

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Shaver**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO PROVIDE NOTICE TO A PARTY SUBJECT TO A WRIT OF
9 EXECUTION OR ORDER OF ATTACHMENT OF THEIR RIGHT TO CLAIM
10 EXEMPT PROPERTY; AND FOR OTHER PURPOSES."

11

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

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14 SECTION 1. The following procedure shall be followed in issuing writs
15 of execution or orders of attachment:

16 (1) (A) NOTICE TO DEFENDANT. Upon application for a writ of execution
17 or order of attachment by any qualified party or judgment creditor, the clerk
18 of the court shall attach to said writ or order the following "Notice to
19 Defendant":

20 "NOTICE TO DEFENDANT OF YOUR RIGHT TO KEEP CERTAIN PROPERTY FROM BEING LEVIED
21 UPON

22 The Writ of Execution or Order of Attachment delivered to you with this
23 Notice means that property belonging to you has been seized in order to secure
24 payment of a potential court judgment against you or pay a court judgment
25 against you. HOWEVER, YOU MAY BE ENTITLED TO SELECT THE PROPERTY TO BE TAKEN,
26 SO READ THIS NOTICE CAREFULLY.

27 State and federal laws say that certain property may not be taken to
28 satisfy certain types of court judgments. Such property is said to be
29 'exempt' from execution or attachment.

30 For example under the Arkansas Constitution and state law, you will be
31 able to claim as exempt all or part of your wages or other personal property.

32 As another example, under federal law the following are also exempt from
33 execution or attachment:

34 Social Security, SSI, Veteran's benefits, AFDC (welfare), unemployment
35 compensation, and workers' compensation.

1 You have a right to ask for a court hearing to claim these or other
2 exemptions. If you need legal assistance to help you try to save your wages or
3 property from being seized, you should see a lawyer. If you can't afford a
4 private lawyer, contact your local bar association or ask the clerk's office
5 about any legal services program in your area."

6 (B) As an alternative, the "Notice to Defendant" may be
7 incorporated as a part of the writ or order.

8 (2) SERVICE AND RETURN. Writs of execution or orders of attachment
9 together with the "Notice to Defendant" shall be directed, served, and
10 returned in the same manner as writs of summons.

11 (3) HEARING. Upon receipt of the writ of execution or order of
12 attachment, the judgment debtor is entitled to a prompt hearing in which to
13 claim exemptions. Upon filing a schedule of property, a hearing will be held
14 within the time required under A.C.A. §16-66-211 to determine the validity of
15 the claimed exemptions. No hearing shall be required and a writ of
16 supersedeas shall issue unless the qualified party or judgment creditor files,
17 within five (5) days, a statement in writing that the judgment debtor's claim
18 of exemption is contested.

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20 SECTION 2. All provisions of this act of a general and permanent nature
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
22 Revision Commission shall incorporate the same in the Code.

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24 SECTION 3. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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30 SECTION 4. All laws and parts of laws in conflict with this act are
31 hereby repealed.

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33 SECTION 5. Emergency. It is hereby found and determined by the General
34 Assembly that the Arkansas Supreme Court held in Duhon v. Gravett, 302 Ark.
35 358 that Arkansas' postjudgement execution laws are violative of the due

1 process clause of the 14th Amendment to the United States Constitution because
2 they fail to provide the required notice and hearing to judgement debtors and
3 until corrective legislation is passed, there is no constitutional mechanism
4 for postjudgement executions in Arkansas. Therefore, an emergency is hereby
5 declared to exist, and this act being immediately necessary for the
6 preservation of the public peace, health, and safety shall be in effect from
7 the date of its passage and approval.

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