

January 23, 1998

HOUSE BILL No. 1252

DIGEST OF HB1252 (Updated January 22, 1998 9:54 am - DI 94)

Citations Affected: IC 28-9-3-4; IC 28-9-4-2; IC 34-1-44-7.

Synopsis: Adverse claims act. Provides that a depository institution is not required to respond to interrogatories from an adverse claimant regarding deposit accounts at the depository financial institution unless the adverse claimant has provided the depository with certain notices, orders, and payments. Provides that a depository institution is not required to pay funds in a deposit account to an adverse claimant unless the adverse claimant serves the depository financial institution with a final order in garnishment directing the payment of the lesser of the unpaid amount of the judgment specified by the documents and process or the balance in the account at the time of receipt of the documents and process. Requires the depository institution to pay the
(Continued next page)

Effective: July 1, 1998.

Tabaczynski

January 13, 1998, read first time and referred to Committee on Financial Institutions.
January 22, 1998, reported — Do Pass.

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lesser of: (1) the unpaid amount of the judgment specified by the documents and process; or (2) the balance in the account at the time of receipt of the documents and process, after subtracting one-half of the garnishment fee, if all requirements for payment have been met. Makes conforming amendments.

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January 23, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE BILL No. 1252

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

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

- 1 SECTION 1. IC 28-9-3-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) This section applies to an
3 adverse claimant who is a money judgment creditor attempting to
4 garnish a deposit account.
5 (b) A depository financial institution may not be held accountable
6 to an adverse claimant for funds in a deposit account that are claimed
7 by the adverse claimant unless the adverse claimant has ~~done all of the~~
8 ~~following~~: **complied with subsection (d)**.
9 (c) **A depository institution is not required to respond to**
10 **interrogatories regarding deposit accounts at the depository**
11 **financial institution unless the adverse claimant has complied with**
12 **subsection (d)**.
13 (d) **An adverse claimant shall do all of the following:**
14 (1) ~~Provides~~ **Provide** the depository financial institution notice of
15 garnishment proceedings, the unpaid amount of the judgment, and

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1 sufficient identifying information about the judgment defendant
 2 to enable the depository financial institution reasonably to verify
 3 the judgment defendant as the depositor.

4 (2) ~~Serves~~ **Serve** or ~~causes~~ **cause** to be served upon the depository
 5 financial institution an order to answer interrogatories.

6 (3) If the judgment defendant is an individual, ~~serves~~ **serve** or
 7 ~~causes~~ **cause** to be served upon the depository financial institution
 8 a copy of a notice, or an apparently valid order containing a
 9 notice, issued by a court that is directed to the judgment defendant
 10 (which is to be used by the depository financial institution to
 11 comply with IC 28-9-4-2(a)(3)) and that:

12 (A) states that the adverse claimant has or may have served or
 13 caused to be served upon one (1) or more depository financial
 14 institutions notice that may result in the placing of a hold on
 15 deposit accounts maintained by the judgment defendant, either
 16 individually or jointly with another person, in such depository
 17 financial institutions;

18 (B) states that under federal and state law certain funds are
 19 exempt from garnishment, including Social Security,
 20 Supplemental Security Income, veterans benefits, and certain
 21 disability pension benefits, and that there may be other
 22 exemptions from garnishment under federal or state law;

23 (C) states that if the judgment defendant or another person
 24 who maintains a deposit account jointly with the judgment
 25 defendant believes that some or all of the funds in the deposit
 26 account on which a hold may have been placed are exempt,
 27 such person is entitled to a prompt hearing for the purpose of
 28 presenting evidence to establish exemptions and seeking
 29 removal of the hold; and

30 (D) has attached to it a preprinted detachable form that may be
 31 used by the judgment defendant or other person maintaining
 32 a deposit account jointly with the judgment defendant in
 33 requesting the prompt hearing specified in clause (C) and that
 34 generally instructs such person as to how the form should be
 35 used in requesting this hearing.

36 (4) ~~Serves~~ **Serve** or ~~causes~~ **cause** to be served upon the depository
 37 financial institution an apparently valid order issued by a court
 38 that expressly directs the depository financial institution to place
 39 a hold on a deposit account identified in the order whenever the
 40 conditions under ~~subdivision~~ **subdivisions** (1) through (3) are
 41 met.

42 (5) ~~Pays~~ **Pay** to the depository financial institution five dollars

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1 (\$5) for each judgment defendant identified by the adverse
 2 claimant under subdivision (1). This fee may not be assessed as
 3 a cost to the judgment defendant in the action.

4 ~~(c)~~ **(e)** An order issued under subsection ~~(b)(4)~~: **(d)(4)**:

5 (1) is subject to the limitations under IC 28-9-4-2 concerning the
 6 duration of the restriction and the amount to be restricted; and
 7 (2) may be terminated or modified to reflect valid exemptions of
 8 a depositor that the court has considered.

9 **(f) A depository financial institution is not required to pay funds**
 10 **in a deposit account to an adverse claimant unless the adverse**
 11 **claimant serves the depository financial institution with a final**
 12 **order in garnishment directing the payment of the lesser of:**

13 **(1) the unpaid amount of the judgment specified by the**
 14 **documents and process; or**

15 **(2) the balance in the account at the time of receipt of the**
 16 **documents and process.**

17 SECTION 2. IC 28-9-4-2 IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) Upon receipt from an adverse
 19 claimant who is a money judgment creditor of the documents and
 20 process required under ~~IC 28-9-3-4(b)~~, **IC 28-9-3-4(d)**, a depository
 21 financial institution shall:

22 (1) deduct and obtain from the deposit account the full amount of
 23 the fee specified in ~~IC 28-9-4-3(b)~~; **section 3(b) of this chapter**;

24 (2) within a commercially reasonable time after receiving the
 25 documents and process, restrict withdrawal of funds in ~~or~~
 26 ~~subsequently deposited into~~, the deposit account identified in the
 27 documents and process in an amount ~~not exceeding equal to the~~
 28 **lesser of:**

29 **(A) the unpaid amount of the judgment specified by the**
 30 **documents and process; or**

31 **(B) the balance in the account at the time of receipt of the**
 32 **documents and process;**

33 less one-half (1/2) of the amount of the fee deducted under
 34 subdivision (1);

35 (3) if the depository financial institution places a hold on the
 36 deposit account of a judgment defendant who is an individual,
 37 within one (1) working day after the hold has been placed, send
 38 to each depositor whose deposit account is affected at the last
 39 known address of such depositor or depositors (as the address is
 40 shown by the records of the depository financial institution with
 41 respect to that deposit account) a copy of the notice or order
 42 containing the notice specified in ~~IC 28-9-3-4(b)(3)~~

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1 **IC 28-9-3-4(d)(3)** and a written notification advising the
2 depositor or depositors that the hold has been placed; and

3 (4) if the depository financial institution places a hold on the
4 deposit account of a judgment defendant who is not an individual,
5 within one (1) working day after the hold has been placed, send
6 to each depositor whose deposit account is affected at the last
7 known address of such depositor or depositors (as the address is
8 shown by the records of the depository financial institution with
9 respect to that deposit account) a written notification advising the
10 depositor or depositors that the hold has been placed.

11 (b) The restriction on withdrawal from a deposit account imposed
12 by a depository financial institution under this section may not exceed
13 ninety (90) days, pending a court's determination of the adverse
14 claimant's rights to the amount restricted.

15 (c) If:

16 (1) ninety (90) days have elapsed after the hold is placed on a
17 deposit account; and

18 (2) an apparently valid order of a court has not been served upon
19 the depository financial institution that directs the depository
20 financial institution to begin or to continue to restrict withdrawals
21 from a deposit account;

22 the restriction on withdrawal from the deposit account imposed under
23 subsection (a) expires.

24 **SECTION 3. IC 34-1-44-7 IS AMENDED TO READ AS**
25 **FOLLOWS [EFFECTIVE JULY 1, 1998]:** Sec. 7. (a) After a hearing
26 of which the judgment debtor has been notified, the court may order
27 any property, income, or profits of the judgment debtor not exempt
28 from execution or process, in the hands either of the judgment debtor
29 or of any other person, or any debt due to the judgment debtor, to be
30 applied to the satisfaction of the judgment and forbid transfers of
31 property and choses in action.

32 (b) The judge may order that:

33 (1) the judgment or execution is a continuing lien upon the
34 income or profits of the judgment debtor in the hands either of the
35 judgment debtor or any other person, governmental officer, or
36 corporation from the date such order is served upon the person,
37 governmental officer, or corporation indebted to the judgment
38 debtor to the extent that the lien, together with all similar liens, is
39 permitted under IC 24-4.5-5-105; and

40 (2) the court has full power to enforce all orders and decrees in
41 the premises, by attachment or otherwise.

42 (c) A court in an action for proceedings supplementary to execution

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1 shall issue an order directing a depository financial institution (as
 2 defined in IC 28-9-2) to place a hold on a deposit account in which the
 3 judgment debtor has an interest, either individually or jointly with
 4 another person, whenever the conditions prescribed under
 5 ~~IC 28-9-3-4(b)(1)~~ **IC 28-9-3-4(d)(1)** through ~~IC 28-9-3-4(b)(3)~~
 6 **IC 28-9-3-4(d)(3)** are met. An order issued under this subsection:

- 7 (1) is subject to the limitations as to duration of the restriction and
 8 the amount to be restricted as specified under IC 28-9-4-2; and
 9 (2) may be terminated or modified to reflect valid exemptions of
 10 a depositor that the court has considered.

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

- 14 (1) the person's right to claim certain funds in the person's deposit
 15 account as exempt from garnishment; and
 16 (2) whether the hold should be removed by the court.

17 (e) If a court receives a request for a hearing under subsection (d),
 18 the court shall hold a prompt hearing on the matter.

19 (f) For the purposes of subsection (e), a prompt hearing is one held
 20 within five (5) days (excluding Saturdays, Sundays, and legal holidays)
 21 after the court receives the request.

22 (g) If a person whose deposit account is affected by the order issued
 23 under subsection (c) files an affidavit with the court stating that the
 24 funds in the account are exempt from garnishment, the court may issue
 25 an order releasing the hold on the account without first conducting a
 26 hearing.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1252, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

TABACZYNSKI, Chair

Committee Vote: yeas 14, nays 0.

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