

## IC 34-25-3

### Chapter 3. Garnishment

#### IC 34-25-3-1

##### **Officers subject to garnishment**

Sec. 1. (a) This section applies to:

- (1) all officers who may collect money by virtue of their office, including:
  - (A) clerks of the circuit and superior courts;
  - (B) sheriffs; and
  - (C) constables;
- (2) executors;
- (3) administrators;
- (4) guardians; and
- (5) trustees.

(b) Persons described in subsection (a) are subject to garnishment at the suit of any creditor who has money or choses in action in the hands of the officer, executor, administrator, guardian, or trustee at the time of the service of the garnishee process, in the same manner as and to the same extent that other persons are subject to garnishment.

*As added by P.L.1-1998, SEC.20.*

#### IC 34-25-3-2

##### **Personal actions arising upon contract or judgment; affidavit; undertaking; summons**

Sec. 2. (a) In all personal actions arising upon contract, express or implied, or upon a judgment or decree of any court, if at the time the action is commenced or at any time afterwards, whether a writ of attachment has been issued or not, the plaintiff, or a person representing the plaintiff, shall file with the clerk an affidavit that the plaintiff has good reason to believe, and does believe, that the person named in the affidavit:

- (1) has property of the defendant in the person's possession or under the person's control;
- (2) is indebted to the defendant;
- (3) has the control or agency of any property, money, credits, or effects of the defendant; or
- (4) has control over the defendant's share or interest in the stock of any association or corporation.

(b) The plaintiff shall file a written undertaking, as described in IC 34-25-2-5, payable to the defendant, with freehold surety to be approved by the clerk, stating that the plaintiff will:

- (1) prosecute the proceedings in garnishment to effect; and
- (2) pay to the defendant all damages the defendant may sustain if the proceedings are wrongful and oppressive.

(c) The clerk shall issue a summons notifying the person, association, or corporation to appear at the court and answer as garnishee in the action. The summons must contain the name and address of the defendant. The summons shall be served in the manner

provided by the Indiana rules of trial procedure.  
*As added by P.L.1-1998, SEC.20.*

### **IC 34-25-3-3**

#### **Accountability of garnishee to plaintiff**

Sec. 3. From the day of the service of the summons, the garnishee is accountable to the plaintiff in the action for the amount of money, property, or credits in the garnishee's possession or due and owing from the garnishee to the defendant.

*As added by P.L.1-1998, SEC.20.*

### **IC 34-25-3-4**

#### **Certificate and examination of garnishee; enforcement**

Sec. 4. (a) This section applies to an officer or agent of an association or corporation and every other person summoned as a garnishee.

(b) A person described in subsection (a) shall, when served, or not later than five (5) days after being served the summons, furnish the sheriff with a certificate of:

- (1) the number of shares or rights of the defendants in the stock of the corporation or association;
- (2) a description of the property held by the corporation, association, or person that belongs to the defendant or is held for the benefit of the defendant; or
- (3) the amount of the debt owing to the defendant by the association, corporation, or person, whether due or not.

The sheriff shall return the certificate with the summons.

(c) If the person refuses to provide the information set forth in subsection (b), the person may be required by the court to appear and be examined under oath concerning the information. Obedience to the orders may be enforced by attachment.

*As added by P.L.1-1998, SEC.20.*

### **IC 34-25-3-5**

#### **Garnishee's failure to appear or provide information; effect; procedure**

Sec. 5. (a) This section applies to a garnishee who is summoned and:

- (1) fails to appear and provide discovery as required by law; or
- (2) fails to answer or demur to the matters set forth against the garnishee in the affidavit, additional complaint, or interrogatories.

(b) When a garnishee fails to provide information as described in subsection (a):

- (1) the information may be taken as confessed;
- (2) judgment may be entered by default; or
- (3) the garnishee may be examined under oath concerning all the matters charged in the affidavit or additional complaint.

(c) Proceedings, pleadings, and process under this section must conform to the practice in other cases, as necessary to determine the

rights of the parties and render a final judgment.  
*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-6**

##### **Absconding garnishee; order of arrest**

Sec. 6. If the plaintiff or person representing the plaintiff files an affidavit with the clerk stating that the plaintiff or person:

- (1) fears that the garnishee will abscond before judgment with intent to defraud the plaintiff; and
- (2) believes that the garnishee:
  - (A) has money, things in action, goods, chattels, or effects of the defendant in the garnishee's possession; or
  - (B) is indebted to the defendant;

the clerk shall issue an order of arrest against the garnishee and hold the garnishee to bail as in a civil action.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-7**

##### **Final judgment against garnishee; discharge of garnishee; costs**

Sec. 7. The court shall not render final judgment against the garnishee until the action against the defendant has been determined. If the plaintiff fails to recover judgment either against the defendant or the garnishee, the garnishee shall be discharged and recover costs.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-8**

##### **Return of "no property found"**

Sec. 8. The return of "no property found" upon the order of attachment does not affect the proceedings against the garnishee.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-9**

##### **Judgment recovered; liability of defendant or garnishee for costs**

Sec. 9. (a) If the plaintiff wins judgment against the defendant and before the judgment the garnishee:

- (1) delivers to the sheriff:
  - (A) all the defendant's goods and chattels, or other effects in the garnishee's possession subject to execution; or
  - (B) an inventory of the items described in subdivision (1)(A); and
- (2) pays to the sheriff or into court all money due from the garnishee or belonging to the defendant;

the costs in the proceeding against the garnishee shall be paid by the defendant.

(b) If the garnishee does not appear or appears and refuses to accurately confess the matter alleged and at the trial:

- (1) the plaintiff recovers judgment against the garnishee; or
- (2) the garnishee admits to having possession of money, credits, or effects belonging to the defendant and refuses to pay or deliver the money, credits, or effects;

the garnishee shall pay costs.  
*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-10**

##### **Compelling garnishee to pay or perform contracts**

Sec. 10. The garnishee may not be compelled to pay or perform any contract in any other manner or at any other time, than the garnishee would be bound to do for the defendant.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-11**

##### **Payment to sheriff or court; discharge of garnishee**

Sec. 11. A garnishee may pay money the garnishee owes to the defendant to the sheriff or into court and is discharged from liability to the defendant for the amount of money paid to the sheriff or into court that does not exceed the plaintiff's claim.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-12**

##### **Examination of garnishee; delivery of property and payment; undertaking**

Sec. 12. (a) This section applies to a garnishee or an officer of a corporation summoned as a garnishee.

(b) Five (5) or more days after being served with the summons, the garnishee may be examined under oath in open court.

(c) If the examination reveals that at the time the summons was served, or after the service of the summons upon the garnishee, the garnishee or the corporation possessed any property of the defendant or was indebted to the defendant, the court may order:

(1) the delivery of the property and the payment of the indebtedness into court; or

(2) the execution of a written undertaking by the garnishee, with sufficient sureties, to be approved by the court, payable to the plaintiff, to the effect that the indebtedness shall be paid or the property forthcoming as the court shall direct.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-13**

##### **Creditor of defendant; intervention in action**

Sec. 13. At any time before the final judgment in the suit, any creditor of the defendant, upon filing an affidavit and written undertaking, as required of an attaching creditor, may do the following:

(1) Become a party to the action, file a complaint, and prove the claim or demand against the defendant.

(2) Have any person summoned as garnishee or held to bail who has not before been summoned or held to bail.

(3) Propound interrogatories to the garnishee and enforce answers to the interrogatories in like manner, as the creditor who is plaintiff.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-14**

##### **Judgment for plaintiff or creditor; execution**

Sec. 14. (a) If:

(1) judgment in the action is rendered for the plaintiff, or one (1) or more of several plaintiffs; and  
(2) sufficient proof is made of the goods, chattels, rights, credits, money, and effects in the possession of the garnishee; the court shall also give judgment in favor of the plaintiff or creditors against the garnishee, or the property of the defendant, or both, as the case may require.

(b) A judgment described in subsection (a) may be enforced by execution.

*As added by P.L.1-1998, SEC.20.*

#### **IC 34-25-3-15**

##### **Procedurally defective order; immunity of person who complies**

Sec. 15. (a) In addition to other proceedings, this section applies to proceedings supplementary to execution involving a depository financial institution under IC 28-9.

(b) A person, whether designated as a garnishee defendant, an income payor, or otherwise, who complies with what purports to be a garnishment, an income withholding order, or a hold or restriction on withdrawal order issued under:

- (1) the Indiana Rules of Trial Procedure;
- (2) this article (or IC 34-1-11 before its repeal);
- (3) IC 31-16-15 (or IC 31-2-10 before its repeal) or a similar law of Indiana or another state pertaining to support or maintenance of any person; or
- (4) IC 34-55-8-7 (or IC 34-1-44-7 before its repeal) concerning proceedings supplementary to execution;

is not personally liable for the amounts withheld if, for any reason, the order is determined by a court to be procedurally defective.

*As added by P.L.1-1998, SEC.20.*