Bill as Introduced

SB 315- AS INTRODUCED

2000 SESSION

00-2636
09/10

SENATE BILL ***315***

AN ACT changing the form for writs of execution.

SPONSORS: Sen. Fernald, Dist 11; Sen. Russman, Dist 19; Sen. Gordon, Dist 2

COMMITTEE: Judiciary

ANALYSIS

This bill changes the form for writs of execution.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

00-2636
09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT changing the form for writs of execution.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Form; Writs of Execution. Amend RSA 527:12 to read as follows:

527:12 Form. Writs of execution shall be substantially in the following form:

THE STATE OF NEW HAMPSHIRE

..... ss. To the sheriff of any county or his deputy:

[L.S.] Whereas, ..., of ....., by the consideration of our justices of our court of ....., holden at ....., in said County of ....., on the ..... Tuesday of ....., recovered judgment against ..... of ..... for the sum of ..... dollars, and costs taxed at ....., as appears of record, whereof execution remains to be done. We command you, therefore, that of the ***money,*** goods, chattels [~~or~~], lands, ***personal estate, property interest, right or credit*** of the said debtor, in your precinct, you cause to be levied and paid to the said creditor the aforesaid sums, with lawful interest thereon, and ..... more for this writ and your own fees; and make return of this writ, with your doings thereon, to said court, to be holden at ....., in said county, upon the ..... Tuesday of .....

Witness, ..., Esquire, the ..... day of ....., ...

....., Clerk.

2 Effective Date. This act shall take effect January 1, 2001.

Amendments

Senate Judiciary
March 6, 2000
2000-3640s
09/01

Amendment to SB 315

Amend RSA 527:12 as inserted by section 1 of the bill by replacing it with the following:

527:12 Form. Writs of execution shall be substantially in the following form:

THE STATE OF NEW HAMPSHIRE

..... ss. To the sheriff ***or deputy*** of any county [~~or his deputy~~]:

[L.S.] Whereas, ..., of ....., by the consideration of our justices of our court of ....., holden at ....., in said County of ....., on the ..... Tuesday of ....., recovered judgment against ..... of ..... for the sum of ..... dollars, and costs taxed at ....., as appears of record, whereof execution remains to be done. We command you, therefore, that of the ***money,*** goods, chattels [~~or~~], lands, ***personal estate, property interest, right or credit*** of the said debtor, in your precinct, you cause to be levied and paid to the said creditor the aforesaid sums, with lawful interest thereon, and ..... more for this writ and your own fees; and make return of this writ, with your doings thereon, to said court, to be holden at ....., in said county, upon the ..... Tuesday of .....

Witness, ..., Esquire, the ..... day of ....., ...

....., Clerk.

Committee Minutes

Date: **JANUARY 12, 2000**
Time: **10:37 AM**
Room: **103 State House**

The Senate Committee on **Judiciary** held a hearing on the following:

SB315 ***changing the form for writs of execution.***

Members of Committee present: *Senator Brown*
Senator Cohen
Senator Fernald
Senator Squires
Senator Wheeler

Senator Burt Cohen, acting Chair, opened the hearing by introducing Senator Mark Fernald, prime sponsor of the bill.

Senator Burton J. Cohen, D. 24: Senator Fernald ...

Senator Mark Fernald, D. 11: Thank you. You may recall last year, that Senator Gordon had undertaken a great effort to clean up some of the sections of the RSA's that needed a lawyer's analysis, and I've undertaken a small part of that with this bill. I need to give you a little bit of history to understand why I've done this.

In procedure, if you sue someone in civil court, and you win, what you get in the end is what's called a judgment from the court. And, if the person you've sued, doesn't then voluntarily pay the money, you've got to force them to pay. So, you get from the court what's called an execution, which is a piece of paper, that you can then send to the sheriff, and the sheriff can go out and look for assets of the debtor ... that can be used to satisfy the judgment. It used to be, say ten years ago, that you sent an execution to the sheriff, and they had a whole lot of options in terms of what assets they could attach in some way to satisfy the judgement. They could go after the real estate, they could go after personal property, they could also go to the bank, if they thought there was a bank account there from the debtor, and basically attach the account and take out the amount of money necessary to satisfy the judgment.

In, I believe it was 1992, there was a NH Supreme Court case which upset this traditional process. And, that case involved the State of NH trying to collect unpaid taxes. And, the process is called distraint, and there's a certain form the state gets, and again, the state gets this form and goes to try and attach assets. To seize assets. And, in that case, they'd gone and seized someone's bank account, because they owed a whole pile of money to the state.

The bank turned the money over, and the account holder sued the bank, and said, the state had no authority to take this money, and you shouldn't have handed it over. The Supreme Court agreed. The reason was, the distraint statute allowed the state to seize goods and chattels. Meaning, they could take ... they could seize real estate, they could seize personal property ... like furniture. But, a bank account is not a piece of property you can pick up and put down, and therefore, it wasn't a good or a chattel, and the state couldn't take it. At which point, all of the sheriffs in the state got together and said, sounds like we can't, using a writ of execution, seize any bank accounts. Because, we're only allowed in the form of writ of execution that's issued by the courts, to go after goods, chattels, and lands. Which means we can't go after any property which does not fall within those three definitions. Chattels being pretty similar to goods ... I mean, it's personal property ... like furniture.

It means, since 1992, that all the sheriffs of this state, have refused to go after bank accounts of people who owe other people money, pursuant to judgments that have been issued by our court or courts. Which means, technically, you can have a million dollars in the bank, and you might owe somebody ten thousand dollars because you didn't pay on your car loan or something, and they can't touch the bank account. The court did have one little out, which was, you can do a trustee process ... which I think is our next bill, today? Trustee process? And, a trustee process is where you go to court and ask to have a bank account attached through a procedure, and eventually you might actually get it.

The problem with a trustee process, is ... normally what you do is you file papers in court saying ... I want to attach this bank account. You allow the account holder, or whoever is being attached, to come in and object. What happens with the bank account is, they simply empty the account. If you're going for trustee process, say, I'm going to attach the accounts they have at Fleet, well, they just take all their accounts out of Fleet and put them in Bank of NH. And, by the time you've gotten your attachment, the money's gone.

Trustee process works with chattels, and cars, and furniture and so forth, because, unless they carry them out of state, they're still going to be there. So, the trustee process does work, but not very well on bank accounts.

So, the purpose of my bill is to change the form of writ of execution so that all types of property are there to satisfy judgments. And, this makes it consistent with the distraint statute, which you can well understand, that as soon as that case came down in 1992, the legislature changed the law concerning distraint of property by the state because, the state suddenly realized they would never be able to get bank accounts again out of people who owed the monies ... owed money to the state.

So, this is just, really, a housekeeping matter to really mean that judgment debtors will have to pay their debts, and can't simply put the money in the bank and then thumb their nose at people they owe money to.

Senator Burton J. Cohen, D. 24: Along the lines of housekeeping, I can't help but think that you did not intend to say that, all deputy sheriffs would forever be of the male gender? This ... rather, the sheriff would be of the male gender here, in the beginning of the bill ... I think I might have it changed to say, "...the sheriff or deputy of any county ...", rather than, "... or his deputy."

Senator Mark Fernald, D. 11: That sounds good.

Senator Burton J. Cohen, D. 24: Are there any questions? See none, thank you. Jim Demers, representing the Trial Lawyers Association signed up in favor of the bill, not wishing to speak. Anyone else wishing to speak to this bill? Mr. Haas?

Joseph Haas: Good morning. For the record, my name is Joe Haas, Post Office Box 218, Ashland, New Hampshire, 03217. Before I proceed, I'd just like ... I'd like to give this to the chairman. I gave a copy earlier to the ... Senate President. [Attachment #1] It deals with procedural matters. I just wanted to make sure that was in the records.

Ah, I didn't really plan on speaking on this today, but I heard some information that I thought I would add ... from personal experience. And, that is ... that... ah, I would like to remind the Senate that HB number unknown that was presented by Representative ... former ... Roland Hemon of Dover. And it had to deal with what was called the writ of elegit. E-L-E-G-I-T. Where technically, no attachments can take place unless that process is in place. And that, I think, is a US Supreme Court case. So, technically, all the attachments that anybody has in the state of NH, are unlawful. And, that ... what that elegit process does, it says that if somebody owes some money, and has some income coming in, whether it's rents or interest or dividends, or whatever, that half of the attachment is okay, but the other half the person could live off.

And, what's going on in NH, is that these executions are issued against a person at 100%. People are being thrown out of houses without their homestead being granted to them. And, it's an abuse of process. I'm a member of VOCALS, Victims of a Corrupt American Legal System. We started with 20 people ... I was one of the original incorporate[ors] [sic]. There were three Representatives in that organization. Bill McCann was another one ... for Representatives. And, ah, also former Representative from down in Nashua, the one that got ill. Taylor, I think was his name. But, anyway ... that's just my suggestion that this committee study that writ of elegit process, and somehow work that into this form.

Senator Burton J. Cohen, D. 24: Thank you.

Joseph Haas: And, what I wanted to say, too ... was, ah ... in lines number seven and eight, you put down there, "...recovered judgment ...". And, in the next line you put, "...and taxed," ... "and costs taxed...". And, I just wanted to say, that I was up at the Supreme Court about two weeks ago, talking to the rules committee, Judge Horton, and we got into a discussion on the forms that they use ... at the county courts. And, what it is ... is a taxation of costs for, it

is being abused ... that the judges are putting in there the judgment ... they are co-mingling the amounts. And, according to the Constitution, judgments against anybody over 1500 dollars, the people are entitled to a right to a trial by jury. And, what's going on is these judges are violating their oaths of office, they're not giving the people their jury trials, and they're calling their taxation of costs judgments. Which is George or Lillian Doublespeak. So, my suggestion is that perhaps, instead of a blank for the sum of money ... that there could be a section where it has the date of the judgment and maybe a star or a footnote in reference to the Constitution on the amount for a jury trial.

It's just like the forms that they use in the District Court right now. They have these little stars that say, well, if it's over a certain amount, you can pay the $50 for the appeal to the Supreme ... to the Superior Court, and also there's a little footnote that says ah ... that if you within 5 days of the hearing, you can request a court record ... a tape recorder, or whatever.

And I think that would pin it down, that way they wouldn't get away with co-mingling those two terms.

Senator Burton J. Cohen, D. 24: Thank you. Questions from the Committee? I see none, thanks. Anyone else wishing to speak to SB315? I see none, and I'm going to close the hearing.

THE HEARING ON SB315 WAS CLOSED AT 10:50 AM.

Respectfully submitted,
Laurel J. Gallant-Hanlon,
Senate Judiciary Committee Secretary

Attachment #1

msn Microsoft

Anyone want to chat?

Hotmail *josephhaas53@hotmail.com*

Folder: Inbox

From: "Joseph Haas" <josephhaas53@hotmail.com>Block Sender
To: JosephHaas53@HotMail.com
Subject: New Chairmanships (House & Senate)
Date: Wed, 12 Jan 2000 14:30:06 GMT

To: The House Judiciary Committee
Room 208 L.O.B.
Concord, New Hampshire

Attention: Chairman Mock & Vice Chair Peterson:

Would you please absent yourselves from this Committee immediately and go straight to the House Speakers office to "be forthwith dismissed from" your R.S.A. Ch. 92:2 position as having violated your part 2, article 84 oath to the constitution and R.S.A. Ch. 9:8-b by voting for the two Claremont school House bills #117 + 999 that "exceed the state's total estimated revenues" AND let the Rule 32 (page 127 Black Book) Chairman Alf E. Jacobsen preside over: Keans, Bergin, Soltani, DePecol, Pratt, Mitchell and Solow; with the others to join you in your walk: Dokmo, Jean (the Clerk), Rowe, Ford, Withee, Dudley, Picconi, Woods, Wall, Craig, Lasky and Wood.

This is a requirement of you as a mandatory duty "To carry out all duties required by law" (House Rule 100(s) @ p. 137)! So do it NOW!

cc: Senator Pignatelli to likewise absent your Chairmanship to Ned Gordon to preside over Brown and Cohen; taking with you to the President's Office: Fernald, Squires, Trombly, and Wheeler.

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Joe Haas



Hotmail josephhaas53@hotmail.com

From: "Joseph Haas" <josephhaas53@hotmail.com>Block Sender
To: JosephHaas53@HotMail.com
Subject: Year 2000 Senate Bills #300, 315, 338 + 412-FN (Judiciary)
Date: Wed, 12 Jan 2000 17:43:26 GMT

To: The Senate Judiciary Committee
Concord, New Hampshire (03301)

This is to follow up my testimony of this morning during the four hearings scheduled on page 3 of the No. 1 CALANDER of 5Jan00 at from about 10:20 a.m.- 12 o'clock noon.

1.) I reserved a spot after Caroline Douglas' reservation and before Ken Blevens for when this is re-scheduled (SB #300 admin. committee), hearing Judge Edwin W. Kelly's statement of too many studies;
2.) re: SB315 writs of execution; my comments about guaranteeing that all judgments over $1500 show on the face of the RSA 527:12 form that a jury trial has resulted in this "verdict" by Article 20 of the NH Const., Pt. 1 & Bill of Rights; AND that the Writ of Elegit process has been established for one-half allowance to the debtor, the latter reference: HB__ of 199_ by former Rep. Roland Hemon of Dover.
3.) re: SB#338 trustee process, repeat of the Writ of Elegit, and my example of two land developers who tried to attach a trust established by a third party (un-attachable by case law, but that was immune from attachment by the "spendthrift clause"); as speaker #4 of 4; +
4.) re: SB#412-FN with four comments, one final (as to making the "assess"ment word on page 3, line #3 stronger, as by taxation; and three brief statements to follow up of: to show proof that part-time judges have less conplaints per time on the bench than full-timers, ref. excellent p.t. judge David L. Kent of the Plymouth District Court from personal cases there; to get the file of former attorney Michael Tocci of Center Harbor who quit the bar assn. because of religious differences; and to see what happens if anything to my complaint to the Rules Committee last month at the NH Supreme Court with Judge Horton's interest in the co-mingling of the taxation of costs form being used for judgments over $1500 withOUT a jury trial, and their constant excuse that "conduct" is NOT like a conductor of a train on HOW the courts operate BUT for "behavior" only!? (as speaker #10 last)

Joe Haas

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NEW HAMPSHIRE SENATE
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TDD Access: 1-800-735-2964

TO: Senate Judiciary Committee
FROM: Shannon Gorrell
DATE: January 14, 2000
RE: **Hearing report on SB 315,** changing the form for writs of execution **(Senate Judiciary Committee, 1/12/00)**

Sponsor: Sen. Fernald, Sen. Russman, Sen. Gordon

What the bill does: This bill changes the form for writs of execution.

Who supports the bill:

Who opposes the bill: Joseph Haas, Ashland, NH

Testimony report: Senator Fernald explained that in 1992, the Supreme Court ruled that writs issued under RSA 21-J:28-c (distraint of assets pursuant to the assessment of a tax obligation) did not convey the authority to attach funds held in a bank account because the language of the statute was not sufficiently clear in listing the types of assets or property subject to distraint. SB 315 addresses a similar problem in the statute regarding writs of execution (RSA 527:12). SB 315 adds the words "money" and "personal estate, property interest, right or credit" as assets of the debtor that may be attached pursuant to a writ of execution.

Senator Cohen suggested line 4 of the bill be changed to make the reference to sheriffs and deputies gender-neutral.

Mr. Haas testified that the committee should make sure the wording of the writ of execution is consistent with the provisions of a "writ of elegit." However, as elegit is an element of English common law which is not part of New Hampshire statutes, matters of elegit are not highly relevant to the attachment process.

Funding: N/A

Future Action: Pending

Speakers

SB 315 Public Sign In - JUDICIARY

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: JANUARY 12, 2000 TIME: 10:30 AM NAME / REPRESENTING	WISH TO SPEAK?
✓		James Demers NH Trial Lawyers Association, 31-B So. Main St., Suite D, Concord	No
		Joe Hayes	

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

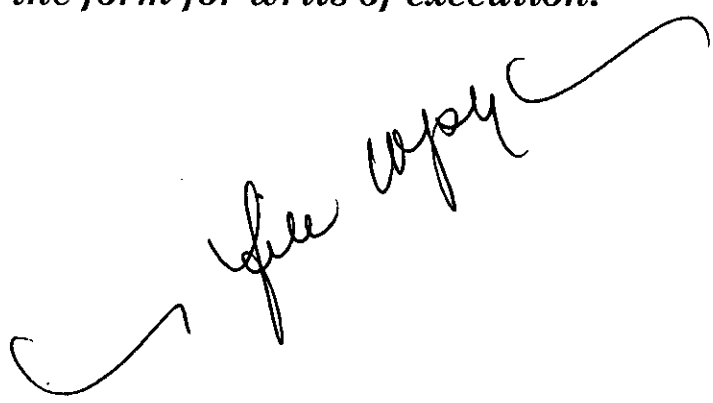
REPORT OF THE COMMITTEE

Date: **MARCH 9, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **Senate Bill 315**

AN ACT ***changing the form for writs of execution.***



VOTE: **7 / 0**

AMENDMENT # : **00-3640s**

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Mark Fernald
For the Committee

SB315 Docket

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Bill Title: changing the form for writs of execution.

Date	Body	Description
1/5/2000	**S**	Introduced and Ref. to Judiciary; SJ Convening Day, Pg. 7
1/6/2000	**S**	Hearing , Jan. 12 , Room 103 , 10:30 a.m., SH ; SC1, Pg.3
3/6/2000	**S**	Committee Report Ought to Pass with Amendment{3640}; SC15, Pg.4
3/9/2000	**S**	Ought to Pass with Amendment{3640}, AA, VV; OT3rdg, MA,VV; SJ 5, Pg.141
3/9/2000	**H**	Introduced and ref to Judiciary; HJ22, p660
3/15/2000	**H**	Copy to Chairman on 3/15/2000
3/16/2000	**H**	Hearing Mar 22 11:00 RM208,LOB
4/19/2000	**H**	Maj Report OTP/AM for May 4 (vote 13-0;CC)
4/19/2000	**H**	Prop Comm Am{4157}; HC36, p1117
5/4/2000	**H**	Removed from Consent Cal, req Rep Mirski; HJ39, p1207
5/4/2000	**H**	Comm Am, AA VV; Passed with Am VV; HJ39, p1234-1235 + 1236
5/11/2000	**S**	Sen. Pignatelli Concur with House Amendment, MA, VV; SJ 14, Pg.384
5/18/2000	**H**	Enrolled; HJ46, p1487
5/18/2000	**S**	Enrolled Bill; SJ 15, Pg.394
5/26/2000	**S**	Signed by the Governor on 5/26/2000 Eff: 1/1/2001 Chap: 0191

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations

|SB315 Docket

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3/9/2000	**H**	Introduced and ref to Judiciary; HJ22, p660
3/15/2000	**H**	Copy to Chairman on 3/15/2000
3/16/2000	**H**	Hearing Mar 22 11:00 RM208,LOB
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4/19/2000	**H**	Prop Comm Am{4157}; HC36, p1117
5/4/2000	**H**	Removed from Consent Cal, req Rep Mirski; HJ39, p1207
5/4/2000	**H**	Comm Am, AA VV; Passed with Am VV; HJ39, p1234-1235 + 1236
5/11/2000	**S**	Sen. Pignatelli Concur with House Amendment, MA, VV; SJ 14, Pg.384
5/18/2000	**H**	Enrolled; HJ46, p1487
5/18/2000	**S**	Enrolled Bill; SJ 15, Pg.394
5/26/2000	**S**	Signed by the Governor on 5/26/2000 Eff: 1/1/2001 Chap: 0191

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