

Chapter 6.26 RCW
PREJUDGMENT GARNISHMENT

Sections

- 6.26.010 Prejudgment writs of garnishment—Grounds.
- 6.26.020 Issuance of writ—Bond—Fee.
- 6.26.025 Writs of garnishment to different garnishees.
- 6.26.030 Action on bond for wrongful garnishment—Damages and
 attorney's fees.
- 6.26.040 Action against plaintiff for wrongful garnishment—Damages
 and attorney's fees.
- 6.26.050 Application for prejudgment writ of garnishment—Affidavit.
- 6.26.060 Issuance of writ—Notice—Hearing—Issuance without prior
 notice—Forms for notice.
- 6.26.070 Application of chapter 6.27 RCW to prejudgment
 garnishments.

Rules of court: CR 64.

RCW 6.26.010 Prejudgment writs of garnishment—Grounds. Except as limited by RCW 6.27.040, relating to the state and other public entities, and RCW 6.27.330, relating to continuing liens on earnings, the plaintiff at the time of commencing an action, or at any time thereafter before judgment in an action, may obtain a prejudgment writ of garnishment from a superior or district court of this state before which the action is pending on the following grounds:

(1) If the writ is issued for a purpose other than garnishing a defendant's earnings as defined in RCW 6.27.010, (a) on the ground that an attachment has been issued in accordance with chapter 6.25 RCW, (b) on the ground that the plaintiff sues on a debt that is due and owing and unpaid, or (c) on one or more of the grounds for issuance of attachment stated in RCW 6.25.030 or 6.25.040; or

(2) If the writ is directed to an employer for the purpose of garnishing earnings of a defendant, on the grounds that the defendant:

(a) Is not a resident of this state, or is about to move from this state; or

(b) Has concealed himself or herself, absconded, or absented himself or herself so that ordinary process of law cannot be served on him or her; or

(c) Has removed or is about to remove any of his or her property from this state, with intent to delay or defraud his or her creditors. [1988 c 231 s 18; 1987 c 442 s 901.]

Severability—1988 c 231: See note following RCW 6.01.050.

RCW 6.26.020 Issuance of writ—Bond—Fee. In all cases of garnishment before judgment, before the writ shall issue, the plaintiff shall pay the fee described in RCW 6.27.060 and shall execute and file with the clerk a bond with sufficient sureties, to be approved by the clerk of the court issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, or such other amount as the court shall fix, conditioned that the plaintiff will prosecute the suit without delay and pay all

damages and costs that may be adjudged against him or her for wrongfully suing out such garnishment. [1988 c 231 s 19; 1987 c 442 s 902; 1969 ex.s. c 264 s 3. Formerly RCW 7.33.030.]

Severability—1988 c 231: See note following RCW 6.01.050.

RCW 6.26.025 Writs of garnishment to different garnishees. If issuance of a writ of garnishment or of a writ of attachment has been ordered by the court in a case, other writs of garnishment to different garnishees may be issued in the same case under the circumstances and restrictions stated in RCW 6.25.120 for issuance of successive writs of attachment. [1988 c 231 s 21.]

Severability—1988 c 231: See note following RCW 6.01.050.

RCW 6.26.030 Action on bond for wrongful garnishment—Damages and attorney's fees. In an action on the bond under RCW 6.26.020, if it is shown that the garnishment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the court. If it is shown that such garnishment was sued out maliciously, the defendant may also recover exemplary damages, and the defendant need not wait until the principal suit is determined before suing on the bond by counterclaim in the original action or in a separate action. [1987 c 442 s 903.]

RCW 6.26.040 Action against plaintiff for wrongful garnishment—Damages and attorney's fees. In all actions in which a prejudgment writ of garnishment has been issued by a court and served upon a garnishee, in the event judgment is not entered for the plaintiff on the claim sued upon by plaintiff, and the claim has not voluntarily been settled or otherwise satisfied, the defendant shall have an action for damages against the plaintiff. The defendant's action for damages may be brought by way of a counterclaim in the original action or in a separate action and, in the action the trier of fact, in addition to other actual damages sustained by the defendant, may award the defendant reasonable attorney's fees. [1987 c 442 s 904; 1970 ex.s. c 61 s 4; 1969 ex.s. c 264 s 34. Formerly RCW 7.33.340.]

RCW 6.26.050 Application for prejudgment writ of garnishment—Affidavit. The plaintiff or someone on the plaintiff's behalf shall apply for a prejudgment writ of garnishment by affidavit, alleging that the garnishment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that the affiant has reason to believe and does believe the following, together with specific facts on which the affiant's belief in the allegations is based: (1) That the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness over and above all just credits and offsets); (2) that one or more of the grounds for prejudgment garnishment established in RCW 6.26.010 exists; (3) that the plaintiff has reason to believe, and does believe, that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in

amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; (4) whether or not the garnishee is the employer of the defendant; and (5) if the action is based on a debt not due, that nothing but time is wanting to fix an absolute indebtedness due from the defendant. [1987 c 442 s 905.]

RCW 6.26.060 Issuance of writ—Notice—Hearing—Issuance without prior notice—Forms for notice. (1) When application is made for a prejudgment writ of garnishment, the court shall issue the writ in substantially the form prescribed in RCW 6.27.070 and 6.27.100 directing that the garnishee withhold an amount as prescribed in RCW 6.27.090, but, except as provided in subsection (2) of this section, the court shall issue the writ only after prior notice to the defendant, given in the manner prescribed in subsections (4) and (5) of this section, with an opportunity for a prior hearing at which the plaintiff shall establish the probable validity of the plaintiff's claim and that there is probable cause to believe that the alleged ground for garnishment exists.

(2) Subject to subsection (3) of this section, the court shall issue the writ without prior notice to the defendant and without an opportunity for a prior hearing only if:

(a) A ground alleged in the plaintiff's affidavit is: (i) A ground appearing in RCW 6.26.010(2)(c) if the writ is to be directed to an employer for the purpose of garnishing the defendant's earnings; or (ii) a ground appearing in RCW 6.25.030 (5) through (7) or in RCW 6.25.040(1) of the attachment chapter; or (iii) if garnishment is necessary to permit the court to acquire jurisdiction over the action, the ground alleged is one appearing in RCW 6.25.030 (1) through (4) or in RCW 6.26.010(2) (a) or (b); and

(b) The court finds on the basis of specific facts, after an ex parte hearing, that there is probable cause to believe the allegations of the plaintiff's affidavit.

(3) If a writ is issued under subsection (2) of this section without prior notice to the defendant, after service of the writ on the garnishee, the defendant shall be entitled to prompt notice of the garnishment and a right to an early hearing, if requested, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for garnishment exists.

(4) When notice and a hearing are required under this section, notice may be given by a show cause order stating the date, time, and place of the hearing. Notice required under this section shall be jurisdictional and, except as provided for published notice in subsection (5) of this section, notice required under this section shall be served in the same manner as a summons in a civil action and shall be served together with (a) a copy of plaintiff's affidavit and a copy of the writ if already issued, and (b) a copy of the following "Notice of Right to a Hearing" in substantially the following form or, if defendant is an individual, a copy of the claim form and the "Notice of Garnishment and of Your Rights" prescribed by RCW 6.27.140, in which the following notice is substituted for the first paragraph of said Notice:

NOTICE OF RIGHT TO HEARING

A writ of garnishment has been or will be issued by a Washington court and has been or will be served on the garnishee defendant. It will require the garnishee defendant to withhold payment of money that may be due to you and to withhold other property of yours that the garnishee may hold or control until a lawsuit in which you are a defendant has been decided by the court. Service of this notice of your rights is required by law.

YOU HAVE A RIGHT TO A PROMPT HEARING. If notice of a hearing date and time is not served with this notice, you have the right to request the hearing. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the statements in the enclosed affidavit are true and also that the claim stated in the lawsuit is probably valid, or else the garnishment will be released.

(5) If service of notice on the defendant must be effected by publication, only the following notice need be published under the caption of the case:

To, Defendant:

A writ of prejudgment garnishment has been issued in the above captioned case, directed to as Garnishee Defendant, commanding the Garnishee to withhold amounts due you or to withhold any of your property in the Garnishee's possession or control for application to any judgment that may be entered for plaintiff in the case.

YOU HAVE A RIGHT TO ASK FOR A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the ground for garnishment alleged in an affidavit filed with the court exists and also that the claim stated in the lawsuit is probably valid, or else the garnishment will be released.

If the defendant is an individual, the following paragraph shall be added to the published notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE THE GARNISHMENT RELEASED if amounts or property withheld are exempt under federal or state statutes, for example, bank accounts in which benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, United States pension, Unemployment Compensation, or Veterans' benefits have been deposited or certain personal property described in section 6.15.010 of the Revised Code of Washington.

[1997 c 59 s 1; 1988 c 231 s 20; 1987 c 442 s 906.]

Severability—1988 c 231: See note following RCW 6.01.050.

RCW 6.26.070 Application of chapter 6.27 RCW to prejudgment garnishments. Except as otherwise provided, the provisions of chapter

6.27 RCW governing garnishments apply to prejudgment garnishments.
[1987 c 442 s 907.]