

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80071-LD-49 (01/29)

Short Title: Garnish Wages to Satisfy Judgments. (Public)

Sponsors: Representatives Moore, Daughtridge, McGee, and Tillis (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE GARNISHMENT OF THE JUDGMENT DEBTOR'S
WAGES AS AN ADDITIONAL MEANS OF ENFORCING A JUDGMENT.

The General Assembly of North Carolina enacts:

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 that 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 Enforce Judgments.

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

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 that are not exempt under G.S. 1-362.

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

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

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

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

24 (d) Duration of Garnishment Order. – A garnishment order issued under this
25 section shall continue until whichever of the following events occurs first:

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

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

30 (e) Priority of Wage Garnishment Orders. – Garnishment orders shall be satisfied
31 by the employer without regard to when the garnishment order was served according to
32 the following order of priority, from highest to lowest:

33 (1) Garnishment for child support.

34 (2) Garnishment by a governmental entity.

35 (3) All other garnishments.

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

39 (g) Objection by Judgment Debtor; Hearing on Objection. – At any time
40 following the issuance of a garnishment order under this section, the judgment debtor
41 may file with the court and serve upon the employer and the judgment creditor a notice
42 of objection to the garnishment order. Within 10 days after a notice of objection is filed,
43 the clerk shall notify, by first-class mail, the judgment creditor and the judgment debtor
44 of a hearing to be held before the clerk to determine the validity of the judgment

1 debtor's objections. The hearing shall be held no later than 30 days following the filing
2 of the notice of objection. Following the hearing, the clerk may make such orders as are
3 necessary to modify or vacate the garnishment order. Appeal from the order by the clerk
4 may be made to a judge of the court in the division from which the original judgment
5 was issued.

6 (h) Application of Payments Received. – All payments received by a judgment
7 creditor shall be credited in the following order:

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

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

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

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

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

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

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

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

28 **SECTION 3.** G.S. 95-241(a) reads as rewritten:

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

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

35 a. Chapter 97 of the General Statutes.

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

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

38 d. G.S. 95-28.1.

39 e. Article 16 of Chapter 127A of the General Statutes.

40 f. G.S. 95-28.1A.

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

- 1 (3) Exercise any right on behalf of the employee or any other employee
2 afforded by Article 2A or Article 16 of this Chapter or by Article 2A
3 of Chapter 74 of the General Statutes.
4 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
5 Statutes.
6 (5) Exercise rights under Chapter 50B. Actions brought under this
7 subdivision shall be in accordance with the provisions of G.S. 50B-5.5.
8 (6) Has his or her wages garnished by legal process."
9 **SECTION 4.** This act becomes effective October 1, 2007, and applies to
10 civil actions filed on or after that date.