HOUSE BILL 30:
Allow Wage Garnishment to Satisfy Judgments

2011-2012 General Assembly

Committee:	House Finance	**Date:**	May 19, 2011
Introduced by:	Rep. T. Moore	**Prepared by:**	Trina Griffin
Analysis of:	PCS to Second Edition H30-CSSVf-20		Committee Counsel

SUMMARY: House Bill 30 would provide for the garnishment of an individual's disposable earnings to satisfy a judgment for unfair or deceptive trade practices.

The PCS makes the following changes, which were requested by AOC:

- ***It changes the fee for filing a motion for garnishment from $20 to the same fee that applies in other supplemental proceedings, which is $30.***
- ***It expands the method of service of an order of garnishment by allowing any method authorized under Rule 4(j) of the Rules of Civil Procedure.***
- ***It simplifies the process for handling garnishment payments by requiring that they be paid directly to the judgment creditor, rather than to the court, and by requiring the creditor to notify the court once the judgment has been satisfied in full.***

CURRENT LAW: In North Carolina, a judgment creditor may not obtain an order for garnishment of wages against a judgment debtor except where specifically authorized by statute.

Specific situations in which the General Assembly has provided for garnishment of wages include tax liens[1], child support[2], student loans[3], recoupment of fraudulent public assistance program payments[4], and services provided by public hospitals[5]. The amount that may be garnished from earnings varies among the statutes. For tax liens, the amount is limited to 10% of wages and other compensation for any one pay period. Garnishment for public hospital services may not exceed 10% of monthly disposable earnings; garnishment to recoup fraudulent public assistance payments is limited to 20% of monthly disposable income; and garnishment for the support of a minor child is 40% of monthly disposable earnings.

BILL ANALYSIS: House Bill 30 would authorize the garnishment of wages to satisfy judgments against judgment debtors found to have violated G.S. 75-1.1 (unfair or deceptive acts or practices in or affecting commerce), if the acts that constituted the violation were knowingly and willfully committed.

The bill includes the following provisions:

<u>*Enforcement.*</u> – A judgment creditor may move for garnishment of the judgment debtor's disposable earnings at any time after attempting to execute the judgment that has been returned wholly or partially unsatisfied after exhausting remedies available under Article 31 of Chapter 1 (Supplemental Proceedings), if:

- The judgment creditor has sent a certified letter to the judgment debtor's last known address with information that the judgment debtor's disposable earnings may be garnished; and

[1] G.S. 105-368
[2] G.S. 110-136
[3] G.S. 105B-3
[4] G.S. 108A-25.3
[5] G.S. 131E-49

- The judgment debtor has not paid or made reasonable arrangements to pay within 10 days of the mailing.

Motion and notice. – The motion must be in writing and provide grounds for requesting garnishment, the amount alleged to be unpaid, and the judgment debtor's source of earnings. Notice of hearing must be served on the judgment debtor at least 10 days before the hearing and include all of the following:

- Failure to appear will result in an order of garnishment.
- Garnishment may be up to 15% of the judgment debtor's disposable earnings.
- The order shall not be entered if the judgment debtor makes regular payments to the judgment creditor of 10% of the judgment debtor's disposable earnings.
- The order shall not be entered if the judgment debtor can show that economic hardship would result to the judgment debtor or his or her dependents.

Filing fee. – A motion must include a fee of $30, which is the same fee for other supplemental proceedings. The fee may be recoverable by the judgment creditor as a taxable cost of the action.

Hearing. – At a hearing on the motion, the court must determine whether garnishment is appropriate on the basis of the motion, any affidavit of the judgment creditor, the record in the civil action, and any testimony and other relevant evidence offered by either party.

Garnishment amount. – An order of garnishment may not exceed the lesser of 15% of the judgment debtor's monthly disposable earnings, or the amount by which the disposable earnings for that pay period exceed an amount calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks in the pay period.

Garnishment order. – A copy of the order must be served on the judgment debtor and the garnishee, and it must notify the garnishee of the manner for complying with the order.

Payment to the creditor. – Upon receipt of an order, the garnishee must submit payment to the judgment creditor. For each payment, the amount garnished shall be increased by $5 as a processing fee to be assessed and retained by the garnishee.

Duration of order. – The order continues until one of the following occurs:

- The judgment has been satisfied.
- The judgment debtor's employment is terminated, unless he or she is reemployed within 90 days of termination.
- The limitation period prescribed by G.S. 1-47 has expired.

Priority of garnishment orders. A garnishment under this article does not take priority over any other garnishment authorized by law. Garnishments under this article against the same judgment debtor are to be satisfied in the order in which they were served on the employer.

Application of payments. All payments are to be applied first against record costs of the judgment and garnishment orders, followed by interest, principal, and then attorneys' fees and costs awarded.

Notice of satisfaction. The judgment creditor must notify the garnishee within 5 business days following satisfaction of the judgment and the clerk within 60 days following satisfaction of the judgment. If a judgment creditor fails to file the notice within 30 days following written demand by the judgment debtor, the judgment creditor may be required to pay a $100 civil penalty in addition to attorney's fees.

<u>Improper garnishment.</u> The court may set aside an order of garnishment if it is improper and may make any further orders that are necessary to return the judgment debtor's funds and any reasonable costs and damages.

EFFECTIVE DATE: The act becomes effective October 1, 2011 and applies to civil actions filed on or after that date.

Wendy Ray, counsel to House Judiciary C, substantially contributed to this summary.

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