Senate Bill 194

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

AS PASSED

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.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 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
- clerk shall cause a summons of garnishment to issue, provided that the plaintiff's affidavit
- 19 is

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- 20 (1) Made made before any officer authorized to administer oaths, a notary public, such
- 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."

SECTION 2.

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

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

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

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:

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

48 SECTION 4.

Said chapter is further amended by revising subparagraph (b)(1)(C) of Code Section 18-4-8, 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 defendant was:

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

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

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

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

63 SECTION 5.

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

"(b) No new summons of garnishment on the same affidavit of garnishment shall be issued after two years from the date of the original filing of such affidavit. After two years, the The garnishment proceeding based on such affidavit shall automatically stand dismissed unless there are funds remaining in the registry of the court or a new summons 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
- or her claim:

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- 77 (1) That the plaintiff does not have a judgment against the defendant or that the plaintiff's
- affidavit of garnishment is untrue or is legally insufficient, the garnishment case shall be
- dismissed by the court, and any money or other property belonging to the defendant in
- 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
- incorrect, the court may allow the summons of garnishment to be amended to the amount
- proven to be owed, and if such amount is less than the amount shown to be due by the
- plaintiff, any money or other property belonging to the defendant in the possession of the
- court in excess of the amount due shall be restored to the defendant unless another claim
- or traverse thereto has been filed;
- 88 (3) That the money or other property belonging to the defendant in the possession of the
- 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
- 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
- disposition of the money or other property belonging to the defendant in the possession
- of the court.

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

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

109 **SECTION 7.**

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

"18-4-82. 113

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	STATE OF	GEORGIA		
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Plaintiff:)			
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Name)			
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Plaintiff's contact	information:			
 Name)			
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Street Address)	CIVII ACIIOI	ii File 140.	
City State	ZIP Code)			
E-mail Address)			
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148 149	City	State	ZIP Code)			
150		NOTIC	E TO DEFENI	DANT OF R	RIGHT AGAI	NST	
151	G	SARNISHM	ENT OF MON	NEY, INCLU	UDING WAG	SES, AND	
152			ОТНЕ	R PROPER	ТY		
153	You receive	ved this notic	ce because mone	ey, including	wages, and otl	her property belongir	ıg
154	to you have been garnished to pay a court judgment against you. HOWEVER, YOU						
155	MAY BE ABLE TO KEEP YOUR MONEY, INCLUDING WAGES, OR OTHER						
156	PROPERT	ГΥ.					
157	READ THI	IS NOTICE	CAREFULLY	7.			
158	State and f	federal law p	protects some m	oney, includ	ing wages, fro	m garnishment even	if
159	it is in a bank. Some common exemptions are benefits from social security, supplemental						
160	security income, unemployment, workers' compensation, the Veterans' Administration,						
.61	state pensi	on, retireme	nt funds, and di	sability inco	me. This list o	of exemptions does no	ot
62		-	-		-	ions is available at the	
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64		· · · · · · · · · · · · · · · · · · ·	(Addre	ss),		(City), Georg	ia
65		_(ZIP Code)), and on the wel	bsite for the A	Attorney Gener	ral (www.law.ga.gov).
166	Garnishme	ent of your ea	arnings from you	ır employme	nt is limited to	the lesser of 25 perce	nt
67	of your dis	sposable earr	nings for a week	or the amou	nt by which yo	our disposable earning	zs
68	for a week	exceed \$21	7.00 <u>\$217.50</u> . N	More than 25	percent of yo	ur disposable earning	3S

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may be taken from your earnings for the payment of child support or alimony or if a

Chapter 13 bankruptcy allows a higher amount. 170 TO PROTECT YOUR MONEY, INCLUDING WAGES, AND OTHER PROPERTY 171 FROM BEING GARNISHED, YOU MUST: 172 173 1. Complete the Defendant's Claim Form as set forth below; and File this completed claim form with the Clerk of Court's office located at 174 (Name of Court), _____ (Address), 175 _____ (City), Georgia _____ (ZIP Code). 176 FILE YOUR COMPLETED CLAIM FORM AS SOON AS POSSIBLE. You may lose 177 your right to claim an exemption if you do not file your claim form within 20 days after the 178 Garnishee's Answer is filed or if you do not mail or deliver a copy of your completed claim 179 form to the Plaintiff and the Garnishee at the addresses listed on this notice. 180 The Court will schedule a hearing within ten days from when it receives your claim form. 181 The Court will mail you the time and date of the hearing at the address that you provide on 182 183 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** I CLAIM EXEMPTION from garnishment. Some of my money or property held by 189 the garnishee is exempt because it is: (check all that apply) 190 \square 1. Social security benefits. 191 192 \square 2. Supplemental security income benefits. \square 3. Unemployment benefits. 193 ☐ 4. Workers' compensation. 194 195 \square 5. Veterans' benefits. \square 6. State pension benefits. 196 \square 7. Disability income benefits. 197 198 \square 8. Money that belongs to a joint account holder. 199 \square 9. Child support or alimony.

18 SB 194/AP 200 \square 10. Exempt wages, retirement, or pension benefits. \square 11. Other exemptions as provided by law. 201 Explain: ____ 202 203 204 I further state: (check all that apply) 205 ☐ 1. The Plaintiff does not have a judgment against me. □ 2. The amount shown due on the Plaintiff's Affidavit of Garnishment is incorrect. 206 207 □ 3. The Plaintiff's Affidavit of Garnishment is untrue or legally insufficient. Send the notice of the hearing on my claim to me at: 208 209 Address:__ 210 Phone Number: 211 E-mail Address:____ The statements made in this claim form are true to the best of my knowledge and belief. 212 213 _,20___ Defendant's signature 214 Date 215 Print name of Defendant 216 217 **CERTIFICATE OF SERVICE** This is to certify that I have this day served the Plaintiff or Plaintiff's Attorney and the 218 219 Garnishee in the foregoing matter with a copy of this pleading by depositing it in the United States Mail in a properly addressed envelope with adequate postage thereon. 220 This ______, 20___. 221 222 Defendant or Defendant's Attorney'" 223

SECTION 8.

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

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

SECTION 9.

243 This Act shall become effective upon its approval by the Governor or upon its becoming law

244 without such approval.

SECTION 10.

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