

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 740
Commerce Committee Substitute Adopted 5/1/97

Short Title: Garnishment to Satisfy Judgments.

(Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 7, 1997

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.

Section 1. G.S. 1-362 reads as rewritten:

"§ 1-362. Debtor's property ordered sold.

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; ~~except that the judgment. The earnings of the debtor for his the debtor's personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor. services which are less than or equal to 30 times the federal minimum hourly wage per work week or seventy-five percent (75%) of the debtor's net income, whichever is greater, shall not be subject to attachment or garnishment.~~"

Section 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.
"Garnishment of Wages to Satisfy Judgments.

"§ 1C-1501. Judgment enforced by wage garnishment.

A final judgment awarding monetary damages against an individual may be enforced by a garnishment order directing the employer of the judgment debtor to pay to the judgment creditor that portion of the disposable earnings owed to the judgment debtor which are not exempt under G.S. 1-362.

"§ 1C-1502. Garnishment procedures.

1 (a) Clerk to Issue Order. At any time after 30 days following the entry of a final
2 judgment, upon request of the judgment creditor, the clerk of superior court in the county
3 in which the judgment was originally entered shall issue a garnishment order directing
4 the employer of the judgment debtor to pay to the judgment creditor that portion of the
5 disposable earnings owed to the judgment debtor which are not exempt under G.S. 1-362.
6 The garnishment order shall bear a notice that the judgment debtor has the right to file an
7 objection to the garnishment order pursuant to subsection (f) of this section.

8 (b) Service of Order. A garnishment order issued under subsection (a) of this
9 section shall be served by the judgment creditor on the judgment debtor and the employer
10 of the judgment debtor, by certified mail, return receipt requested, or served by any
11 means authorized under Rule 4 of the Rules of Civil Procedure.

12 (c) Payment to the Judgment Creditor; Employer to Retain Fee. The employer of
13 the judgment debtor shall withhold the nonexempt earnings of the judgment debtor and
14 shall remit the amount withheld to the judgment creditor or the attorney of the judgment
15 creditor as provided in the garnishment order within 15 days following the last wage pay
16 period of each month, beginning with the pay period following the pay period in which
17 the order is served upon the employer. The employer shall be entitled to deduct from the
18 amount garnished a fee not to exceed two percent (2%) of the amount garnished or five
19 dollars (\$5.00), whichever is greater. The judgment creditor shall apply toward
20 satisfaction of the judgment all amounts deducted by the employer pursuant to the
21 garnishment order, including the fee retained by the employer.

22 (d) Duration of Garnishment Order. A garnishment order issued under this section
23 shall continue until either:

(1) The underlying judgment has been satisfied in full, or

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

(e) Priority of Wage Garnishment Orders. Garnishment orders shall be satisfied by the employer without regard to when the garnishment order was served according to the following order of priority:

(1) Garnishment for child support.

(2) Garnishment by a governmental entity.

(3) All other garnishments.

If an employer is served with more than one garnishment of the same order of priority against the same judgment debtor, then the garnishments shall be satisfied in the order in which they were served on the employer.

(f) Objection by Judgment Debtor; Hearing on Objection. At any time following the issuance of a garnishment order under this section, the judgment debtor may file with the court and service upon the employer and the judgment creditor a notice of objection to the garnishment order. Within 10 days after a notice of objection is filed, the clerk shall notify by first-class mail the judgment creditor and the judgment debtor of a hearing to be held before the clerk to determine the validity of the judgment debtor's objections. The hearing shall be held no later than 30 days following the filing of the notice of objection. Following the hearing, the clerk may make such orders as are necessary to modify or vacate the garnishment order. Appeal from the order by the clerk may be made to a judge of the court in the division from which the original judgment was issued.

(g) Application of payments received. All payments received by a judgment creditor shall be credited in the following order:

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

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

(3) Against the principal amount of the judgment.

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

(h) Notice of Satisfaction. The judgment creditor shall, within five business days following the satisfaction of the judgment, deliver to the employer a written notification that the garnishment order is satisfied. The judgment creditor shall, within 30 days after satisfaction of the judgment, notify the clerk in writing that the judgment is satisfied.

(i) Improper Garnishment; Penalty. In the event of an improper garnishment, the clerk may set aside the garnishment order and make such further orders as are necessary to return to the judgment debtor any funds improperly garnished, together with reasonable costs and attorneys' fees.

(j) Public Compensation. Earnings paid by a city, county, State, or local government authority are subject to the provisions of this section in the same manner as earnings paid by any other employer.

(k) Deficiency Judgments. The clerk shall not issue an order of garnishment pursuant to this section to enforce any deficiency judgment described in Article 2 of Chapter 45 of the General Statutes."

Section 3. G.S. 95-241(a) reads as rewritten:

1 "(a) No person shall discriminate or take any retaliatory action against an employee
2 because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

a. Chapter 97 of the General Statutes.

b. Article 2A or Article 16 of this Chapter.

c. Article 2A of Chapter 74 of the General Statutes.

d. G.S. 95-28.1.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(4) Has his or her wages garnished by legal process."

Section 4. This act becomes effective October 1, 1997. Section 2 of this act applies to civil actions filed on or after that date.