

HOUSE BILL No. 1366

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-55-8-10.

Synopsis: Proceedings supplementary for judgment debtors. Provides that if it is established at a hearing that a judgment debtor is not able to pay a judgment, the judgment creditor may seek a subsequent order from a court to compel the judgment debtor to appear at a proceeding supplementary concerning the judgment debtor's property, income, or other assets. Provides that if it is established at the proceeding supplementary that a judgment debtor has recently: (1) acquired property or other assets in the care of; or (2) begun new employment with; a proposed garnishee defendant, the court shall make the property, assets, or income of the judgment debtor eligible for garnishment.

Effective: July 1, 2015.

Frizzell

January 14, 2015, read first time and referred to Committee on Judiciary.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1366

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-55-8-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 10. (a) Notwithstanding section 9 of this chapter, if it**
4 **is established at a hearing under this chapter that a judgment**
5 **debtor is not able to pay a judgment, the judgment creditor may**
6 **seek a subsequent order from a court to compel the judgment**
7 **debtor to appear at a proceeding supplementary concerning the**
8 **judgment debtor's property, income, or other assets as provided in**
9 **subsection (b).**
10 **(b) If a judgment creditor seeks an order under subsection (a),**
11 **the court shall grant the order and require the judgment debtor to**
12 **appear before the court at least one (1) time every one hundred**
13 **twenty (120) days if the judgment creditor claims that the**
14 **judgment debtor has recently:**
15 **(1) acquired an interest in property or another asset that is**



- 1 subject to a levy; or
 2 (2) begun new employment.
- 3 (c) If it is established at a hearing held under subsection (b) that
 4 a judgment debtor has recently:
 5 (1) acquired property or other assets in the care of; or
 6 (2) begun new employment with;
 7 a proposed garnishee defendant, the court shall make the property,
 8 assets, or income of the judgment debtor eligible for garnishment,
 9 subject to any exemptions otherwise provided by law. The court
 10 may make the property, assets, or income of the judgment debtor
 11 eligible for garnishment without conducting an additional hearing
 12 upon the return of interrogatories sent to the proposed garnishee
 13 defendant that verify the property, assets, or employment of the
 14 judgment debtor.
- 15 (d) The inability of a judgment debtor to pay a judgment
 16 established at a hearing held under subsection (b) does not bar a
 17 judgment creditor from seeking an order to compel the judgment
 18 debtor to appear at subsequent proceedings supplementary under
 19 this section.
- 20 (e) A judgment debtor shall inform the:
 21 (1) court; and
 22 (2) judgment debtor's judgment creditor;
 23 of the judgment debtor's current address at which the judgment
 24 debtor may be served with orders, notices, and other
 25 correspondence under this section. If a judgment debtor fails to
 26 inform the court and the judgment debtor's judgment creditor of
 27 the judgment debtor's current address, the judgment debtor may
 28 not complain about insufficiency of service concerning an action
 29 brought under this section.
- 30 (f) Notwithstanding section 8 of this chapter, if a judgment
 31 creditor prevails in an action brought under this section, the court
 32 shall award the following to the judgment creditor:
 33 (1) Reasonable attorney's fees incurred by the judgment
 34 creditor in bringing the action.
 35 (2) Costs incurred by the judgment creditor in bringing the
 36 action, including any costs of:
 37 (A) providing notice or service of process to; or
 38 (B) locating;
 39 the judgment debtor.
 40 (3) Court costs incurred by the judgment creditor in bringing
 41 the action.
- 42 (g) In any action in tort or contract, if the judgment plaintiff is



1 entitled to recover from the judgment defendant reasonable
2 attorney's fees, the plaintiff may establish the reasonableness of the
3 fees by referring to:

4 (1) a reasonable hourly rate and the reasonable hours
5 expended or to be expended by counsel to the plaintiff;

6 (2) commercially reasonable standards that may include
7 contingent fees; or

8 (3) a combination of the provisions in subdivisions (1) and (2).

9 The court shall award fees, if allowed otherwise by law or contract,
10 for postjudgment activity, either as part of the original judgment
11 or incrementally after the original judgment as postjudgment
12 remedies are invoked by the judgment creditor. Postjudgment fees
13 may not be disallowed by a court solely because a judgment,
14 including prejudgment fees, has been entered on the original claim
15 by the plaintiff. If postjudgment fees are granted as part of an
16 original judgment, the judgment creditor may recover
17 postjudgment fees only under extraordinary circumstances,
18 including any attempt by a judgment defendant to hide or secrete
19 assets, wages, or income, to actively attempt to defeat a judgment
20 creditor's attempt to collect its judgment, or to fraudulently convey
21 assets to defeat a creditor's attempt to collect its judgment, as
22 determined by the court.

23 (h) The remedies provided by this section are cumulative. An
24 action brought by a judgment creditor under this section may not
25 be construed to exclude the use of any other remedy by the
26 judgment creditor.

