

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 30
PROPOSED COMMITTEE SUBSTITUTE H30-PCS70178-SUF-11

Short Title: Allow Wage Garnishment to Satisfy Judgments.

(Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL
MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"§ 75-16.3. Procedure for garnishment.

(a) Definitions. – The following definitions apply to this section:

- (1) Judgment creditor. – A person awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1.
- (2) Judgment debtor. – A person against whom a judgment has been rendered in which a determination has been made that the judgment debtor is found to have violated G.S. 75-1.1.
- (3) Earnings. – Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.
- (4) Disposable earnings. – The part of the earnings which remains after the deduction of any amounts required by law to be withheld or withheld to pay for reasonably necessary expenses of the judgment debtor or the judgment debtor's dependents, including health care and day care expenses.
- (5) Garnishee. – The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) Judgments May Be Enforced by Garnishment of Wages. – Any judgment creditor awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1 and that the acts or practices which constituted the violation were knowingly and willfully committed may move the court in the county wherein the judgment debtor resides for an order for garnishment of the disposable earnings of the judgment debtor at any time after attempting execution of a judgment for unfair or deceptive acts or practices that has been returned wholly or partially unsatisfied after exhausting remedies available under Article 31 of Chapter 1 of the General Statutes, provided the following conditions have been met:

- (1) The judgment creditor has sent a certified letter to the judgment debtor's last known address which includes information that the judgment debtor's disposable earnings may be subject to wage garnishment.



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1 (2) The judgment debtor has neglected or refused to pay or make reasonable
2 arrangements to pay the judgment within 10 days of the mailing of the letter
3 described in subdivision (1) of this subsection.

4 (c) Motion and Notice Procedures. – The motion shall be in writing and describe in
5 detail the grounds for requesting garnishment, the amount of judgment alleged to be unpaid,
6 and the source of earnings of the judgment debtor. A notice of hearing must be served on the
7 judgment debtor at least 10 days before the hearing, in a form to be prescribed by the
8 Administrative Office of the Courts, that notifies the judgment debtor of the following:

9 (1) That if the judgment debtor fails to appear at the hearing, the court will enter
10 an order directing the judgment debtor's employer to withhold a portion of
11 wages to apply to the judgment.

12 (2) That the amount withheld may be as much as fifteen percent (15%) of the
13 judgment debtor's disposable earnings.

14 (3) That an order of garnishment shall not be rendered if the judgment debtor is
15 making regular payments to the judgment creditor that are equal to ten
16 percent (10%) of the judgment debtor's monthly disposable earnings.

17 (4) That an order of garnishment shall not be rendered if the judgment debtor
18 can show at the hearing that economic hardship would result to the judgment
19 debtor or judgment debtor's dependents if garnishment is ordered.

20 (d) Filing Fee. – The motion shall be accompanied by a fee of twenty dollars (\$20.00)
21 payable to the clerk of court for the administrative costs of complying with the provisions of
22 this section, which fee may be recoverable by the judgment creditor as a taxable cost of the
23 action.

24 (e) Hearing. – The court may enter an order of garnishment following notice
25 requirements set forth in this Article and a hearing held before a superior or district court judge
26 pursuant to the motion for garnishment. At the hearing on the motion, the court shall determine
27 whether an order of garnishment is appropriate on the basis of the motion, any affidavit of the
28 judgment creditor, the record in the civil action, and any testimony and other relevant evidence
29 offered by either party. The court shall not enter an order of garnishment if the judgment debtor
30 is making regular payments to the judgment creditor that are equal to ten percent (10%) of the
31 judgment debtor's monthly disposable earnings, or if economic hardship would result to the
32 judgment debtor or judgment debtor's dependents if garnishment is ordered.

33 (f) Amount Subject to Garnishment. – The court shall not enter an order of garnishment
34 which exceeds the lesser of fifteen percent (15%) of the judgment debtor's monthly disposable
35 earnings, or the amount by which the disposable earnings for that pay period exceed an amount
36 calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks
37 in the pay period. For purposes of applying this provision, a bimonthly pay period shall
38 constitute 2.17 weeks and a monthly pay period shall constitute 4.33 weeks.

39 (g) Order of Garnishment; Contents. – If an order for garnishment is entered, the order
40 shall state (i) the names and last known addresses of the judgment creditor and judgment
41 debtor, (ii) the court in which and the date on which the money judgment was rendered, (iii) the
42 original amount of the money judgment and the amount due thereon, (iv) the portion of the
43 judgment debtor's earnings which are subject to garnishment thereunder, or the information
44 necessary to determine such portion, and (v) any information which the judgment creditor
45 provides to identify the judgment debtor's employer. The garnishment order shall notify any
46 garnishee of the manner prescribed by this section for complying with the order. A copy of the
47 order shall be served on the judgment debtor and the garnishee either personally or by certified
48 or registered mail, return receipt requested. The garnishment order shall be subject to review
49 for modification or dissolution upon the filing of a motion in the cause.

50 (h) Payment to the Court; Garnishee May Retain Fee. – Upon receipt of an order of
51 garnishment, the garnishee shall transmit the amount ordered by the court to be garnished to the

1 clerk of court who shall disburse it to the judgment creditor. The garnishee shall not be required
2 to change normal pay cycles but shall make every effort to ensure that payments are received as
3 soon as practicable. The garnishment order shall simplify the withholding process for
4 garnishees to the extent possible. The amount garnished shall be increased by an additional five
5 dollar (\$5.00) processing fee to be assessed and retained by the garnishee for each payment
6 under the order.

7 (i) Duration of Garnishment Order. – A garnishment order issued pursuant to this
8 section shall continue until whichever of the following events occurs first:

9 (1) The underlying judgment has been satisfied in full.

10 (2) The judgment debtor ceases to be employed by the employer, unless the
11 judgment debtor is thereafter reinstated or reemployed within 90 days from
12 the date employment was terminated.

13 (3) The limitations period prescribed by G.S. 1-47 has expired.

14 (j) Priority of Garnishment Orders. – Garnishment orders shall be satisfied by the
15 employer according to the following order of priority, from highest to lowest:

16 (1) Garnishment pursuant to some authority other than this Article, by a
17 governmental entity, by a public hospital, for child support, or by some other
18 entity or for some other purpose. Nothing in this Article alters the priority in
19 which such garnishments are to be satisfied.

20 (2) Garnishment pursuant to this Article. If an employer is served with more
21 than one garnishment order obtained pursuant to this Article against the
22 same judgment debtor, the garnishments shall be satisfied in the order in
23 which they were served on the employer. Each prior garnishment order shall
24 be satisfied before any effect is given to a subsequent garnishment order.

25 (k) Application of Payments Received. – All payments received by a judgment creditor
26 shall be credited or applied in the following mandatory order of priority:

27 (1) Against the record costs of the judgment and garnishment orders.

28 (2) Against the accrued interest on the unpaid balance of the judgment,
29 including postjudgment interest.

30 (3) Against the principal amount of the judgment.

31 (4) Against any attorneys' fees and costs awarded.

32 (l) Notice of Satisfaction. – The judgment creditor shall, within five business days
33 following the satisfaction of the judgment, deliver to the garnishee a written notification that
34 the garnishment order is satisfied. The judgment creditor shall, within 30 days after satisfaction
35 of the judgment, notify the clerk in writing that the judgment is satisfied.

36 (m) Improper Garnishment. – In the event of an improper garnishment, the court may set
37 aside the garnishment order and make such further orders as are necessary to return to the
38 judgment debtor any funds improperly garnished, together with damages and reasonable costs
39 and attorneys' fees."

40 **SECTION 2.** This act becomes effective October 1, 2011, and applies to civil
41 actions filed on or after that date.