

SECOND REGULAR SESSION

# HOUSE BILL NO. 1612

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGAUGH.

5589L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 408.040, 488.305, 525.020, 525.040, 525.070, 525.080, 525.230, and 525.310, RSMo, and to enact in lieu thereof eight new sections relating to garnishments.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 408.040, 488.305, 525.020, 525.040, 525.070, 525.080, 525.230, and 525.310, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 408.040, 488.305, 525.020, 525.040, 525.070, 525.080, 525.230, and 525.310, to read as follows:

408.040. 1. **Judgments shall accrue interest on the judgment balance as set forth in this section. The "judgment balance" is defined as 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 shall be applied first to post-judgment costs, then to post-judgment interest, and then to the judgment balance.**

2. In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

[2.] 3. Notwithstanding the provisions of subsection [1] 2 of this section, in tort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date [of] judgment is entered by the trial court until full satisfaction. All such judgments and orders

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 for money shall bear a per annum interest rate equal to the intended Federal Funds Rate, as  
17 established by the Federal Reserve Board, plus five percent, until full satisfaction is made. The  
18 judgment shall state the applicable interest rate, which shall not vary once entered. In tort  
19 actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a  
20 claim, to the party, parties or their representatives, and to such party's liability insurer if known  
21 to the claimant, and the amount of the judgment or order exceeds the demand for payment or  
22 offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety  
23 days after the demand or offer was received, as shown by the certified mail return receipt, or  
24 from the date the demand or offer was rejected without counter offer, whichever is earlier. In  
25 order to qualify as a demand or offer pursuant to this section, such demand must:

- 26 (1) Be in writing and sent by certified mail return receipt requested; and
- 27 (2) Be accompanied by an affidavit of the claimant describing the nature of the claim,  
28 the nature of any injuries claimed and a general computation of any category of damages sought  
29 by the claimant with supporting documentation, if any is reasonably available; and
- 30 (3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a  
31 list of the names and addresses of medical providers who have provided treatment to the claimant  
32 or decedent for such injuries, copies of all reasonably available medical bills, a list of employers  
33 if the claimant is seeking damages for loss of wages or earning, and written authorizations  
34 sufficient to allow the party, its representatives, and liability insurer if known to the claimant to  
35 obtain records from all employers and medical care providers; and
- 36 (4) Reference this section and be left open for ninety days.

37

38 Unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause  
39 of action in circuit court prior to a date one hundred twenty days after the demand or offer was  
40 received, then the court shall not award prejudgment interest to the claimant. If the claimant is  
41 a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably  
42 appears to be qualified to act as next friend or conservator or personal representative. If the  
43 claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to  
44 section 537.080 to make claim for the death. Nothing contained herein shall limit the right of  
45 a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise  
46 provided by law or contract.

47 [3.] 4. In tort actions, a judgment for prejudgment interest awarded pursuant to this  
48 [subsection] **section** should bear interest at a per annum interest rate equal to the intended  
49 Federal Funds Rate, as established by the Federal Reserve Board, plus three percent. The  
50 judgment shall state the applicable interest rate, which shall not vary once entered.

488.305. 1. The clerk of the circuit court shall charge and collect fees for the clerk's duties as prescribed by sections 429.090 and 429.120 in such amounts as are determined pursuant to sections 488.010 to 488.020.

2. **The clerk of the circuit court may charge and collect in cases where a garnishment is granted, a surcharge not to exceed ten dollars for the clerk's duties. Any moneys collected under this subsection shall be placed in a fund to be used at the discretion of the circuit clerk to maintain and improve case processing and record preservation.**

525.020. 1. **Upon receipt of the garnishment application, the clerk shall process the application, issue the writ, and return the garnishment to the garnisher. The garnisher shall be responsible for obtaining service upon the garnishee of the summons, application, and order of execution or garnishment.** When a fieri facias shall be issued and placed in the hands of an officer for collection, it shall be the duty of the officer, when directed by the plaintiff, his or her agent or attorney, to summon garnishees, and with like effect as in case of an original attachment. The service of garnishment in such case, and the subsequent proceedings against and in behalf of the garnishee, shall be the same as in the case of garnishment under an attachment. **Alternatively, the garnisher may obtain service upon the garnishee by certified mail. In such cases, it shall 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 described in section 525.050. The garnisher shall thereafter file with the clerk of the court issuing the order the return receipt signed by the garnishee. When service on the garnishee is obtained by certified mail, no subsequent proceeding against the garnishee may be undertaken unless the party filing the garnishment has filed the signed return receipt with the court. All sums paid on behalf of the garnisher to the United States Postal Service or a private mail provider for certified mail shall be treated as and included in post-judgment costs.**

2. **Within five days of notice of service upon the garnishee, the garnisher shall serve a copy of the summons and writ on the judgment debtor. The writ shall be served by delivering it to the judgment debtor as provided in the supreme court rule by mailing the documents to the debtor's last known address. Service by mail shall be complete upon mailing. At the time of mailing, a certificate of service shall be filed with the court. The certificate shall 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.**

525.040. 1. Notice of garnishment, served as provided in sections 525.010 to 525.480 shall have the effect of attaching all personal property, money, rights, credits, bonds, bills, notes, drafts, checks or other choses in action of the defendant in the garnishee's possession or charge,

4 or under his **or her** control at the time of the service of the garnishment, or which may come into  
5 his **or her** possession or charge, or under his **or her** control, or be owing by him **or her**, between  
6 that time and the time of filing his **or her** answer, **or in the case of a continuous wage**  
7 **garnishment, until the judgment is paid in full or until the employment relationship is**  
8 **terminated, whichever occurs first**; but he **or she** shall not be liable to a judgment in money  
9 on account of such bonds, bills, notes, drafts, checks or other choses in action, unless the same  
10 shall have been converted into money since the garnishment, or he **or she** fail, in such time as  
11 the court may prescribe, to deliver them into court, or to the sheriff or other person designated  
12 by the court.

13 **2. Writs of garnishment which would otherwise have equal priority shall have**  
14 **priority according to the date of service on the garnishee. If the employee's wages have**  
15 **been attached by more than one writ of garnishment, the employer shall inform the**  
16 **inferior garnisher of the existence and case number of all senior garnishments.**

525.070. Whenever any property, effects, money or debts, belonging or owing to the  
2 defendant, shall be confessed, or found by the court or jury, to be in the hands of the garnishee,  
3 the garnishee may, at any time before final judgment, discharge himself **or herself**, by paying  
4 or delivering the same, or so much thereof as the court shall order, to the sheriff [or] , to the  
5 court, **or when applicable, to the attorney for the party on whose behalf the order of**  
6 **garnishment issued**, from all further liability on account of the property, money or debts so paid  
7 or delivered.

525.080. 1. If it appear that a garnishee, at or after his or her garnishment, was possessed  
2 of any property of the defendant, or was indebted to him **or her**, the court, or judge in vacation,  
3 may order the delivery of such property, or the payment of the amount owing by the garnishee,  
4 to the sheriff [or] , into court, **or to the attorney for the party on whose behalf the order of**  
5 **garnishment issued**, at such time as the court may direct; or may permit the garnishee to retain  
6 the same, upon his or her executing a bond to the plaintiff, with security, approved by the court,  
7 to the effect that the property shall be forthcoming, or the amount paid, as the court may direct.  
8 Upon a breach of the obligation of such bond, the plaintiff may proceed against the obligors  
9 therein, in the manner prescribed in the case of a delivery bond given to the sheriff.

10 **2. Notwithstanding subsection 1 of this section, when property is protected from**  
11 **garnishment by state or federal law including but not limited to federal restrictions on the**  
12 **garnishment of earnings in Title 15, U.S.C. Sections 1671 to 1677 and Old Age, Survivors and**  
13 **Disability Insurance benefits as provided in Title 42, U.S.C. Section 407, such property need not**  
14 **be delivered to the court, or to any other person, by the garnishee to the extent such protection**  
15 **or preemption is applicable.**

525.230. [1. The court shall make the garnishee a reasonable allowance] **The garnishee may deduct a one-time sum not to exceed twenty dollars, 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 [paid out of the funds or proceeds of the property or effects confessed in his or her hands. The reasonable allowances shall include any court costs, attorney's fees and any other bona fide expenses of the garnishee.**

2. The court also shall allow the garnishee, in addition to the reasonable allowance for his or her trouble and expenses in answering the interrogatories, to collect an administrative fee consisting of the greater of eight dollars or two percent of the amount required to be deducted by any court-ordered garnishment or series of garnishments arising out of the same judgment debt. Such fee shall be for the trouble and expenses in administering the notice of garnishment and paying over any garnished funds available to the court. The fee shall be withheld by the employer from the employee, or by any other garnishee from any fund garnished, in addition to the moneys withheld to satisfy the court-ordered judgment. Such fee shall not be a credit against the court-ordered judgment and shall be collected first] **withheld from any funds garnished, in addition to the moneys withheld to satisfy the court-ordered judgment. Such fee shall not be a credit against the court-ordered judgment and shall be collected first. The garnishee may file a motion with the court for additional costs, including attorney's fees, reasonably incurred in answering the interrogatories in which case the court may make such award as it deems reasonable. The motion shall be filed on or before the date the garnishee makes payment or delivers property subject to garnishment to the court.**

525.310. 1. [When a judgment has been rendered against an officer, appointee or employee of the state of Missouri, or any municipal corporation or other political subdivision of the state, the judgment creditor, or his attorney or agent, may file in the office of the clerk of the court before whom the judgment was rendered, an application setting forth such facts, and that the judgment debtor is employed by the state, or a municipal corporation or other political subdivision of the state, with the name of the department of state or the municipal corporation or other political subdivision of the state which employs the judgment debtor, and the name of the treasurer, or the name and title of the paying, disbursing or auditing officer of the state, municipal corporation or other political subdivision of the state, charged with the duty of payment or audit of such salary, wages, fees or earnings of such employee, and upon the filing of such application the clerk shall issue a writ of sequestration directed to the sheriff or other officer authorized to execute writs in the county in which such paying, disbursing or auditing officer may be found and the sheriff or other officer to whom the writ is directed shall serve a true copy thereof upon such paying, disbursing or auditing officer named therein, which shall

15 have the effect of attaching any and all salary, wages, fees or earnings of the judgment debtor,  
16 which are not made exempt by virtue of the exemption statutes of this state and are not in excess  
17 of the amount due on the judgment and costs, then due and payable, from the date of the writ to  
18 the return day thereof.

19         2. The paying, disbursing or auditing officer charged with the duty of payment or audit  
20 of the salary, wages, fees or earnings of the judgment debtor shall deliver to the sheriff or officer  
21 serving the writ the amount, not to exceed the amount due upon the judgment and costs, of the  
22 salary, wages, fees or earnings of the judgment debtor not made exempt by virtue of the  
23 exemption statutes of this state, as the same shall become due to the judgment debtor. The  
24 paying, disbursing or auditing officer shall pay to the judgment debtor the remaining portion of  
25 his salary, wages, fees or earnings, as the same shall become due to the judgment debtor. The  
26 sheriff, or officer serving the writ, shall provide to the paying, disbursing or auditing officer  
27 along with the writ sufficient information to compute the amount which shall be delivered to the  
28 sheriff or officer serving the writ. Neither the state, municipal corporation or other political  
29 subdivision of the state, nor the paying, disbursing or auditing officer shall be liable for the  
30 payment of any amount above the amount delivered to the sheriff or officer serving the writ if  
31 the computation of the amount delivered is in accordance with the information provided with the  
32 writ.

33         3. The sheriff or officer serving such writ shall endorse thereon the day and date he  
34 received the same, and upon receiving any amount in connection with the writ, shall issue his  
35 receipt to such paying, disbursing or auditing officer therefor. All amounts delivered to the  
36 sheriff, or officer serving said writ, in connection with the writ, or so much thereof as shall be  
37 necessary therefor, shall be applied to the payment of the judgment debt, interest and costs in the  
38 same manner as in the case of garnishment under execution. The sheriff or other officer serving  
39 the writ shall make his return to the writ showing the manner of serving the same, and he shall  
40 be allowed the same fees therefor as provided for levy of execution, and the writ shall be  
41 returnable in the same manner as the execution issued out of the court in which the judgment was  
42 rendered. Nothing in this section shall deprive the judgment debtor of any exemptions to which  
43 he may be entitled under the exemption laws of this state, and the same may be claimed by him  
44 to the sheriff or other officer serving the writ at any time on or before the return day of the writ  
45 in the manner provided under the exemption laws of this state. It shall be the duty of such sheriff  
46 or other officer serving the writ, at the time of the service thereof, to apprise the judgment debtor  
47 of his exemption rights, either in person or by registered letter directed to the judgment debtor  
48 to his last known address.] **The provisions of this section constitute a waiver of sovereign**  
49 **immunity with respect to garnishment of the pay of state, municipal, or other political**  
50 **subdivision employees. The state, municipal, or other political subdivision employer served**

51 with a garnishment shall have the same duties and obligations as those imposed upon a  
52 private employer when served with garnishment.

53       2. Pay of any officer, appointee, or employee of the state of Missouri, or any  
54 municipal corporation or other political subdivision of the state, shall be subject to  
55 garnishment to the same extent as in any other garnishment. All garnishments against  
56 such employee shall proceed in the same manner as any other garnishment, except as  
57 provided in subsection 3 of this section.

58       3. Service of legal process to which a department, municipal corporation, or other  
59 political subdivision of the state is subject under this section may be accomplished by  
60 certified mail, return receipt requested, or by personal service upon:

61       (1) The appropriate agent designated for receipt of such service of process; or

62       (2) The head of such department, municipal corporation, or other political  
63 subdivision of the state if no agent has been so designated.

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