



Am. Sub. S.B. 281
127th General Assembly
(As Passed by the Senate)

Sens. Seitz, Cates, Jacobson, Mumper, Niehaus, Schuler, Spada, Wagoner, Boccieri, Cafaro, Fedor, Kearney, Mason, D. Miller, Morano, Roberts, Sawyer, Carey, Goodman, Harris, R. Miller, Schaffer, Smith, Wilson

BILL SUMMARY

- Increases the exemptions for certain types of property a debtor may hold exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order to reflect the higher exemptions under the United States Bankruptcy Code.
- Provides for automatic, annual adjustments to the exemption amounts based on changes in the Consumer Price Index.
- Modifies certain aspects of the current garnishment procedure.

CONTENT AND OPERATION

Property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order

Current law allows both real and personal property to be subject to the payment of debts and liable to be taken on execution, garnishment, attachment, or sale to satisfy a judgment or order. However, every person domiciled in Ohio may hold limited property interests in certain types of property exempt from being taken on execution, garnishment, attachment, or sale to satisfy a judgment or order. Generally, this bill increases the values of certain types of property interests already exempt in the current law and provides for periodic increases.¹

¹ The bill's proposed amendments make Ohio law consistent with debtor exemptions from the bankruptcy estate under federal bankruptcy law. (11 U.S.C. §§ 104(b)(1) and 522(b)(2) and (d).)

Residential property

Under current law, a person domiciled in Ohio may exempt a property interest of no more than \$5,000 in one parcel or item of real or personal property that the person or that person's dependent uses as a residence. The bill raises the exemption amount to \$20,200. (R.C. 2329.66(A)(1).)

Motor vehicle

Current law also exempts from being taken to satisfy a judgment or order a person's interest in one motor vehicle in the amount of \$1,000 or less. The bill increases the maximum amount to \$3,225. (R.C. 2329.66(A)(2).)

Personal, family, and household items and appliances

The following personal interests in property are exempt under current law from being taken to satisfy a judgment or order: (1) no more than \$200 in any one particular item of wearing apparel, beds, and bedding, (2) no more than \$300 in one cooking unit, (3) no more than \$300 in one refrigerator or other food preservation unit, (4) no more than \$200 in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment held primarily for personal, family, or household use, and (5) no more than \$400 in one item of jewelry and no more than \$200 in every other item of jewelry. Current law also specifies that exemption items described in (1) through (3) above cannot be included as exemption items under (4) and (5) above. Additionally, current law provides that if a person does not claim the residential property exemption (see "**Residential property**" above), the exemption items described in (4) and (5) above, when their values are added together, cannot exceed \$2,000. If a person does claim the residential property exemption, those exemption items added together cannot exceed \$1,500. (R.C. 2329.66(A)(3) and (4)(b), (c), and (d).)

The bill eliminates the exemptions items (1) to (3) above. The bill changes exemption item (4) above by raising the exemption amount to \$525 in any particular item or \$10,775 in the aggregate, and by specifically including wearing apparel. With respect to (5) above, the bill eliminates the existing exemption and instead exempts an aggregate interest in one or more items of jewelry of no more than \$1,350 if the jewelry is held primarily for personal, family, or household use. The bill also eliminates the provisions of existing law discussed in the last three sentences of the prior paragraph. (R.C. 2329.66(A)(4) and repeal of existing R.C. 2329.66(A)(3) and (4)(d).)

Professional books and tools

Current law exempts a person's interest of no more than \$750 in aggregate in all implements, professional books, or tools of that person's profession, trade, or business, including agriculture. The bill increases the interest in such exempt property to no more than \$2,025 in aggregate. (R.C. 2329.66(A)(5).)

Payment on account of personal bodily injury

Money received during the past 12 months, or the right to receive such money, as payment for personal bodily injury, but excluding pain and suffering or compensation for actual pecuniary loss, of the person or another individual for whom the person is a dependent is exempt under current law in an amount not exceeding \$5,000.² The bill increases the value of this exemption to a maximum of \$20,200. (R.C. 2329.66(A)(12)(c).)

Other property

Current law permits a person, in a bankruptcy proceeding, to exempt an interest of up to \$400 in any property. The bill, instead, permits a person, in a bankruptcy proceeding, to exempt an aggregate interest in any property not to exceed \$1,075, plus up to \$10,125 of any unused amount of the residential exemption. (R.C. 2329.66(A)(18).)

Annual adjustments of exempt property amounts

Unlike current law, the bill requires periodic adjustment of the maximum amounts for each type of property that may be exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order. The bill requires that on April 1, 2010, and on the same day every third year thereafter, each exempted dollar amount must be adjusted to reflect the change in the Consumer Price Index,³ as published by the U.S. Department of Labor. In the event the index is no longer published, the amounts instead must be adjusted to reflect a generally available comparable index for the three-year period ending on December 31 of the preceding year, with any such adjustment being rounded to the nearest \$25. (R.C. 2329.66(B).)

² This exemption is unavailable if the person receiving the payment is an inmate and the payment resulted from a civil action or appeal against a government entity or employee. (R.C. 2969.21 to 2969.27, not in the bill.)

³ The Consumer Price Index (CPI) produces data on changes in the prices paid by urban consumers for a representative basket of goods and services (U.S. Department of Labor, Bureau of Labor and Statistics, <http://www.bls.gov/cpi/>).

Garnishment procedures

The current Garnishment Law (R.C. Chapter 2716.) permits a judgment creditor (the person who obtains a judgment against another in a civil action) to garnish the personal earnings and other property of the judgment debtor (the person against whom the judgment has been obtained) through a proceeding in garnishment. A garnishment order requires a garnishee (the person or entity in possession of certain money, property, credit, or disposable earnings belonging to a judgment debtor) to make the money, property, credit, or disposable earnings available to satisfy the judgment. The bill modifies certain aspects of the current garnishment procedure.

Garnishing personal earnings

Affidavit filed to commence garnishment. Current law requires a judgment creditor to file an affidavit to begin a proceeding in garnishment of personal earnings. That affidavit must, among other things, affirm that the person filing the affidavit has good reason to believe and actually believes that the garnishee is an employer of the judgment debtor who may have personal earnings of the judgment debtor that are not exempt from garnishment. The bill instead requires that the affidavit contain the name and address of the garnishee who may be an employer of the judgment debtor and who may have the judgment debtor's personal earnings. (R.C. 2716.03(A)(2).)

Pre-garnishment demand. Under current law, after obtaining a judgment and before garnishing the personal earnings of the judgment debtor, the judgment creditor must serve a written demand upon the judgment debtor for the excess of the amount of the judgment over the amount of personal earnings that *are* exempt from garnishment. Under the bill, the demand is to be for the excess of the amount of the judgment over the amount of personal earnings *that may be* exempt from garnishment. (R.C. 2716.02(A)(2).)

Service of order of garnishment. A garnishee that is a judgment debtor's employer currently must be served with a binding order of garnishment for personal earnings issued by a common pleas, municipal, or county court. The bill modifies the form that the order of garnishment must substantially comply with. Currently, the order of garnishment must provide that the judgment creditor has filed an affidavit stating that the garnishee owes the judgment debtor money for personal earnings and that some of that money may not be exempt from garnishment under Ohio or federal law. Under the bill, the order is to provide that the judgment creditor has filed an affidavit stating that the garnishee *may* owe the judgment debtor money for personal earnings. (R.C. 2716.05.)

Garnishing property other than personal earnings

Affidavit filed to commence garnishment. Under current law, a judgment creditor may begin a proceeding for garnishment of property other than personal earnings by filing a written affidavit. The affidavit must, among other things, affirm that the person filing the affidavit has a reasonable basis to believe that the person named as the garnishee in the affidavit may have property other than personal earnings of the judgment debtor that is not exempt under Ohio or federal law. The bill instead requires that the affidavit set forth the name and address of the garnishee who may have in the garnishee's hands or control money, property, or credits, other than personal earnings, of the judgment debtor. (R.C. 2716.11(C).)

Service of order of garnishment. Current law requires that, within 12 days of the filing of an affidavit to commence a proceeding for garnishment of property other than personal earnings, the court must set a hearing. Upon the scheduling of the hearing, the clerk of the court must immediately issue to the garnishee three copies of the order of garnishment, which binds the property, and of a written notice that the garnishee must file an answer with the court. The copies of the order of garnishment and of the notice must be served on the garnishee "in the same manner as a summons is served"⁴ and not later than seven days before the date on which the hearing is scheduled. The bill retains these requirements and further requires that the clerk mail a copy of the order and notice of garnishment to the garnishee by ordinary or regular mail. The bill protects from liability for damages in a civil action a garnishee that garnishes property in good faith reliance on the order and notice sent by the clerk. (R.C. 2716.13(A) and (B).)

The bill modifies the form that the order and notice of garnishment must substantially follow. Currently, the order and notice of garnishment must provide that the judgment creditor has filed an affidavit stating that the garnishee has money, property, or credits, other than personal earnings, in the garnishee's hands or control that belong to the judgment debtor, *some of which may not be exempt from garnishment under state or federal law*. The bill eliminates the italicized clause and requires that the order and notice state that the judgment creditor has filed an affidavit stating that the garnishee *may* have the judgment debtor's money, property, or credits, other than personal earnings, in the garnishee's hands or control. (R.C. 2716.13(B).)

Notice to the judgment debtor of the order of garnishment. Current law requires the judgment creditor to file with the court an order instructing the clerk

⁴ A summons is typically served by certified or express mail, pursuant to the Ohio Rules of Civil Procedure (Ohio Civ. R. 4.1).

to issue a notice to the judgment debtor of the garnishment and to provide the judgment debtor with a form with which to request a hearing. The notice to the judgment debtor must state that the court has issued an order in favor of the judgment creditor directing some of the debtor's money, property, or credits in the possession of the garnishee be used to satisfy the judgment. The bill instead refers to the debtor's money, property, or credits *that may be* in the possession of the garnishee. (R.C. 2716.13(C)(1)(a).)

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 01-29-08 |
| Reported, S. Finance & Financial Institutions | 03-12-08 |
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