

IC 34-55-8

Chapter 8. Proceedings Supplementary to Execution

IC 34-55-8-1

Unsatisfied execution; order requiring judgment debtor to appear

Sec. 1. If an execution against the property of the judgment debtor or any of several debtors in the same judgment is returned unsatisfied, in whole or in part, the judgment creditor, after the return is made, is entitled to an order to be issued by any circuit, superior, or city court in the jurisdiction to which the execution issued that requires the judgment debtor to appear before the court to answer concerning the judgment debtor's property, income, and profits within the county to which the execution was issued.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-2

Refusal of judgment debtor to apply assets to judgment; order requiring

Sec. 2. (a) If, after the issuing of an execution against property, the execution plaintiff or other person on the execution plaintiff's behalf makes and files with the clerk of any court of record of any city, county, or township an affidavit:

(1) stating to the effect that a judgment debtor, residing in the territorial jurisdiction of the court, has property, income, or profits that the judgment debtor unjustly refuses to apply toward the satisfaction of the judgment; and

(2) describing the property, income, or profits;

the court shall issue a subpoena requiring the judgment debtor to appear immediately before the court, at a specified time and place, to answer concerning the affidavit.

(b) Proceedings described in subsection (a) may subsequently be held for the application of the property, income, or profits of the judgment debtor toward the satisfaction of the judgment as provided upon the return of an execution.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-3

Arrest of debtor authorized

Sec. 3. When the plaintiff or the plaintiff's agent or attorney, at the time of applying for the order or at any time afterwards, makes and files an affidavit with the court, stating that:

(1) there is danger of the debtor leaving the state or concealing himself or herself; and

(2) there is reason to believe the debtor has property, rights, credits, moneys, or effects that the debtor unjustly refuses to apply to the judgment, with intent to defraud the creditor;

the court shall issue to the sheriff of the county an order of arrest and bail.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-4

Arrest of debtor; bond

Sec. 4. The sheriff, after taking the execution debtor into custody upon the order of arrest, shall require the execution debtor to enter into a written undertaking to the plaintiff, with surety, to be approved by the officer, that:

- (1) the execution debtor will attend before the court and obey the order made by the court; and
- (2) the execution debtor will not, in the meantime, dispose of any part of the execution debtor's property that is not exempt from execution.

If the execution debtor defaults on the written undertaking, the execution debtor shall be committed to prison. Upon breach of the written undertaking, the plaintiff is entitled to the amount of the value of the property unlawfully withheld or disposed of.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-5

Third parties; when required to appear

Sec. 5. (a) Except as provided in subsections (b) and (c):

- (1) after the issuing or return of an execution against the property of the judgment debtor or any one (1) of the several debtors in the same judgment; and
- (2) upon an affidavit that any person, corporation (municipal or otherwise), the state, or any subdivision or agency of the state:
 - (A) has property of the judgment debtor; or
 - (B) is or will be periodically indebted to the judgment debtor in any amount (although the amount shall be determined periodically as it becomes due and payable, which together with other property claimed by the judgment debtor as exempt from execution, exceeds the amount of property exempt by law);

such person, corporation, any member of the corporation, the auditor of state, or auditing officer of the municipal corporations, subdivisions, or agencies of the state may be required to appear and answer concerning the affidavit, as provided by this chapter.

(b) The persons described in this section shall not be required to appear personally in court unless the judge of the court orders their personal appearance.

(c) The court may order interrogatories to be submitted and the interrogatories to be answered by the persons described in subsection (a). The interrogatories shall be submitted by the parties. The clerk of the court shall transmit by registered mail a copy of:

- (1) the interrogatories, with blanks for answer; and
 - (2) the order of the court ordering the interrogatories answered;
- to the person, corporation, member of the corporation, the auditor of state, or the auditing officer of the municipal corporations, subdivisions, or agencies of the state required to answer the interrogatories. On receipt of the interrogatories and order, the

person, corporation, member of the corporation, auditor of state, or the auditing officer of the municipal corporations, subdivisions, or agencies of the state shall answer the interrogatories and return the interrogatories to the clerk by registered mail or personally. The court may compel answers to the interrogatories.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-6

Witnesses

Sec. 6. (a) Witnesses may be required to appear and testify in the proceeding provided for in this chapter.

(b) Either party may examine the other as a witness in the same manner as upon the trial of an issue, or the plaintiff may waive the answer of the debtor and rely upon other testimony.

(c) All examinations and answers under this section shall be made on the oath of the party. However, when a corporation answers, the answers shall be on the oath of an officer of the corporation.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-7

Order requiring application of property to debt and forbidding transfer; liens; order for placing hold on deposit account; hearing; order releasing hold

Sec. 7. (a) Except as provided in subsection (b), after a hearing of which the judgment debtor has been notified, the court may order:

- (1) any property, income, or profits of the judgment debtor not exempt from execution or process, in the hands either of the judgment debtor or of any other person; or
- (2) 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.

(b) If the judgment debtor has failed to comply with an agreed order in the action, after a hearing of which the judgment debtor has been notified, the court shall order:

- (1) any property, income, or profits of the judgment debtor not exempt from execution or process, in the hands either of the judgment debtor or of any other person; or
- (2) 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.

(c) The judge shall order that:

- (1) 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, governmental officer, or corporation from the date the order is served upon the person, governmental officer, or corporation indebted to the judgment debtor to the extent that the lien, together with all similar liens, is permitted under IC 24-4.5-5-105; and
- (2) the court may enforce all orders and decrees in the premises, by attachment or otherwise.

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

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

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

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

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

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

(h) If a court has issued a garnishment order to a third party and the garnishment order no longer applies to the third party due to a change in circumstances, the court may cancel the garnishment order and issue a new garnishment order to an appropriate third party, if all of the following conditions are met:

- (1) The court has issued a garnishment order under subsection (a) or (b) with respect to a judgment debtor's income or profits in the hands of a third party.
- (2) The judgment constitutes a continuing lien under subsection (c).
- (3) Due to a change in circumstances, including a change of employment, the judgment debtor's income or profits are in the hands of a new third party not named in the garnishment order.
- (4) The judgment creditor files a petition:
 - (A) notifying the court of the matters described in subdivisions (1) through (3); and
 - (B) informing the court of the name, address, and other relevant information concerning the new third party holding the judgment debtor's income and profits.

A court may issue a new garnishment order under this subsection without holding a hearing.

As added by P.L.1-1998, SEC.51. Amended by P.L.1-1999, SEC.76; P.L.78-2014, SEC.22.

IC 34-55-8-8

Cost of proceedings

Sec. 8. Costs shall be awarded and taxed in a proceeding under this chapter as in other cases.

As added by P.L.1-1998, SEC.51.

IC 34-55-8-9

Proceedings to be summary

Sec. 9. All proceedings under this chapter, after the order has been made requiring parties to appear and answer, shall be summary, without further pleadings, upon the oral examination and testimony of parties and witnesses. However, the sufficiency of the order and of the affidavit first filed by the plaintiff may be tested by:

- (1) demurrer;
- (2) motion to dismiss; or
- (3) motion to strike.

As added by P.L.1-1998, SEC.51.