

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

1

SENATE BILL 340

Short Title: Honor Financial Commitments. (Public)

Sponsors: Senators Perry, Britt, and Craven (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 24, 2021

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 INVOLVING UNFAIR  
4 OR DECEPTIVE ACTS OR PRACTICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding  
7 a new section to read:

8 "**§ 75-16.3. Procedure for garnishment.**

9 (a) Definitions. – The following definitions apply in this section:

- 10 (1) Disposable earnings. – The part of the earnings which remains after the  
11 deduction of any amounts required by law to be withheld or withheld to pay  
12 for reasonably necessary expenses of the judgment debtor or the judgment  
13 debtor's dependents, including health care and day care expenses.  
14 (2) Earnings. – Compensation paid or payable for personal services, whether  
15 denominated as wages, salary, commission, bonus, or otherwise.  
16 (3) Garnishee. – The person, firm, association, or corporation owing  
17 compensation for personal services, whether denominated as wages, salary,  
18 commission, bonus, or otherwise.  
19 (4) Judgment creditor. – A person awarded a judgment in which a determination  
20 has been made that a judgment debtor is found to have violated G.S. 75-1.1.  
21 (5) Judgment debtor. – A person against whom a judgment has been rendered in  
22 which a determination has been made that the judgment debtor is found to  
23 have violated G.S. 75-1.1.

24 (b) Judgments May Be Enforced by Garnishment of Wages. – Any judgment creditor  
25 awarded a judgment in which a determination has been made that a judgment debtor is found to  
26 have violated G.S. 75-1.1 and in which the acts or practices that constituted the violation were  
27 knowingly and willfully committed may move the court in the county wherein the judgment  
28 debtor resides for an order of garnishment of the disposable earnings of the judgment debtor at  
29 any time after attempting execution of a judgment for unfair or deceptive acts or practices that  
30 has been returned wholly or partially unsatisfied after exhausting remedies available under  
31 Article 31 of Chapter 1 of the General Statutes, provided the following conditions have been met:

- 32 (1) The judgment creditor has sent a certified letter to the judgment debtor's last  
33 known address that includes information that the judgment debtor's disposable  
34 earnings may be subject to wage garnishment.



1           (2)    The judgment debtor has neglected or refused to pay or make reasonable  
2                   arrangements to pay the judgment within 10 days of the mailing of the letter  
3                   described in subdivision (1) of this subsection.

4           (c)    Motion and Notice Procedures. – The motion shall be in writing and describe in detail  
5                   the grounds for requesting garnishment, the amount of judgment alleged to be unpaid, and the  
6                   source of earnings of the judgment debtor. A notice of hearing must be served on the judgment  
7                   debtor at least 10 days before the hearing, in a form prescribed by the Administrative Office of  
8                   the Courts, that notifies the judgment debtor of the following:

9                   (1)    If the judgment debtor fails to appear at the hearing, the court will enter an  
10                   order directing the judgment debtor's employer to withhold a portion of wages  
11                   to apply to the judgment.

12                   (2)    The amount withheld may be as much as fifteen percent (15%) of the  
13                   judgment debtor's disposable earnings.

14                   (3)    An order of garnishment shall not be entered if the judgment debtor is making  
15                   regular payments to the judgment creditor that are equal to ten percent (10%)  
16                   of the judgment debtor's monthly disposable earnings.

17                   (4)    An order of garnishment shall not be entered if the judgment debtor can show  
18                   at the hearing that economic hardship would result to the judgment debtor or  
19                   judgment debtor's dependents if garnishment is ordered.

20           (d)    Filing Fee. – The filing fee for a motion requesting garnishment under this section is  
21                   the same as for other supplemental proceedings, as set forth in G.S. 7A-308(a)(2). This fee may  
22                   be recoverable by the judgment creditor as a taxable cost of the action.

23           (e)    Hearing. – The court may enter an order of garnishment following notice  
24                   requirements set forth in this section and a hearing held before a superior or district court judge  
25                   pursuant to the motion for garnishment. At the hearing on the motion, the court shall determine  
26                   whether an order of garnishment is appropriate on the basis of the motion, any affidavit of the  
27                   judgment creditor, the record in the civil action, and any testimony and other relevant evidence  
28                   offered by either party. The court shall not enter an order of garnishment if the judgment debtor  
29                   is making regular payments to the judgment creditor that are equal to ten percent (10%) of the  
30                   judgment debtor's monthly disposable earnings, or if economic hardship would result to the  
31                   judgment debtor or judgment debtor's dependents if garnishment is ordered.

32           (f)    Amount Subject to Garnishment. – The court shall not enter an order of garnishment  
33                   that exceeds the lesser of fifteen percent (15%) of the judgment debtor's monthly disposable  
34                   earnings or the amount by which the disposable earnings for that pay period exceed an amount  
35                   calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks in  
36                   the pay period. For purposes of applying this provision, a bimonthly pay period shall constitute  
37                   2.17 weeks and a monthly pay period shall constitute 4.33 weeks.

38           (g)    Order of Garnishment; Contents. – If an order of garnishment is entered, the order  
39                   shall state (i) the names and last known addresses of the judgment creditor and judgment debtor,  
40                   (ii) the court in which and the date on which the money judgment was rendered, (iii) the original  
41                   amount of the money judgment and the amount due thereon, (iv) the portion of the judgment  
42                   debtor's earnings that are subject to garnishment thereunder, or the information necessary to  
43                   determine such portion, and (v) any information that the judgment creditor provides to identify  
44                   the judgment debtor's employer. The garnishment order shall notify any garnishee of the manner  
45                   prescribed by this section for complying with the order. A copy of the order shall be personally  
46                   served on the judgment debtor and the garnishee by any method authorized under G.S. 1A-1,  
47                   Rule 4(j). The garnishment order shall be subject to review for modification or dissolution upon  
48                   the filing of a motion in the cause.

49           (h)    Payment to Creditor; Garnishee May Retain Fee. – Upon receipt of an order of  
50                   garnishment, and beginning with the judgment debtor's next succeeding pay period starting after  
51                   the receipt of the notice of garnishment, the garnishee shall withhold and transmit to the judgment

1 creditor, at the address specified in the order, the amount ordered by the court to be garnished.  
2 The garnishee shall not be required to change normal pay cycles but shall make every effort to  
3 ensure that payments are received as soon as practicable. The garnishment order shall simplify  
4 the withholding process for garnishees to the extent possible. The amount garnished shall be  
5 increased by an additional five-dollar (\$5.00) processing fee to be assessed and retained by the  
6 garnishee for each payment under the order. The judgment creditor shall, within five business  
7 days following the satisfaction of the judgment, deliver to the garnishee a written notification  
8 that the garnishment order is satisfied.

9 (i) Duration of Garnishment Order. – A garnishment order issued pursuant to this section  
10 shall continue until whichever of the following events occurs first:

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

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

15 (3) The limitations period prescribed by G.S. 1-47 has expired.

16 (j) Priority of Garnishment Orders. – Garnishment orders shall be satisfied by the  
17 employer according to the following order of priority, from highest to lowest:

18 (1) Garnishment pursuant to some authority other than this section, by a  
19 governmental entity, by a public hospital, for child support, or by some other  
20 entity or for some other purpose. Nothing in this section alters the priority in  
21 which such garnishments are to be satisfied.

22 (2) Garnishment pursuant to this section. If an employer is served with more than  
23 one garnishment order obtained pursuant to this section against the same  
24 judgment debtor, the garnishments shall be satisfied in the order in which they  
25 were served on the employer. Each prior garnishment order shall be satisfied  
26 before any effect is given to a subsequent garnishment order.

27 (k) Application of Payments Received. – All payments received by a judgment creditor  
28 shall be credited or applied in the following mandatory order of priority:

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

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

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

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

34 (l) Notice of Satisfaction. – Notwithstanding G.S. 1-239(c), a judgment creditor shall not  
35 notify the clerk of superior court of the receipt of each individual payment under the garnishment  
36 order, but upon receipt of payment in full of the total amount ordered, a judgment creditor shall,  
37 within 60 days of the receipt of said payment, file with the clerk of superior court in the county  
38 where the judgment and garnishment order were entered a notice of payment in full and  
39 satisfaction of the judgment. If a judgment creditor fails to file the notice required by this  
40 subsection within 30 days following written demand by the judgment debtor, the judgment  
41 creditor may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to  
42 attorneys' fees and any loss caused to the judgment debtor by such failure.

43 (m) Improper Garnishment. – In the event of an improper garnishment, the court may set  
44 aside the garnishment order and make such further orders as are necessary to return to the  
45 judgment debtor any funds improperly garnished, together with damages and reasonable costs  
46 and attorneys' fees."

47 **SECTION 2.** This act becomes effective October 1, 2021, and applies to civil actions  
48 filed on or after that date.