

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 30

Short Title: Allow Wage Garnishment to Satisfy Judgments. (Public)

Sponsors: Representative T. Moore (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

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.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 1-362. Debtor's property ordered sold.**

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

17 **SECTION 2.** Chapter 1C of the General Statutes is amended by adding a new
18 Article to read:

19 "Article 15.

20 "Garnishment of Wages to Enforce Judgments.

21 "**§ 1C-1501. Definitions.**

22 The following definitions apply in this Article:

23 (1) Disposable earnings. – That part of the compensation paid or payable for
24 personal services, including wages, salary, commission, bonus, payments to
25 a pension or retirement program, and other similar payments that remain
26 after the deduction of any amounts required by law to be withheld.

27 (2) Nonexempt earnings. – That portion of the disposable earnings owed to a
28 judgment debtor that are not exempt under G.S. 1-362.

29 "**§ 1C-1502. Judgments may be enforced by garnishment of wages.**

30 (a) Final Judgments May Be Enforced by Garnishment. – Except as provided in
31 G.S. 1C-1511, a final judgment awarding monetary damages against an individual may be
32 enforced by a garnishment order directing the employer of the judgment debtor to pay
33 nonexempt earnings to the judgment creditor.



1 (b) Public Compensation No Exception. – Earnings paid by a city, county, State, or
2 local government authority are subject to the provisions of this Article in the same manner as
3 earnings paid by any other employer.

4 **"§ 1C-1503. Issuance of garnishment order; service.**

5 (a) Clerk to Issue Order. – At any time after 30 days following the entry of a final
6 judgment, upon the request of the judgment creditor, the clerk of superior court in the county in
7 which the judgment was originally entered shall issue a garnishment order directing the
8 employer of the judgment debtor to pay nonexempt earnings to the judgment creditor.

9 (b) Notice Required. – The garnishment order shall bear a notice that the judgment
10 debtor has the right to file an objection to the garnishment order pursuant to G.S. 1C-1504.

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

15 **"§ 1C-1504. Objection by judgment debtor; hearing on objection.**

16 At any time following the issuance of a garnishment order under G.S. 1C-1503, the
17 judgment debtor may file with the court and serve upon the employer and the judgment creditor
18 a notice of objection to the garnishment order. Within 10 days after a notice of objection is
19 filed, the clerk shall notify, by first-class mail, the judgment creditor and the judgment debtor
20 of a hearing to be held before the clerk to determine the validity of the judgment debtor's
21 objections. The hearing shall be held no later than 30 days following the filing of the notice of
22 objection. Following the hearing, the clerk may make such orders as are necessary to modify or
23 vacate the garnishment order. Appeal from the order by the clerk may be made to a judge of the
24 court in the division from which the original judgment was issued.

25 **"§ 1C-1505. Payment to the judgment creditor; employer may retain fee.**

26 (a) Withholding and Remittance to Creditor. – If a garnishment order is issued pursuant
27 to this Article, the employer of the judgment debtor shall withhold the nonexempt earnings of
28 the judgment debtor and shall remit the amount withheld to the judgment creditor or the
29 attorney of the judgment creditor as provided in the garnishment order within 15 days
30 following the last wage pay period of each month, beginning with the pay period following the
31 pay period in which the order is served upon the employer.

32 (b) Retention of Fee. – The employer may deduct from the amount garnished a fee not
33 to exceed five dollars (\$5.00) per pay period. The judgment creditor shall apply toward
34 satisfaction of the judgment all amounts deducted by the employer pursuant to the garnishment
35 order, including the fee retained by the employer.

36 **"§ 1C-1506. Duration of garnishment order.**

37 A garnishment order issued pursuant to G.S. 1C-1503 shall continue until whichever of the
38 following events occurs first:

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

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

43 **"§ 1C-1507. Priority of garnishment orders.**

44 Garnishment orders shall be satisfied by the employer according to the following order of
45 priority, from highest to lowest:

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

50 (2) Garnishment pursuant to this Article. If an employer is served with more
51 than one garnishment order obtained pursuant to this Article against the

1 same judgment debtor, the garnishments shall be satisfied in the order in
2 which they were served on the employer.

3 **"§ 1C-1508. Application of payments received.**

4 All payments received by a judgment creditor shall be credited in the following order:

- 5 (1) Against the record costs of the judgment and garnishment orders.
- 6 (2) Against the accrued interest on the unpaid balance of the judgment,
7 including postjudgment interest.
- 8 (3) Against the principal amount of the judgment.
- 9 (4) Against any attorneys' fees and costs awarded.

10 **"§ 1C-1509. Notice of satisfaction.**

11 The judgment creditor shall, within five business days following the satisfaction of the
12 judgment, deliver to the employer a written notification that the garnishment order is satisfied.
13 The judgment creditor shall, within 30 days after satisfaction of the judgment, notify the clerk
14 in writing that the judgment is satisfied.

15 **"§ 1C-1510. Improper garnishment.**

16 In the event of an improper garnishment, the clerk may set aside the garnishment order and
17 make such further orders as are necessary to return to the judgment debtor any funds
18 improperly garnished, together with reasonable costs and attorneys' fees.

19 **"§ 1C-1511. Garnishment not available to enforce deficiency judgments.**

20 The clerk shall not issue an order of garnishment pursuant to this Article to enforce any
21 deficiency judgment described in Article 2 of Chapter 45 of the General Statutes."

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

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

- 25 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
26 proceeding or other action, or testify or provide information to any person
27 with respect to any of the following:
 - 28 a. Chapter 97 of the General Statutes.
 - 29 b. Article 2A or Article 16 of this Chapter.
 - 30 c. Article 2A of Chapter 74 of the General Statutes.
 - 31 d. G.S. 95-28.1.
 - 32 e. Article 16 of Chapter 127A of the General Statutes.
 - 33 f. G.S. 95-28.1A.
 - 34 g. Article 52 of Chapter 143 of the General Statutes.
 - 35 h. Article 5F of Chapter 90 of the General Statutes.
- 36 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
37 initiated on an employee's behalf.
- 38 (3) Exercise any right on behalf of the employee or any other employee afforded
39 by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of
40 the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.
- 41 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
42 Statutes.
- 43 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
44 shall be in accordance with the provisions of G.S. 50B-5.5.
- 45 (6) Has his or her wages garnished by legal process."

46 **SECTION 4.** This act becomes effective October 1, 2011, and applies to civil
47 actions filed on or after that date.