

House Research Act Summary

CHAPTER: 405

SESSION: 2000 Regular Session

TOPIC: Creditors Remedies

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Overview

This act makes various changes in the procedures creditors can use to gain access to wages or other funds or property held for a debtor by a third party, such as an employer or a financial institution.

- 1 **Time periods.** Lets a creditor's attorney perform actions in regard to a writ of execution of a levy that are currently performed by the sheriff. Allows a levy properly served under Minnesota Statutes, chapter 550 or 551, before expiration of the writ of execution to be processed to completion, even if the writ expires before completion.
- 2 **Earnings exemption notice.** Amends the statute on the earnings exemption notice in connection with a levy on earnings. Requires the notice to include the debtor's telephone number. Strikes a reference to a levy occurring within ten days (consistent with time period changes elsewhere in the act).
- 3 **Exemption notice.** Amends the statute on levying debtor funds held by a financial institution. Adds language notifying the debtor that the exemption claim may be resolved faster if the debtor provides written proof of why the money is exempt. Changes the deadline for the debtor to give the financial institution the court motion papers asserting the exemption. The prior deadline was ten days after the objection is mailed or given to the debtor. The act changes this to ten days after personal service or 13 days after the date the objection is mailed. Changes the exemption form to (1) indicate that it should be mailed to the creditor's attorney rather than to the creditor, and (2) include the debtor's telephone number.
- 4 **Notice of objection.** Amends this form, which may be filed by a creditor, to reflect the deadline changes indicated in section 3.
- 5 **Request for hearing and notice for hearing.** Amends this form used by a debtor to provide for it to include the debtor's telephone number.
- 6 **Attorney's summary execution of judgment debts; when authorized.** Raises from \$5,000 to

\$10,000 the amount that can be recovered by a single notice of execution levy. Limits a judgment creditor to serving one execution on a single third party each calendar day.

- 7 **Service of third party levy.** Makes a third party levy served by registered or certified mail effective if served at the third party's regular place of business. Same amount increase as section 6.
- 8 **Third party disclosure and remittance.** Same amount increase as section 6.
- 9 **Judgment against third party upon failure to disclose or remit.** Same amount increase as section 6.
- 10 **Attorney's summary execution of funds being held pursuant to garnishment summons.** Lets a judgment creditor's attorney execute on funds held by a garnishee (such as an employer or financial institution holding funds belonging to a debtor) under a garnishment summons. Puts a \$10,000 limit on a single execution levy under this section. Provides for serving the garnishee by registered or certified mail or personal service. Requires including a notice of levy on garnishee in substantially the form provided in the statute. Provides that no additional fee is due the garnishee if the judgment creditor already paid the statutory garnishment fee. Prohibits serving the notice of levy on garnishee until the judgment debtor's right to claim an exemption has expired under the garnishment statute.
- 11 **Money due from state departments.** Subjects to attachment: money the state owes any entity or person for specified purposes. Provides for serving notice of third party levy and disclosure; prohibits service by publication on the state. Specifies who in the state agency must make the disclosure. Provides that if payment is made in regard to a judgment against the state as third party, a certificate of satisfaction to the extent of the payment endorsed on it must be delivered to the head of the state agency.
- 12 **Salary of public servants.** Subjects to attachment: the salary of officials and employees of counties, cities, towns, and school districts. Provides on whom to serve the notice of third party levy and disclosures in these cases, and who must make the disclosure. Provides that if payment is made in regard to a judgment against the government entity as a third party, a certificate of satisfaction to the extent of the payment endorsed on it must be delivered to the treasurer.
- 13 **Exemption notice.** Amends a statute on levying judgment debtor funds on deposit with a financial institution. Increases the maximum amount the institution can be required to hold from \$5,000 to \$10,000. Adds language notifying the debtor that the exemption claim may be resolved faster if the debtor provides written proof of why the money is exempt. Changes the deadline for the debtor to give the financial institution the court motion papers asserting the exemption. The prior deadline was ten days after the objection is mailed or given to the debtor. The act changes this to ten days after personal service or 13 days after the date the objection is mailed. Changes the exemption form to include the debtor's telephone number.
- 14 **Notice of objection.** Same time frame change as section 13 is inserted in regard to when the debtor must request a hearing on an exemption claim.
- 15 **Notice of levy on earnings.** Amends the notice of levy on earnings served on a debtor's employer to raise the maximum amount subject to levy from \$5,000 to \$10,000.
- 16 **Notice of levy on earnings, disclosure, and child support worksheet.** Amends the statutory form to change the maximum amount subject to levy from \$5,000 to \$10,000.
- 17 **Service of a garnishment summons.** Makes a garnishment summons served by certified mail effective if served at the garnishee's regular place of business.
- 18 **Garnishment summons and notice to debtor.** Amends the garnishment summons form to include the date of entry of the judgment and to require disclosure only of nonexempt (rather than all, as in current law) money or property the garnishee owes the debtor.

- 19 **Money due from state departments.** Same amendments as section 11, with regard to the garnishment process.
- 20 **Discharge of a garnishee.** Provides that a garnishee is not discharged if, within 20 days of the latter of (1) service of garnishee's disclosure, or (2) return to the debtor of any disposable earnings, indebtedness money, or other property, an interested person:
serves a motion relating to the garnishment that is scheduled for hearing within 30 days;
or
serves a motion under specified conditions and the court vacates the discharge of the garnishee.
- 21 **Judgment upon failure to disclose.** Under prior law a garnishee who failed to serve a disclosure of what is owed to the debtor is subject to a judgment for the lesser of the creditor's claim against the debtor or 110 percent of what is claimed in the garnishment summons. The act changes this to allow the creditor to recover 110 percent of the amount claimed in the garnishment summons.
- 22 **Form of exemption notice.** Amends the form used to notify a debtor that an order for attachment, garnishment summons, or levy by execution has been used to attach the debtor's funds. Adds language notifying the debtor that an exemption claim may be resolved faster if the debtor provides written proof of why the money is exempt. Allows 13 days for the debtor to get the financial institution the debtor's court papers, if mailed. Requires the form to include the debtor's telephone number and the address of the creditor's attorney.
- 23 **Notice of objection.** Amends the form used by a creditor to object to debtor exemptions under the garnishment statute. Makes the same ten to 13 day deadline change in the case of a mailed objection as earlier sections of the act.
- 24 **Form of notice.** Amends the notice a debtor receives about a garnishment to (1) strike a reference to ten days to be consistent with other deadline changes in the bill and (2) include the debtor's telephone number.
- 25 **Repealer.** Repeals a provision of law replaced by the new paragraph (h) in section 20.