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SENATE DRS25181-LR-92B (03/13)

Short Title: Civil Judgment/Allow Wage Garnishment. (Public)

Sponsors: Senator Brock (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW GARNISHMENT OF A JUDGMENT DEBTOR'S WAGES UPON A
3 FINAL JUDGMENT AWARDING MONEY DAMAGES IN A CIVIL ACTION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 1C of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 15.

8 "Garnishment of Wages to Enforce Judgments.

9 "**§ 1C-1501. Judgment enforced by garnishment of wages.**

10 (a) A final judgment awarding monetary damages against an individual may be
11 enforced by a writ of garnishment directing the employer of the judgment debtor to pay that
12 portion of the disposable earnings owed to the judgment debtor as determined by reference to
13 subsections (b) and (c) of this section.

14 (b) For the purposes of this section, the term "disposable earnings" means that amount
15 owed to the judgment debtor by his or her employer less any amounts deducted by the
16 employer for federal and State income taxes, the judgment debtor's share of State
17 unemployment insurance, and for social security.

18 (c) The amount of the judgment debtor's weekly earnings which may be garnished shall
19 be the lesser of:

20 (1) Twenty-five percent (25%) of the judgment debtor's disposable earnings; or

21 (2) The amount by which the judgment debtor's disposable earnings exceed 30
22 times the federal minimum wage (currently seven dollars and twenty-five
23 cents (\$7.25) per hour).

24 "**§ 1C-1502. Garnishment procedures.**

25 (a) Clerk to Issue Writ of Garnishment. – At any time after 30 days following the entry
26 of a final judgment, upon the request of the judgment creditor, and payment of a fee in the
27 amount of twenty-five dollars (\$25.00), the clerk of superior court in the county in which the
28 judgment was originally entered shall issue a writ of garnishment directing the employer of the
29 judgment debtor to pay to the judgment creditor that portion of the disposable earnings owed to
30 the judgment debtor that are not exempt as defined in this section, and which do not exceed
31 twenty-five percent (25%) of the nonexempt net earnings of the judgment debtor. The writ of
32 garnishment shall bear a notice that the judgment debtor has the right to file an objection to the
33 writ of garnishment pursuant to subsection (i) of this section.

34 (b) Service of Writ. – A writ of garnishment issued under subsection (a) of this section
35 shall be served by the judgment creditor on the judgment debtor and the employer of the



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1 judgment debtor, by certified mail, return receipt requested, or served by any means authorized
2 under Rule 4 of the Rules of Civil Procedure.

3 (c) Payment to the Judgment Creditor; Employer to Retain Fee. – The employer of the
4 judgment debtor shall withhold no more than twenty-five percent (25%) of the nonexempt net
5 earnings of the judgment debtor and shall remit the amount withheld to the judgment creditor
6 or the attorney of the judgment creditor as provided in the writ of garnishment within 15 days
7 following the last wage pay period of each month, beginning with the pay period following the
8 pay period in which the order is served upon the employer. The employer may deduct from the
9 amount garnished per pay period a fee of ten dollars (\$10.00). The judgment creditor shall
10 apply toward satisfaction of the judgment all amounts deducted by the employer pursuant to the
11 writ of garnishment, including all of the fees retained by the employer.

12 (d) Employer to Comply with Writ of Garnishment. – Any employer who fails without
13 good cause to comply with the withholding requirement in writ of garnishment, or who
14 discharges, disciplines, or refuses to hire a judgment debtor due solely on the basis of a writ of
15 garnishment may be subject to contempt of court proceedings resulting in possible civil
16 penalties.

17 (1) Either the judgment creditor or the judgment debtor may file a motion for
18 order to show cause against the employer to be heard by a judge of the court
19 in the division from which the original judgment was issued.

20 (2) The employer may be subject to contempt of court resulting in possible civil
21 penalties, including reasonable attorneys' fees to the moving party.

22 (e) Duration of Writ of Garnishment. – A garnishment order issued under this section
23 shall continue in effect, without the need for renewal, until whichever of the following events
24 occurs first:

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

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

29 (3) The judgment debtor qualifies for an exemption to garnishment pursuant to
30 subsection (i) of this section.

31 (f) Priority of Writs of Garnishment. – Writs of garnishment shall be satisfied by the
32 employer without regard to when the garnishment order was served according to the following
33 order of priority, from highest to lowest:

34 (1) Garnishment for child support.

35 (2) Garnishment by a governmental entity.

36 (3) All other garnishments.

37 (g) If an employer is served with more than one writ of garnishment of the same level
38 of priority against the same judgment debtor, then the garnishments shall be satisfied in the
39 order in which they were served on the employer.

40 (h) Exemptions to Writ of Garnishment. – A judgment debtor shall have the right to
41 claim certain exemptions:

42 (1) Exemptions from garnishment:

43 a. Social security.

44 b. Disability.

45 c. Retirement savings withheld by employer.

46 d. Income subject to garnishment for child support.

47 e. Income subject to garnishment by a governmental entity.

48 (2) Judgment debtor has the right to file an objection to the writ of garnishment
49 based on any of these exemptions pursuant to subsection (i) of this section.

50 (i) Objection by Judgment Debtor; Hearing on Objection. – At any time following the
51 issuance of a writ of garnishment under this section, the judgment debtor may file with the

1 court and serve upon the employer and the judgment creditor a notice of objection to the
2 garnishment order. Within 10 days after a notice of objection is filed, the clerk shall notify, by
3 first-class mail, the judgment creditor and the judgment debtor of a hearing to be held before
4 the clerk to determine the validity of the judgment debtor's objections. The hearing shall be
5 held no later than 30 days following the filing of the notice of objection. Following the hearing,
6 the clerk may make such orders as are necessary to modify or vacate the writ of garnishment.
7 Appeal from the order by the clerk may be made to a judge of the court in the division from
8 which the original judgment was issued.

9 (j) Application of Payments Received. – All payments received by a judgment creditor
10 pursuant to a writ of garnishment shall be credited in the following order:

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

12 (2) Against the accrued interest on the unpaid balance of the judgment,
13 including post-judgment interest.

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

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

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

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

24 (m) Public Compensation. – Earnings paid by a city, county, state, or local government
25 authority are subject to the provisions of this section in the same manner as earnings paid by
26 any other employer."

27 **SECTION 2.** G.S. 1-362 reads as rewritten:

28 **"§ 1-362. Debtor's property ordered sold.**

29 The court or judge may order any property, whether subject or not to be sold under
30 execution (except the homestead and personal property exemptions of the judgment debtor), in
31 the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be
32 applied towards the satisfaction of the judgment; ~~except that the earnings of the debtor for his~~
33 ~~personal services, at any time within 60 days next preceding the order, cannot be so applied~~
34 ~~when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the~~
35 ~~use of a family supported wholly or partly by his labor.~~**judgment."**

36 **SECTION 3.** This act becomes effective July 1, 2015, and applies to civil
37 judgments entered either prior to or after the effective date.