

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1268**

**Bill Subtitle: CONCERNING THE PROCEDURES FOR ISSUING A WRIT OF GARNISHMENT.**

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**Basic Change :** Sponsor: Rep. Broadaway

HB1268 amends the procedure for issuing writs of garnishment. The bill changes state law to reflect actual practice in the issuance of writs of garnishment. Under current law, the circuit clerk is supposed to add the certificate of service statement to the writ. However, in practice, the judgment creditor provides the certificate of service statement when it mails a copy of the writ of garnishment to the judgment debtor and garnishee. The bill reflects the practice of the writ of garnishment being issued (file-marked) by the court clerk before being sent to anyone. In the bill, "residence" is changed to the term "last known address" of the judgment debtor to provide clarity to judgment creditors of proper service location. The bill also clarifies the requirements for mailing the annual "Notice to Defendant." Also, the bill extends the time in which a judgment debtor may file a claim for exemption with the clerk and provides additional protection to the judgment debtor. Exemption claims may now be filed "at any time." Previously the law provided that a judgment debtor would be entitled to a hearing within eight (8) working days of filing a claim of exemption to determine the validity of the exemption claim.

The bill requires the clerk to notify the judgment creditor by fax transmission and mailing when the debtor files an exemption claim. If the judgment creditor does not file a statement in writing contesting the judgment debtor's claim of exemption within five (5) days from the date that the exemption claim is filed, a writ of supersedeas shall issue. A hearing is no longer required.

**Revenue Impact :**

None

**Taxpayer Impact :**

None

**Resources Required :**

DFA will change the language of the "Notice to Defendant" and will be required to monitor the issuance of the annual Notice to Defendant if repeat garnishments are pursued.

**Time Required :**

None

**Procedural Changes :**

None

**Legal Analysis :**

Please note that the language of the first sentence of the "Notice to Defendant" as stated in the bill should be corrected to reflect the actions the judgment debtor must now take to file an exemption claim. An amendment to this bill should state: "You have a right to file a claim for exemption at any time after service of the writ of garnishment upon you. If the judgment creditor does not file in writing a contest of your exemption claim a hearing is not required to determine the validity of your claim." The remainder of this paragraph does not require any changes. HB1268 does not conflict with current law. It does not present any constitutional issues.