

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H2/23/15 S3/19/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1268

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5 By: Representative Broadway

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For An Act To Be Entitled

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AN ACT CONCERNING THE PROCEDURES FOR ISSUING A WRIT
9 OF GARNISHMENT; AND FOR OTHER PURPOSES.

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Subtitle

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CONCERNING THE PROCEDURES FOR ISSUING A
14 WRIT OF GARNISHMENT.

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

18

19 SECTION 1. Arkansas Code § 16-110-402 is amended to read as follows:
20 16-110-402. Procedure in issuing writs of garnishment.

21

~~The following procedure shall be followed in issuing writs of
22 garnishment:~~

23

~~(1)(A) Notice to Defendant.~~

24

(a)(1) Upon application for a writ of garnishment by any qualified
25 judgment creditor, the clerk of the court shall attach to ~~said~~ the writ of
26 garnishment the following "Notice to Defendant":

27

"NOTICE TO DEFENDANT OF YOUR RIGHT TO KEEP WAGES, MONEY, AND OTHER PROPERTY
28 FROM BEING GARNISHED

29

The Writ of Garnishment or Writ of Execution delivered to you with this
30 Notice means that wages, money, or other property belonging to you has been
31 garnished in order to pay a court judgment against you. HOWEVER, YOU MAY BE
32 ABLE TO KEEP YOUR MONEY OR PROPERTY FROM BEING TAKEN, SO READ THIS NOTICE
33 CAREFULLY.

34

State and federal laws say that certain money and property may not be
35 taken to pay certain types of court judgments. Such money or property is said
36 to be 'exempt' from garnishment.



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

4 As another example, under federal law the following are also exempt
5 from garnishment:

6 Social Security, SSI, Veteran's benefits, ~~AFDC (welfare)~~ Temporary
7 Assistance for Needy Families, unemployment compensation, and workers'
8 compensation.

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

14 ~~(B)(2)~~ As an alternative, the "Notice to Defendant" may be
15 incorporated as a part of the writ of garnishment.

16 ~~(2) Service and Return; Mailing of Copies.~~

17 ~~(A)(b)(1)(A) Writs~~ A writ of garnishment together with the "Notice to
18 Defendant" shall be directed, served, and returned in the same manner as
19 writs a writ of summons.

20 ~~(B) In addition, the judgment creditor is responsible for~~
21 ~~mailing a copy of the writ of garnishment and the "Notice to Defendant" to~~
22 ~~the judgment debtor the same day that he or she serves the writ of~~
23 ~~garnishment and the "Notice to Defendant" on the garnishee or the judgment~~
24 ~~creditor's attorney shall mail a copy of the writ of garnishment and the~~
25 ~~"Notice to Defendant" to the judgment debtor and the judgment debtor's~~
26 ~~attorney, if any, within five (5) days from the date the writ of garnishment~~
27 ~~is served on the garnishee.~~

28 ~~(B)(2)(A) The judgment creditor or the judgment creditor's~~
29 ~~attorney shall mail the writ of garnishment, and the "Notice to Defendant",~~
30 ~~by first-class mail, to the residence last known residential address of the~~
31 ~~judgment debtor.~~

32 ~~(B) However, if the letter is returned "undeliverable" by~~
33 ~~the post office, or if the residence last known residential address of the~~
34 ~~judgment debtor is not discoverable after diligent search, then the writ of~~
35 ~~garnishment and the "Notice to Defendant" shall be sent by first-class mail~~
36 ~~to the judgment debtor at his or her place of employment, if known.~~

1 ~~(3)(c)(1) Mailing of Annual Notice.~~ The judgment creditor shall not
2 be or the judgment creditor's attorney is not required to mail another
3 "Notice to Defendant" to the judgment debtor for future garnishments on the
4 same debt within twelve (12) months of the original garnishment.

5 (2) If further garnishments are filed thereafter after the
6 original garnishment, then the notice shall be "Notice to Defendant" is
7 required to be mailed by the judgment creditor or the judgment creditor's
8 attorney annually.

9 ~~(4)(d)(1) Certificate of Service Statement.~~ The circuit clerk shall
10 include as a part of the writ of garnishment a certification statement of the
11 above service on the judgment debtor. The judgment creditor must complete the
12 certificate of service statement by listing the name and address of the
13 judgment debtor and the date of mailing. The statement must be signed by the
14 judgment creditor or his or her attorney Upon return of the clerk's writ of
15 garnishment for filing with the court, the judgment creditor or judgment
16 creditor's attorney shall include a "Notice to Defendant" certificate of
17 service statement, including the name and last known address for the judgment
18 debtor and the date the "Notice to Defendant" was sent to the judgment
19 debtor.

20 (2) The certificate of service statement shall be signed by the
21 judgment creditor or judgment creditor's attorney.

22 ~~(5)(e)(1)(A) Hearing.~~ *Upon receipt of the writ of garnishment, the*
23 *judgment debtor is entitled to a prompt hearing in which to claim exemptions.*
24 *Upon filing a claim of exempt property or wages, a hearing will be held*
25 *within eight (8) working days to determine the validity of the claimed*
26 *exemptions* The judgment debtor may claim exemptions according to law after
27 service of the writ of garnishment on the garnishee by filing an exemption
28 claim with the clerk.

29 (B) Within five (5) days after an exemption claim is filed
30 with the clerk, the judgment debtor or the judgment debtor's attorney shall
31 notify the judgment creditor or the judgment creditor's attorney by fax
32 transmission and concurrent mailing of the judgment debtor's exemption claim.

33 (2) No A hearing shall not be required and a writ of supersedeas
34 shall issue unless the judgment creditor files, within ~~five (5)~~ ten (10)
35 days, from the date the judgment debtor or judgment debtor's attorney files
36 an exemption claim a statement in writing that the judgment debtor's claim of

1 exemption is contested.

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/s/Broadaway

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