MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Senator(s) Posey To: Judiciary

SENATE BILL NO. 2793

AN ACT TO AMEND SECTION 11-35-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT All PAYMENTS MADE PURSUANT TO A GARNISHMENT ISSUED OUT OF THE JUSTICE COURT SHALL BE MADE DIRECTLY TO THE PLAINTIFF OR TO THE PLAINTIFF'S ATTORNEY AS INDICATED BY THE PLAINTIFF IN HIS OR HER SUGGESTION FOR WRIT OF GARNISHMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 11-35-23, Mississippi Code of 1972, is amended as follows:

11-35-23. (1) Except for wages, salary or other compensation, all property in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall be bound by and subject to the lien of the judgment, decree or attachment on which the writ shall have been issued. If the garnishee shall surrender such property to the sheriff or other officer serving the writ, the officer shall receive the same and, in case the garnishment issued on a judgment or decree, shall make sale thereof as if levied on by virtue of an execution, and return the money arising therefrom to satisfy the judgment; and if the garnishment issued on an attachment, the officer shall dispose of the property as if it were levied upon by a writ of attachment. And any indebtedness of the garnishee to the defendant, except for wages, salary or other compensation, shall be bound from the time of the service of the writ of garnishment, and be appropriable to the satisfaction of the judgment or decree, or liable to be condemned in the attachment.

(2) The court issuing any writ of garnishment shall show thereon the amount of the claim of the plaintiff and the court costs in the proceedings and should at any time during the

pendency of said proceedings in the court a judgment be rendered for a different amount, then the court shall notify the garnishee of the correct amount due by the defendant under said writ.

(3) (a) Except for judgments, liens, attachments, fees or charges owed to the state or its political subdivisions; wages, salary or other compensation in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall not be bound by nor subject to the lien of the judgment, decree or attachment on which the writ shall have been issued when the writ of garnishment is issued on a judgment based upon a claim or debt that is less than One Hundred Dollars ($100.00), excluding court costs.

(b) If the garnishee be indebted or shall become indebted to the defendant for wages, salary or other compensation during the first thirty (30) days after service of a proper writ of garnishment, the garnishee shall pay over to the employee all of such indebtedness, and thereafter, the garnishee shall retain and the writ shall bind the nonexempt percentage of disposable earnings, as provided by Section 85-3-4, for such period of time as is necessary to accumulate a sum equal to the amount shown on the writ as due the court, even if such period of time extends beyond the return day of the writ. Unless the court otherwise authorizes the garnishee to make earlier payments or releases, the garnishee shall retain all sums collected pursuant to the writ and make only one (1) payment into court at such time as the total amount shown due on the writ has been accumulated, provided that, at least one (1) payment per year shall be made to the court of the amount that has been withheld during the preceding year. Should the employment of the defendant for any reason be terminated with the garnishee, then the garnishee shall not later than fifteen (15) days after the termination of such employment, report such termination to the court and pay into the court all sums as have been withheld from the defendant's disposable

earnings. If the plaintiff in garnishment contest the answer of the garnishee, as now provided by law in such cases, and proves to the court the deficiency or untruth of the garnishee's answer, then the court shall render judgment against the garnishee for such amount as would have been subject to the writ had the said sum not been released to the defendant; provided, however, any garnishee who files a timely and complete answer shall not be liable for any error made in good faith in determining or withholding the amount of wages, salary or other compensation of a defendant which are subject to the writ.

(4) Wages, salaries or other compensation as used in this section shall mean wages, salaries, commissions, bonuses or other compensation paid for employment purposes only.

(5) The circuit clerk may, in his or her discretion, spread on the minutes of the county or circuit court, as the case may be, an instruction that all garnishment defendants shall send all garnishment monies to the attorney of record or in the case where there is more than one (1) attorney of record, then to the first-named attorney of record, and not to the clerk. The payment schedule shall be the same as subsection (3)(b) of this section.

(6) All payments made pursuant to a garnishment issued out of the Justice Court shall be made directly to the plaintiff or to the plaintiff's attorney as indicated by the plaintiff in the suggestion for writ of garnishment.

SECTION 2. This act shall take effect and be in force from and after July 1, 2002.

ST: Garnishment; authorize payments in justice court to go directly to plaintiff or his attorney.