

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 740

Short Title: Garnishment to Satisfy Judgments.

(Public)

Sponsors: Senators Rand; Allran, Blust, Carrington, Clark, Dalton, East, Forrester, Foxx, Garwood, Hartsell, Horton, Hoyle, Jenkins, Kincaid, Ledbetter, McDaniel, Perdue, Plyler, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Warren, Webster, and Weinstein.

Referred to: Commerce.

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 AND TO
4 AUTHORIZE COLLECTION AGENCIES TO TAKE AN ASSIGNMENT OF
5 CLAIMS AS REAL PARTIES IN INTEREST FOR THE PURPOSE OF BILLING,
6 COLLECTION, AND BRINGING SUITS.

Whereas, four states allow garnishment of commercial debts; and

Whereas, personal bankruptcy has increased 35% in North Carolina since 1995; and

Whereas, the United States federal government allows wage garnishment of civil service employees; and

Whereas, garnishment of wages is allowed in North Carolina regarding judgments ordering the payment of hospital bills, ambulance charges, and child support; Now, therefore,

7 The General Assembly of North Carolina enacts:

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

9 **"§ 1-362. Debtor's property ordered sold.**

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

11 Section 2. Part 3 of Article 35 of Chapter 1 of the General Statutes is amended
12 by adding a new section to read:

13 **"§ 1-440.18A. Levy on wages in possession of defendant garnishee.**

14 (a) Levy on Wages. – The sheriff shall levy on the debtor's wages in the
15 possession of the defendant garnishee to the extent allowed under G.S. 1-362. The levy
16 shall continue until the debt is satisfied. The defendant garnishee shall withhold the
17 attachable wages payable to the debtor and shall remit the amount withheld directly to the
18 creditor within 15 days of the last wage pay period of each month. The defendant
19 garnishee shall be entitled to deduct from each employee any extra costs incurred to
20 record these transactions, not to exceed two percent (2%) of the amount of money
21 collected under this section.

22 (b) Order of Wage Attachments. – Attachments shall be satisfied in the following
23 order, beginning with highest priority:

- 24 (1) Attachment for child support.
- 25 (2) Attachment by a governmental entity.
- 26 (3) Attachment by other entities.

27 If an employer is served with more than one attachment of the same order of priority
28 against the same judgment debtor, then the attachments shall be satisfied in the order in
29 which they were served. Each prior attachment shall be satisfied before any effect is
30 given to a subsequent attachment.

31 (c) Lapse of Attachment. – If a judgment debtor resigns or is dismissed from
32 employment while an attachment on the debtor's wages is wholly or partially unsatisfied,
33 the attachment shall lapse unless the judgment debtor is reinstated or reemployed within
34 90 days from the date of dismissal.

35 (d) Prohibition. – No employer shall discharge an employee because the
36 employee's wages are being garnished. An employer who violates this subsection may be
37 adjudged in contempt of court and subject to a fine of up to five hundred dollars
38 (\$500.00). An employee who is aggrieved by a violation of this subsection may bring an
39 action for damages and reasonable attorneys' fees.

40 (e) Statement of Payments. – Within 15 days after the defendant garnishee has
41 remitted payment to the judgment creditor, the judgment creditor shall furnish the
42 defendant garnishee, the judgment debtor, and the clerk of court a written statement

1 showing all payments that were credited to the account of the judgment debtor during that
2 month.

3 (f) Notice of Satisfaction. – The judgment creditor shall, within seven business
4 days after satisfaction of the total amount due under the judgment, including interest and
5 costs of the judgment, notify the defendant garnishee in writing that the order of wage
6 attachments is satisfied. The judgment creditor shall, within 30 days after satisfaction of
7 the total amount due under the judgment, including interest and costs of the judgment,
8 notify the clerk of court in writing that the order of wage attachments is satisfied.

9 (g) Application of Payments Received. – All payments received by a judgment
10 creditor shall be credited in the following order, beginning with the first:

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

12 (2) Against the accrued interest on the unpaid balance of the judgment, if
13 any.

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

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

16 (h) Failure to Comply. – If the judgment creditor fails to comply with this section,
17 the court may, upon request, set aside the attachment and order the judgment creditor to
18 pay reasonable attorneys' fees and court costs of the party seeking to set aside the
19 attachment.

20 (i) Public Wages. – Wages paid by a city, county, State, or local government
21 authority are subject to this section in the same manner as the wages of a private person."

22 Section 3. Article 70 of Chapter 58 of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 58-7-121. Assignments.**

25 Nothing in this Article prevents a collection agency from taking an assignment of a
26 claim in its own name as a real party in interest for the purpose of billing, collection, and
27 filing a civil action. No civil action under this section may be instituted on behalf of a
28 collection agency in any court unless an attorney makes an appearance for the collection
29 agency."

30 Section 4. This act becomes effective October 1, 1997, and applies to civil
31 actions filed on or after that date.