

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 781*

Short Title: Elected Official Wage Garnishment.

(Public)

Sponsors: Representative Brawley.

Referred to: Public Employees.

March 22, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR EXECUTION OF JUDGMENTS AGAINST ELECTED
3 STATE OFFICIALS BY GARNISHMENT OF WAGES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 1-303 reads as rewritten:

6 **"§ 1-303. Kinds of; signed by clerk; when sealed.**

7 There are ~~three~~ four kinds of execution: one against the property of the judgment
8 debtor, another against his person, ~~and the third~~ another for the delivery of the possession
9 of real or personal property, or such delivery with damages for withholding the ~~same~~
10 property; and the fourth for garnishment of the income of an elected State official as
11 provided in G.S. 1-314.1. They shall be deemed the process of the court, and shall be
12 subscribed by the clerk, and when to run out of his county, must be sealed with the seal
13 of his court."

14 Sec. 2. Article 28 of Chapter 1 of the General Statutes is amended by adding
15 a new section to read:

16 **"§ 1-314.1. Execution against elected State officials.**

17 (a) Definition. As used in this section, unless the context clearly requires
18 otherwise:

- 19 (1) 'Creditor' means a party in whose favor a judgment for a sum certain
20 has been entered against an elected State official.
21 (2) 'Debtor' means an elected State official against whom a judgment for a
22 sum certain has been entered.
23 (3) 'Disposable earnings' means that part of the compensation paid or
24 payable by the State for personal services, including wages, salary,

1 commission, bonus, payments to a pension or retirement program, and
2 other similar payments that remain after the deduction of any amounts
3 required by law to be withheld.

4 (4) 'Elected State official' means a person who holds a State office elected
5 by the people under Article II, III, or IV of the Constitution.

6 (b) Motion for Garnishment. Notwithstanding any other provision of law, a
7 creditor may enforce a judgment for a sum certain entered against an elected State
8 official by garnishment of the debtor's disposable earnings. The clerk of superior court
9 in the county in which the judgment was entered shall, upon motion of a creditor, notice
10 and a hearing as provided in this section, and payment of the necessary fees for issuance
11 of an execution, issue an execution ordering garnishment. The creditor's motion for an
12 execution for garnishment shall be verified, shall include a motion to join the State as a
13 third-party garnishee defendant, and shall state:

14 (1) That no execution has been issued on the judgment or, if issued, the
15 execution has been returned and the judgment remains unsatisfied.

16 (2) The debtor's monthly disposable earnings.

17 (3) The amount sought to be garnished, not to exceed forty percent (40%)
18 of the debtor's monthly disposable earnings.

19 (c) Notice. The motion shall be served on the debtor and on the State in
20 accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period
21 for answering or otherwise responding to proceedings, motions, and other papers issued
22 pursuant to this section shall be in accordance with the time periods set forth in G.S.
23 1A-1, Rules of Civil Procedure, except that the State shall have 10 days from the date of
24 service of process to answer both the motion to join it as a defendant garnishee and the
25 motion for the garnishment order.

26 (d) Order for Garnishment. Following a hearing held on the motion, the clerk
27 shall issue an execution on the judgment ordering garnishment of up to forty percent
28 (40%) of the debtor's monthly disposable earnings if the clerk finds that the debtor is an
29 elected State official against whom a judgment for a sum certain has been entered in
30 favor of the creditor and that no execution has been issued on the judgment or, if issued,
31 the execution has been returned and the judgment remains unsatisfied. The order shall
32 increase the amount to be garnished by an additional one dollar (\$1.00) processing fee
33 to be assessed and retained by the garnishee for each payment under the order. The
34 order shall be subject to review for modification and dissolution upon the filing of a
35 motion in the cause.

36 (e) Enforcement. The execution shall be directed to the sheriff or other official
37 of Wake County as provided in G.S. 1-313, after the judgment has been docketed in the
38 county as required by G.S. 1-308. The sheriff shall serve a copy of the execution on the
39 debtor and the garnishee. Upon receipt of an execution ordering garnishment of an
40 elected State official's disposable earnings, the garnishee shall transmit the amount
41 ordered to be garnished to the clerk of court who shall disburse it to the creditor. The
42 garnishee may not be required to change normal pay cycles, but shall ensure that
43 payments are received as soon as practicable. The garnishment order shall simplify the
44 withholding process for garnishees to the extent possible.

1 (f) Return. The execution shall remain in effect no more than 90 days and shall
2 be returnable to the court from which it was issued. The provisions of G.S. 1-321 apply
3 upon the return of an execution entered under this section."

4 Sec. 3. This act shall become effective September 1, 1989.