

The House Committee on Judiciary offers the following substitute to SB 194:

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 eliminate provisions relating to requiring the clerk of court
3 to approve an affidavit for garnishment; to change the maximum part of disposable earnings
4 subject to garnishment and conform the form used therewith; to clarify various provisions;
5 to change provisions relating to serving the defendant; to change provisions relating to the
6 introduction of evidence and how judgments are paid; to amend Code Section 44-7-50 of the
7 Official Code of Georgia Annotated, relating to demand for possession, procedure upon a
8 tenant's refusal, and concurrent issuance of federal lease termination notice; to provide a
9 conforming cross-reference; to provide for an effective date; to provide for related matters;
10 to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 4 of Title 18 of the Official Code of Georgia Annotated, relating to garnishment
14 proceedings, is amended by revising subsection (b) of Code Section 18-4-3, relating to
15 affidavit and requirements, summons of garnishment, and form for affidavit, as follows:

16 "(b) Upon the filing of the affidavit described in subsection (a) of this Code section with
17 the clerk of any court having jurisdiction to preside over garnishment proceedings, such
18 clerk shall cause a summons of garnishment to issue, provided that the plaintiff's affidavit
19 is:

20 (1) ~~Made~~ made before any officer authorized to administer oaths, a notary public, such
21 clerk, or the deputy clerk of the court in which the garnishment is filed; ~~and~~

22 (2) ~~Submitted to and approved by any judge of the court in which the garnishment is~~
23 ~~filed or submitted to and approved by any clerk or deputy clerk of such court if the court~~
24 ~~has promulgated rules authorizing the clerk or deputy clerk of such court to review and~~
25 ~~approve affidavits of garnishment."~~

26 **SECTION 2.**

27 Said chapter is further amended by revising subparagraph (a)(1)(B) and paragraph (2) of
 28 subsection (a) of Code Section 18-4-5, relating to the maximum part of disposable earnings
 29 subject to garnishment, as follows:

30 "(B) The amount by which the defendant's disposable earnings for that week exceed
 31 ~~\$217.00~~ \$217.50.

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

34 **SECTION 3.**

35 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
 36 18-4-7, relating to the required information on summons of garnishment or attachment
 37 thereto, form usage, and failure to use correct form, as follows:

38 "(2) The form for a ~~A~~ summons of garnishment on a financial institution shall not be
 39 used for a continuing garnishment or continuing garnishment for support. A summons
 40 of garnishment on a financial institution, or an attachment thereto, shall also state with
 41 particularity the defendant's account, identification, or tracking numbers known to the
 42 plaintiff used by the garnishee in the identification or administration of the defendant's
 43 funds or property; provided, however, that if such summons is filed with a court, the court
 44 filing shall be redacted in accordance with Code Section 9-11-7.1 or 15-10-54, as
 45 applicable. The defendant's account, identification, or tracking numbers shall be made
 46 known to the garnishee and defendant in accordance with Code Section 9-11-7.1 or
 47 15-10-54, as applicable, to the extent such information is known to the plaintiff."

48 **SECTION 4.**

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

51 "(C)(i) To be sent to the defendant by regular mail at the address at which the
 52 defendant ~~was~~:

53 (I) Accepted service in the action resulting in the judgment;

54 (II) Identified as his or her residence in any pleading in the action resulting in the
 55 judgment; or

56 (III) Was served as shown on the return of service in the action resulting in the
 57 judgment when it shall appear by affidavit to the satisfaction of the clerk of the
 58 court that the defendant resides out of this state; has departed this state; cannot,
 59 after due diligence, be found within this state; or has concealed his or her place of
 60 residence from the plaintiff.

61 (ii) A certificate of such mailing shall be filed with the clerk of the court in which the
62 garnishment is pending by the person mailing such notice."

63 **SECTION 5.**

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

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

71 **SECTION 6.**

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

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

77 (1) That the plaintiff does not have a judgment against the defendant or that the plaintiff's
78 affidavit of garnishment is untrue or is legally insufficient, the garnishment case shall be
79 dismissed by the court, and any money or other property belonging to the defendant in
80 the possession of the court shall be restored to the defendant unless another claim or
81 traverse thereto has been filed;

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

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

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

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

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

109 **SECTION 7.**

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

113 "18-4-82.

114 **'IN THE _____ COURT OF _____ COUNTY**
 115 **STATE OF GEORGIA**

116)

117 **Plaintiff:**)

118 _____)

119 Name)

120)

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

122 _____)

123 Name)

124 _____)

125 Street Address)

126 _____)

127 City State ZIP Code)

Civil Action File No.

128 _____)

129 E-mail Address)

130 _____)

131 Phone Number)

132 _____)

133 Bar Number)

134)

169 may be taken from your earnings for the payment of child support or alimony or if a
 170 Chapter 13 bankruptcy allows a higher amount.

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

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

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

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

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

188 **DEFENDANT'S CLAIM FORM**

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

- 191 1. Social security benefits.
 192 2. Supplemental security income benefits.
 193 3. Unemployment benefits.
 194 4. Workers' compensation.
 195 5. Veterans' benefits.
 196 6. State pension benefits.
 197 7. Disability income benefits.
 198 8. Money that belongs to a joint account holder.
 199 9. Child support or alimony.

200 10. Exempt wages, retirement, or pension benefits.

201 11. Other exemptions as provided by law.

202 Explain: _____
203 _____

204 I further state: (check all that apply)

205 1. The Plaintiff does not have a judgment against me.

206 2. The amount shown due on the Plaintiff's Affidavit of Garnishment is incorrect.

207 3. The Plaintiff's Affidavit of Garnishment is untrue or legally insufficient.

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

209 Address: _____

210 Phone Number: _____

211 E-mail Address: _____

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

213 _____, 20__

214 Defendant's signature Date

215 _____

216 Print name of Defendant

217 **CERTIFICATE OF SERVICE**

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

221 This _____ day of _____, 20__.

222 _____
223 Defendant or Defendant's Attorney"

224 **SECTION 8.**

225 Code Section 44-7-50 of the Official Code of Georgia Annotated, relating to demand for
226 possession, procedure upon a tenant's refusal and concurrent issuance of federal lease
227 termination notice, is amended by revising subsection (a) as follows:

228 "(a) In all cases ~~where~~ when a tenant holds possession of lands or tenements over and
229 beyond the term for which they were rented or leased to ~~the~~ such tenant or fails to pay the
230 rent when it becomes due and in all cases ~~where~~ when lands or tenements are held and
231 occupied by any tenant at will or sufferance, whether under contract of rent or not, when
232 the owner of ~~the~~ such lands or tenements desires possession of ~~the~~ such lands or tenements,
233 ~~the~~ such owner may, individually or by an agent, attorney in fact, or attorney at law,
234 demand the possession of the property so rented, leased, held, or occupied. If the tenant
235 refuses or fails to deliver possession when so demanded, the owner or the agent, attorney
236 at law, or attorney in fact of ~~the~~ such owner may immediately go before the judge of the
237 superior court, the judge of the state court, or the clerk or deputy clerk of either court, or
238 the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject
239 matter, or a magistrate in the district where the land lies and make an affidavit under oath
240 to the facts. The affidavit may likewise be made before a notary public, ~~subject to the same~~
241 ~~requirements for judicial approval specified in Code Section 18-4-3."~~

242 **SECTION 9.**

243 This Act shall become effective upon its approval by the Governor or upon its becoming law
244 without such approval.

245 **SECTION 10.**

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