

Representative Kelly B. Miles proposes the following substitute bill:

ADMINISTRATIVE GARNISHMENT ORDER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by amending provisions relating to administrative garnishment orders.

Highlighted Provisions:

This bill:

- ▶ authorizes the Office of State Debt Collection to determine the dollar amount that a garnishee is to withhold from earnings and deliver to the office in a continuing administrative garnishment order in certain circumstances;
- ▶ specifies requirements for determining the dollar amount that a garnishee is to withhold from earnings in a continuing administrative garnishment;
- ▶ modifies provisions relating to administrative garnishment orders;
- ▶ authorizes the office to submit a motion for an order to show cause against a garnishee under certain circumstances;
- ▶ excuses a garnishee from providing withholdings information if the information was provided in the garnishee's initial response to an interrogatory requesting the information;
- ▶ authorizes a garnishee fee and establishes limits on the fee; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63A-3-507**, as last amended by Laws of Utah 2019, Chapter 269



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **63A-3-507** is amended to read:

36 **63A-3-507. Administrative garnishment order.**

37 (1) If a judgment is entered against a debtor, the office may, subject to Subsection (2),
38 issue an administrative garnishment order against the debtor's personal property, including
39 wages, in the possession of a party other than the debtor in the same manner and with the same
40 effect as if the order was a writ of garnishment issued by a court with jurisdiction.

41 (2) The office may issue the administrative garnishment order if [~~the order is~~]:

42 (a) the order is signed by the director or the director's designee; and

43 (b) the underlying debt is for:

44 (i) nonpayment of a criminal judgment accounts receivable as defined in Section
45 **77-32a-101**; or

46 (ii) nonpayment of a judgment, or abstract of judgment or award filed with a court,
47 based on an administrative order for payment issued by an agency of the state.

48 (3) An administrative garnishment order issued in accordance with this section is
49 subject to the procedures and due process protections provided by Rule 64D, Utah Rules of
50 Civil Procedure, except as provided by Section **70C-7-103**.

51 (4) An administrative garnishment order issued by the office shall:

52 (a) contain a statement that includes:

53 (i) if known:

54 (A) the nature, location, account number, and estimated value of the property; and

55 (B) the name, address, and phone number of the person holding the property;

56 (ii) whether any of the property consists of earnings;

57 (iii) the amount of the judgment and the amount due on the judgment; and
58 (iv) the name, address, and phone number of any person known to the plaintiff to claim
59 an interest in the property; [~~and~~]
60 [~~(v) that the plaintiff has attached or will serve the garnishee fee established in Section~~
61 ~~78A-2-216;~~]
62 (b) identify the defendant, including[~~:(i)~~] the defendant's name and last known
63 address; [~~and~~]
64 [~~(ii) if known:~~
65 [~~(A) the last four digits of the defendant's Social Security number;~~]
66 [~~(B) the last four digits of the defendant's driver license; and~~]
67 [~~(C) the state in which the driver license was issued;~~]
68 [~~(e) include one or more interrogatories inquiring:~~]
69 [~~(i) whether the garnishee is indebted to the defendant and, if so, the nature of the~~
70 ~~indebtedness;~~]
71 [~~(ii) whether the garnishee possesses or controls any property of the defendant, and, if~~
72 ~~so, the nature, location, and estimated value of the property;~~]
73 [~~(iii)(A) whether the garnishee knows of any property of the defendant in the~~
74 ~~possession or under the control of another; and~~]
75 [~~(B) the nature, location, and estimated value of the defendant's property in possession~~
76 ~~or under the control of another, and the name, address, and phone number of the person with~~
77 ~~possession or control;~~]
78 [~~(iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim~~
79 ~~against the plaintiff or the defendant, a designation as to whom the claim relates, and the~~
80 ~~amount deducted;~~]
81 [~~(v) the date and manner of the garnishee's service of papers upon the defendant and~~
82 ~~any third party;~~]
83 [~~(vi) the dates on which previously served writs of continuing garnishment were~~
84 ~~served, if any; and~~]
85 [~~(vii) any other relevant information the office may request, including the defendant's~~
86 ~~position, rate, and method of compensation, pay period, or computation of the amount of the~~
87 ~~defendant's disposable earnings;~~]

88 ~~[(d)]~~ (c) notify the defendant of the defendant's right to reply to answers and request a
89 hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and

90 ~~[(e)]~~ (d) state where the garnishee may deliver property.

91 (5) The office may, in the office's discretion, include in an administrative garnishment
92 order:

93 (a) the last four digits of the defendant's Social Security number;

94 (b) the last four digits of the defendant's driver license number;

95 (c) the state in which the defendant's driver license was issued;

96 (d) one or more interrogatories inquiring:

97 (i) whether the garnishee is indebted to the defendant and, if so, the nature of the
98 indebtedness;

99 (ii) whether the garnishee possesses or controls any property of the defendant and, if
100 so, the nature, location, and estimated value of the property;

101 (iii) whether the garnishee knows of any property of the defendant in the possession or
102 under the control of another and, if so:

103 (A) the nature, location, and estimated value of the property; and

104 (B) the name, address, and telephone number of the person who has possession or
105 control of the property;

106 (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim
107 against the plaintiff or the defendant, whether the claim is against the plaintiff or the defendant,
108 and the amount deducted;

109 (v) the date and manner of the garnishee's service of papers upon the defendant and any
110 third party;

111 (vi) the dates on which any previously served writs of continuing garnishment were
112 served; and

113 (vii) any other relevant information, including the defendant's position, rate of pay,
114 method of compensation, pay period, and computation of the amount of the defendant's
115 disposable earnings.

116 ~~[(5)]~~ (6) (a) A garnishee who acts in accordance with this section and the
117 administrative garnishment issued by the office is released from liability unless an answer to an
118 interrogatory is successfully controverted.

119 (b) Except as provided in Subsection ~~[(5)]~~ (6)(c), if the garnishee fails to comply with
120 an administrative garnishment issued by the office without a court or final administrative order
121 directing otherwise, the garnishee is liable to the office for an amount ~~[ordered]~~ determined by
122 the court~~[-including:]~~.

123 (c) The amount for which a garnishee is liable under Subsection (6)(b) includes:

124 ~~[(i) the value of the property or the value of the judgment, whichever is less;]~~

125 (i) (A) the value of the judgment; or

126 (B) the value of the property, if the garnishee shows that the value of the property is

127 less than the value of the judgment;

128 (ii) reasonable costs; and

129 (iii) attorney fees incurred by the parties as a result of the garnishee's failure.

130 (c) If the garnishee shows that the steps taken to secure the property were reasonable,
131 the court may excuse the garnishee's liability in whole or in part.

132 (7) (a) If the office has reason to believe that a garnishee has failed to comply with the
133 requirements of this section in the garnishee's response to a garnishment order issued under this
134 section, the office may submit a motion to the court requesting the court to issue an order
135 against the garnishee requiring the garnishee to appear and show cause why the garnishee
136 should not be held liable under this section.

137 ~~[(6) A creditor who files a motion for an order to show cause under this section] (b)~~
138 The office shall attach to ~~the~~ a motion under Subsection (7)(a) a statement that the ~~creditor~~
139 office has in good faith conferred or attempted to confer with the garnishee in an effort to settle
140 the issue without court action.

141 ~~[(7)]~~ (8) A person is not liable as a garnishee for drawing, accepting, making, or
142 endorsing a negotiable instrument if the instrument is not in the possession or control of the
143 garnishee at the time of service of the administrative garnishment order.

144 ~~[(8)]~~ (9) (a) A person indebted to the defendant may pay to the office the amount of the
145 debt or an amount to satisfy the administrative garnishment.

146 (b) The office's receipt of an amount described in Subsection ~~[(8)]~~ (9)(a) discharges the
147 debtor for the amount paid.

148 ~~[(9)]~~ (10) A garnishee may deduct from the property any liquidated claim against the
149 defendant.

150 ~~[(10)]~~ (11) (a) If a debt to the garnishee is secured by property, the office:
151 (i) is not required to apply the property to the debt when the office issues the
152 administrative garnishment order; and
153 (ii) may obtain a court order authorizing the office to buy the debt and requiring the
154 garnishee to deliver the property.
155 (b) Notwithstanding Subsection ~~[(10)]~~ (11)(a)(i):
156 (i) the administrative garnishment order remains in effect; and
157 (ii) the office may apply the property to the debt.
158 (c) The office or a third party may perform an obligation of the defendant and require
159 the garnishee to deliver the property upon completion of performance or, if performance is
160 refused, upon tender of performance if:
161 (i) the obligation is secured by property; and
162 (ii) (A) the obligation does not require the personal performance of the defendant; and
163 (B) a third party may perform the obligation.
164 ~~[(11)]~~ (12) (a) The office may issue a continuing garnishment order against a
165 nonexempt periodic payment.
166 (b) This section is subject to the Utah Exemptions Act.
167 (c) A continuing garnishment order issued in accordance with this section applies to
168 payments to the defendant from the date of service upon the garnishee until the ~~[earlier]~~ earliest
169 of the following:
170 (i) the last periodic payment;
171 (ii) the judgment upon which the administrative garnishment order is issued is stayed,
172 vacated, or satisfied in full; or
173 (iii) the office releases the order.
174 (d) No later than seven days after the last day of each payment period, the garnishee
175 shall with respect to that period:
176 (i) answer each interrogatory;
177 (ii) serve an answer to each interrogatory on the office, the defendant, and any other
178 person who has a recorded interest in the property; and
179 (iii) deliver the property to the office.
180 (e) If the office issues a continuing garnishment order during the term of a writ of

181 continuing garnishment issued by the district court, the order issued by the office:

182 (i) is tolled when a writ of garnishment or other income withholding is already in effect
183 and is withholding greater than or equal to the maximum portion of disposable earnings
184 described in Subsection [~~(12)~~] (13);

185 (ii) is collected in the amount of the difference between the maximum portion of
186 disposable earnings described in Subsection [~~(12)~~] (13) and the amount being garnished by an
187 existing writ of continuing garnishment if the maximum portion of disposable earnings exceed
188 the existing writ of garnishment or other income withholding; and

189 (iii) shall take priority upon the termination of the current term of existing writs.

190 [~~(12)~~] (13) The maximum portion of disposable earnings of an individual subject to
191 seizure in accordance with this section is the lesser of:

192 (a) 25% of the defendant's disposable earnings for any other judgment; or

193 (b) the amount by which the defendant's disposable earnings for a pay period exceeds
194 the number of weeks in that pay period multiplied by 30 times the federal minimum wage as
195 provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

196 (14) (a) In accordance with the requirements of this Subsection (14), the office may, at
197 its discretion, determine a dollar amount that a garnishee is to withhold from earnings and
198 deliver to the office in a continuing administrative garnishment order issued under this section.

199 (b) The office may determine the dollar amount that a garnishee is to withhold from
200 earnings under Subsection (14)(a) if the dollar amount determined by the office:

201 (i) does not exceed the maximum amount allowed under Subsection (13); and

202 (ii) is based on:

203 (A) earnings information received by the office directly from the Utah Department of
204 Workforce Services; or

205 (B) previous garnishments issued to the garnishee by the office where payments were
206 received at a consistent dollar amount.

207 (c) The earnings information or previous garnishments relied on by the office under
208 Subsection (14)(b)(ii) to calculate a dollar amount under this Subsection (14) shall be:

209 (i) for one debtor;

210 (ii) from the same employer;

211 (iii) for two or more consecutive quarters; and

212 (iv) received within the last six months.

213 (15) (a) A garnishee who provides the calculation for withholdings on a defendant's
214 wages in the garnishee's initial response to an interrogatory in an administrative garnishment
215 order under this section is not required to provide the calculation for withholdings after the
216 garnishee's initial response if:

217 (i) the garnishee's accounting system automates the amount of defendant's wages to be
218 paid under the garnishment; and

219 (ii) the defendant's wages do not vary by more than five percent from the amount
220 disclosed in the garnishee's initial response.

221 (b) Notwithstanding Subsection (15)(a), upon request by the office or the defendant, a
222 garnishee shall provide, for the last pay period or other pay period specified by the office or
223 defendant, a calculation of the defendant's wages and withholdings and the amount garnished.

224 (16) (a) A garnishee under an administrative garnishment order under this section is
225 entitled to receive a garnishee fee, as provided in this Subsection (16), in the amount of:

226 (i) \$10 per garnishment order, for a noncontinuing garnishment order; and

227 (ii) \$25, as a one-time fee, for a continuing garnishment order.

228 (b) A garnishee may deduct the amount of the garnishee fee from the amount to be
229 remitted to the office under the administrative garnishment order, if the amount to be remitted
230 exceeds the amount of the fee.

231 (c) If the amount to be remitted to the office under an administrative garnishment order
232 does not exceed the amount of the garnishee fee:

233 (i) the garnishee shall notify the office that the amount to be remitted does not exceed
234 the amount of the garnishee fee; and

235 (ii) (A) the garnishee under a noncontinuing garnishment order shall return the
236 administrative garnishment order to the office, and the office shall pay the garnishee the
237 garnishee fee; or

238 (B) the garnishee under a continuing garnishment order shall delay remitting to the
239 office until the amount to be remitted exceeds the garnishee fee.

240 (d) If, upon receiving the administrative garnishment order, the garnishee does not
241 possess or control any property, including money or wages, in which the defendant has an
242 interest:

243 (i) the garnishee under a continuing or noncontinuing garnishment order shall, except
244 as provided in Subsection (16)(d)(ii), return the administrative garnishment order to the office,
245 and the office shall pay the garnishee the applicable garnishee fee; or

246 (ii) if the garnishee under a continuing garnishment order believes that the garnishee
247 will, within 90 days after issuance of the continuing garnishment order, come into possession
248 or control of property in which the defendant owns an interest, the garnishee may retain the
249 garnishment order and deduct the garnishee fee for a continuing garnishment once the amount
250 to be remitted exceeds the garnishee fee.

251 (17) Section 78A-2-216 does not apply to an administrative garnishment order issued
252 under this section.

253 ~~[(13) The]~~ (18) An administrative garnishment instituted in accordance with this
254 section shall continue to operate and require that a person withhold the nonexempt portion of
255 earnings at each succeeding earning disbursement interval until the total amount due in the
256 garnishment is withheld or the garnishment is released in writing by the court or office.