



Ohio Revised Code

Section 2716.03 Commencing proceeding for garnishment of personal earnings.

Effective: September 30, 2008

Legislation: Senate Bill 281 - 127th General Assembly

(A) Subject to the limitation on the commencement of proceedings contained in division (B) of section 124.10 of the Revised Code, a proceeding in garnishment of personal earnings may be commenced after a judgment has been obtained by a judgment creditor by the filing of an affidavit in writing made by the judgment creditor or the judgment creditor's attorney setting forth all of the following:

- (1) The name of the judgment debtor whose personal earnings the judgment creditor seeks to garnish;
- (2) The name and address of the garnishee who may be an employer of the judgment debtor and who may have personal earnings of the judgment debtor;
- (3) That the demand in writing, as required by section 2716.02 of the Revised Code, has been made;
- (4) That the payment demanded in the notice required by section 2716.02 of the Revised Code has not been made, and a sufficient portion of the payment demanded has not been made to prevent the garnishment of personal earnings as described in section 2716.02 of the Revised Code;
- (5) That the affiant has no knowledge of any application by the judgment debtor for the appointment of a trustee so as to preclude the garnishment of the judgment debtor's personal earnings;
- (6) That the affiant has no knowledge that the debt to which the affidavit pertains is the subject of a debt scheduling agreement of a nature that precludes the garnishment of the personal earnings of the judgment debtor under division (B) of this section.

(B) No proceeding in garnishment of personal earnings shall be brought against a judgment debtor for the collection of a debt that is the subject of an agreement for debt scheduling between the judgment debtor and a budget and debt counseling service, unless any payment to be made by the



judgment debtor, or by a budget and debt counseling service to the judgment creditor under the agreement for debt scheduling between the judgment debtor and the budget and debt counseling service, is due and unpaid for more than forty-five days after the date on which the payment became due, or unless the judgment creditor previously was notified by the service that the debt scheduling agreement between the judgment debtor and the service was terminated.

(C) Upon a court's issuance of an order of garnishment of personal earnings following a judgment creditor's filing of an affidavit under this section and compliance with section 2716.04 of the Revised Code, the garnishee and the judgment debtor shall be notified of the proceeding in garnishment of personal earnings in accordance with sections 2716.05 and 2716.06 of the Revised Code.

(D) As used in this chapter:

(1) A "budget and debt counseling service" or "service" means a corporation organized under Chapter 1702. of the Revised Code for the purpose of counseling consumers with respect to their financial obligations and assisting them in dealing with their creditors.

(2) "Debt scheduling" means counseling and assistance provided to a consumer by a budget and debt counseling service under all of the following circumstances:

(a) The counseling and assistance is manifested in an agreement between the consumer and the service under which the consumer regularly pays that portion of the consumer's income to the service that has been determined not to be required for the maintenance of health or the essentials of life.

(b) The payments are made to the service until the debts of the consumer that are the subject of the agreement are fully retired.

(c) The service has sent written notice, by certified mail, return receipt requested, or by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail, to the creditors of the consumer that are disclosed by the consumer to the service. The notice shall contain all of the following:



- (i) A statement of the consumer's intent to participate in debt scheduling;

- (ii) A summary of the consumer's income, proposed itemized budget, schedule of creditors, and proposed debt retirement plan;

- (iii) A statement of the particular creditor's duty to respond, in writing, to the service regarding the consumer's participation in debt scheduling within fifteen days after receiving the notice.

- (d) The debts of the consumer that are the subject of the agreement for debt scheduling are determined as follows:
 - (i) Any debt owed to a creditor that was notified of the consumer's intent to participate is a subject of the agreement if the creditor responds to the service and enters into an agreement with the service, pursuant to which the creditor agrees not to attempt to collect the debts of the consumer as long as the consumer regularly pays to the service the amount previously agreed upon by the service and the consumer, and no payment to be made by the judgment debtor to the service or by the service to the creditor is due and unpaid for more than forty-five days after the date on which the payment became due, as long as the debt scheduling agreement between the consumer and the service has not been terminated, and as long as the service regularly pays to the creditor a mutually acceptable amount that is either the amount agreed upon by the service and the creditor on the date they entered into their original agreement or an amount agreed upon by both the service and the creditor on a date after the date of the original agreement.

 - (ii) Any debt owed to a creditor that was notified of the consumer's intent to participate is a subject of the agreement if the creditor does not respond to the service and state the creditor's objection, in writing, to the consumer's participation in debt scheduling within fifteen days after receiving notice of the consumer's intention to do so; however, no debt that is subject to a lien or security interest of any type, other than a judgment lien or execution lien, shall be a subject of the agreement unless the creditor specifically assents, in writing, to the debt being a subject of the agreement. The creditor shall be considered to have entered into an agreement of the type described in division (D)(2)(d)(i) of this section, and the amount to be regularly paid by the service to the creditor shall be an amount determined to be reasonable by the service or an amount agreed upon by both the service and the creditor on a date after the expiration of the fifteen-day period.



(iii) Any debt owed to a creditor that was not notified of the consumer's intent to participate, or a debt owed to a creditor that was notified of the consumer's intent to participate and that responded to the service and stated its objection, in writing, to the consumer's participation in debt scheduling within fifteen days after receiving notice of the consumer's intention to do so, is not a subject of the agreement.

(e) The service agrees that, if the consumer fails to make a payment under the agreement within forty-five days of its due date or if the agreement is terminated, the service will notify each creditor that is owed a debt that is subject to the agreement of the failure or termination by regular mail within two business days of the failure or termination, and the service provides that notice in accordance with the agreement.