

HB 1680 -- GARNISHMENTS AND LIENS

SPONSOR: Englund

This bill changes the laws regarding administrative garnishment and liens. In its main provisions, the bill:

(1) Allows the Director of the Department of Revenue to issue an order directing any person to withhold and pay to the department assets belonging to, due, or to become due to the delinquent taxpayer if the director has filed a certificate of lien in the circuit court. The order must be served on the person by regular or certified mail, return receipt requested, or by electronic means if the person has previously provided written consent to electronic service. The order is binding on the employer or other payer upon receipt;

(2) Prohibits the director or director's designee from issuing an administrative garnishment if the taxpayer has entered into a written agreement with the department for an alternative payment arrangement and the taxpayer is in compliance with that agreement;

(3) Allows the person in possession of the assets of the delinquent taxpayer to deduct a sum of up to \$6 per month for costs. The total amount withheld must not exceed the limitations set forth in the federal Consumer Credit Protection Act;

(4) Specifies that a copy of the withholding order must be mailed to the taxpayer at the taxpayer's last known address and must advise that the administrative garnishment has commenced and the procedures to contest the garnishment by requesting a hearing within 30 days from the mailing or electronic issuance of the notice;

(5) Specifies that the certified records of the department constitute prima facie evidence that the withholding order is valid and enforceable. Once a prima facie case is established, the obligor may only assert as a defense a mistake as to the identity of the taxpayer, a mistake as to payments made, or the existence of an alternative payment agreement for which no default has occurred;

(6) Specifies what an employer or other payer must withhold and how to transmit any payments;

(7) Specifies that an order served on a person other than an employer or other payer is a lien against any money belonging to the taxpayer that is in the possession of the person on the date of service;

(8) Requires a withholding order issued under these provisions to have priority over any other legal process under state law against the same income or other assets, except the withholding for alimony or child support;

(9) Releases a person who complies with a withholding order from liability to the taxpayer or any other person claiming rights derived from the taxpayer for wrongful withholding;

(10) Prohibits an employer from discharging, refusing to hire or otherwise disciplining an employee as a result of an order to withhold. If an employee is discharged within 30 days of the date upon which an order to withhold is to take effect, a rebuttable presumption that the discharge was the result of the order arises. The presumption must be overcome only by clear, cogent, and convincing evidence produced by the employer that the employee was not terminated because of the order to withhold;

(11) Requires an employer to notify the department if the taxpayer's employment is terminated and provide the department with specified information;

(12) Specifies that if a certificate of lien was erroneously or improvidently filed the director must make a determination in writing that the record be expunged and give written notice to the recorder of deeds and the circuit clerk;

(13) Permits the director to file for record in the recorder's office of any county in which a delinquent taxpayer resides, owns property, or has a place of business a certificate of lien specifying the amount of tax, interest, additions to tax, or penalty due and the name of the person liable for the same;

(14) Specifies that a lien arises on the date the assessment becomes final and must be continuing and attach to real or personal property or interest in real or personal property owned by the taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien;

(15) Specifies that a lien must expire 10 years after the certificate of lien was filed, unless within that 10 year period the certificate lien was refiled by the director with the recorder. A certificate of lien must not be refiled more than once;

(16) Specifies how a taxpayer affected by an erroneously or improvidently filed lien may notify the director and what steps the director must take to ensure an erroneously or improvidently filed lien is expunged;

(17) Specifies how to release, either wholly or partly, a lien imposed under these provisions; and

(18) Specifies that each county recorder must receive a fee of \$3 which must be charged for the filing of each certificate of lien, and a fee of \$1.50 for each release of lien filed for record.