

Do Try This at Home!

Passage of Bill gives UT Collection Lawyers easier access to DWS information

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If your state allows wage garnishment, you might want to follow Utah's example and try to pass a bill that allows judgment creditors to access judgment debtor employment information (name and address of last known employer) directly from the State DWS (Department of Workforce Services) database without the need and expense of debtor examinations, supplemental proceedings or the uncertain outcome of a GRAMA request (Government Records Access and Management Act).

NL first heard about UT Senate Bill 281, passed the *last day* of the legislative session and signed by Utah's Governor on April 1, from Greg Constantino of [Constantino Law Office, P.C.](#) Greg is the author of the NL white paper on [Utah Debt Collection](#) laws, published by NL on April 5th. Because his overview of the Bill didn't get to us in time to be included in his paper, this follow-up article tells how it all came about. S.B. 281 goes into effect on May 14, 2013.

Who the idea for the Bill came from

Another source led us to Utah Attorney Christopher Rogers of Johnson Mark LLC. The firm was the first to come up with the idea for the Bill. Chris helped to draft the initial provisions, and the firm was backed financially by Constantino Law and others, who helped to pay for "the best lobbyist we could find. We attended legislative hearings, negotiated with the Dept. of Labor and with UT DWS." Their lobbyist was "very well-connected, knew everybody, even the Governor, and was able to help at every level," Chris reported in an interview with Marti Lythgoe, NL Editor, on April 11th.

What the process will be under the new law

Under the new law, the process to obtain the information is this: an attorney files a motion with the court requesting debtor employment information directly from the DWS, the motion is served on the judgment debtor and the DWS, after considering any opposition filed by the DWS or the debtor (not likely once precedent is established), the court grants the motion that the request is exempt from GRAMA and enters an Order for the information. The DWS charges the Judgment Creditor a "reasonable fee" (as yet undetermined) for the cost of processing the request, and the information is released to the attorney.

The "How-To" Story According to Chris Rogers of Johnson Mark

If you would like your state to pass a similar bill, the details of the Utah story, as told by Chris Rogers, could be helpful as well as interesting. The following is an approximate retelling of Marti's interview with him, published with his approval:

When Johnson Mark realized that the state government has in its possession information about the current employment of everybody in the state, we thought, "Why can't we use the same information the Govt. is using? The information we're seeking is to allow wage garnishment. We only want the name of the employer and the address where the debtor works. We're entitled to the information anyway as a judgment creditor." Every state has a similar database of information. Every employer has to report information about who they hire to their respective state unemployment departments. The Govt. uses the information for collecting child support, determining eligibility for unemployment [and employer premiums for Unemployment Benefit Insurance], State taxes owed, etc.

Inconsistent rulings on GRAMA requests

The current process is that once we have judgment against a debtor, we seek to obtain this same information from the debtor by bringing him/her to court, if necessary, to ask questions about his or her assets and financial situation. Sometimes the debtor won't come in. Debtor exams or supplemental hearings are not as efficient as requesting information from the DWS. We do thousands of these requests after judgments are granted. However, prior to the Bill, this information is considered private under the GRAMA statute. We have to obtain a GRAMA order by filing a motion with the court. The courts gave inconsistent rulings to our GRAMA requests, even though giving us the information won't usurp State liens, which are always paid first.

A GRAMA request is more efficient than ordering debtors into court, where they are put under oath to tell us their employment information but might not always respond truthfully, because they know we can garnish their wages. Most debtors don't object to the GRAMA request. They either don't care, or they don't want to waste time by coming into court. However, GRAMA was originally set up for government transparency and accountability, for example, for newspapers. Under GRAMA, the judge weighs privacy vs. public interest in deciding whether to grant access to the information.

This issue came to a head for us at a hearing in December 2012, where we started receiving inconsistent rulings on our GRAMA requests for the debtor's employment information. Some were denied until a supplemental proceeding was conducted, where we usually get the information anyway. And some judges simply said "I don't think you're entitled to it" even though we are. That's when we had the thought that we should push for legislation that makes the process uniform, so judges would have a legal avenue to go by, without going through GRAMA. The Utah Legislative session is Jan. 28 – March 15. The process for writing, submitting and passing a bill usually starts the summer before. We were behind the

game. We didn't get our bill drafted until the last month of the Legislative Session. The process was accelerated by the lobbyist and by negotiations with the DWS.

Hurdles to passing the Bill: unemployment benefits and data security

Our biggest hurdle was to make sure our Bill did not jeopardize the Federal law regarding unemployment benefits to the State. We knew we couldn't jeopardize Utah's benefits. We had to negotiate between the U.S. Dept of Labor and UT DWS. We also had to include Data Security Protection measures into the statute, in order to keep data safe via special software and hardware. Our Bill includes provisions that violations of data security could bring up to \$10K in civil penalties. Federal law requires a court order to obtain the DWS information so we had to include that aspect in our Bill in order to comply with federal law. Initially, we wanted the Bill to bypass the order and just allow us to send a judgment to DWS, but we couldn't get around the Federal mandate to have a court involved.

Establishing precedent

Federal Law also requires that the DWS file an objection to a court order for DWS information, unless there is a State law permitting disclosure and there is binding precedent in the state. It's up to the State to determine when there's a precedent. After that is established, the DWS is no longer required to object. The DWS can audit any firm at will (for matters of security, etc.) We need to be on the Department's good side, to help them make their job easier, to work within the law and comply with Federal law. As long as we comply, we should not have a problem. Both Johnson Mark and the DWS feels it's a waste of resources for the DWS to continuously object, but they have to until it's determined that there is precedent in Utah not to.

Test cases will be filed soon. We don't think it's wise to file a lot of requests at once. We're waiting for 1-2 of our test motions under the new Bill to go through. After that happens, DWS will be able to use those test cases as precedent to determine that it no longer is required to object to our motions under the new Bill. Although the Dept. of Labor has already Okayed the Bill as being in compliance with Federal law, the DWS must continue to object to the requests until binding precedent has been established in our jurisdiction

Fee set by administrative rule

As an integral part of the Bill, the process of obtaining information can't cause the DWS to lose money or waste money. The fee charged to cover cost will be set by administrative rule. It will probably be \$10 - \$25. It should be reasonable and based on actual costs. We think DWS will eventually try to set up a processing portal to make things easier for all concerned. Right now, neither party has any idea how many requests will be filed, or whether there will be a backlog. No other state has a process like this.

Bill easier to pass in Utah

S.B. 281 passed on the last day of the Legislative session. Utah is a very conservative, creditor-friendly state. The Bill was easier to pass here than maybe in any other state in the U.S. It helps if both the Federal and State Government are supportive of a bill. Opposition came from only a few lawmakers who were concerned about infringement of people's privacy rights or who were basically opposed to the debt collection industry.

With respect to the judgment debtors, the only potential objection from debtors is whether they owe the money. Once there's a judgment, that's no longer an issue. Getting the information directly from DWS is more accurate and efficient for both collectors and debtors, who don't have to miss a day of work to come to court or stand up in front of a group of people and testify about their finances and assets.. DWS reports are accurate as long as they are current and are usually more accurate than what a debtor says in court.

Important advice from Chris

Marti's final question to Chris was "What advice would you give to a law firm trying to pass a bill like this in another state?" He replied, "Employ the best lobbyist you can find. It's not worth your money to hire an inexpensive, inexperienced lobbyist. You need one who knows the senators and can get things done. Pool your resources with other attorneys to get The Best. The Legislation requires the full effort from a lobbyist and someone who can get through to everybody."

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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