

As Engrossed: 3/27/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL 2009

4 **By: Representatives Allen and Mitchum**

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For An Act To Be Entitled

8 "AN ACT TO AMEND AND CLARIFY ARKANSAS LAWS ON JUDGMENTS

9 AGAINST GARNISHEES; AND FOR OTHER PURPOSES."

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

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13 SECTION 1. Arkansas Code 16-110-407 is hereby amended to read as

14 follows:

15 "16-110-407. Failure of garnishee to answer.

16 (a) If any garnishee, after having been duly served with a writ of
17 garnishment, shall neglect or refuse to answer the interrogatories exhibited
18 to him, on or before twenty (20) days after service of the writ, the court,
19 upon motion of the plaintiff, may issue a notice to the garnishee, requiring
20 him to appear personally at a hearing not later than ten (10) days after
21 receipt of said notice (or at such other later date as the court may fix) and
22 answer the allegations and interrogatories of the plaintiff. Service of the
23 notice may be made either by the clerk, or by the plaintiff, by any method
24 prescribed by Arkansas Rules of Civil Procedure for service of notice.

25 (b) The court, after hearing and reviewing the evidence and testimony
26 of both parties, may then render judgment against the garnishee in such
27 amount, if any, as the court finds the garnishee held at the time of service
28 of the writ of garnishment, of any goods, chattels, wages, credits and effects
29 belonging to the defendant, not otherwise exempt under state or federal law;
30 together with attorney's fees and such other reasonable expenses incurred by
31 the plaintiff, as the court may deem appropriate under the facts and
32 circumstances."

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34 SECTION 2. This act shall neither amend nor repeal Section 16-110-406,

35 Arkansas Code, 1987.

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SECTION 3. Arkansas Code Annotated §16-110-401 is amended to read as follows:

"16-110-401. Grounds.

(a) In all cases where any plaintiff may begin an action in any court of record, or before any justice of the peace, or may have obtained a judgment before any of the courts, and the plaintiff shall have 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 the defendant, the plaintiff may sue out a writ of garnishment, setting forth the claim, demand, or judgement and commanding the officer charged with the execution thereof to summon the person therein named as garnishee, to appear at the return day of the 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 such further interrogatories as may be exhibited against him. Further, the writ of garnishment served on the garnishee shall contain one of the following notices:

NOTICE TO NON-EMPLOYER GARNISHEE

FAILURE TO ANSWER THIS WRIT WITHIN 20 DAYS OR FAILURE OR REFUSAL TO ANSWER THE INTERROGATORIES ATTACHED HERETO SHALL RESULT IN THE COURT ENTERING A JUDGMENT AGAINST YOU AND YOU BECOMING PERSONALLY LIABLE FOR THE FULL AMOUNT SPECIFIED IN THIS WRIT TOGETHER WITH COSTS OF THIS ACTION AS PROVIDED BY ARKANSAS CODE ANNOTATED §16-110-407.; or,

NOTICE TO EMPLOYER GARNISHEE

FAILURE TO ANSWER THIS WRIT WITHIN 20 DAYS OR FAILURE OR REFUSAL TO ANSWER THE INTERROGATORIES ATTACHED HERETO SHALL RESULT IN THE COURT ENTERING A JUDGMENT AGAINST YOU AND YOU BECOMING PERSONALLY LIABLE FOR THE AMOUNT OF THE NON-EXEMPT WAGES OWED THE DEBTOR-EMPLOYEE ON THE DATE YOU WERE SERVED THIS WRIT AS PROVIDED BY ARKANSAS CODE ANNOTATED §16-110-407. (This notice shall be in addition to the notice required to employer garnishees under Arkansas Code Annotated 16-110-416.)

(b) However, if the garnishment is issued before the judgment, the plaintiff shall give bond in double the amount for which the garnishment is issued that he will pay the defendant all damages that he may sustain by the

1 wrongful bringing of his suit or the issuing of the garnishment."

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

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5 SECTION 5. The provisions of this act shall be effective with respect
6 to any writs of garnishment issued after the effective date of this act,
7 regardless of the date of judgment on the debt or obligation of the judgment
8 debtor.

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10 SECTION 6. All provisions of this act of a general and permanent
11 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
12 Code Revision Commission shall incorporate the same in the Code.

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14 SECTION 7. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 8. *Emergency Clause. It is found and determined by the General*
21 *Assembly that the Supreme Court of Arkansas held in Bob Hankins Distributing*
22 *Company v. Willie Francies May, 90-227, Opinion Delivered March 18, 1991, that*
23 *the Arkansas garnishment laws violate a garnishee's right to due process of*
24 *law as guaranteed by the fourteenth amendment to the United States*
25 *Constitution because they do not provide for an adequate notice to garnishees*
26 *that they may be liable for the judgment against the debtor if they fail to*
27 *properly answer the writ of garnishment. Therefore, an emergency is declared*
28 *to exist and this act being necessary for the immediate preservation of the*
29 *public peace, health and safety shall be in full force and effect from and*
30 *after its passage and approval.*

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33 /s/ J. Allen and T. Mitchum
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