

1 HB238
2 215620-2
3 By Representative Faulkner
4 RFD: Judiciary
5 First Read: 02-FEB-22

SYNOPSIS: Under existing law, when a defendant resides within the state and a garnishment is issued on a judgment in which an appearance has not be entered for the defendant, the officer issuing the garnishment must issue notice to the defendant before the garnishment may take effect.

This bill would authorize an alternative procedure to perfect notice to the defendant by providing for a procedure to post the garnishment notice.

A BILL
TO BE ENTITLED
AN ACT

Relating to garnishment proceedings; to add Section 6-6-394.1 to the Code of Alabama 1975, to authorize the service of notice of a garnishment by the posting of a garnishment notice.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 6-6-394.1 is added to the Code of
2 Alabama 1975, to read as follows:

3 §6-6-394.1.

4 (a) Should service of notice of a garnishment on a
5 judgment or in a pending action in which an appearance has not
6 been entered for the defendant be returned not found or
7 otherwise not accomplished, service may be perfected by the
8 posting of the notice upon motion and order. The posting of
9 the notice of garnishment is accomplished in the following
10 manner:

11 (1) A request for an order permitting service by
12 posting shall be made upon the court by verified motion
13 attesting that notice was issued to the defendant
14 contemporaneously with the service of process of garnishment
15 upon the garnishee, but was returned not found or service was
16 otherwise not accomplished.

17 (2) If the motion is granted by written court order,
18 the clerk of the court shall post a copy of the notice of the
19 garnishment and written court order authorizing the posting on
20 the clerk of the court's official website and in a designated
21 and conspicuous location within the courthouse where the
22 action is pending for four continuous weeks, or as may be
23 directed by the court order. If the court determines that an
24 additional location for the posting is necessary, the court,
25 for good cause shown, may order an additional posting in any
26 other public place for four continuous weeks, or as may be

1 directed by the court order. The additional posting shall be
2 the responsibility of the plaintiff.

3 (3) The last date of the posting must be at least
4 five days before any judgment of condemnation is entered
5 against the garnishee and shall identify the name of the
6 parties, the court in which the action is pending, and the
7 case number. In addition, except in proceedings to collect
8 child or spousal support, the notice shall also contain the
9 statement concerning rights of exemption as provided in Rule
10 64A of the Alabama Rules of Civil Procedure.

11 (4) At the time of posting, the clerk of the court
12 shall also send by regular U.S. Mail a copy of the posted
13 notice of garnishment to the defendant at the defendant's last
14 known address.

15 (5) A fee of fifteen dollars (\$15) shall be assessed
16 as additional court costs and collected by the clerk of the
17 court for the county in which the case has been filed. At the
18 time of the filing of the motion for posting, the moving party
19 shall be responsible for this assessment and the cost of
20 mailing. The additional costs and fees may be made taxable to
21 the defendant upon motion to the court. If the amount subject
22 to a judgment of condemnation is less than twenty-five dollars
23 (\$25), the court may order waiver of the fee assessment upon
24 motion.

25 (b) The fees collected pursuant to this section by
26 the clerk of the court shall be remitted monthly to the

1 Circuit Clerk's Judicial Administrative Fund for the county in
2 which the case has been filed.

3 (c) Upon compliance with the order of service by
4 posting, a request for an order for a judgment of condemnation
5 against the garnishee and condemnation of proceeds may be made
6 upon the court by verified motion that all requirements of the
7 order of service by posting have been accomplished. The movant
8 shall attach to the verified motion a copy of the posting,
9 along with a verified statement of the clerk of the court
10 attesting to the contents of the posting, the dates of the
11 website and courthouse postings, and the date of the mailing
12 of the posted notice copy to the defendant.

13 (d) Unless otherwise authorized by law or rule,
14 perfection of service by notice upon a defendant by posting
15 shall have application to this section only.

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.