

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

1
2 ENROLLED, An Act,

3 Relating to garnishment proceedings; to add Section
4 6-6-394.1 to the Code of Alabama 1975, to authorize the
5 service of notice of a garnishment by the posting of a
6 garnishment notice.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 §6-6-394.1.

11 (a) Should service of notice of a garnishment on a
12 judgment ~~or in a pending action~~ in which an appearance has not
13 been entered for the defendant be returned not found or
14 otherwise not accomplished, service of the notice of
15 garnishment may be perfected by the ~~posting of the notice upon~~
16 ~~motion and order. The posting of~~ posting and mailing of the
17 notice upon motion and order. The posting and mailing of the
18 notice of garnishment is accomplished in the following manner:

19 (1) A request for an order permitting service by
20 posting and mailing shall be made upon the court by verified
21 motion attesting that notice was issued to the defendant
22 contemporaneously with the service of process of garnishment
23 upon the garnishee, but was returned not found or service was
24 otherwise not accomplished.

1 (2) If the motion is granted by written court order,
2 the clerk of the court shall post a copy of the notice of the
3 garnishment and written court order authorizing the posting on
4 the clerk of the court's official website and in a designated
5 and conspicuous location within the courthouse where the
6 action is pending for four continuous weeks, or as may be
7 directed by the court order. If the court determines that an
8 additional location for the posting is necessary, the court,
9 for good cause shown, may order an additional posting in any
10 other public place for four continuous weeks, or as may be
11 directed by the court order. The additional posting shall be
12 the responsibility of the plaintiff.

13 (3) The last date of the posting must be at least
14 five days before any judgment of condemnation is entered
15 against the garnishee and shall identify the name of the
16 parties, the court in which the action is pending, and the
17 case number. In addition, except in proceedings to collect
18 child or spousal support, the notice shall also contain the
19 statement concerning rights of exemption as provided in Rule
20 64A of the Alabama Rules of Civil Procedure.

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

1 (5) The effective date of service shall be 28 days
2 from the first date of the website posting.

3 ~~(5)~~ (6) A fee of fifteen dollars (\$15) shall be
4 assessed as additional court costs and collected by the clerk
5 of the court for the county in which the case has been filed.
6 At the time of the filing of the motion for posting and
7 mailing, the moving party shall be responsible for this
8 assessment and the cost of mailing. The additional costs and
9 fees may be made taxable to the defendant upon motion to the
10 court. If the amount subject to a judgment of condemnation is
11 less than twenty-five dollars (\$25), the court may order
12 waiver of the fee assessment upon motion.

13 (b) The fees collected pursuant to this section by
14 the clerk of the court shall be remitted monthly to the
15 Circuit Clerk's Judicial Administrative Fund for the county in
16 which the case has been filed.

17 (c) Upon compliance with the order of service by
18 posting and mailing, a request for an order for a judgment of
19 condemnation against the garnishee and condemnation of
20 proceeds may be made upon the court by verified motion that
21 all requirements of the order of service by posting and
22 mailing have been accomplished. The movant shall attach to the
23 verified motion a copy of the posting, along with a verified
24 statement of the clerk of the court attesting to the contents
25 of the posting, the dates of the website and courthouse

1 postings, and the date of the mailing of the posted notice
2 copy to the defendant.

3 (d) Unless otherwise authorized by law or rule,
4 perfection of service by notice upon a defendant by posting
5 and mailing shall have application to this section only.

6 (e) This section applies to any garnishment
7 proceeding conducted under this chapter, Chapter 10, or the
8 Alabama Rules of Civil Procedure.

9 (f) Pursuant to Section 6.11 of Amendment 328 to the
10 Constitution of Alabama of 1901, now appearing as Section 150
11 of the Official Recompilation of the Constitution of Alabama
12 of 1901, as amended, the Supreme Court is hereby requested to
13 modify its rules to conform to this section.

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

