

House File 569 - Introduced

HOUSE FILE 569
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 168)

A BILL FOR

1 An Act relating to notice of garnishment and levy to a judgment
2 debtor.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 626.50, Code 2015, is amended to read as
2 follows:

3 **626.50 Duty to levy — notice of ownership or exemption —**
4 **notice to defendant.**

5 1. An officer is bound to levy an execution on any personal
6 property in the possession of, or that the officer has reason
7 to believe belongs to, the defendant, or on which the plaintiff
8 directs the officer to levy, after having received written
9 instructions for the levy from the plaintiff or the attorney
10 who had the execution issued to the sheriff, unless the officer
11 has received notice in writing under oath from some other
12 person, or that person's agent or attorney, that the property
13 belongs to the person, stating the nature of the person's
14 interests in the property, how and from whom the person
15 acquired the property, and the consideration paid for the
16 property; or from the defendant, that the property is exempt
17 from execution.

18 2. a. The officer making the levy in subsection 1 shall
19 promptly serve written notice of the levy on the defendant.
20 The notice shall be served in the same manner as provided for
21 original notice.

22 b. This ~~section~~ subsection is not applicable to garnishment
23 proceedings.

24 Sec. 2. Section 642.5, subsection 2, Code 2015, is amended
25 to read as follows:

26 2. The sheriff shall ~~append~~ file the answers to the
27 examination to the sheriff's return within seven business days
28 of receiving the answers.

29 Sec. 3. Section 642.14, Code 2015, is amended to read as
30 follows:

31 **642.14 Notice of garnishment proceedings.**

32 Judgment against the garnishee shall not be entered until
33 notice as required by section 642.14A or 642.14B has been
34 served upon the defendant in the main action ~~has had ten days'~~
35 ~~notice of the garnishment proceedings, to be served in the~~

1 ~~same manner as original notices. However, if the garnishment~~
2 ~~is to earnings owed such defendant by the garnishee, judgment~~
3 ~~may be entered if notice to the defendant is served with the~~
4 ~~notice of garnishment to the garnishee who shall deliver the~~
5 ~~notice to the defendant with the remainder of or in lieu of the~~
6 ~~defendant's earnings. The garnishee shall state in answer to~~
7 ~~the service of notice of garnishment whether or not service of~~
8 ~~notice was delivered to the defendant.~~

9 ~~The notice required by this section shall contain the full~~
10 ~~text of section 630.3A.~~

11 Sec. 4. Section 642.14A, Code 2015, is amended to read as
12 follows:

13 **642.14A Notice of garnishment and levy to defendant —**
14 **non-employer garnishees.**

15 1. Within seven ~~If the garnishment is to property other than~~
16 earnings an employer owes a defendant, the judgment creditor
17 shall serve upon a debtor who is a natural person not later
18 than seven business days after execution is served upon a
19 garnishee, the sheriff shall send the sheriff's filing of a
20 garnishee's answers pursuant to section 642.5, subsection 2,
21 which show that the garnishee is indebted to the defendant, a
22 ~~notice of garnishment and levy to the defendant in the main~~
23 ~~action informing notifying the defendant that certain real and~~
24 ~~personal property of the defendant may be exempt from execution~~
25 ~~or garnishment and that a hearing process is available for the~~
26 ~~defendant to claim such exemptions of the information required~~
27 in subsection 3.

28 2. The notice required by this section shall be served by
29 personal service or restricted certified mail and first class
30 mail to the last known address of the defendant and to the
31 defendant's attorney. ~~The judgment creditor shall provide the~~
32 ~~sheriff with the last known address of the defendant and the~~
33 ~~defendant's attorney if there is an attorney of record. Proof~~
34 ~~of mailing or personal such service by the sheriff shall be by~~
35 affidavit filed with the court.

1 3. The notice required by this section shall:

2 a. Inform the defendant that judgment has been entered in
3 the main action and the defendant's funds or other property is
4 subject to execution under the judgment.

5 b. Inform the defendant that the defendant has the right
6 to claim funds or other property exempt from execution or
7 garnishment and a right to ~~be timely heard on those claims~~
8 request and have a timely hearing before a judge to claim such
9 exemptions.

10 c. Inform the defendant that if the defendant does not file
11 a motion or other appropriate pleading to claim funds or other
12 property exempt from execution or garnishment under state or
13 federal law, the defendant may lose any such rights and the
14 funds or other property may be applied to the judgment against
15 the defendant.

16 d. Inform the defendant that state and federal laws may
17 place limits on the amount of earnings that may be garnished
18 annually and per pay period and limits on other funds and
19 property that may be garnished or levied against.

20 e. Contain the full text of section 630.3A.

21 f. State that the defendant may wish to consult a lawyer for
22 advice as to the meaning of the notice.

23 g. Inform the defendant that any garnishment for fines
24 imposed on a defendant in a criminal case is subject to section
25 909.6, including the provision that any law which exempts a
26 person's personal property from any lien or legal process is
27 not applicable for such garnishment.

28 4. An additional court filing fee shall not be assessed for
29 proceedings under this section.

30 Sec. 5. NEW SECTION. 642.14B Notice to defendant —
31 employer garnishees.

32 If the garnishment is to earnings an employer owes a
33 defendant, the employer shall deliver the notice of garnishment
34 to the defendant with the remainder of or in lieu of the
35 defendant's earnings. The garnishee shall state in answer to

1 the sheriff's examination whether or not service of the notice
2 of garnishment was delivered to the defendant. The notice
3 required by this section shall contain the information required
4 by section 642.14A, subsection 3, and shall be delivered by
5 personal service, mail, or electronic means.

6 Sec. 6. NEW SECTION. **642.25 Sheriff not an agent.**

7 The sheriff's actions under this chapter, including service
8 of notice, shall not be construed to be that of an agent of any
9 person or party in the proceedings.

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill relates to notice of garnishment and levy to a
14 judgment debtor.

15 The bill amends Code section 626.50 to provide that in
16 garnishment proceedings, an officer who has received written
17 instructions for the levy from a plaintiff who had an execution
18 issued to a sheriff is bound to levy an execution on any
19 personal property in the possession of, or that belongs to, the
20 defendant, unless either another person provides the officer
21 notice in writing that the property belongs to such person or
22 the defendant provides the officer notice in writing that the
23 personal property is exempt from execution.

24 Under current law when a sheriff, at the direction of
25 a plaintiff, submits interrogatories to a garnishee, the
26 sheriff appends the examination to the sheriff's return. The
27 bill requires the sheriff, within seven business days after
28 receiving the answers, to file the garnishee's answers in the
29 case.

30 Under current law, judgment against a garnishee who is not
31 the judgment debtor's employer cannot be entered until the
32 defendant in the main action (i.e., the judgment debtor) has
33 had 10 days' notice of the garnishment proceedings. Current
34 Code section 642.14A requires that within seven days after
35 execution is served upon a garnishee, a sheriff is required to

1 send a notice of garnishment and levy to the judgment debtor
2 and the judgment debtor's attorney which contains information
3 about exemption from garnishment for certain types of property.

4 The bill provides that judgment against a garnishee who is
5 not the judgment debtor's employer cannot be entered until
6 notice required by Code section 642.14A is served on the
7 judgment debtor. The bill provides that, under Code section
8 642.14A, instead of the sheriff sending notice of garnishment
9 and levy within seven days after execution, the judgment
10 creditor shall serve a natural person debtor with notice of
11 garnishment and levy not later than seven business days after
12 the sheriff's filing of the garnishee's answers. In addition
13 to the existing notice items Code section 642.14A requires,
14 the bill provides that the notice inform the judgment debtor
15 that if the garnishment is for fines imposed in a criminal
16 case, laws that otherwise exempt the judgment debtor's personal
17 property from garnishment are not applicable pursuant to Code
18 section 909.6. The bill eliminates the requirement that the
19 judgment debtor's attorney receive a copy of the notice.

20 Under current Code section 642.14, judgment against an
21 employer garnishee may be entered if the employer delivers
22 the notice of garnishment to the judgment debtor with the
23 remainder of or in lieu of the judgment debtor's earnings.
24 The bill moves this requirement to new Code section 642.14B
25 to more clearly distinguish the requirements of employer
26 and non-employer garnishees. The bill requires an employer
27 garnishee to provide the information currently required by Code
28 section 642.14A(3) to the judgment debtor.

29 The bill provides that a sheriff's actions under Code
30 chapter 642, including service of notice, shall not be
31 construed to be that of an agent of any person or party in the
32 garnishment proceedings.