts would collect a \$10.00 surcharge and anticipates the revenue would be approximately \$2,373,540 in any given year.

FY 09	211,043
FY 10	231,258
FY 11	250,212
FY 12	<u>256,904</u>
Total	949,417
Average	237,354

Oversight assumes all circuit court clerks will collect this fee and will reflect ten months of impact in FY 2015, or \$1,977,950 ($\$2,373,540/12 \times 10$).

ASSUMPTION (continued)

Officials at the **Office of the State Public Defender**, the **Missouri Department of Transportation**, the **Department of Conservation** and the **Department of Insurance, Financial Institutions and Professional Registration** each assume no fiscal impact to their respective agencies from this proposal.

Officials at the **City of Kansas City**, the **Cape Girardeau County Recorder of Deeds** and the **City of Jefferson** each assume no fiscal impact to their respective organizations from this proposal.

Officials at the **St. Charles County Recorder of Deeds** responded to Oversight, however they did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
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LOCAL POLITICAL SUBDIVISIONS

<u>Revenue</u> - Circuit Courts - Surcharge assessed and collected in cases where garnishment is granted	Up to <u>\$1,977,950</u>	Up to <u>\$2,373,540</u>	Up to <u>\$2,373,540</u>
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ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	Up to <u>\$1,977,950</u>	Up to <u>\$2,373,540</u>	Up to <u>\$2,373,540</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill specifies that judgments must accrue interest on the judgment balance, which is the total amount of the judgment awarded on the day judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees. Post-judgment payments or credits must be applied first to post-judgment costs, then to post-judgment interest, and then to the judgment balance. In a case where a garnishment is granted, the clerk of the circuit court may charge and collect a surcharge of up to \$10 for the clerk's duties. The moneys collected from this surcharge must be placed in a fund to be used at the discretion of the clerk to maintain and improve case processing and record preservation. Upon receipt of the garnishment application, the clerk must process the application, issue the writ, and return the garnishment to the garnisher. The garnisher must be responsible for obtaining service upon the garnishee of the summons, application, and order of execution or garnishment.

Alternatively, the garnisher may obtain service upon the garnishee by certified mail. When service is obtained by certified mail, it must be the duty of the garnisher to send the summons and writ by certified mail, return receipt requested, to the garnishee; or if the garnishee is a corporation, to the person designated by law. The garnisher must file with the clerk of the court issuing the order the return receipt signed by the garnishee, and no subsequent proceeding against the garnishee can be undertaken unless the party filing the garnishment has filed the signed return receipt with the court. Any costs incurred on behalf of the garnisher for using certified mail must be treated as and included in post-judgment costs.

The bill requires the garnisher to serve a copy of the summons and writ on the judgment debtor within five days of notice of service upon the garnishee. The writ must be served by delivering it to the judgment debtor as provided in Supreme Court rule by mailing the documents to the debtor's last known address, and service by mail is considered complete upon mailing. At the time of mailing, a certificate of service must be filed with the court and the certificate must show the caption of the case, the name of the party served, the date and manner of service, the designation of the documents, and the signature of the serving party or attorney.

FISCAL DESCRIPTION (continued)

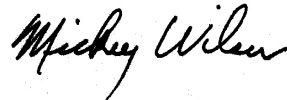
Writs of garnishment which would otherwise have equal priority must have priority according to the date of service on the garnishee. If the employee's wages have been attached by more than one writ of garnishment, the employer must inform the inferior garnisher of the existence and case number of all senior garnishments. The garnishee may deduct a one-time sum of up to \$20, or the fee previously agreed upon between the garnishee and judgment debtor where the garnishee is a financial institution, for his or her trouble and expenses in answering the interrogatories and withholding the funds, to be withheld from any funds garnished, in addition to the moneys withheld to satisfy the court-ordered judgment. This fee must not be a credit against the court-ordered judgment and must be collected first. The garnishee may file a motion with the court for additional costs, including attorney fees, reasonably incurred in answering the interrogatories, and the court may make an award as it deems reasonable. The motion must be filed on or before the date the garnishee makes payment or delivers property subject to garnishment to the court.

The bill repeals the current provisions regarding a judgment against an officer, appointee, or employee of this state or any municipal corporation or other political subdivision of the state and specifies that the provisions constitute a waiver of sovereign immunity with respect to garnishment of the pay of state, municipal, or other political subdivision employees. The state, municipal, or other political subdivision employer served with a garnishment must have the same duties and obligations as those imposed upon a private employer when served with garnishment. Pay of any officer, appointee, or employee of the state or any municipal corporation or other political subdivision of the state must be subject to garnishment to the same extent as in any other garnishment, and all garnishments against the employee must proceed in the same manner as any other garnishment except service of legal process to a department, municipal corporation, or other political subdivision of the state may be accomplished by certified mail, return receipt requested, or by personal service upon the appropriate agent designated for receipt of the service of process or the head of the department, municipal corporation, or other political subdivision of the state if no agent has been designated.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Public Defender
Missouri Department of Transportation
Department of Conservation
Department of Insurance, Financial Institutions and Professional Registration
City of Kansas City
Cape Girardeau County Recorder of Deeds
City of Jefferson
St. Charles County Recorder of Deeds
Office of Administration
Office of the State Courts Administrator

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 25, 2014

Ross Strobe
Assistant Director
February 25, 2014