

Senate Bill 194

By: Senators Stone of the 23rd, Albers of the 56th, Tillery of the 19th and Harbin of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 18 of the Official Code of Georgia Annotated, relating to
2 garnishment proceedings, so as to change the maximum part of disposable earnings subject
3 to garnishment and conform the form used therewith; to clarify various provisions; to change
4 provisions relating to serving the defendant; to change provisions relating to the introduction
5 of evidence and how judgments are paid; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 4 of Title 18 of the Official Code of Georgia Annotated, relating to garnishment
10 proceedings, is amended by revising subparagraph (a)(1)(B) and paragraph (2) of subsection
11 (a) of Code Section 18-4-5, relating to the maximum part of disposable earnings subject to
12 garnishment, as follows:

13 "(B) The amount by which the defendant's disposable earnings for that week exceed
14 ~~\$217.00~~ \$217.50.

15 (2) In case of earnings for a period other than a week, a the proportionate fraction or
16 multiple of 30 hours per week at \$7.25 per hour shall be used."

17 **SECTION 2.**

18 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
19 18-4-7, relating to the required information on summons of garnishment or attachment
20 thereto, form usage, and failure to use correct form, as follows:

21 "(2) The form for a ~~A~~ summons of garnishment on a financial institution shall not be
22 used for a continuing garnishment or continuing garnishment for support. A summons
23 of garnishment on a financial institution, or an attachment thereto, shall also state with
24 particularity the defendant's account, identification, or tracking numbers known to the
25 plaintiff used by the garnishee in the identification or administration of the defendant's

26 funds or property; provided, however, that if such summons is filed with a court, the court
 27 filing shall be redacted in accordance with Code Section 9-11-7.1 or 15-10-54, as
 28 applicable. The defendant's account, identification, or tracking numbers shall be made
 29 known to the garnishee and defendant in accordance with Code Section 9-11-7.1 or
 30 15-10-54, as applicable, to the extent such information is known to the plaintiff."

31 **SECTION 3.**

32 Said chapter is further amended by revising subparagraph (b)(1)(C) of Code Section 18-4-8,
 33 relating to required documents and service thereof, as follows:

34 "(C) To be sent to the defendant by regular mail at the address at which the defendant
 35 accepted service in the action resulting in the judgment, identified as his or her
 36 residence in any pleading in the action resulting in the judgment, or was served as
 37 shown on the return of service in the action resulting in the judgment when it shall
 38 appear by affidavit to the satisfaction of the clerk of the court that the defendant resides
 39 out of this state, has departed this state, cannot, after due diligence, be found within this
 40 state, or has concealed his or her place of residence from the plaintiff. A certificate of
 41 such mailing shall be filed with the clerk of the court in which the garnishment is
 42 pending by the person mailing such notice."

43 **SECTION 4.**

44 Said chapter is further amended by revising subsection (b) of Code Section 18-4-9, relating
 45 to periodic summonses and original filing date limiting extension, as follows:

46 "(b) No new summons of garnishment on the same affidavit of garnishment shall be
 47 issued after two years from the date of the original filing of such affidavit. After two
 48 years, the ~~The~~ garnishment proceeding based on such affidavit shall automatically stand
 49 dismissed unless there are funds remaining in the registry of the court or a new summons
 50 of garnishment has been issued in the preceding 30 days."

51 **SECTION 5.**

52 Said chapter is further amended by revising subsections (c) and (d) of and adding a new
 53 subsection to Code Section 18-4-19, relating to order of trial, introduction of evidence, and
 54 expenses, to read as follows:

55 "(c) When the defendant, garnishee, or third-party claimant prevails upon the trial of his
 56 or her claim:

57 (1) That the plaintiff does not have a judgment against the defendant or that the plaintiff's
 58 affidavit of garnishment is untrue or is legally insufficient, the garnishment case shall be
 59 dismissed by the court, and any money or other property belonging to the defendant in

60 the possession of the court shall be restored to the defendant unless another claim or
61 traverse thereto has been filed;

62 (2) That the amount shown to be due on the plaintiff's affidavit of garnishment is
63 incorrect, the court may allow the summons of garnishment to be amended to the amount
64 proven to be owed, and if such amount is less than the amount shown to be due by the
65 plaintiff, any money or other property belonging to the defendant in the possession of the
66 court in excess of the amount due shall be restored to the defendant unless another claim
67 or traverse thereto has been filed;

68 (3) That the money or other property belonging to the defendant in the possession of the
69 court is exempt from garnishment, such exempt money or other property shall be restored
70 directly to the defendant. The court shall order such restoration within 48 hours; and

71 (4) Based on any legal or statutory defense or that money or other property in the
72 possession of the court may be subject to a claim held by a third party that is superior to
73 the judgment described in the affidavit of garnishment, the court shall determine the
74 disposition of the money or other property belonging to the defendant in the possession
75 of the court.

76 (d) On the trial of the plaintiff's traverse, if the court finds the garnishee has failed to
77 respond properly to the summons of garnishment, the court shall disallow any expenses
78 demanded by the garnishee and shall enter a judgment for any money or other property
79 ~~paid or delivered to the court with the garnishee's answer, plus any money or other property~~
80 the court finds subject to garnishment which the garnishee has failed to pay or deliver to
81 the court; provided, however, that the total amount of such judgment shall not exceed the
82 amount shown to be due by the plaintiff, together with the costs of the garnishment
83 proceeding.

84 (e) A defendant shall not be allowed to present evidence, make an argument, or prevail on
85 a claim that money or other property in a garnishment may be subject to a claim by a third
86 party. When a claim of exemption or defense to a garnishment proceeding belongs to a
87 defendant, a third-party claimant shall not be allowed to present evidence, make an
88 argument, or prevail on any such claim."

89 **SECTION 6.**

90 Said chapter is further amended by revising Code Section 18-4-82, relating to the notice to
91 defendant of right against garnishment of money, including wages, and other property, as
92 follows:

93 "18-4-82.

94 'IN THE _____ COURT OF _____ COUNTY

95 STATE OF GEORGIA

96)

97 **Plaintiff:**)

98 _____)

99 Name)

100)

101 **Plaintiff's contact information:**)

102 _____)

103 Name)

104 _____)

105 Street Address)

106 _____)

107 City State ZIP Code)

108 _____)

109 E-mail Address)

110 _____)

111 Phone Number)

112 _____)

113 Bar Number)

114)

115 v.)

116)

117 **Defendant:**)

118 _____)

119 Name)

120 _____)

121 Street Address)

122)

123 **Garnishee:**)

124 _____)

125 Name)

126 _____)

127 Street Address)

128 _____)

129 City State ZIP Code)

Civil Action File No.

130 **NOTICE TO DEFENDANT OF RIGHT AGAINST**
 131 **GARNISHMENT OF MONEY, INCLUDING WAGES, AND**
 132 **OTHER PROPERTY**

133 You received this notice because money, including wages, and other property belonging
 134 to you have been garnished to pay a court judgment against you. **HOWEVER, YOU**
 135 **MAY BE ABLE TO KEEP YOUR MONEY, INCLUDING WAGES, OR OTHER**
 136 **PROPERTY.**

137 **READ THIS NOTICE CAREFULLY.**

138 State and federal law protects some money, including wages, from garnishment even if
 139 it is in a bank. Some common exemptions are benefits from social security, supplemental
 140 security income, unemployment, workers' compensation, the Veterans' Administration,
 141 state pension, retirement funds, and disability income. This list of exemptions does not
 142 include all possible exemptions. A more detailed list of exemptions is available at the
 143 Clerk of Court's office located at _____ (Name of Court),
 144 _____ (Address), _____ (City), Georgia
 145 _____ (ZIP Code), and on the website for the Attorney General (www.law.ga.gov).

146 Garnishment of your earnings from your employment is limited to the lesser of 25 percent
 147 of your disposable earnings for a week or the amount by which your disposable earnings
 148 for a week exceed ~~\$217.00~~ \$217.50. More than 25 percent of your disposable earnings
 149 may be taken from your earnings for the payment of child support or alimony or if a
 150 Chapter 13 bankruptcy allows a higher amount.

151 **TO PROTECT YOUR MONEY, INCLUDING WAGES, AND OTHER PROPERTY**
 152 **FROM BEING GARNISHED, YOU MUST:**

- 153 1. Complete the Defendant's Claim Form as set forth below; and
- 154 2. File this completed claim form with the Clerk of Court's office located at
 155 _____ (Name of Court), _____ (Address),
 156 _____ (City), Georgia _____ (ZIP Code).

157 **FILE YOUR COMPLETED CLAIM FORM AS SOON AS POSSIBLE.** You may lose
 158 your right to claim an exemption if you do not file your claim form within 20 days after the
 159 Garnishee's Answer is filed or if you do not mail or deliver a copy of your completed claim
 160 form to the Plaintiff and the Garnishee at the addresses listed on this notice.

161 The Court will schedule a hearing within ten days from when it receives your claim form.
 162 The Court will mail you the time and date of the hearing at the address that you provide on
 163 your claim form. You may go to the hearing with or without an attorney. You will need
 164 to give the Court documents or other proof that your money is exempt.

165 The Clerk of Court cannot give you legal advice. IF YOU NEED LEGAL ASSISTANCE,
 166 YOU SHOULD SEE AN ATTORNEY. If you cannot afford a private attorney, legal
 167 services may be available.

168 **DEFENDANT'S CLAIM FORM**

169 **I CLAIM EXEMPTION from garnishment. Some of my money or property held by**
 170 **the garnishee is exempt because it is: (check all that apply)**

- 171 1. Social security benefits.
 172 2. Supplemental security income benefits.
 173 3. Unemployment benefits.
 174 4. Workers' compensation.
 175 5. Veterans' benefits.
 176 6. State pension benefits.
 177 7. Disability income benefits.
 178 8. Money that belongs to a joint account holder.
 179 9. Child support or alimony.
 180 10. Exempt wages, retirement, or pension benefits.
 181 11. Other exemptions as provided by law.

182 Explain: _____
 183 _____

184 I further state: (check all that apply)

- 185 1. The Plaintiff does not have a judgment against me.
 186 2. The amount shown due on the Plaintiff's Affidavit of Garnishment is incorrect.
 187 3. The Plaintiff's Affidavit of Garnishment is untrue or legally insufficient.

188 Send the notice of the hearing on my claim to me at:

189 Address: _____
 190 Phone Number: _____
 191 E-mail Address: _____

192 The statements made in this claim form are true to the best of my knowledge and belief.

193 _____, 20____

194 Defendant's signature Date

195 _____

196 Print name of Defendant

197 **CERTIFICATE OF SERVICE**

198 This is to certify that I have this day served the Plaintiff or Plaintiff's Attorney and the
199 Garnishee in the foregoing matter with a copy of this pleading by depositing it in the
200 United States Mail in a properly addressed envelope with adequate postage thereon.

201 This _____ day of _____, 20__.

202 _____
203 Defendant or Defendant's Attorney"

204 **SECTION 7.**

205 All laws and parts of laws in conflict with this Act are repealed.