

HB 1612 -- GARNISHMENTS

SPONSOR: McGaugh

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.

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.