

SENATE BILL No. 366

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-5-105; IC 33-34; IC 34-55-8-7.

Synopsis: Township small claims courts and garnishments. Requires the judges of all the Marion County township small claims courts to select from among themselves a small claims administrative judge to carry out certain duties currently performed by the Marion circuit court judge, including adopting uniform rules for conducting the business of the small claims courts. Allows a vacationing small claims court judge instead of the Marion circuit court judge to authorize the appointment of a judge pro tempore to handle the judicial business of the small claims court. Makes changes to the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment to enforce the payment of any judgments against the individual. Requires a court to order: (1) any property, income, or profits of a judgment debtor not exempt from execution or process or any debt due to the judgment debtor to be applied to the satisfaction of the judgment and forbid transfers of property and choses in action; and (2) that the judgment or execution is a continuing lien upon the income or profits of the judgment debtor in the hands either of the judgment debtor or any other person from the date the order is served upon the person indebted to the judgment debtor to the extent that the lien, together with all similar liens, is allowed by law.

Effective: July 1, 2014.

Schneider, Young R Michael

January 14, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 366

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

1 SECTION 1. IC 24-4.5-5-105 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 105. (1) For the
3 purposes of IC 24-4.5-5-101 through IC 24-4.5-5-108:
4 (a) "disposable earnings" means that part of the earnings of an
5 individual, including wages, commissions, income, rents, or
6 profits remaining after the deduction from those earnings of
7 amounts required by law to be withheld;
8 (b) "garnishment" means any legal or equitable proceedings
9 through which the earnings of an individual are required to be
10 withheld by a garnishee, by the individual debtor, or by any other
11 person for the payment of a judgment; and
12 (c) "support withholding" means that part of the earnings that are
13 withheld from an individual for child support in accordance with
14 the laws of this state.
15 (2) Except as provided in subsection (8), the maximum part of the
16 aggregate disposable earnings of an individual for any workweek which



1 is subjected to garnishment to enforce the payment of one (1) or more
 2 judgments against ~~him~~ **the individual** may not exceed **the lesser of the**
 3 **following amounts:**

4 (a) **An amount equal to** twenty-five percent (25%) of ~~his~~ **the**
 5 **individual's** disposable earnings for that week or, **upon a**
 6 **showing of good cause by the individual why the amount**
 7 **should be reduced, an amount equal to:**

8 (i) **less than twenty-five percent (25%); and**

9 (ii) **at least ten percent (10%);**

10 **of the individual's disposable earnings for that week.**

11 (b) The amount by which ~~his~~ **the individual's** disposable earnings
 12 for that week exceed thirty (30) times the federal minimum hourly
 13 wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the
 14 earnings are payable.

15 ~~whichever is less.~~ In the case of earnings for a pay period other than a
 16 week, the earnings shall be computed upon a multiple of the federal
 17 minimum hourly wage equivalent to thirty (30) times the federal
 18 minimum hourly wage as prescribed in this section.

19 (3) The maximum part of the aggregate disposable earnings of an
 20 individual for any workweek which is subject to garnishment or
 21 support withholding to enforce any order for the support of any person
 22 shall not exceed:

23 (a) where such individual is supporting ~~his~~ **the individual's**
 24 spouse or dependent child (other than a spouse or child with
 25 respect to whose support such order is used), fifty percent (50%)
 26 of such individual's disposable earnings for that week; and

27 (b) where such individual is not supporting such a spouse or
 28 dependent child described in subdivision (a), sixty percent (60%)
 29 of such individual's disposable earnings for that week;

30 except that, with respect to the disposable earnings of any individual
 31 for any workweek, the fifty percent (50%) specified in subdivision (a)
 32 shall be deemed to be fifty-five percent (55%) and the sixty percent
 33 (60%) specified in subdivision (b) shall be deemed to be sixty-five
 34 percent (65%), if and to the extent that such earnings are subject to
 35 garnishment or support withholding to enforce a support order with
 36 respect to a period which is prior to the twelve (12) week period which
 37 ends with the beginning of such workweek.

38 (4) No court may make, execute, or enforce an order or process in
 39 violation of this section.

40 (5) An employer who is required to make deductions from an
 41 individual's disposable earnings pursuant to a garnishment order or
 42 series of orders arising out of the same judgment debt (excluding a



1 judgment for payment of child support) may collect, as a fee to
2 compensate the employer for making these deductions, an amount
3 equal to the greater of twelve dollars (\$12) or three percent (3%) of the
4 total amount required to be deducted by the garnishment order or series
5 of orders arising out of the same judgment debt. If the employer
6 chooses to impose a fee, the fee shall be allocated as follows:

7 (a) One-half (1/2) of the fee shall be borne by the debtor, and that
8 amount may be deducted by the employer directly from the
9 employee's disposable earnings.

10 (b) One-half (1/2) of the fee shall be borne by the creditor, and
11 that amount may be retained by the employer from the amount
12 otherwise due the creditor.

13 The deductions made under this subsection for a collection fee do not
14 increase the amount of the judgment debt for which the fee is collected
15 for the purpose of calculating or collecting judgment interest. This fee
16 may be collected by an employer only once for each garnishment order
17 or series of orders arising out of the same judgment debt. The employer
18 may collect the entire fee from one (1) or more of the initial deductions
19 from the employee's disposable earnings. Alternatively, the employer
20 may collect the fee ratably over the number of pay periods during
21 which deductions from the employee's disposable earnings are
22 required.

23 (6) The deduction of the garnishment collection fee under
24 subsection (5)(a) or subsection (7) is not an assignment of wages under
25 IC 22-2-6.

26 (7) An employer who is required to make a deduction from an
27 individual's disposable earnings in accordance with a judgment for
28 payment of child support may collect a fee of two dollars (\$2) each
29 time the employer is required to make the deduction. The fee may be
30 deducted by the employer from the individual's disposable earnings
31 each time the employer makes the deduction for support. If the
32 employer elects to deduct such a fee, the amount to be deducted for the
33 payment of support must be reduced accordingly if necessary to avoid
34 exceeding the maximum amount permitted to be deducted under
35 subsection (3).

36 (8) A support withholding order takes priority over a garnishment
37 order irrespective of their dates of entry or activation. If a person is
38 subject to a support withholding order and a garnishment order, the
39 garnishment order shall be honored only to the extent that disposable
40 earnings withheld under the support withholding order do not exceed
41 the maximum amount subject to garnishment as computed under
42 subsection (2).



1 SECTION 2. IC 33-34-1-5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. The ~~judge of the~~
 3 ~~circuit court shall extend aid and assistance to the judges in the conduct~~
 4 ~~of all the township small claims courts elected under this article shall~~
 5 ~~select from among themselves a small claims administrative judge~~
 6 ~~to carry out the duties of the small claims administrative judge~~
 7 ~~under this article. The small claims administrative judge shall be~~
 8 ~~selected for a minimum term of twelve (12) months.~~

9 SECTION 3. IC 33-34-2-4 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The ~~circuit court~~
 11 ~~small claims administrative~~ judge may establish a regular hourly
 12 schedule for the performance of duties by full-time or part-time
 13 township small claims courts, and each judge shall maintain that
 14 schedule.

15 (b) If the ~~circuit court~~ **small claims administrative** judge does not
 16 establish a regular hourly schedule, the judge shall perform the judge's
 17 duties at regular, reasonable hours.

18 (c) Regardless of whether a regular hourly schedule has been
 19 established as set forth in subsection (a), a judge shall hold sessions in
 20 addition to the judge's regular schedule whenever the business of the
 21 judge's court requires.

22 SECTION 4. IC 33-34-2-9 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) A vacation of one
 24 (1) month per year shall be provided for a judge who serves in a
 25 full-time capacity.

26 (b) The ~~circuit court~~ **vacationing** judge may authorize the
 27 appointment of a judge pro tempore to handle the judicial business of
 28 the ~~vacationing judge, if the circuit court, judge considers it if~~
 29 necessary.

30 SECTION 5. IC 33-34-3-6 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The **small claims**
 32 **administrative** judge of the ~~circuit court, assisted by shall, in~~
 33 **coordination with all the other** judges of the small claims court, ~~shall~~
 34 make and adopt uniform rules for conducting the business of the small
 35 claims court:

36 (1) according to a simplified procedure; and

37 (2) in the spirit of sections 7 and 9 of this chapter.

38 SECTION 6. IC 34-55-8-7 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) After a hearing
 40 of which the judgment debtor has been notified, the court ~~may~~ **shall**
 41 order:

42 (1) any property, income, or profits of the judgment debtor not



1 exempt from execution or process, in the hands either of the
 2 judgment debtor or of any other person; or
 3 (2) any debt due to the judgment debtor;
 4 to be applied to the satisfaction of the judgment and forbid transfers of
 5 property and choses in action.

6 (b) The judge ~~may~~ **shall** order that:

7 (1) the judgment or execution is a continuing lien upon the
 8 income or profits of the judgment debtor in the hands either of the
 9 judgment debtor or any other person, governmental officer, or
 10 corporation from the date the order is served upon the person,
 11 governmental officer, or corporation indebted to the judgment
 12 debtor to the extent that the lien, together with all similar liens, is
 13 permitted under IC 24-4.5-5-105; and

14 (2) the court may enforce all orders and decrees in the premises,
 15 by attachment or otherwise.

16 (c) A court in an action for proceedings supplementary to execution
 17 shall issue an order directing a depository financial institution (as
 18 defined in IC 28-9-2) to place a hold on a deposit account in which the
 19 judgment debtor has an interest, either individually or jointly with
 20 another person, whenever the conditions prescribed under
 21 IC 28-9-3-4(d)(1) through IC 28-9-3-4(d)(3) are met. An order issued
 22 under **this subsection**:

23 (1) is subject to the limitations as to duration of the restriction and
 24 the amount to be restricted as specified under IC 28-9-4-2; and

25 (2) may be terminated or modified to reflect valid exemptions of
 26 a depositor that the court has considered.

27 (d) If an order for the placing of a hold on a deposit account is
 28 issued under subsection (c), a person whose deposit account is affected
 29 may request a hearing from the court on the matter of:

30 (1) the person's right to claim certain funds in the person's deposit
 31 account as exempt from garnishment; and

32 (2) whether the hold should be removed by the court.

33 (e) If a court receives a request for a hearing under subsection (d),
 34 the court shall hold a hearing on the matter within five (5) days
 35 (excluding Saturdays, Sundays, and legal holidays) after the court
 36 receives the request.

37 (f) If a person whose deposit account is affected by the order issued
 38 under subsection (c) files an affidavit with the court stating that the
 39 funds in the account are exempt from garnishment, the court may issue
 40 an order releasing the hold on the account without first conducting a
 41 hearing.

