

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Wilson

HOUSE BILL 1829

"AN ACT TO AMEND AND CLARIFY THE GARNISHMENT STATUTES OF ARKANSAS; TO REQUIRE NOTICE TO DEBTORS OF GARNISHMENTS; TO AMEND GARNISHMENT PROCEDURES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 1 of Act 115 of 1889, as amended, the same being Arkansas Statute 31-501, is hereby amended to read as follows:

"Section 1. (A) GROUNDS. In any action in any court when a party has obtained a judgment before any such court and the party has reason to believe that any other person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits and effects belonging to such defendant, the party may request a writ of garnishment, setting forth the judgment, and commanding the officer charged with the execution thereof to summon the person therein named, as garnishee, to appear at the return day of such writ and answer what goods, chattels, moneys, credits and effects he may have in his hands or possession belonging to the defendant to satisfy the judgment, and answer further interrogatories as may be exhibited against him.

(B) (1) CONTENTS OF WRIT OF GARNISHMENT. Either the writ of garnishment or allegations attached thereto shall separately list the specific dollar amount which the judgment creditor claims to be due from the judgment debtor to the judgment creditor for each of the following items which are applicable:

(a) The amount adjudged due from the judgment debtor to the judgment creditor in the judgment sought to be enforced in the writ of garnishment, including the amount of attorney's fees, court costs, and service fees adjudged payable from the judgment debtor to the judgment creditor including any postjudgment interest up to the date of garnishment.

(b) The fee of the clerk for issuing the writ of garnishment.

(c) The fee of the sheriff or other authorized process server

for serving the writ of garnishment upon the garnishee.

(d) Any other amounts the judgment creditor claims from the judgment debtor as an expense of prosecuting the writ of garnishment.

(e) The total of subparagraphs (B) (1) (a) through (B) (1) (d).

(2) Either the writ of garnishment or allegations attached thereto shall state that the garnishee is required to file an answer within twenty (20) days after service of the writ of garnishment and shall notify the garnishee that, in case of failure to do so, judgment on the writ of garnishment by default may be entered against the garnishee which shall include the amount of the judgment, plus court costs, sheriff and clerk's fees, pre- and post-judgment interest and any attorney's fees awarded by the judgment.

(3) This Section does not preclude the inclusion in a writ of garnishment, or allegations attached thereto, any information or instructions relevant to the proceedings, in addition to that required to be included by this section, and not otherwise inconsistent therewith.

(C) (1) PROPERTY OR INDEBTEDNESS SUBJECT TO GARNISHMENT. All property of the judgment debtor, whether tangible or intangible, in the possession or under the control of the garnishee on the date of service of the writ of garnishment upon the garnishee, or any indebtedness, whether tangible or intangible, of the garnishee to the judgment debtor, as of the date of the service of the writ of garnishment; and any salary, wages or other compensation subject to the provisions of subsections (b) through (j) of Section 1 of Act 794 of 1981 as to continuing garnishment, as therein provided, shall be subject to garnishment.

(2) Notwithstanding subparagraph (1) of this subsection (C), a judgment debtor may claim as exempt from garnishment any property or indebtedness that may be exempt from garnishment under federal law, or state constitution or state law, applicable to the judgment debtor on the date of the service of the writ of garnishment, provided the judgment debtor complies with the procedures prescribed in subsection (D) of this section.

(D) (1) The judgment creditor is responsible for mailing a copy of the writ of garnishment and notice of exemption to the judgment debtor on or before the same day it serves, delivers, files, or mails for the purpose of filing, the writ of garnishment on the garnishee, upon each judgment debtor who is an individual and whose property is subject to garnishment by said writ. The form of the notice of exemption and pending levy, which is set out

in subsection (H) of this Section shall inform the judgment debtor that the judgment creditor intends to seek satisfaction of any judgment rendered in its favor against the judgment debtor out of the judgment debtor's personal property in the possession or control of the garnishee. The notice shall also inform the judgment debtor of his right to claim exempt property.

(2) Either the writ of garnishment or the notice of exemption and pending levy in such garnishment proceeding against the personal property of a judgment debtor who is a natural person shall contain the following:

- (a) The judgment creditor's name and business address;
- (b) The original amount of the judgment;
- (c) The amount, if any, paid on the principal of the judgment as of the date of the notice;
- (d) The principal balance due on the judgment;
- (e) The interest, if any, due on the judgment;
- (f) Additional fees and costs, if any, including attorney's fees, court costs, and costs of issuing the writ and of serving notice;
- (g) The total amount due and owing on the judgment;
- (h) The date of entry of the judgment;
- (i) The name of the court in which the judgment was entered;
- (j) A statement of the judgment debtor's right to claim any property levied upon as exempt, if applicable;
- (k) the method of claiming an exemption and the time limitation therefor; and
- (l) The right to a hearing on any claim of exemption and the time within which a hearing must be requested and held.

(m) A certification statement by the judgment creditor of service of the notice of exemption and writ of garnishment on the judgment debtor listing the mailing address and date of mailing.

(E) (1) METHOD OF SERVICE OF NOTICE UPON DEBTOR. Service of the notice of exemption and pending levy and copy of the writ of garnishment required by subsection (D) of this Section upon the judgment debtor shall be made by first class mail, postage prepaid, at the last known residential address of the judgment debtor; however, if the mail is returned as "undeliverable" by the postal service, or if the residence address of the judgment debtor is not discoverable after diligent search, then notice shall be directed to the judgment debtor by mail in care of his/her place of employment.

(2) The judgment creditor shall not be required to mail another writ of garnishment and the notice of exemption and pending levy to the judgment debtor for future garnishments on the same debt within twelve months of the original garnishment and notices. If further garnishments are filed thereafter, then such notice shall be required annually.

(F) (1) JUDGMENT DEBTOR TO FILE WRITTEN CLAIM OF EXEMPTION. Within ten (10) days after being served with the notice of exemption and pending levy required by subsection (D) of this Section, the judgment debtor may make the file with the clerk of the court a written claim of exempt property, signed by the judgment debtor under oath, setting forth in reasonable detail a description of the property claimed to be exempt and the grounds for exemption. If valuation of said property is a ground for exemption, the valuation of items of property claimed as exempt shall be listed. The judgment debtor shall serve a copy of the exemption notice on the garnishee and judgment creditor or on their attorneys of record. Service shall be made by mail or in person. This notice must be mailed to the garnishee and judgment creditor on the same day that the claim of exemption is filed with the clerk of the court.

(2) Upon the filing of a written claim of exempt property, all further proceedings with relation to the sale or other disposition of the subject property of the judgment debtor shall be stayed until the claim of exempt property is heard and determined.

(3) Notwithstanding the filing by the judgment debtor of a written claim of exemption, the lien of garnishment shall continue in full force and effect until released by order of the court or upon motion of the judgment creditor, approved by the court.

(G) (1) (a) HEARING OF CLAIM OF EXEMPTION. Upon the filing of a claim of exemption pursuant to subsection (F) of this Section, the court shall set a time for the hearing of the claim which shall not be more than ten (10) calendar days after filing of the claim of exemption. If the tenth day falls on a holiday or weekend, then the hearing shall be set on the next business day following. The clerk of the court shall immediately inform the judgment creditor or his attorney of record and the judgment debtor or his attorney of record by telephone, mail, or in person of the date and time set for such hearing. No hearing shall be required and a writ of supersedeas shall issue unless the judgment creditor files, in writing, within five (5) days a statement that the judgment debtor's claim of exemptions is contested.

(b) The certificate of the clerk of the court that service of notice of the hearing has been made in the manner and form stated in this subsection (G) which certificate has been attached to the court file, shall constitute prima facie evidence of service, and the certificate of service filed with the clerk of the court is a sufficient return of service.

(c) The clerk may charge a fee of \$2.00 for the filing of a request for hearing on exemptions.

(2) At the hearing the court shall determine whether the property held by the garnishee is exempt and shall enter an order of judgment setting forth the determination of the court. The judgment debtor shall bear the burden of proving the amount and extent of applicable exemptions.

(3) Any order or judgment entered by the court as provided for in this subsection (G) is a final judgment or order for the purposes of appellate review.

(H) No summons in garnishment shall be issued or served unless a notice of exemptions and claim for exemption form are attached. The notice shall be in substantially the following form:

'STATE OF ARKANSAS
COUNTY OF _____ COURT

Plaintiff(s) V. _____
Defendant(s)
Case No. _____
Garnishee

NOTICE TO JUDGMENT DEBTOR
HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT

The attached Writ of Garnishment has been issued on request of a creditor who holds a judgment against you. The Writ of Garnishment may cause your property or wages to be held or taken to pay the judgment.

State and Federal law and the State constitution provide that certain property and wages cannot be taken in garnishment, depending on the facts in each case. Such property, if it qualifies, is said to be 'exempt'. For example, under the Arkansas constitution and

state law, you may be able to claim as exempt all or part of your wages or other personal property. As another example, under federal law the following are also exempt from garnishment:

Social Security, SSI, Veterans benefits, AFDC (Welfare), unemployment compensation, and worker's compensation

There is no exemption solely because you are having difficulties in paying your debts. Nor does your claim of exemption entitle you to a new trial on the debt.

If you claim an exemption, you should (1) fill out the claim for exemption form and (2) deliver or mail the form to the clerk's office of this court. You have a right to a hearing within ten (10) business days from the date you file your claim with the court. If the creditor is asking that your wages be withheld, the method of computing the amount of wages which are exempt from garnishment by law is indicated on the Summons and Garnishment attached. You do not need to file any claim for exemption to receive the exemption required by federal law, but if you believe the wrong amount is being withheld by your employer, you may file a claim for exemption.

On the day set for hearing you should come to court ready to explain why your property might be exempt, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time, without good cause, and prove to the satisfaction of the court that your property should be exempt, you may lose some of your rights.

It may be helpful to you to seek the advice of an attorney in this matter, although you are not required to have an attorney. If you cannot afford a privately-employed lawyer, contact your local Bar Association or ask the clerk's office about any legal services programs available in your area for qualified persons.

REQUEST FOR HEARING-GARNISHMENT EXEMPTIONS CLAIM

I claim that the exemption(s) from garnishment which are listed below apply in this case:

(attach additional sheet if needed)

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given me at:

Telephone Number (Home)

Address Telephone Number (Job)

The statements made in this request are true to the best of my knowledge and belief.

JUDGMENT DEBTOR (PRINT NAME)

Date SIGNATURE OF JUDGMENT DEBTOR

SUBSCRIBED AND SWORN to before me this ____ day of _____
19____.

NOTARY PUBLIC

(My commission expires: _____)

HEARING DATE: _____ PLACE: _____

TIME: _____

Clerk of the Court

SECTION 2. SERVICE OF WRIT. Section 2 of Act 115 of 1889, the same being Arkansas Statute 31-504, is hereby amended to read as follows:

"Section 2. Such writs shall be directed, served and returned in the same manner as writs of summons. Service on a bank or savings and loan association, as garnishee, may be made by serving any officer or any employee with managerial authority."

SECTION 3. ANSWERS TO INTERROGATORIES. Section 4 of Act 115 of 1889, the same being Arkansas Statute 31-506, is hereby amended to read as follows:

"Section 4. (a) Such garnishee shall on the return day named in such

writ, but no later than twenty (20) days after service, exhibit and file, under oath, full, direct and true answers to all such allegations and interrogatories as may have been exhibited against him by the plaintiff. The garnishee shall disclose, in its answer, among other things, whether it holds any wages, salary, commissions or other compensation for services due or payable to the judgment debtor, including pay periods and dates, and the amount of disposable earnings it holds, as defined under applicable laws.

(b) JUDGMENT ON GARNISHEE'S ANSWER. If the judgment debtor files no claim of exemptions within the 10-day period prescribed by subsection (F) of section 1 of Act 115 of 1889, as amended, the court may enter judgment on the garnishee's answer. If the garnishment is a continuing garnishment applicable to wages, salary, commissions, or other compensation for services, as provided in subsection (C) (2) of section 1 of Act 794 of 1981, the court may authorize or direct in the judgment the dates and manner of remittance by the garnishee to the judgment creditor, or his attorney; or the court may approve and authorize voluntary arrangements agreed to by the judgment creditor and garnishee, reasonable and necessary for satisfaction of the debtor's judgment."

SECTION 4. INSUFFICIENCY OF ANSWER. Section 5 of Act 115 of 1889, the same being Arkansas Statue 31-508, is hereby amended to read as follows:

"Section 5. If the garnishee shall file his answer to the interrogatories exhibited, and the plaintiff shall deem such answers untrue or insufficient, he may deny such answer, and cause his denial to be entered on the record within 20 days after service of the garnishee's answer upon the plaintiff or plaintiff's agent or attorney; and the court, if neither party requires a jury, shall proceed to try the facts put in issue by the answer of the garnishee and the denial of the plaintiff. If the plaintiff shall fail to file the denial within such 20-day period, the plaintiff shall be deemed to have accepted the garnishee's answer as true and the garnishee shall be discharged from further liability on the writ to which the garnishee's answer was filed."

SECTION 5. WAGE GARNISHMENTS. Section 1 of Act 794 of 1981, the same being Arkansas Statue 31-522, is hereby amended to read as follows:

"Section 1. (a) As an alternative to garnishment of wages, salaries, commissions or other compensation for services (earnings) and subject to prior

written consent of the employer and judgment creditor, the employee (judgment debtor) may consent in writing to the withholding from his earnings by his employer of specified amounts to be paid periodically to the judgment creditor toward satisfaction of the total amount due upon its judgment debt and costs; or to extend until the expiration of the employer's payroll period immediately prior to three (3) calendar months after the date of such written agreement, whichever occurs first. Such agreement shall be binding but shall terminate as soon as the judgment and costs are paid in full; or until the employment relationship is terminated or the underlying judgment is vacated or modified. So long as such agreement remains in effect, it shall have priority over any writ of garnishments by other judgment creditors subsequent to the date of any agreement executed under the provisions of this subsection.

(b) Unless a judgment debtor has voluntarily entered into the withholding agreement provided in subsection (a) above, a writ of garnishment shall be a lien and a continuing levy upon the earnings due or to become due to the judgment debtor at the time the writ of garnishment is served on the garnishee, except for any exempt portions of said earnings. The lien shall continue until such time as the employment relationship is terminated, the underlying judgment is vacated modified or satisfied in full, the writ is dismissed or ninety days have expired since service of the writ, whichever is sooner; except that a continuing garnishment may be suspended for a specified time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered and a copy delivered by the judgment creditor to the garnishee.

(c) Garnishment pursuant to subsection (b) of this section shall apply only to proceedings against the earnings of a judgment debtor who is a natural person.

(d) Any earnings owed by the garnishee to the judgment debtor at the time of service of the writ of continuing garnishment upon the garnishee and all earnings accruing from the garnishee to the judgment debtor from such date of service up to and including the nintieth day thereafter shall be subject to the process of continuing garnishment; subject, however, to applicable exemptions under state or federal law or constitutional provision.

(e) Only one writ of continuing garnishment against earnings due the judgment debtor shall be satisfied at one time. When more than one writ of

continuing garnishment has been issued against earnings due the same judgment debtor they shall be satisfied in the order of service on the garnishee. Except as provided hereafter in this subsection, a lien and continuing levy obtained pursuant to this subsection shall have priority over any subsequent garnishment lien or wage attachment.

(f) Where a continuing garnishment has been suspended for a special period of time by agreement of the parties pursuant to the provisions of this subsection, such suspended continued garnishment shall have priority over any writ of continuing garnishment served on the garnishee after such suspension has expired.

(g) Notwithstanding any other provision of this subsection, a continuing garnishment obtained pursuant to a court order for the satisfaction of debts or judgments for child support, or taxes, shall have priority over any other continuing garnishment.

(h) Any writ of continuing garnishment served upon a garnishee where any previous writ is still in effect shall be answered by the garnishee with a statement that he has been served previously with one or more writs of continuing garnishment against earnings due the judgment debtor and specifying the dates on which all such liens are expected to terminate.

(i) Upon the termination of a lien and continuing levy obtained pursuant to this subsection, any other writ of continuing garnishment which has been issued or which is issued subsequently against earnings due the judgment debtor shall have priority in the order of service on the garnishee, and no priority shall be given to any previous continuing lienholder whose lien has terminated. The person who serves a writ of continuing garnishment on a garnishee shall note the date and time of such service.

(j) In a case of continuing garnishment, the judgment creditor shall serve notice on the debtor in the same manner provided by law for notice of any other garnishment. The judgment creditor receiving payments pursuant to a continuing garnishment, if requested by either the garnishee or the judgment debtor, shall furnish evidence, itemization, date of receipt and current balance due on the judgment, and, if requested, partially satisfy the judgment record to the extent of all such payments already received and credited. The continuing garnishment shall terminate if the judgment creditor fails or refuses, within a reasonable period of time after being requested, to furnish such information either to the garnishee or the judgment debtor, or partially

satisfy the judgment record."

SECTION 6. The following are hereby repealed: (a) Act 177 of 1925, the same being Arkansas Statutes 31-515 through 31-518;

(b) Section 3 of 794 of 1981, the same being Arkansas Statute 31-524.

SECTION 7. All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 8. It has been found and so determined by the General Assembly of the State of Arkansas that a recent federal court decision has held that procedures for giving notice to judgment debtors of garnishments, under laws heretofore in effect, are insufficient to afford due process, requiring amendment of our laws in compliance with standards prescribed by federal court order; and that other garnishment statutes are in need of clarification for the benefit of the citizens of Arkansas, and the orderly enforcement of judgments of Arkansas courts. An emergency is therefore declared to exist, and this Act shall take effect and be in force from and after its passage.

