

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 30
Committee Substitute Favorable 4/14/11
PROPOSED COMMITTEE SUBSTITUTE H30-PCS90112-SVf-20

Short Title: Allow Wage Garnishment to Satisfy Judgments.

(Public)

Sponsors:

Referred to:

February 3, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL
3 MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS INVOLVING UNFAIR
4 OR DECEPTIVE ACTS OR PRACTICES.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 75-16.3. Procedure for garnishment.**

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

10 (1) Judgment creditor. – A person awarded a judgment in which a determination
11 has been made that a judgment debtor is found to have violated G.S. 75-1.1.

12 (2) Judgment debtor. – A person against whom a judgment has been rendered in
13 which a determination has been made that the judgment debtor is found to
14 have violated G.S. 75-1.1.

15 (3) Earnings. – Compensation paid or payable for personal services, whether
16 denominated as wages, salary, commission, bonus, or otherwise.

17 (4) Disposable earnings. – The part of the earnings which remains after the
18 deduction of any amounts required by law to be withheld or withheld to pay
19 for reasonably necessary expenses of the judgment debtor or the judgment
20 debtor's dependents, including health care and day care expenses.

21 (5) Garnishee. – The person, firm, association, or corporation owing
22 compensation for personal services, whether denominated as wages, salary,
23 commission, bonus, or otherwise.

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



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

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

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

12 (1) If the judgment debtor fails to appear at the hearing, the court will enter an
13 order directing the judgment debtor's employer to withhold a portion of
14 wages to apply to the judgment.

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

17 (3) An order of garnishment shall not be entered if the judgment debtor is
18 making regular payments to the judgment creditor that are equal to ten
19 percent (10%) of the judgment debtor's monthly disposable earnings.

20 (4) An order of garnishment shall not be entered if the judgment debtor can
21 show at the hearing that economic hardship would result to the judgment
22 debtor or judgment debtor's dependents if garnishment is ordered.

23 (d) Filing Fee. – The filing fee for a motion requesting garnishment under this section is
24 the same as for other supplemental proceedings, as set forth in G.S. 7A-308(a)(2). This fee may
25 be recoverable by the judgment creditor as a taxable cost of the action.

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

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

41 (g) Order of Garnishment; Contents. – If an order of garnishment is entered, the order
42 shall state (i) the names and last known addresses of the judgment creditor and judgment
43 debtor, (ii) the court in which and the date on which the money judgment was rendered, (iii) the
44 original amount of the money judgment and the amount due thereon, (iv) the portion of the
45 judgment debtor's earnings that are subject to garnishment thereunder, or the information
46 necessary to determine such portion, and (v) any information that the judgment creditor
47 provides to identify the judgment debtor's employer. The garnishment order shall notify any
48 garnishee of the manner prescribed by this section for complying with the order. A copy of the
49 order shall be personally served on the judgment debtor and the garnishee by any method
50 authorized under G.S. 1A-1, Rule 4(j). The garnishment order shall be subject to review for
51 modification or dissolution upon the filing of a motion in the cause.

1 (h) Payment to Creditor; Garnishee May Retain Fee. – Upon receipt of an order of
2 garnishment, and beginning with the judgment debtor's next succeeding pay period starting
3 after the receipt of the notice of garnishment, the garnishee shall withhold and transmit to the
4 judgment creditor, at the address specified in the order, the amount ordered by the court to be
5 garnished. The garnishee shall not be required to change normal pay cycles but shall make
6 every effort to ensure that payments are received as soon as practicable. The garnishment order
7 shall simplify the withholding process for garnishees to the extent possible. The amount
8 garnished shall be increased by an additional five-dollar (\$5.00) processing fee to be assessed
9 and retained by the garnishee for each payment under the order. The judgment creditor shall,
10 within five business days following the satisfaction of the judgment, deliver to the garnishee a
11 written notification that the garnishment order is satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

37 (l) Notice of Satisfaction. – Notwithstanding G.S. 1-239(c), a judgment creditor shall
38 not notify the clerk of superior court of the receipt of each individual payment under the
39 garnishment order, but upon receipt of payment in full of the total amount ordered, a judgment
40 creditor shall, within 60 days of the receipt of said payment, file with the clerk of superior court
41 in the county where the judgment and garnishment order were entered a notice of payment in
42 full and satisfaction of the judgment. If a judgment creditor fails to file the notice required by
43 this subsection within 30 days following written demand by the judgment debtor, the judgment
44 creditor may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to
45 attorneys' fees and any loss caused to the judgment debtor by such failure.

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

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