

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 334

DATE: February 11, 2009

Version: First engrossment

Authors: Hilstrom

Subject: Debtor Exemption and Garnishment Notices

Analyst: Matt Gehring, 651-296-5052

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This bill modifies the timeline and forms required to be served related to certain exemptions that may be claimed by a judgment debtor.

Section

1 Levy on funds; exemption notice; objections. Replaces the existing statutory form required to be served on a financial institution, in the event the debtor's funds being levied are held by that financial institution. The instructions attached to the form, as well as the text of the exemption form, are also modified.

The financial institution is required to serve the debtor with two copies of the exemption notice. If the debtor does not respond and claim an exemption applicable to the funds subject to levy, current law requires the institution to remit the funds to the sheriff within seven days. This bill modifies that timeline, requiring remittance within six business days.

If a debtor claims an exemption, this bill would require the debtor to submit copies of bank statements for the prior 60 days along with the exemption notice. If an exemption is claimed, the funds must be released to the debtor after six business days have expired, unless an objection is filed by the creditor. This is a modification of the current law, which requires release upon expiration of seven days, unless an objection is filed.

This section also modifies the process for a creditor to file an objection to a debtor's claimed exemption. An objection must be interposed within six business days of receipt of an exemption claim by the debtor. The statutory objection form is replaced with a new statutory Objection and Notice of Hearing form. The court administrator is permitted to charge a \$1 fee for filing a Notice of Objection and Notice of Hearing. A hearing must be scheduled between five and seven business days after the filing of the notice; a debtor may request a continuance for no more than seven days after the originally scheduled hearing date.

Within three days of the hearing, the court must issue an order determining whether the

claimed funds are exempt.

This section also provides that a creditor is not subject to a bad faith claim if the creditor objects to an improperly completed or incomplete exemption claim.

2 Public assistance. Modifies the existing provision providing an exemption for “relief” based on need by instead providing an exemption for “government assistance” provided to a debtor based on need. Examples of government assistance programs are added to the section for illustrative purposes.

3 Attorney’s summary execution. In an attorney’s summary execution, replaces the existing statutory form exemption notice that must be provided to a judgment debtor with a new statutory form notice, along with new instructions and a new exemption claim form. These forms are identical to the new notices and forms provided in section 1 of the bill.

Other procedures relating to documentation required of the debtor, and the filing of a Notice of Objection and Notice of Hearing by a creditor, are also identical to the modifications made in section 1 of the bill.

4 Garnishment. Modifies the time when a garnishment summons can be issued. A garnishment summons may be issued in a case where a default judgment could be – but has not been – entered up to 45 days after service of the summons and complaint on the debtor.

This section also provides that garnishment is effective only after the required Notice of Intent to Garnish form, and the required Exemption form is provided to the debtor, and the creditor does not receive an answer within 25 days after serving the Notice of Intent to Garnish.

If the creditor serves a Notice of Intent to Garnish, this section prohibits the creditor from obtaining a default judgment until 25 days after service of the form.

5 Exemption notice; prejudgment garnishment. Establishes a statutory exemption notice form for prejudgment garnishments.

6 Claiming an exemption. Requires a debtor claiming an exemption from garnishment to submit copies of bank statements from the prior 60 days in addition to other required exemption notices. Funds claimed exempt by a debtor must be released upon expiration of six business days, unless the creditor objects to the exemption.

7 Objection to prejudgment garnishment exemption. Modifies the standards for filing an objection to a claimed exemption. The timeline for filing the Notice of Objection and Notice of Hearing form is identical to that provided in section 1 of the bill.

The required statutory form for a Notice of Objection is modified into a Notice of Objection and Notice of Hearing form.

A new provision allows a financial institution holding funds claimed to be exempt by a debtor to release the funds upon mutual agreement of the parties.

8 Exemption notice; garnishment. Replaces the existing statutory exemption notice form with a new statutory exemption notice form, identical to the form provided in section 1 of the bill.

