

GEORGIA GARNISHMENT LAW

Statutory Supplement

(2012 Update)

This update contains significant reforms to Georgia garnishment statutes in HB 683, signed into law on February 7, 2012.

For further updates, consult <http://www.GarnishmentBook.com>

Contents:

- Georgia Garnishment Statutes
- Georgia Selected Additional Statutes
- Federal Garnishment Law
 - Title III of Consumer Credit Protection Act (15 USC Chapter 41, Subchapter II - Restrictions On Garnishment)
 - Debt Collection Improvement Act (31 USC § 3720D – Garnishment)
 - Department of Treasury Regulations (45 C.F.R. PART 32—Administrative Wage Garnishment)

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Part One : Georgia Garnishment Statutes (Official Code of Georgia)**ARTICLE 1. GENERAL PROVISIONS****§ 18-4-1. Practice and procedure generally**

(a) As used in this chapter, the terms 'garnishee answer,' 'garnishee's answer,' or 'answer of garnishee' means the response filed by a garnishee responding to a summons of garnishment detailing the property, money, or other effects of the defendant that are in the possession of the garnishee or declaring that the garnishee holds no such property, money, or other effects of the defendant.

(b) The procedure in garnishment cases shall be uniform in all courts throughout this state; and, except as otherwise provided in this chapter, Chapter 11 of Title 9 shall apply in garnishment proceedings.

§ 18-4-2. Discovery

Discovery in a garnishment proceeding shall be made in the manner provided for in Chapter 11 of Title 9.

§ 18-4-3. Amendment of affidavits, bonds, or pleadings

Unless otherwise provided in this chapter, any affidavit, bond, garnishee answer, or pleading required or permitted by this chapter shall be amendable at any time before judgment thereon.

§ 18-4-4. Judge to perform functions of clerk where court has no clerk

Where this chapter makes the performance of any function the duty of the clerk, the function shall be performed by the judge if the court in which the proceedings are filed has no clerk.

§ 18-4-5. Challenge to sufficiency of bond; requiring of additional security; discharge of original surety

(a) Any party of record to a proceeding under this chapter who may be affected materially thereby may challenge the sufficiency of any bond required or permitted by this chapter. Such challenge shall be made by motion to require additional security; and, if upon hearing the same the court shall determine that the security upon the bond is inadequate for the purposes for which the bond is filed, an order shall be entered requiring the person filing the bond to furnish additional security within seven days of the date of the order.

(b) The original surety shall not be discharged from his liability on the bond until another surety is approved.

§ 18-4-6. Issuance of release of garnishment

It shall be the duty of the clerk of the court in which garnishment proceedings are pending to issue a release of garnishment if:

- (1) The plaintiff or his attorney so requests in writing;
- (2) The amount claimed due together with the costs of the garnishment proceeding are paid into court;
- (3) A dissolution bond is filed by the defendant and approved by the clerk as provided for in this chapter;
- (4) A judge shall enter an order, after a hearing required by this chapter, directing that the garnishment be released; or
- (5) The garnishment is dismissed.

§ 18-4-7. Discharge of employee subject to garnishment

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness, even though more than one summons of garnishment may be served upon such employer with respect to the indebtedness.

§ 18-4-8.

(a) As used in this Code section, the term:

(1) 'Entity' means a public corporation or a corporation, limited liability company, partnership, limited partnership, professional corporation, firm, or other business entity other than a natural person.

(2) 'Public corporation' means the State of Georgia or any department, agency, branch of government, or State of Georgia political subdivision, as such term is defined in Code Section 50-15-1, or any public board, bureau, commission, or authority created by the General Assembly.

(b) When a garnishment proceeding is filed in a court under any provision of this chapter involving an entity as garnishee, the execution and filing of a garnishee answer may be done by an entity's authorized officer or employee and shall not constitute the practice of law. If a traverse or claim is filed to such entity's garnishee answer in a court of record, an attorney shall be required to represent such entity in further garnishment proceedings.

(c) An entity's payment into court of any property, money, or other effects of the defendant, or property or money which is admitted to be subject to garnishment, may be done by an entity's authorized officer or employee and shall not constitute the practice of law.

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ARTICLE 2. PROPERTY AND PERSONS SUBJECT TO GARNISHMENT

§ 18-4-20. Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution

(a) As used in this Code section, the term:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of the amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) All debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from the date of service to the date of the garnishee's answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment.

(c) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or control of the garnishee at any time from the date of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.

(d)(1) Notwithstanding subsection (a) of this Code section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of:

(A) Twenty-five percent of his disposable earnings for that week; or

(B) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, Section 206(a)(1), in effect at the time the earnings are payable.

(2) In case of earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subparagraph (B) of paragraph (1) of this subsection shall be used.

(e) The limitation on garnishment set forth in subsection (d) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of garnishment based on a judgment for alimony or the support of a dependent, in which case the limitation on garnishment set forth in subsection (f) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant. No garnishee shall withhold from the disposable earnings of the defendant any sum greater than the amount prescribed by subsection (d) or subsection (f) of this Code section, as applicable, regardless of the number of summonses served upon the garnishee.

(f) The exemption provided by subsection (d) of this Code section shall not apply if the judgment upon which the garnishment is based is a judgment for alimony or for the support of any dependent of the defendant, provided the summons of garnishment shall contain a notice to the garnishee that the garnishment is based on the judgment for alimony or the support of a dependent. In any case in which the garnishment is based on the judgment, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall be 50 percent of the individual's disposable earnings for that week.

(g) Except as provided in Article 7 of this chapter for a summons of continuing garnishment for support, the summons of garnishment, including a summons of continuing garnishment pursuant to Article 6 of this chapter, shall on its face state the total amount claimed to be due at the time of the summons and the amount subject to garnishment shall not exceed the amount so shown on the summons of garnishment.

(h) The summons of garnishment, including a summons of continuing garnishment, may on its face set forth, if known, the social security number of the defendant.

(i) A summons of garnishment upon a financial institution, or an attachment thereto, shall state with particularity all of the following information, to the extent reasonably available to the plaintiff:

(1) The name of the defendant, and, to the extent such would reasonably enable the garnishee to answer properly respond to the summons, all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof;

(2) The service address and the current addresses of the defendant and, to the extent such would reasonably enable the garnishee to answer properly respond to the summons of garnishment and such is reasonably available to the plaintiff, the past addresses of the defendant;

(3) The social security number or federal tax identification number of the defendant; and

(4) Account, identification, or tracking numbers known or suspected by the plaintiff to be used by the garnishee in the identification or administration of the defendant's funds or property.

A misspelling of any information required by paragraph (1) or (2) of this subsection, other than the surname of a natural person defendant, shall not invalidate a summons of garnishment, so long as such information is not misleading in a search of the garnishee's records.

§ 18-4-21. Garnishment of salaries of officials and employees of state and its subdivisions; exemption; summons

(a) Money due officials or employees of a municipal corporation or county of this state or of the state government, or any department or institution thereof, as salary for services performed for or on behalf of the municipal corporation or county of this state, or the state, or any department or institution thereof, shall be subject to garnishment, except in no event may the officials' or employees' salary for services performed for or on behalf of any municipal corporation or county of this state, or the state, or any department or institution thereof, be garnisheed where the judgment serving as a basis for the issuance of the summons of garnishment arises out of the liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency. In such cases, the summons shall be directed to such political entity and served upon the person authorized by law to draw the warrant on the treasury of the government or to issue a check for such salary due, or upon the chief administrative officer of the political subdivision, department, agency, or instrumentality; and such entity shall be required to respond to the summons in accordance with the mandate thereof and as provided by this chapter.

(b) For purposes of this Code section only, the state and its political subdivisions, departments, agencies, and instrumentalities shall be deemed private persons; and jurisdiction for the purpose of issuing a summons of garnishment shall be restricted to a court located in the county in which the warrant is drawn on the treasury of the government or in which the check is issued for the salary due the official or employee of the state or its political subdivisions, departments, agencies, or instrumentalities.

§ 18-4-22. Exemption of pension or retirement funds or benefits

(a) Funds or benefits from a pension or retirement program as defined in 29 U.S.C. Section 1002(2)(A) or funds or benefits from an individual retirement account as defined in Section 408 or 408A of the United States Internal Revenue Code of 1986, as amended, shall be exempt from the process of garnishment until paid or otherwise transferred to a member of such program or beneficiary thereof. Such funds or benefits, when paid or otherwise transferred to the member or beneficiary, shall be exempt from the process of garnishment only to the extent provided in Code Section 18-4-20 for other disposable earnings, unless a greater exemption is otherwise provided by law.

(b) The exemption provided by this Code section shall not apply when the garnishment is based upon a judgment for alimony or for child support, in which event

such funds or benefits shall then be subject to the process of garnishment to the extent provided in subsection (f) of Code Section 18-4-20.

(c) Nothing in this Code section shall prohibit the attachment or alienation of welfare benefits as defined in 29 U.S.C. Section 1002(1) in the control of an administrator or trustee.

§ 18-4-22.1. Garnishment of funds or benefits of pension, retirement, or employee benefit plans and programs which are subject to the Employee Retirement Income Security Act of 1974

Repealed by Ga. L. 1990, p. 360, § 2, effective July 1, 1990.

§ 18-4-23. Manner of service of summons of garnishment on corporations

The method of service of a summons of garnishment shall be as provided in Code Section 9-11-4.

ARTICLE 3. PREJUDGMENT GARNISHMENT PROCEEDINGS GENERALLY

§ 18-4-40. Grounds for issuance of writ of garnishment prior to judgment

In cases where an action is pending against the defendant, garnishment may issue prior to judgment only in the following cases:

- (1) When the defendant resides outside the limits of the state;
- (2) When the defendant is actually removing, or about to remove, outside the limits of the county;
- (3) When the defendant is causing his property to be removed beyond the limits of the state;
- (4) When the defendant has transferred, has threatened to transfer, or is about to transfer property to defraud or delay his creditors; or
- (5) When the defendant is insolvent.

§ 18-4-41. Application to judge for writ; contents

When the plaintiff contends one or more of the grounds set forth in Code Section 18-4-40 exist, the plaintiff may, prior to obtaining judgment against the defendant, make application to a judge of any court of record, other than the probate court, in the county of residence of the garnishee having jurisdiction over the garnishee, for an order authorizing the issuance of summons of garnishment. Such application shall be made in writing, under oath, and shall set forth the specific facts that show the existence of one or more such grounds as well as the name of the court where the action is pending, the case number of such action, and the amount claimed therein by the plaintiff.

§ 18-4-42. Entry of order by judge authorizing garnishment prior to judgment; issuance of summons of garnishment pursuant to order by clerk of court generally

After considering plaintiff's application, if the judge to whom same is made finds that the facts alleged show the existence of one or more of the grounds set forth in Code Section 18-4-40, he may enter an order authorizing garnishment prior to judgment. The entry of such order shall authorize the clerk of the court in which the garnishment proceedings are pending to issue summons of garnishment from time to time without a further showing until the case is terminated or until further order of the court.

§ 18-4-43. Bond required prior to issuance of summons of garnishment; amount; presentation of bond to clerk of court for approval

No summons of garnishment prior to judgment shall issue unless accompanied by a bond with good security, conditioned to pay the defendant all costs and damages that he may sustain in consequence of the issuance of the summons of garnishment in the event that the amount claimed to be due was not due, or that no lawful ground for the issuance of such garnishment prior to judgment existed, or that the property sought to be garnisheed was not subject to garnishment. Such bond shall be in a sum equal to twice the amount claimed due in the plaintiff's application. The bond shall be presented to the clerk of the court where the application provided for in this article is sought to be filed, for approval by the clerk prior to making application to the judge of the court for the writ of garnishment.

§ 18-4-44. Service of order and summons of garnishment on defendant

Upon the entry of an order authorizing the issuance of garnishment prior to judgment, summons of garnishment shall issue and be served as provided in Code Section 18-4-62. A copy of the order and of each summons of garnishment issued pursuant thereto shall be served upon the defendant in any manner prescribed for the service of original summons and complaints.

§ 18-4-45. Traverse of affidavit of plaintiff by defendant; show cause order; revocation of order upon failure of plaintiff to prove grounds

When summons of garnishment shall issue before judgment against the defendant, the defendant may at any time traverse the plaintiff's affidavit upon which the garnishment was obtained, stating that the affidavit is untrue or legally insufficient. Upon filing of the traverse, the court from which the garnishment issued shall issue a show cause order to the plaintiff requiring him to appear at a specified time, which shall not be more than ten days from the filing of the traverse, to prove the grounds for the issuance of the garnishment. If the plaintiff shall fail to carry the burden of proof, the order authorizing the garnishment prior to judgment shall be revoked.

§ 18-4-46. Personal earnings of defendant not subject to garnishment prior to judgment; statement of substance of Code section to appear on summons of garnishment

Any other provisions of this chapter to the contrary notwithstanding, no part of the personal earnings of the defendant shall be subject to garnishment prior to judgment, whether such earnings be denominated as salary, wages, commissions, or otherwise; and each summons of garnishment which is issued pursuant to this article shall state the substance of this Code section upon the face thereof.

§ 18-4-47. Funds and property paid into court or subject to garnishment to be held by clerk pending judgment; exception

When funds or other property are paid into court or subject to garnishment under this article, the funds or other property shall be held by the clerk of the court in which the garnishment proceedings are pending until final judgment is entered against the defendant in the main proceedings; provided, however, that, if the garnishment is released by filing of the bond provided for by Code Section 18-4-81, such funds or other property shall be delivered to the defendant if no claim has been filed pursuant to Code Section 18-4-95 at the time the bond is approved and filed with the clerk of the court.

§ 18-4-48. Proceedings subsequent to final judgment in action upon which garnishment summons issued generally; final judgment required

After final judgment is entered in an action in which a summons of garnishment was issued prior to judgment, the garnishment proceedings shall continue in accordance with Article 4 of this chapter. The plaintiff shall not have judgment against the garnishee until he obtains final judgment against the defendant.

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ARTICLE 4. POSTJUDGMENT GARNISHMENT PROCEEDINGS GENERALLY

§ 18-4-60. Right to writ of garnishment after judgment

In all cases where a money judgment shall have been obtained in a court of this state or in a federal court sitting in this state, the plaintiff shall be entitled to the process of garnishment.

§ 18-4-61. Affidavit for issuance of summons of garnishment; making and approval of affidavit

The plaintiff, the plaintiff's attorney at law, or the plaintiff's agent shall make, on personal knowledge, an affidavit setting forth that the plaintiff has a judgment against a named defendant, the amount claimed to be due on the judgment, the name of the court which rendered the judgment, and the case number thereof. Upon the filing of the affidavit with the clerk of any court having jurisdiction over the garnishee, the clerk shall cause a summons of garnishment to issue forthwith; provided, however, that the affidavit shall first be made and be approved as containing the information required by this Code section in one of the following ways:

(1) The affidavit may be made before and approved by a judge of the court in which the garnishment proceeding is filed;

(2) The affidavit may be made before and approved by a judge of the court that rendered the judgment upon which the garnishment is based;

(3) The affidavit may be made before and approved by a judge of any court of record;

(4) The affidavit may be made before any officer authorized to administer oaths, including a notary public, provided that the affidavit is then submitted by mail or in person to any judge of a court specified in paragraph (1), (2), or (3) of this Code section and is approved by him; or

(5) The affidavit may be made before the clerk or deputy clerk of the court in which the garnishment is filed or before any officer authorized to administer oaths, including a notary public, and may be approved by the clerk or deputy clerk if the judge or judges of the court promulgate rules supervising the initiation of the garnishment proceedings and the affidavit is made and approved pursuant to such rules. No court rule or practice shall preclude a plaintiff from proceeding pursuant to paragraph (1), (2), (3), or (4) of this Code section.

§ 18-4-62. Contents and service of summons of garnishment; requirements as to filing of answer to summons

(a) The summons of garnishment shall be directed to the garnishee, commanding the garnishee to respond stating what money or other property is subject to garnishment. Except as provided in subsection (b) or (c) of this Code section, the

garnishee's answer shall be filed with the court issuing the summons not sooner than 30 days and not later than 45 days after the service of the summons and shall be accompanied by the money or other property subject to garnishment. Upon the affidavit and summons being delivered to the sheriff, marshal, constable, or like officer of the court issuing the summons, it shall be his or her duty to serve the summons of garnishment, as set forth in Code Section 18-4-23, upon the person to whom it is directed and to make his entry of service upon the affidavit and return the affidavit to the court. The summons of garnishment shall state that, if the garnishee fails to file a garnishee's answer to the summons, a judgment by default will be entered against the garnishee for the amount claimed by plaintiff against the defendant.

(b) Under circumstances where the defendant has been an employee of the garnishee, and if the defendant is no longer employed by the garnishee, and if the garnishee has no money or property of the defendant subject to garnishment, the garnishee may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons.

(c) If the garnishee is a bank or other financial institution and if the defendant does not have an active account with, and is not the owner of any money or property in the possession of, the bank or financial institution then the garnishee may immediately file a garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons."

§ 18-4-63. Issue of additional summons of garnishment; dismissal of garnishment proceedings upon nonissuance of summons

(a) Summons of garnishment may issue from time to time on the same affidavit until the judgment is paid or the garnishment proceeding is otherwise terminated in accordance with this chapter.

(b) In the event no summons of garnishment has been issued on an affidavit for two years or more, the garnishment proceeding based on that affidavit shall automatically stand dismissed.

§ 18-4-64. Service of copy of summons of garnishment upon defendant; notice of filing and issuance of summons of garnishment; time for distribution

(a) In a garnishment based on a judgment, the defendant shall be given notice of the filing of the first summons of garnishment on an affidavit for garnishment and of the issuance of an additional summons of garnishment on such affidavit when no notice has been given to the defendant within 90 days immediately preceding the issuance of such additional summons, using any one or more of the following methods:

(1) The plaintiff, at the time the garnishment is filed with the clerk, shall commence procedures to effectuate the service of a copy of the summons of garnishment on the defendant; and service thereafter shall be made on the defendant

as soon as is reasonably practicable. Service pursuant to this paragraph shall be made pursuant to Code Section 9-11-4;

(2) The plaintiff, after issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee, shall cause a written notice to be sent to the defendant at the defendant's last known address by registered or certified mail or statutory overnight delivery, return receipt requested. Either the return receipt indicating receipt by the defendant or the envelope bearing the official notification from the United States Postal Service of the defendant's refusal to accept delivery of such registered or certified mail or statutory overnight delivery shall be filed with the clerk of the court in which the garnishment is pending. The defendant's refusal to accept such registered or certified mail or statutory overnight delivery addressed to defendant shall be deemed notice to defendant;

(3) The plaintiff, after the issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee, shall cause a written notice to be delivered personally to the defendant by the plaintiff or by the plaintiff's attorney at law or other agent. A certification by the person making the delivery shall be filed with the clerk;

(4)(A) When the defendant resides out of the state, has departed the state, cannot, after due diligence, be found within the state, or conceals his place of residence from the plaintiff and the fact shall appear, by affidavit, to the satisfaction of the judge or clerk of the court, the levy and attachment of the lien of the garnishment shall constitute sufficient notice to the defendant, provided such levy and attachment of the lien of garnishment alone shall constitute sufficient notice, unless the plaintiff has actual knowledge of the defendant's address, in which case, to provide sufficient notice, the plaintiff shall also mail a written notice of garnishment to the defendant at said address; or, not having such actual knowledge of the defendant's address but the address at which the defendant was served being shown on the return of service in the action resulting in the judgment, to provide sufficient notice, the plaintiff shall also mail a written notice of garnishment to the defendant at said address.

(B) A mailing of the written notice provided for in this Code section shall be made after the issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee; and a certificate of such mailing shall be filed with the clerk by the person mailing the notice;

(5)(A) Where it shall appear by affidavit that a defendant in the garnishment action is not a resident of this state or has departed from this state, or after due diligence cannot be found in this state, or conceals his place of residence from the plaintiff, notice may be given by causing two publications of the written notice in the paper in which advertisements are printed by the sheriff in each county in which a summons of garnishment is served. Such publications must be at least six days apart; and the second publication must be made not more than 21 days after the service of the summons of garnishment on the garnishee. A certification by the person causing the notice to be published shall be filed with the clerk, provided such publication shall

constitute sufficient notice alone, unless the plaintiff has actual knowledge of the defendant's address, in which case, to provide sufficient notice, the plaintiff shall also mail a written notice of garnishment to the defendant at said address.

(B) A mailing of the written notice provided for in this Code section shall be made after the issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee; and a certificate of such mailing shall be filed with the clerk by the person mailing the notice;

(6) After issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee, the plaintiff shall send by ordinary mail a written notice of the garnishment to the defendant at the address at which the defendant was served in the action resulting in the judgment on which the garnishment proceeding is based; provided, however, this paragraph may be used only when the garnishment proceeding is commenced within 60 days after the judgment upon which the garnishment is based was obtained. A certification by the person mailing the notice shall be filed with the clerk;

(7) Where the defendant's address is known, the plaintiff, after issuance of the summons of garnishment and not more than three business days after service of the summons of garnishment on the garnishee, shall send to the defendant at such known address by ordinary mail a written notice of the garnishment. A certification by the person mailing the notice shall be filed with the clerk.

(b) The receiving by the defendant of actual timely notice of a summons of garnishment shall constitute notice.

(c) "Written notice," as referred to in paragraphs (2) through (7) of subsection (a) of this Code section, shall consist of a copy of the summons of garnishment or of a document which includes the names of the plaintiff and the defendant, the amount claimed in the affidavit of garnishment, a statement that a garnishment against the property and credits of the defendant has been or will be served on the garnishee, and the name of the court issuing the summons of garnishment.

(d) The methods of notification specified in subsection (a) of this Code section are cumulative and may be used in any sequence or combination. Where it appears that a plaintiff has reasonably, diligently, and in good faith attempted to use one method, another method thereafter may be utilized; and, for the time during which the attempt was being made, the time limit shall be tolled for the subsequent method.

(e) No money or other property delivered to the court by the garnishee shall be distributed; nor shall any judgment be rendered against the garnishee until after the expiration of ten days from the date of compliance with at least one method of notification provided by subsection (a) of this Code section.

§ 18-4-65. Issues defendant may raise by traverse of plaintiff's affidavit

(a) When garnishment proceedings are based upon a judgment, the defendant, by traverse of the plaintiff's affidavit, may challenge the existence of the judgment or the amount claimed due thereon. The defendant may plead any other matter in bar of the judgment, except as provided in subsection (b) of this Code section.

(b) The validity of the judgment upon which a garnishment is based may only be challenged in accordance with Chapter 11 of Title 9; and no such challenge shall be entertained in the garnishment case. However, where the court finds that the defendant has attacked the validity of the judgment upon which the garnishment is based in an appropriate forum, the judge may order the garnishment released and stayed until the validity of the judgment has been determined in such forum.

(c) If the garnishment proceedings are based upon a pending action, the case shall proceed in accordance with Code Section 18-4-45.

§ 18-4-66. Forms for postjudgment garnishment

For the purpose of Articles 1 through 5 of this chapter, the following forms are declared to be sufficient for garnishment after judgment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

(1) Garnishment affidavit.

IN THE COURT OF COUNTY
STATE OF GEORGIA

Plaintiff))	
))	
v.))	Civil action
))	File no.
Defendant))	
))	
Garnishee))	
))	
Address))	

GARNISHMENT AFFIDAVIT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:
 is the case number in the Court of County which rendered the judgment against the defendant, \$ being the balance thereon.

Affiant

Sworn to and subscribed
before me this
day of , .

Plaintiff's attorney

(2) Summons of garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)
Plaintiff)
)
v.) Civil action
) File no. _____
_____)
Defendant)
Social security)
number)
)
_____)
Garnishee)
)
_____)
Address)

SUMMONS OF GARNISHMENT

To: _____ Garnishee
Amount claimed due by plaintiff \$ _____
(To be completed by plaintiff)
Plus court costs due on the summons \$ _____
(To be completed by the clerk)

YOU ARE HEREBY COMMANDED to hold immediately all property, money, wages, except what is exempt, belonging to the defendant, or debts owed to the defendant named above at the time of service of this summons and between the time of service of this summons and the time of making your garnishee answer. Not sooner than 30 days but not later than 45 days after you are served with this summons, you are commanded to file your garnishee answer in writing with the clerk of this court and serve a copy upon the plaintiff or his the plaintiff's attorney named below. Money or other property subject to this summons should be delivered to the court with your garnishee answer. Should you fail to answer file a garnishee answer to this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable _____, Judge of said Court.

This _____ day of _____, ____.

Clerk,
_____ Court of _____ County

Plaintiff's attorney

Address

Service perfected on garnishee, this _____ day of _____, ____.

Deputy marshal, sheriff,
or constable

(3) Defendant's traverse and order thereon.

	IN THE	COURT OF	COUNTY
		STATE OF GEORGIA	
Plaintiff)		
)		
v.)	Civil action	
)	File no.	
Defendant)		
)		
Garnishee)		

TRAVERSE OF DEFENDANT

Now comes the defendant in the above-styled case and traverses the plaintiff's affidavit by saying the same is untrue or legally insufficient.

Defendant or his
attorney at law

ORDER

It is hereby ordered that a hearing be held upon the defendant's traverse before this court on the day of , , at : .M., and that a copy of the defendant's traverse and this order be served as provided by law.

This day of , .

Court of Judge,
County

(CERTIFICATE OF SERVICE)

(4) Answer of garnishee.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)
Plaintiff)
)
v.) Civil action
) File no. _____
_____)
Defendant)
)
_____)
Garnishee)
ANSWER OF GARNISHEE

1.
At the time of service or from the time of service to the time of this garnishee answer,
garnishee had in his its possession the following described property of the defendant:

2.
At the time of service or from the time of service to the time of this garnishee answer, all
debt accruing from garnishee to defendant is in the amount of \$_____.

3.
\$_____ of the amount named in paragraph 2 was wages earned at the rate of
\$_____ per _____ for the period beginning (date) , _____, through the time
of making this garnishee answer. The amount of wages which is subject to this
garnishment is computed as follows:
\$ _____ Gross earnings
\$ _____ Total social security and withholding tax
\$ _____ Total disposable earnings
\$ _____ Amount of wages subject to garnishment

4.
Garnishee further states: _____.

Garnishee, or his
attorney at law
garnishee's attorney, or officer or
employee of an entity garnishee
(CERTIFICATE OF SERVICE)

(5) Plaintiff's traverse.

IN THE COURT OF COUNTY

STATE OF GEORGIA
)
Plaintiff)
)
v.) Civil action
) File no.
)
Defendant)
)
)
Garnishee)

TRAVERSE OF PLAINTIFF

Now comes the plaintiff in the above-styled case and traverses the garnishee's answer by saying the same is untrue or legally insufficient.

Plaintiff or his
attorney at law

(CERTIFICATE OF SERVICE)

(6) Release of garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)
Plaintiff)
)
v.) Civil action
) File no. _____
_____)
Defendant)
)
_____)
Garnishee)
)
_____)
Address)

RELEASE OF GARNISHMENT

To: _____ Garnishee

This is to notify you that you have been released from filing an a garnishee answer to any and all summons of garnishment pending as of this date in the above-styled case.

This release authorizes you to deliver to the defendant in garnishment any money or other property in your possession belonging to the defendant.

This release does not terminate the garnishment proceedings, nor does this release relieve you of any obligation placed on you by the service of a summons of garnishment subsequent to this date.

This _____ day of _____, ____.

Clerk,
_____ Court of _____ County

(7) Attachment to summons of garnishment upon a financial institution.

IN THE COURT OF COUNTY
STATE OF GEORGIA
)
Plaintiff)
)
v.) Civil action
) File no.
)
Defendant)
)
)
Other known names)
of Defendant)
)
Current and past)
addresses of Defendant)
)
Social security number)
or federal tax)
identification number)
of Defendant)
)
)
Account or identification)
numbers of Defendant)
used by Garnishee)
)
)
Other allegations)
)
)
Garnishee)

ARTICLE 5. ANSWER BY GARNISHEE AND SUBSEQUENT PROCEEDINGS

§ 18-4-80. Effect of release of summons of garnishment on garnishee

A release of summons of garnishment shall relieve the garnishee from any obligation to file a garnishee answer to any summons of garnishment pending on the date of the release and shall authorize the garnishee to deliver to the defendant in garnishment any money or other property in the garnishee's possession belonging to the defendant. A release shall not operate as a dismissal of the garnishment proceedings.

§ 18-4-81. Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond

When the defendant files his or her traverse, the garnishee is not relieved of filing a garnishee answer, nor is the garnishee relieved of delivering the money or other property of the defendant which is subject to the garnishment to the court, unless the defendant files in the clerk's office of the court where the garnishment is pending a bond with good security, in favor of the plaintiff, conditioned for the payment of any judgment that may be entered in the proceeding. The bond shall be subject to approval by the clerk of the court; and, upon receipt of a bond deemed acceptable by the clerk, it shall be the clerk's duty to issue a release of any summons of garnishment pending in the garnishment proceeding. If the plaintiff shall prevail in the proceeding, the plaintiff shall be entitled to entry of judgment upon such bond against the principal and securities therein, as judgment may be entered against securities upon appeal. If the defendant files a bond, no further garnishment process may be filed in any court by the plaintiff against the defendant until the issues raised by the defendant's pleadings are decided.

§ 18-4-82. Contents of answer of garnishee

Within the time prescribed by Code Section 18-4-62, the garnishee shall file a garnishee answer describing what money or other property is subject to garnishment under Code Section 18-4-20. If the garnishee owes the defendant any sum for wages, the answer shall also state specifically when the wages were earned by defendant and whether they were earned as daily, weekly, or monthly wages. If the garnishee has been served with summons in more than one garnishment case involving the same defendant, the garnishee shall state in each garnishee answer that the money or other property is being delivered to the court subject to the claims of all the cases and shall give the numbers of all such cases in each garnishee answer. If the garnishee is unable to respond as provided for in this Code section, the garnishee's inability shall appear in the garnishee's answer, together with all the facts plainly, fully, and distinctly set forth, so as to enable the court to give judgment thereon.

§ 18-4-83. Service of answer of garnishee on plaintiff or attorney

All garnishee answers shall, concurrently with filing, be served upon the plaintiff or the plaintiff's attorney. Service may be shown by the written acknowledgment of the plaintiff or the plaintiff's attorney, or by the certificate of the garnishee or the garnishee's

attorney, attached to the garnishee's answer, that a copy of the garnishee's answer was mailed to the plaintiff or the plaintiff's attorney; provided, however, that no service shall be required unless the name and address of the plaintiff or the plaintiff's attorney shall appear on the face of the summons of garnishment; provided, further, that, if the garnishee fails to serve the plaintiff, the plaintiff shall be allowed 15 days from the time the plaintiff receives actual notice of the garnishee's answer to traverse the same.

§ 18-4-84. Delivery to court of property admitted to be subject to garnishment; property in safety deposit box

Along with the garnishee's answer, the garnishee shall deliver to the court the money or other property admitted in the garnishee's answer to be subject to garnishment. If in responding to the summons of garnishment, as provided in Code Section 18-4-82, the garnishee shall state that the property of the defendant includes property in a safe-deposit box or similar property, the garnishee shall respond to the court issuing the summons of garnishment as to the existence of such safe-deposit box and shall hold any contents of such safe-deposit box until the earlier of:

(1) Further order of said court either releasing the garnishment or specifically requiring the garnishee to open such safe-deposit box and deliver any contents thereof to said court upon conditions prescribed by said court; or

(2) The elapsing of 120 days from the date of filing of the garnishee answer to the summons of garnishment unless such time has been extended by the court.

§ 18-4-85. Traverse of answer of garnishee by plaintiff -- Time period; discharge for failure to traverse

If the garnishee's answer is served on the plaintiff as provided for in Code Section 18-4-83, the plaintiff or claimant shall traverse the garnishee's answer within 15 days after it is served, or the garnishee shall be automatically discharged from further liability with respect to the summons so answered.

§ 18-4-86. Traverse of answer of garnishee by plaintiff -- Contents

The traverse of the garnishee's answer shall be a statement by the plaintiff or his attorney, or by a claimant or his attorney, that the garnishee's answer is untrue or legally insufficient. Such statement places in issue all questions of law and fact concerning the garnishee's answer.

§ 18-4-87. Traverse of answer of garnishee by plaintiff -- Service

A traverse shall be served in the same manner as is provided for in subsection (b) of Code Section 9-11-5 for the service of subsequent pleadings.

§ 18-4-88. Order of proceedings after answer of garnishee generally

After the garnishee's answer is filed, the defendant's traverse shall be tried first, the plaintiff's traverse shall be tried second, and claims shall be tried last; provided,

however, the court shall retain the money or other property subject to garnishment until trial of all claims which are filed under this chapter.

§ 18-4-89. Proceedings after answer of the garnishee if no traverse or claim filed

If no traverse or claim has been filed within 15 days after the garnishee's answer is filed:

(1) If money is delivered to the court by the garnishee, the clerk shall pay the money to the plaintiff or his attorney on his application;

(2) If other property is delivered to the court by the garnishee, the sheriff, marshal, constable, or like officer of the court shall sell the property in the manner provided by law for the sale of property levied under an execution; and the proceeds of the sale shall be delivered to the plaintiff or his attorney on his application; or

(3) If money or other property admitted to be subject to the garnishment is not delivered to the court, judgment shall be entered for the plaintiff and against the garnishee for the money or other property and execution shall issue on the judgment.

§ 18-4-90. Entry of default judgment upon failure of garnishee to file answer to summons; opening of default

In case the garnishee fails or refuses to file a garnishee answer by the forty-fifth day after service of the summons, the garnishee shall automatically be in default. The default may be opened as a matter of right by the filing of a garnishee answer within 15 days of the day of default and payment of costs. If the case is still in default after the expiration of the period of 15 days, judgment by default may be entered at any time thereafter against the garnishee for the amount claimed to be due on the judgment obtained against the defendant.

§ 18-4-91. Relief of garnishee from default judgment

When a judgment is rendered against a garnishee under Code Section 18-4-90, on a motion filed not later than 60 days from the date the garnishee receives actual notice of the entry of the judgment against the garnishee, the garnishee may, upon payment of all accrued costs of court, have the judgment modified so that the amount of the judgment shall be reduced to an amount equal to the greater of \$50.00 or \$50.00 plus 100 percent of the amount by which the garnishee was indebted to the defendant from the time of service of the summons of garnishment through and including the last day on which a timely garnishee answer could have been made for all money, other property, or effects belonging to the defendant which came into the garnishee's hands from the time of service of the summons through and including the last day on which a timely answer could have been made and, in the case of garnishment of wages, less any exemption allowed the defendant by law. Notice to the garnishee by certified mail or statutory overnight delivery shall be sufficient notice as required in this Code section. On the trial of the motion, the burden of proof shall be upon any plaintiff who objects to

the timeliness of the motion to establish that the motion was not filed within the time provided for by this Code section.

§ 18-4-92. Effect of garnishee's failure to answer properly summons of garnishment

On the trial of the plaintiff's traverse, if the court finds the garnishee has failed to answer properly the summons of garnishment, the court shall disallow any expenses claimed by the garnishee and enter a judgment for any money or other property 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 deliver to the court; provided, however, that the total amount of such judgment shall in no event exceed the amount claimed due by the plaintiff, together with the costs of the garnishment proceeding.

§ 18-4-92.1. Relief of garnishee from liability; definitions

(a) A garnishee may be relieved from liability for failure to file a garnishee answer properly to the summons of garnishment if the plaintiff failed to provide the information required by subsection (i) of Code Section 18-4-20 that would reasonably enable the garnishee to respond properly to the summons of garnishment and a good faith effort to locate the requested property was made by the garnishee based on the information provided by the plaintiff. In determining whether a garnishee may be relieved of liability imposed by Code Section 18-4-92, the court shall consider and compare the accuracy and quantity of the information supplied by the plaintiff pursuant to subsection (i) of Code Section 18-4-20 with the manner in which the garnishee maintains and locates its records, the compliance by the garnishee with its own procedures, and the conformity of the record systems and procedures with reasonable commercial standards prevailing in the area in which the garnishee is located.

(b) A garnishee and a plaintiff shall not be subject to liability to any party or nonparty to the garnishment at issue arising from the attachment of a lien, the freezing, payment, or delivery into court of property, money, or effects reasonably believed to be that of the defendant if such attachment, freezing, payment, or delivery is reasonably required by a good faith effort to comply with the summons of garnishment. In determining whether such compliance by a garnishee is reasonable, the court shall proceed in the manner prescribed in subsection (a) of this Code section by comparing the efforts of the plaintiff to comply with subsection (i) of Code Section 18-4-20 and the garnishee's record system and procedures.

(c)(1) As used in this subsection, the term:

(A) "Association account" means any account, or any safe-deposit box or similar property, maintained by a corporation, statutory close corporation, limited liability company, partnership, limited partnership, limited liability partnership, foundation, trust, a national, state, or local government or quasi-government entity, or any other incorporated or unincorporated association.

(B) "Fiduciary account" means any account, or any safe-deposit box, maintained by any party in a fiduciary capacity for any other party other than the defendant in garnishment. Without limiting the foregoing, for purposes of this subsection, the term fiduciary account shall include any "trust account" as defined in Code Section 7-1-810, any account created pursuant to a transfer governed by Code Section 44-5-119, and any agency account or safe-deposit box governed by a power of attorney or other written designation of authority.

(2)(A) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in an association account that may be subject to garnishment by reason of the fact that a defendant is an authorized signer on such association account, unless the summons of garnishment alleges that the association account is being used by the defendant for an improper or unlawful purpose.

(B) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be subject to garnishment if such account specifically is exempted from garnishment by the laws of this state.

(C) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be subject to garnishment by reason of the fact that a defendant is a fiduciary of the fiduciary account, unless the summons of garnishment is against the defendant in the defendant's capacity as a fiduciary of the fiduciary account or the summons of garnishment alleges that the fiduciary account is being used by the defendant for an improper or unlawful purpose.

§ 18-4-93. Right of defendant to become a party to garnishment proceedings; procedure

A garnishment proceeding is an action between the plaintiff and the garnishee; but, at any time before a judgment is entered on the garnishee's answer or before money or other property subject to garnishment is distributed, the defendant may become a party to the garnishment for the purposes set out in Code Section 18-4-65 by filing a traverse to the plaintiff's affidavit stating that the affidavit is untrue or legally insufficient; and he shall be a party to all proceedings thereafter. Upon the filing of the defendant's traverse, and at the defendant's application therefor, a judge of the court in which the case is pending shall order a hearing to be held not more than ten days from the date the traverse is filed. The hearing shall be available to the defendant as a matter of right after filing his traverse; and no further summons of garnishment may issue nor may any money or other property delivered to the court as subject to garnishment be disbursed until the hearing shall be held.

§ 18-4-94. Procedure where defendant prevails generally; establishment of interests in money or other property in court by parties filing claims thereto; distribution of money or other property

(a) Where the defendant prevails upon the trial of the issues made by his traverse, 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 a claim thereto has been filed.

(b) If a claim has been filed, all parties of record may introduce evidence to establish their respective interests in the money or other property in court; and the court shall direct that the money or other property be distributed in accordance with the laws governing priority of claims.

§ 18-4-95. Right of claimants of property subject to garnishment to become parties; procedure

At any time before judgment is entered on the garnishee's answer or money or other property subject to garnishment is distributed, any person may file a claim in writing under oath stating that he has a claim superior to that of the plaintiff to the money or other property in the hands of the garnishee subject to the process of garnishment; and the claimant shall be a party to all further proceedings upon the garnishment.

§ 18-4-96. Procedure where money or other property in court subject to conflicting cases

Where money or other property in court is subject to the claims of more than one garnishment case, any interested party to any one of the garnishment cases may make a motion to the court in his case for the distribution of the money or other property. Each party of interest in each case and the clerk of the court shall be served with a copy of the motion. Upon hearing the motion, the court shall enter an order directing that the clerk be paid the court cost of each garnishment proceeding first, and all remaining money or other property shall be distributed in accordance with the law governing the relative priorities of claims, judgments, and liens.

§ 18-4-97. Right of garnishee to actual reasonable expenses in making true answer of garnishment; procedure for collection; reimbursement

(a) The garnishee shall be entitled to the garnishee's actual reasonable expenses, including attorney's fees, in preparing and filing a garnishee's answer to a summons of garnishment. The amount so incurred shall be taxed in the bill of costs and shall be paid by the party upon whom the cost is cast, as costs are cast in other cases. The garnishee may deduct \$50.00 or 10 percent of the amount paid into court, whichever is greater, not to exceed \$100.00, as reasonable attorney's fees or expenses.

(b) If the garnishee can show that the garnishee's actual attorney's fees or expenses exceed the amount provided for in subsection (a) of this Code section, the garnishee shall petition the court for a hearing at the time of filing the garnishee's answer without deducting from the amount paid into court. Upon hearing from the parties, the court may enter an order for payment of actual attorney's fees or expenses proven by the garnishee to have been incurred reasonably in preparing and filing the garnishee's answer.

(c) In the event the garnishee makes the deduction permitted in subsection (a) of this Code section but the costs are later cast upon the garnishee, the garnishee shall forthwith refund to the defendant the funds deducted; and, if the costs are later cast against the plaintiff, the court shall enter judgment in favor of the defendant and against the plaintiff for the amount of the deductions made by the garnishee.

(d) Nothing in this Code section shall limit the reimbursement of costs incurred by a financial institution as provided by Code Section 7-1-237.

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ARTICLE 6. CONTINUING GARNISHMENT PROCEEDINGS

§ 18-4-110. Right of plaintiff who has obtained money judgment to process of continuing garnishment; methods, practices, and procedures for continuing garnishment generally

In addition to garnishment proceedings otherwise available under this chapter, in cases where a money judgment has been obtained in a court of this state or a federal court sitting in this state, the plaintiff shall be entitled to the process of continuing garnishment against any garnishee who is an employer of the defendant against whom the judgment has been obtained. Unless otherwise specifically provided in this article, the methods, practices, and procedures for continuing garnishment shall be the same as for any other garnishment as provided in this chapter, including, but not limited to, those proceedings after a garnishee's answer as provided in Code Section 18-4-89.

§ 18-4-111. Property, money, or effects subject to continuing garnishment

(a) All debts owed by the garnishee to the defendant at the time of service of summons of continuing garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from such date of service to and including the one hundred seventy-ninth day thereafter shall be subject to process of continuing garnishment; and no payment made by the garnishee to the defendant or to his order or by any arrangement between the defendant and the garnishee after the date of the service of the summons of continuing garnishment upon the garnishee shall defeat the lien of such garnishment.

(b) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of continuing garnishment upon the garnishee or coming into the possession or control of the garnishee at any time from the date of such service to and including the one hundred seventy-ninth day thereafter shall be subject to process of continuing garnishment, except in the case of collateral securities in the hands of a creditor. Such securities shall not be subject to continuing garnishment so long as there is an amount owed on the debt for which such securities were given as collateral.

(c) Notwithstanding this Code section, the exemptions from garnishment required or allowed by law, including, but not limited to, exemptions provided by Code Sections 18-4-20 and 18-4-22, shall be applicable to a continuing garnishment.

§ 18-4-112. Filing and contents of affidavit for continuing garnishment; issuance of summons; notice and service of summons

(a) In addition to the information required by Code Section 18-4-61, an affidavit for continuing garnishment shall state that the plaintiff believes that the garnishee is or may be an employer of the defendant and subject to continuing garnishment and shall request that a summons of continuing garnishment shall issue. Upon the filing of the affidavit with the clerk of any court having jurisdiction over the garnishee, the clerk shall cause a summons of continuing garnishment to issue forthwith, provided that the

affidavit shall first be made and approved as containing the information required by Code Section 18-4-61 and by this Code section in one of the ways provided for in Code Section 18-4-61.

(b) Only one summons of continuing garnishment may issue on one affidavit for continuing garnishment, and the defendant shall be given notice of the issuance of the summons using any method provided for in Code Section 18-4-64.

(c) The plaintiff, using either forms provided by the court or forms prepared by the plaintiff, shall cause forms sufficient for seven garnishee answers to a summons of continuing garnishment to be served on the garnishee along with the summons.

§ 18-4-113. Contents of summons of continuing garnishment; filing and contents of answers

(a) The summons of continuing garnishment shall be directed to the garnishee, who shall be required:

(1) To file a first garnishee answer no later than 45 days after service of summons of continuing garnishment, which garnishee answer shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the time of service through and including the day of the first garnishee answer;

(2) To file further garnishee answers for the remaining period covered by the summons of continuing garnishment. Further garnishee answers shall be filed no later than 45 days after the previous garnishee answer date. Further garnishee answers shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date through and including the date on which that next garnishee answer is filed. No subsequent garnishee answers shall be required on a summons of continuing garnishment if the last garnishee answer filed states what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date to and including the one hundred seventy-ninth day after service of summons of continuing garnishment. The last garnishee answer shall be filed, notwithstanding the other provisions of this paragraph, no later than the one hundred ninety-fifth day after service. For purposes of this paragraph, "previous garnishee answer date" means the date upon which the immediately preceding garnishee answer to the summons of continuing garnishment was filed as provided in this subsection; and

(3) To accompany all such garnishee answers with any property, money, or other effects of the defendant admitted in the garnishee answer to be subject to continuing garnishment.

(b) The summons of continuing garnishment shall state the requirements of subsection (a) of this Code section and shall inform the garnishee that failure to comply with such requirements may result in a judgment against the garnishee for the entire amount claimed due on the judgment against the defendant.

§ 18-4-114. Traverse of answer of garnishee by plaintiff

If the garnishee's answer is served on the plaintiff as provided in Code Section 18-4-83, the plaintiff shall traverse the garnishee answer within 15 days after it is served or the garnishee shall be automatically discharged from further liability with respect to the summons so answered.

§ 18-4-115. Entry of default judgment against garnishee; relief from default judgment

(a) If the garnishee fails or refuses to file a garnishee answer at least once every 45 days, the garnishee shall automatically become in default. The default may be opened as a matter of right by the filing of the required garnishee answer within 15 days after the day of default upon payment of costs. If the case is still in default after the expiration of such period of 15 days, judgment by default may be entered at any time thereafter against garnishee for the amount claimed to be due on the judgment obtained against the defendant.

(b) The garnishee may obtain relief from default judgment entered as provided in subsection (a) of this Code section upon the same conditions as provided in Code Section 18-4-91.

§ 18-4-116. Effect of and proceedings upon filing of traverse by defendant

(a) In a continuing garnishment proceeding, upon the filing of a traverse by defendant pursuant to Code Section 18-4-93, no further summons of garnishment may issue nor may any money delivered to the court as subject to garnishment be disbursed until the hearing is held upon defendant's traverse. The filing of a traverse by the defendant does not relieve the garnishee of the duties of filing a garnishee answer, of withholding property, money, or other effects subject to continuing garnishment or of delivering to the court any property, money, or other effects subject to continuing garnishment.

(b) Nothing in this Code section shall affect the right of the defendant to file bond under this chapter.

§ 18-4-117. Effect of termination of employment relationship between garnishee and defendant

Notwithstanding the requirements of Code Section 18-4-113, if the employment relationship between the garnishee and the defendant does not exist at the time of the service of summons of continuing garnishment or terminates during the continuing garnishment, in any garnishee answer required by this article the garnishee may state that the employment relationship between the garnishee and defendant does not exist or has been terminated, giving the date of termination if terminated on or after service of this summons of continuing garnishment. If no traverse is filed within 15 days after the garnishee answer is served as provided in Code Section 18-4-83, the garnishee shall be automatically discharged from further liability and obligation under Code Section 18-

4-113 for that summons with respect to the period of continuing garnishment remaining after the employment relationship is terminated.

§ 18-4-118. Forms for continuing garnishment

For purposes of this article, the following forms are declared to be sufficient, along with those provided in Code Section 18-4-66, for continuing garnishment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

(1) Affidavit of continuing garnishment.

	IN THE	COURT OF	COUNTY
	STATE OF GEORGIA		
Plaintiff))	
)		
v.)		Civil action
)		File no.
))	
Defendant))	
)		
))	
Garnishee))	
)		
))	
Address))	

AFFIDAVIT OF CONTINUING GARNISHMENT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:
 is the case number in the Court of County which
 rendered the judgment against the defendant, \$ being the balance thereon.

Affiant further states that affiant believes that garnishee is or may be an employer of the defendant and subject to continuing garnishment.

Affiant

Sworn to and subscribed
 before me this
 day of , .

Plaintiff's attorney

(2) Summons of continuing garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)
Plaintiff)
)
v.) Civil action
) File no. _____
_____)
Defendant)
Social security)
number)
)
_____)
Garnishee)
)
_____)
Address)

SUMMONS OF CONTINUING GARNISHMENT

To: _____ Garnishee
Amount claimed due by plaintiff \$ _____
(To be completed by plaintiff)
Plus court costs due on this summons \$ _____
(To be completed by clerk)

YOU ARE HEREBY COMMANDED to hold immediately all property, money, wages, except what is exempt, belonging to the defendant, or debts owed to the defendant named above at the time of service of this summons and between the time of service of this summons to and including the one hundred seventy-ninth day thereafter. Not later than 45 days after you are served with this summons, you are commanded to file your garnishee answer in writing with the clerk of this court and serve a copy upon the plaintiff or his attorney named below. This garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at the time of service of this summons and between the time of such service and the time of making your first garnishee answer. Thereafter, you are required to file further garnishee answers no later than 45 days after your last garnishee answer. Every further garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at and from the time of the last garnishee answer to the time of the current garnishee answer. The last garnishee answer required by this summons shall be filed no later than the one hundred ninety-fifth day after you receive this summons. Money or other property admitted in an a garnishee answer to be subject to continuing garnishment must shall be delivered to the court with your garnishee answers. Should you fail to file garnishee answers as required by this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable _____, Judge of said Court.
This _____ day of _____, ____.

Clerk,
_____ Court of _____ County

Plaintiff's attorney

Address
Service perfected on garnishee, this _____ day of _____, ____.

Deputy marshal, sheriff,
or constable

(3) Garnishee answer of continuing garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)
Plaintiff)
)
v.) Civil action
) File no. _____
_____)
Defendant)
)
_____)
Garnishee)
)
_____)
Address)

GARNISHEE ANSWER OF CONTINUING GARNISHMENT

1.
From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, garnishee had in his garnishee's possession the following described property of the defendant:

2.
From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, all debts accruing from garnishee to the defendant are in the amount of \$_____.

3.
\$_____ of the amount named in paragraph 2 was wages earned at the rate of \$_____ per _____ for the period beginning (date) , _____, through the time of making this garnishee answer. The amount of wages which is subject to this garnishment is computed as follows:

- \$_____ Gross earnings
- \$_____ Total social security and withholding tax
- \$_____ Total disposable earnings
- \$_____ Amount of wages subject to continuing garnishment

4.
() If checked, defendant is not presently employed by this garnishee and, if employed by garnishee on or after service of this summons of continuing garnishment, was most recently terminated as of the _____ day of _____, _____.

5.
() If checked, this is the last garnishee answer this garnishee is required to file to the presently pending summons of continuing garnishment in the above-styled case.

6.
Garnishee further states: _____.

Garnishee, or his
attorney at law
garnishee's attorney, or officer
or employee of an entity garnishee
(CERTIFICATE OF SERVICE)

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ARTICLE 7. CONTINUING GARNISHMENT FOR SUPPORT

§ 18-4-130. Continuing garnishment for family support; issuance of writ of garnishment

In addition to garnishment proceedings otherwise available in this chapter, a writ of garnishment shall issue for the continuing withholding of earnings for the enforcement of a judgment for periodic support of a family member. Unless otherwise specifically provided in this article, the methods, practices, and procedures for continuing garnishment for support shall be the same as for any other garnishment as provided in this chapter, including, but not limited to, procedures relative to default of a garnishee and relief from default and provisions relative to fees and expenses.

§ 18-4-131. Definitions

As used in this article, the term:

(1) "Accruing on a daily basis" means the amount of support computed by conversion of the periodic amount to an annual sum, divided by 365.

(2) "Department" means the Department of Human Services.

(3) "Earnings" means any periodic form of payment due to an individual, regardless of source, including without limitation wages, salary, commission, bonus, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(4) "Family member" means any minor child of the defendant or a spouse or former spouse of the defendant.

(5) "Judgment" means any order or judgment of a court of this state, any order or judgment of a court of another state which has been registered pursuant to Code Section 19-11-77 or otherwise, any order of a court of this state entered pursuant to a proceeding under Chapter 10 of Title 19, any final administrative order for support issued by the department, or any final administrative order issued by another state.

(6) "Periodic support" means support required by the terms of a court order or judgment or an administrative order to be paid regularly on a daily, weekly, monthly, or other similar specified frequency.

§ 18-4-132. Contents of affidavit for a continuing garnishment for support; attachment of certified copy of judgment; amendment of affidavit

(a) The contents of the affidavit for continuing garnishment for support shall be substantially identical to those set forth in Code Section 18-4-112, but in addition thereto, the plaintiff shall attach a certified copy of the judgment to be enforced and shall also state the following in the affidavit:

(1) That the defendant is in arrears on the obligation of support in an amount equal to or in excess of one month's obligation as decreed in said judgment;

(2) The amount of arrearage which exists under said judgment as of the date of the execution of the affidavit;

(3) The periodic amount of support due under the judgment for each obligee named therein, taking into account the possible attainment of majority or emancipation or death of any minor child named in the judgment; and

(4) The date of the termination of the obligation of support of each obligee named in the order or judgment of support, based upon the terms of said order or judgment, or, as to any obligee who is a minor child, the date each such obligee shall attain the age of 18 years.

(b) Such affidavit may be amended from time to time by subsequent affidavits of any party showing a modification or other amendment to the original judgment sought to be enforced. Such amended or subsequent affidavits shall include a certified copy of any such modification or amendment and shall contain the information required by paragraphs (1) through (4) of subsection (a) of this Code section.

§ 18-4-133. Service of summons; requirements as to filing of first answer accompanied by money; application of money

(a) The summons of continuing garnishment for support shall be directed to the garnishee who shall be required to file a first garnishee answer no later than 45 days after service, which garnishee answer shall state what earnings were payable to the defendant from the time of service through and including the day of the first garnishee answer and the basis for the computation of same, including the rate of pay and hours worked, or salaries, commissions, or other basis of compensation.

(b) The garnishee shall accompany such initial garnishee answer with money of the defendant admitted in the garnishee answer to be subject to continuing garnishment for support. In computing the amounts subject to this article, the provisions of subsection (f) of Code Section 18-4-20 shall control.

(c) The money paid into court with the initial garnishee answer, after deduction for costs, shall be first applied to the periodic support payment accrued on a daily basis from the date of the affidavit of the plaintiff to the date of the initial garnishee answer. All sums in excess of such periodic payment shall be applied to the original arrearage. Original arrearage shall mean those arrears existing as of the date of the making of the plaintiff's affidavit, plus any amounts includable pursuant to subsection (b) of Code Section 18-4-134.

§ 18-4-134. Filing further answers and tendering money; application of money; filing of final answer by garnishee upon termination of defendant's employment

(a) If the amount claimed as original arrearage as of the date of the making of the plaintiff's affidavit is not satisfied by the money payable into court under the initial garnishee answer, after application of the funds as set forth in subsection (c) of Code Section 18-4-133, the garnishee shall file further garnishee answers no later than 45 days after the previous garnishee answer date, stating the earnings accrued and the basis of their accrual and tendering such money accruing in such period. The amounts paid into court pursuant to subsequent garnishee answers, over and above the periodic payment accruing within such period, shall be applied to the original arrearage until the same is retired.

(b) If the earnings paid into court pursuant to any garnishee answer are less than the sums due under the periodic support requirement accruing over the same period of time, after allowance for any costs deductible from same, the resulting difference shall be added to the amount due as original arrearage until the same is retired by subsequent payments.

(c) The garnishee shall file additional garnishee answers until the original arrearage is retired and all periodic support payments are current.

(d) Upon the termination of employment of the defendant by the garnishee, the garnishee shall be required to file a final garnishee answer stating the date and reason for the defendant's termination from employment and stating, to the best of the garnishee's information, the defendant's present residential address and employer.

§ 18-4-135. Period of attachment of writ of garnishment; garnishee's reliance upon information in affidavit of garnishment

The writ of garnishment described in this article shall attach for so long as the defendant is employed by the garnishee and shall not terminate until the original arrearage is retired. The garnishee may rely upon the information as to the termination date of the duty of support of any individual claimed in the affidavit of garnishment, the amount of the duty of periodic support to be paid, any sums paid by the defendant between the date of the filing of the plaintiff's affidavit and the date of the initial garnishee answer, and the amount of the original arrearage existing as of the date of the affidavit of garnishment, unless the same are traversed by the defendant and the court enters any finding otherwise.

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Part Two: Selected Additional Georgia Statutes (O.C.G.A.)

9-11-4 Service

(a) Summons -- Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) Summons -- Form. The summons shall be signed by the clerk; contain the name of the court and county and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address; and state the time within which this chapter requires the defendant to appear and file appropriate defensive pleadings with the clerk of the court, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against him or her for the relief demanded in the complaint.

(c) Summons -- By whom served. Process shall be served by:

(1) The sheriff of the county where the action is brought or where the defendant is found or by such sheriff's deputy;

(2) The marshal or sheriff of the court or by such official's deputy;

(3) Any citizen of the United States specially appointed by the court for that purpose;

(4) A person who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought; or

(5) A certified process server under Code Section 9-11-4.1, provided that the sheriff of the county for which process is to be served allows such servers to serve process in such county.

Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service.

(d) Waiver of service.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) Upon receipt of notice of an action in the manner provided in this subsection, the following defendants have a duty to avoid unnecessary costs of serving the summons:

(A) A corporation or association that:

(i) Is subject to service under paragraph (1) or (2) of subsection (e) of this Code section; and

(ii) Receives notice of such action by an agent other than the Secretary of State; and

(B) A natural person who:

(i) Is not a minor; and

(ii) Has not been judicially declared to be of unsound mind or incapable of conducting his or her own affairs.

(3) To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:

(A) Be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent or other agent authorized by appointment to receive service of process for a defendant subject to service under paragraph (1) or (2) of subsection (e) of this Code section;

(B) Be dispatched through first-class mail or other reliable means;

(C) Be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) Make reference to this Code section and shall inform the defendant, by means of the text prescribed in subsection (l) of this Code section, of the consequences of compliance and of failure to comply with the request;

(E) Set forth the date on which the request is sent;

(F) Allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) Provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

(4) If a defendant located within the United States that is subject to service inside or outside the state under this Code section fails to comply with a request for a waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(5) A defendant that, before being served with process, returns a waiver so requested in a timely manner is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(6) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (5) of this subsection, as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(7) The costs to be imposed on a defendant under paragraph (4) of this subsection for failure to comply with a request to waive service of summons shall include the costs subsequently incurred in effecting service, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Summons -- Personal service. Except for cases in which the defendant has waived service, the summons and complaint shall be served together. The plaintiff shall furnish the clerk of the court with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) If the action is against a corporation incorporated or domesticated under the laws of this state or a foreign corporation authorized to transact business in this state, to the president or other officer of the corporation, secretary, cashier, managing agent, or other agent thereof, provided that when for any reason service cannot be had in such manner, the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him or her or with any other person or persons designated by the Secretary of State to receive such service a copy of such process, notice, or demand, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. The plaintiff or the plaintiff's attorney shall certify in writing to the Secretary of State that he or she has forwarded by registered mail or statutory overnight delivery such process, service, or demand to the last registered office or agent listed on the records of the Secretary of State, that service cannot be effected at such office, and that it therefore appears that the corporation has failed either to maintain a registered office or to appoint a registered agent in this state. Further, if it shall appear from such certification that there is a last

known address of a known officer of the corporation outside the state, the plaintiff shall, in addition to and after such service upon the Secretary of State, mail or cause to be mailed to the known officer at the address by registered or certified mail or statutory overnight delivery a copy of the summons and a copy of the complaint. Any such service by certification to the Secretary of State shall be answerable not more than 30 days from the date the Secretary of State receives such certification;

(2) If the action is against a foreign corporation or a nonresident individual, partnership, joint-stock company, or association, doing business and having a managing or other agent, cashier, or secretary within this state, to such agent, cashier, or secretary or to an agent designated for service of process;

(3) If against a minor, to the minor, personally, and also to such minor's father, mother, guardian, or duly appointed guardian ad litem unless the minor is married, in which case service shall not be made on the minor's father, mother, or guardian;

(4) If against a person residing within this state who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs and for whom a guardian has been appointed, to the person and also to such person's guardian and, if there is no guardian appointed, then to his or her duly appointed guardian ad litem;

(5) If against a county, municipality, city, or town, to the chairman of the board of commissioners, president of the council of trustees, mayor or city manager of the city or to an agent authorized by appointment to receive service of process. If against any other public body or organization subject to an action, to the chief executive officer or clerk thereof;

(6) If the principal sum involved is less than \$200.00 and if reasonable efforts have been made to obtain personal service by attempting to find some person residing at the most notorious place of abode of the defendant, then by securely attaching the service copy of the complaint in a conspicuously marked and waterproof packet to the upper part of the door of the abode and on the same day mailing by certified or registered mail or statutory overnight delivery an additional copy to the defendant at his or her last known address, if any, and making an entry of this action on the return of service; or

(7) In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(f) Summons -- Other service.

(1) Service by publication.

(A) General. When the person on whom service is to be made resides outside the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of the summons, and the fact shall appear, by affidavit, to the satisfaction of the judge or clerk of the court, and it shall appear, either by affidavit or by a verified complaint on file, that a claim exists against the defendant in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the judge or clerk may grant an order that the service be made by the publication of summons, provided that when the affidavit is based on the fact that the party on whom service is to be made resides outside the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in the affidavit that at a previous time such person resided outside this state in a certain place (naming the place and stating the latest date known to affiant when the party so resided there); that such place is the last place in which the party resided to the knowledge of affiant; that the party no longer resides at the place; that affiant does not know the present place of residence of the party or where the party can be found; and that affiant does not know and has never been informed and has no reason to believe that the party now resides in this state; and, in such case, it shall be presumed that the party still resides and remains outside the state, and the affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This Code section shall apply to all manner of civil actions, including those for divorce.

(B) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which any defendant, corporate or otherwise, has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part of excluding such defendant from any interest therein, where the defendant resides outside the state or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons. The service by publication shall be made in the same manner as provided in all cases of service by publication.

(C) Publication. When the court orders service by publication, the clerk shall cause the publication to be made in the paper in which sheriff's advertisements are printed, four times within the ensuing 60 days, publications to be at least seven days apart. The party obtaining the order shall, at the time of filing, deposit the cost of publication. The published notice shall contain the name of the parties plaintiff and defendant, with a caption setting forth the court, the character of the action, the date the action was filed, the date of the order for service by publication, and a notice directed and addressed to the party to be thus served, commanding him or her to file with the clerk and serve upon the plaintiff's attorney an answer within 60 days of the date of the order for service by publication and shall bear teste in the name of the judge and shall be signed by the clerk of the court. Where the residence or abiding place of the absent or nonresident party is known, the party obtaining the order shall advise the clerk thereof; and it shall be the duty of the clerk, within 15 days after filing of the order for service by publication, to enclose, direct, stamp, and mail a copy of the notice, together with a copy of the order for service by publication and complaint, if any, to the party

named in the order at his or her last known address, if any, and make an entry of this action on the complaint or other pleadings filed in the case. The copy of the notice to be mailed to the nonresident shall be a duplicate of the one published in the newspaper but need not necessarily be a copy of the newspaper itself. When service by publication is ordered, personal service of a copy of the summons, complaint, and order of publication outside the state in lieu of publication shall be equivalent to serving notice by publication and to mailing when proved to the satisfaction of the judge or otherwise. The defendant shall have 30 days from the date of such personal service outside the state in which to file defensive pleadings.

(2) Personal service outside the state. Personal service outside the state upon a natural person may be made: (A) in any action where the person served is a resident of this state, and (B) in any action affecting specific real property or status, or in any other proceeding in rem without regard to the residence of the person served. When such facts shall appear, by affidavit, to the satisfaction of the court and it shall appear, either by affidavit or by a verified complaint on file, that a claim is asserted against the person in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the court may grant an order that the service be made by personal service outside the state. Such service shall be made by delivering a copy of the process together with a copy of the complaint in person to the persons served.

(3) Service upon persons in a foreign country. Unless otherwise provided by law, service upon a person from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

(A) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) As directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) Unless prohibited by the law of the foreign country, by:

(I) Delivery to the person of a copy of the summons and the complaint; or

(II) Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(C) By other means not prohibited by international agreement as may be directed by the court.

(4) Service upon persons residing in gated and secured communities.

(A) As used in this paragraph, the term "gated and secured communities" means multiple residential or commercial properties, such as houses, condominiums, offices, or apartments, where access to the multiple residential or commercial properties is restricted by a gate, security device, or security attendant that restricts public entrance onto the property; provided, however, that a single residence, farm, or commercial property with its own fence or gate shall not be included in this definition.

(B) Any person authorized to serve process shall be granted access to gated and secured communities for a reasonable period of time during reasonable hours for the purpose of performing lawful service of process upon:

(i) Identifying to the guard or managing agent the person, persons, entity, or entities to be served;

(ii) Displaying a current driver's license or other government issued identification which contains a photograph; and

(iii) Displaying evidence of current appointment as a process server pursuant to this Code section.

(C) Any person authorized to serve process shall promptly leave gated and secured communities upon perfecting service of process or upon a determination that process cannot be effected at that time.

(g) Territorial limits of effective service. All process may be served anywhere within the territorial limits of the state and, when a statute so provides, beyond the territorial limits of the state.

(h) Return. The person serving the process shall make proof of such service with the court in the county in which the action is pending within five business days of the service date. If the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed. Proof of service shall be as follows:

(1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate of the sheriff, marshal, or deputy;

(2) If by any other proper person, such person's affidavit;

(3) In case of publication, the certificate of the clerk of court certifying to the publication and mailing; or

(4) The written admission or acknowledgment of service by the defendant.

In the case of service otherwise than by publication, the certificate or affidavit shall state the date, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative service. The methods of service provided in this Code section are cumulative and may be utilized with, after, or independently of other methods of service. Whenever a statute provides for another method of service, service may be made under the circumstances and in the manner prescribed by the statute or under any other methods prescribed in this Code section. The provisions for service by publication provided in this Code section shall apply in any action or proceeding in which service by publication may be authorized by law; and, where by law special provision is made for service by publication, the procedure for such service by publication provided in this Code section may be utilized in lieu thereof. In all cases or special proceedings where the requirements or procedure for service, or both, are not prescribed by law and in any situation where the provisions therefor are not clear or certain, the court may prescribe service according to the exigencies of each case, consistent with the Constitution.

(k) Service in probate courts and special statutory proceedings. The methods of service provided in this Code section may be used as alternative methods of service in proceedings in the probate courts and in any other special statutory proceedings and may be used with, after, or independently of the method of service specifically provided for in any such proceeding; and, in any such proceeding, service shall be sufficient when made in accordance with the statutes relating particularly to the proceeding or in accordance with this Code section.

(l) Forms.

NOTICE OF LAWSUIT AND REQUEST FOR

WAIVER OF SERVICE OF SUMMONS

TO: (Name of individual defendant or name of officer or agent of corporate defendant) as (title, or other relationship of individual to corporate defendant) of (name of corporate defendant to be served, if any)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. The

complaint has been filed in the (court named on the complaint) for the State of Georgia in and for the County of (county) and has been assigned (case number of action).

This is not a formal summons or notification from the court, but rather my request pursuant to Code Section 9-11-4 of the Official Code of Georgia Annotated that you sign and return the enclosed Waiver of Service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days (or 60 days if located outside any judicial district of the United States) after the date designated below as the date on which this Notice of Lawsuit and Request for Waiver of Service of Summons is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the Waiver of Service is also attached for your records. **YOU ARE ENTITLED TO CONSULT WITH YOUR ATTORNEY REGARDING**

THIS MATTER.

If you comply with this request and return the signed Waiver of Service, the waiver will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed except that you will not be obligated to answer or otherwise respond to the complaint within 60 days from the date designated below as the date on which this notice is sent (or within 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the

Georgia Rules of Civil Procedure and then, to the extent authorized by those rules, I will ask the court to require you (or the party on whose behalf you are addressed) to pay the full cost of such service. In that connection, please read the statement concerning the duty of parties to avoid unnecessary costs of service of summons, which is set forth on the Notice of Duty to Avoid Unnecessary Costs of Service of Summons enclosed herein.

I affirm that this Notice of Lawsuit and Request for Waiver of Service of Summons is being sent to you on behalf of the Plaintiff on this day of

Signature of plaintiff's attorney

or

Unrepresented plaintiff

WAIVER OF SERVICE OF SUMMONS

To: (Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of (caption of action), which is case number (docket number) in the (name of court) of the State of Georgia in and for the County of (county). I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me. I understand that I am entitled to consult with my own attorney regarding the consequences of my signing this waiver.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by the Georgia Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer is not served upon you within 60 days after the date this waiver was sent, or within 90 days after that date if the request for the waiver was sent outside the United States.

This day of , .

(Signed)

(Printed or typed name of defendant)

as (title)

of (name of corporate defendant, if any)

NOTICE OF DUTY TO AVOID UNNECESSARY

COSTS OF SERVICE OF SUMMONS

Subsection (d) of Code Section 9-11-4 of the Official Code of Georgia Annotated requires certain parties to cooperate in saving unnecessary costs of service of the summons and the pleading. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for such defendant's failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and also must file a signed copy of the response with the court. If the answer is not served within this time, a default judgment may be taken against that defendant.

By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

9-11-5 Service and filing of pleadings subsequent to the original complaint and other papers

(a) Service -- When required. Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided by subsection (b) of this Code section.

(b) Same -- How made. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the person to be served or by mailing it to the person to be served at the person's last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the person to be served or leaving it at the person to be served's office with a person in charge thereof or, if such office is closed or the person to be served has no office, leaving it at the person to be served's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. "Delivery of a copy" also means transmitting a copy via e-mail in portable document format (PDF) to the person to be served using all e-mail addresses provided pursuant to subsection (f) of this Code section and showing in the subject line of the e-mail message the words "STATUTORY ELECTRONIC SERVICE" in capital letters. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his or her employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(c) Same -- Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.

(e) "Filing with the court" defined. The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(f) Electronic service of pleadings.

(1) A person to be served may consent to being served with pleadings electronically by:

(A) Filing a notice of consent to electronic service and including the person to be served's e-mail address or addresses in such pleading; or

(B) Including the person to be served's e-mail address or addresses in or below the signature block of the complaint or answer, as applicable to the person to be served.

(2) A person to be served may rescind his or her election to be served with pleadings electronically by filing and serving a notice of such rescission.

(3) If a person to be served agrees to electronic service of pleadings, such person to be served bears the responsibility of providing notice of any change in his or her e-mail address or addresses.

(4) If electronic service of a pleading is made upon a person to be served, and such person certifies to the court under oath that he or she did not receive such pleading, it shall be presumed that such pleading was not received unless the serving party disputes the assertion of nonservice, in which case the court shall decide the issue of service of such pleading.

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Part Three: Federal Law

Title III of Consumer Credit Protection Act (15 USC Chapter 41, Subchapter II - RESTRICTIONS ON GARNISHMENT)

§ 1671. Congressional findings and declaration of purpose

(a) Disadvantages of garnishment

The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) Necessity for regulation

On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

§ 1672. Definitions

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

§ 1673. Restriction on garnishment

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

- (1) The restrictions of subsection (a) of this section do not apply in the case of
 - (A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.
 - (B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.
 - (C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

- (A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and
- (B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) Termination of employment

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Penalties

Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

§ 1675. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673 (a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673 (a) and (b)(2) of this title.

§ 1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

§ 1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

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Debt Collection Improvement Act

31 USC § 3720D – Garnishment

(a) Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

(b) In carrying out any garnishment of disposable pay of an individual under subsection (a), the head of an executive, judicial, or legislative agency shall comply with the following requirements:

(1) The amount deducted under this section for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual.

(2) The individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the head of the executive, judicial, or legislative agency, informing the individual of—

(A) the nature and amount of the debt to be collected;

(B) the intention of the agency to initiate proceedings to collect the debt through deductions from pay; and

(C) an explanation of the rights of the individual under this section.

(3) The individual shall be provided an opportunity to inspect and copy records relating to the debt.

(4) The individual shall be provided an opportunity to enter into a written agreement with the executive, judicial, or legislative agency, under terms agreeable to the head of the agency, to establish a schedule for repayment of the debt.

(5) The individual shall be provided an opportunity for a hearing in accordance with subsection (c) on the determination of the head of the executive, judicial, or legislative agency concerning—

(A) the existence or the amount of the debt, and

(B) in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), the terms of the repayment schedule.

(6) If the individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of the individual until the individual has been reemployed continuously for at least 12 months.

(c)

(1) A hearing under subsection (b)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (b)(2), and in accordance with such procedures as the head of the executive, judicial, or legislative agency may prescribe, files a petition requesting such a hearing.

(2) If the individual does not file a petition requesting a hearing prior to such date, the head of the agency shall provide the individual a hearing under subsection (a)(5)¹ upon request, but such hearing need not be provided prior to issuance of a garnishment order. (3) The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

(d) The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

(e)

(1) An employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action.

(2) The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

(f)

(1) The employer of an individual—

(A) shall pay to the head of an executive, judicial, or legislative agency as directed in a withholding order issued in an action under this section with respect to the individual, and

(B) shall be liable for any amount that the employer fails to withhold from wages due an employee following receipt by such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages.

(2)

(A) The head of an executive, judicial, or legislative agency may sue an employer in a State or Federal court of competent jurisdiction to recover amounts for which the employer is liable under paragraph (1)(B).

(B) A suit under this paragraph may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period.

(3) Notwithstanding paragraphs (1) and (2), an employer shall not be required to vary its normal pay and disbursement cycles in order to comply with this subsection.

(g) For the purpose of this section, the term "disposable pay" means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by any other law to be withheld.

(h) The Secretary of the Treasury shall issue regulations to implement this section.

¹ This may be a typographical error in the statute. It probably should refer to subsection "(b)(5)".

Department of Treasury Regulations (45 C.F.R. PART 32—ADMINISTRATIVE WAGE GARNISHMENT)

§ 32.1 Purpose and scope.

(a) Purpose. This part prescribes the standards and procedures for the Department to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debts owed to the United States.

(b) Authority. These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury Administrative Wage Garnishment Regulations at 31 CFR 285.11.

(c) Scope.

(1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a delinquent non-tax debt owed to the United States and to all officers or employees of the Department authorized to collect such debt.

(2) This part shall apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with part 30 of this title, or other applicable law or regulation.

(4) The receipt of payments pursuant to this part does not preclude the Department from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States. The Department may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this part requires the Department to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 32.2 Definitions.

In this part, unless the context otherwise requires:

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Certificate of service means a certificate signed by an employee of the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom it is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of money, funds, or property that has been determined by the Secretary to be owed to the United States by an individual, including debt administered by a third party as an agent of the Federal Government. A debt or claim includes, but is not limited to: amounts owed on account of loans made, insured or guaranteed by the Federal Government, including any deficiency or difference between the price obtained by the Federal Government upon selling the property and the amount owed to the Federal Government; overpayments to program beneficiaries; any amount the Federal Government is authorized by statute to collect for the benefit of any person; the unpaid share of any non-Federal partner in a program involving a Federal payment, including a matching or cost-sharing payment of the non-Federal partner; any fine, civil penalty or assessment; and other amounts or money or property owed to the Federal Government.

Debtor means an individual who owes a delinquent non-tax debt to the United States.

Delinquent debt means any non-tax debt that has not been paid by the date specified in the Department's initial written demand for payment, or applicable payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, "delinquent" and "overdue" have the same meaning.

Department means the United States Department of Health and Human Services, including each of its Operating Divisions and Regional Offices.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

Hearing means a review of the documentary evidence concerning the existence or amount of a debt, or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

Hearing official means any qualified individual, as determined by the Secretary, including a Departmental Appeals Board administrative law judge.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within the Department.

Withholding order for purposes of this part means "Wage Garnishment Order (SF329B)." Also for purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 32.3 General rule.

(a) Except as provided in paragraph (b) of this section, whenever a delinquent debt is owed by an individual, the Secretary, or another federal agency collecting a debt on the Department's behalf (See 45 CFR part 30), may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(b) The Secretary may not garnish the wages of a debtor who the Secretary knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the Secretary of the circumstances surrounding an involuntary separation from employment.

§ 32.4 Notice.

(a) Notice requirements. At least 30 days before the initiation of garnishment proceedings, the Secretary shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

- (1) The nature and amount of the debt;
- (2) The intention of the Secretary to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;
- (3) The debtor's right—
 - (i) To inspect and copy Department records related to the debt;
 - (ii) To enter into a written repayment agreement with the Department under terms agreeable to the Department;
 - (iii) To a hearing, in accordance with §32.5, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the debtor is not entitled to a hearing concerning the proposed repayment schedule if the terms were established by written agreement pursuant to paragraph (a)(3)(ii) of this section; and
- (4) The time frames within which the debtor may exercise his or her rights.

(b) The Secretary will keep a copy of the dated notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.5 Hearing.

(a) In general. Upon timely written request of the debtor, the Secretary shall provide a hearing, which at the Department's option may be oral or written, concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under §32.4(a)(3)(ii).

(b) Request for hearing.

- (1) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes supports the debtor's position. Supporting documentation identified by the debtor should be attached to the request.
- (2) Effect of timely request. Subject to paragraph (j) of this section, if the debtor's written request is received on or before the 15th business day following the mailing of the written notice required under this part, a withholding order shall not

be issued under §32.6 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (g) and (h) of this section has been rendered.

(3) Failure to timely request a hearing. If the debtor's written request is received after the 15th business day following the mailing of the written notice required under this part, the Secretary shall provide a hearing to the debtor. However, the Secretary shall not delay the issuance of a withholding order unless the Secretary determines that the delay in submitting such request was caused by factors beyond the control of the debtor, or the Secretary receives information that the Secretary determines justifies a delay or cancellation of the withholding order.

(c) Oral hearing.

(1) For purposes of this section, a debtor shall be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines an oral hearing is appropriate, the hearing official will establish the date, time and location of the hearing. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(d) Paper hearing.

(1) If the hearing official determines an oral hearing is not required by this section, the hearing official shall afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(2) The hearing official shall notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(e) Burden of proof.

(1) The Secretary has the initial burden of proving the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount is incorrect. When challenging the terms of a repayment schedule, the debtor must establish by a preponderance of the evidence that the terms of the repayment schedule are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(f) Record. The hearing official shall maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(g) Date of decision.

(1) The hearing official shall issue a written decision, as soon as practicable, but no later than sixty (60) days after the date on which the request for the hearing was received by the Department.

(2) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(ii) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(h) Content of decision. The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(i) Final agency action. The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701 et seq.

(j) Failure to appear. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

§ 32.6 Withholding order.

(a) Unless the Secretary receives information that the Secretary determines justifies a delay or cancellation of a withholding order, the Secretary shall send, by first class mail, an SF-329A "Letter to Employer & Important Notice to Employer," an SF-329B "Wage Garnishment Order," an SF-329C "Wage Garnishment Worksheet," and an SF-329D "Employer Certification," to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing, i.e., within 15 business days after mailing the notice required under this part, or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Secretary to proceed with garnishment.

(b) The Secretary shall keep a copy of the dated letter to the employer and a copy of the wage garnishment order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.7 Certification by employer.

The employer must complete and return the SF-329D, "Employer Certification" to the Department within 20 days of receipt.

§ 32.8 Amounts withheld.

(a) After receipt of a withholding order issued under this part, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF-329C "Wage Garnishment Worksheet" to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Maximum allowable garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c)

(1) Except as provided in paragraph (c)(2) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part shall have priority over other withholding orders that are served later in time.

(2) Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this part.

(3) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section, or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(d) If the debtor owes more than one debt to the Department, the Secretary may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(e) An amount greater than that set forth in paragraphs (b) or (c) of this section may be withheld upon the written consent of the debtor.

(f) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this part.

(g) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(h) Any assignment or allotment by an employee shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(i) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Secretary to discontinue wage withholding.

(j) The withholding order, SF-329B "Wage Garnishment Order," sent to the employer under §32.6, requires the employer to commence wage withholding on the first pay day after the employer receives the order. However, if the first pay day is within 10 days after receipt of the order, the employer may begin deductions on the second pay day.

(k) An employer may not discharge, refuse to employ, or take disciplinary action against any debtor as a result of the issuance of a withholding order under this part.

[68 FR 15093, Mar. 28, 2003; 68 FR 24052, May 6, 2003]

§ 32.9 Financial hardship.

(a) A debtor whose wages are subject to a withholding order may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting such a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Secretary shall consider any information submitted in accordance with this part.

(c) If a financial hardship is found, the Secretary shall downwardly adjust, by an amount and for a period of time established by the Secretary, the amount garnished to reflect the debtor's financial condition. The Secretary will notify the employer of any adjustments to the amount to be withheld.

§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§32.6 and 32.8, plus attorney's fees, costs, and, if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding deemed to occur if from a debtor whose paragraph (c) of this section, termination of the collection action will be a period of one (1) year the Department does not receive any payments wages were subject to a garnishment order issued under this part.

Provisions to Garnish Social Security or Veterans Benefits

(Veterans Benefits Generally Cannot Be Garnished) 38 USC § 5301 - Nonassignability and exempt status of benefits

(a)

(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(3)

(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary

may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against

(1) any person other than the indebted beneficiary or the beneficiary's estate; or
(2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)

(1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101 (5) of title 37) has tried under section 3711 (a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)

(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716 (a) of title 31—

- (i) the term “records of the agency” shall be considered to refer to the records of the department of the Secretary concerned; and
- (ii) the term “agency” in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

- (1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and
 - (2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person’s eligibility for such pension or compensation,
- the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

(Social Security Benefits Generally Cannot Be Garnished) 42 USC § 407 - Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person’s representative payee.

(Child Support or Alimony Exception) 42 USC § 659 CONSENT BY UNITED STATES TO INCOME WITHHOLDING, GARNISHMENT, AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS

(a) Consent to support enforcement

Notwithstanding any other provision of law (including section 407 of this title and section 5301 of title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

(b) Consent to requirements applicable to private person

With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of this title, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) of this section shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.

(c) Designation of agent; response to notice or process

(1) Designation of agent

The head of each agency subject to this section shall—

(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and

(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

(2) Response to notice or process

If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of this title, or is effectively served with any order, process, or interrogatory, with respect to an individual's child support or alimony payment obligations, the agent shall—

(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State

procedures, comply with all applicable provisions of section 666 of this title; and

(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, withhold available sums in response to the order or process, or answer the interrogatory.

(d) Priority of claims

If a governmental entity specified in subsection (a) of this section receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

(1) support collection under section 666 (b) of this title must be given priority over any other process, as provided in section 666 (b)(7) of this title;

(2) allocation of moneys due or payable to an individual among claimants under section 666 (b) of this title shall be governed by section 666 (b) of this title and the regulations prescribed under such section; and

(3) such moneys as remain after compliance with paragraphs (1) and (2) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(e) No requirement to vary pay cycles

A governmental entity that is affected by legal process served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

(f) Relief from liability

(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) of this section with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

(g) Regulations

Authority to promulgate regulations for the implementation of this section shall, insofar as this section applies to moneys due from (or payable by)—

(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), [1] and (3) the judicial branch of the

Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

(h) Moneys subject to process

(1) In general

Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) compensation payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit as defined in section 428 (h)(3) of this title) or other payments—

(I) under the insurance system established by subchapter II of this chapter;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide "black lung" benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;

(iii) worker's compensation benefits paid or payable under Federal or State law;

(iv) benefits paid or payable under the Railroad Retirement System, [1] and

(v) special benefits for certain World War II veterans payable under subchapter VIII of this chapter; but

(B) do not include any payment—

(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual;

(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, as prescribed by the Secretaries concerned (defined by section 101 (5) of title 37) as necessary for the efficient performance of duty; or

(iii) of periodic benefits under title 38, except as provided in subparagraph (A)(ii)(V).

(2) Certain amounts excluded

In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

- (A) are owed by the individual to the United States;
- (B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;
- (C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);
- (D) are deducted as health insurance premiums;
- (E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or
- (F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(i) Definitions

For purposes of this section—

(1) United States

The term “United States” includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the Federal Government, the United States Postal Service, the Postal Regulatory Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.

(2) Child support

The term “child support”, when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief.

(3) Alimony

(A) In general

The term “alimony”, when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes

separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(B) Exceptions

Such term does not include—

- (i) any child support; or
- (ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(4) Private person

The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.

(5) Legal process

The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment—

(A) which is issued by—

- (i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;
- (ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or
- (iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.

(Court-ordered Victim Restitution Exception) 18 USC § 3613 - CIVIL REMEDIES FOR SATISFACTION OF AN UNPAID FINE

(a) Enforcement.— The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and

(3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

(b) Termination of Liability.— The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.

(c) Lien.— A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, or an order of restitution made pursuant to sections [1] 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b). (d) Effect of Filing Notice of Lien.— Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

(e) Discharge of Debt Inapplicable.— No discharge of debts in a proceeding pursuant to any chapter of title 11, United States Code, shall discharge liability to pay a fine pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding.

(f) Applicability to Order of Restitution.— In accordance with section 3664 (m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

(Unpaid federal taxes exception for IRS levy) 26 USC § 6334(c) Property exempt from levy

(a) Enumeration

There shall be exempt from levy—

(1) Wearing apparel and school books

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects

So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$6,250 in value;

(3) Books and tools of a trade, business, or profession

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$3,125 in value.

(4) Unemployment benefits

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) Undelivered mail

Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Judgments for support of minor children

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income

Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during

such period does not exceed the applicable exempt amount determined under subsection (d).

(10) Certain service-connected disability payments

Any amount payable to an individual as a service-connected (within the meaning of section 101 (16) of title 38, United States Code) disability benefit under—

(A) subchapter II, III, IV, V,, [1] or VI of chapter 11 of such title 38, or (B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

(11) Certain public assistance payments

Any amount payable to an individual as a recipient of public assistance under—

(A) title IV or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

(12) Assistance under Job Training Partnership Act

Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

(13) Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy

(A) Residences in small deficiency cases

If the amount of the levy does not exceed \$5,000—

(i) any real property used as a residence by the taxpayer; or

(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(B) Principal residences and certain business assets

Except to the extent provided in subsection (e)—

(i) the principal residence of the taxpayer (within the meaning of section 121); and

(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

(b) Appraisal

The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary shall summon three disinterested individuals who shall make the valuation.

(c) No other property exempt

Notwithstanding any other law of the United States (**including section 207 of the Social Security Act**), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(d) Exempt amount of wages, salary, or other income

(1) Individuals on weekly basis

In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount.

(2) Exempt amount

For purposes of paragraph (1), the term “exempt amount” means an amount equal to—

(A) the sum of—

(i) the standard deduction, and

(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

(B) 52.

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption.

(3) Individuals on basis other than weekly

In the case of any individual not described in paragraph (1), the amount of the wages, salary, and other income payable to or received by him during any applicable pay period or other fiscal period (as determined under regulations prescribed by the Secretary) which is exempt from levy under subsection (a)(9) shall be an amount (determined under such regulations) which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as he would have under paragraph (1) if (during such period of time) he were paid or received such wages, salary, and other income on a regular weekly basis.

(e) Levy allowed on principal residences and certain business assets in certain circumstances

(1) Principal residences

(A) Approval required

A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

(B) Jurisdiction

The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

(2) Certain business assets

Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

(A) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property; or

(B) the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer’s other assets subject to collection are

insufficient to pay the amount due, together with expenses of the proceedings.

(f) Levy allowed on certain specified payments

Any payment described in subparagraph (B) or (C) of section 6331 (h)(2) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331 (h).

(g) Inflation adjustment

(1) In general

In the case of any calendar year beginning after 1999, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1 (f)(3) for such calendar year, by substituting “calendar year 1998” for “calendar year 1992” in subparagraph (B) thereof.

(2) Rounding

If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(Current year federal income tax liability) 26 USC § 3402(P)

...

(p) Voluntary withholding agreements

(1) Certain Federal payments

(A) In general

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

(B) Amount withheld

The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1 (c), or such other percentage as is permitted under regulations prescribed by the Secretary.

(C) Specified Federal payments

For purposes of this paragraph, the term “specified Federal payment” means—

(i) any **payment of a social security benefit** (as defined in section 86 (d)),

(ii) any payment referred to in the second sentence of section 451

(d) which is treated as insurance proceeds,

(iii) any amount which is includible in gross income under section 77 (a), and

(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.

(D) Requests for withholding

Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

(2) Voluntary withholding on unemployment benefits

If, at the time a payment of unemployment compensation (as defined in section 85 (b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 10 percent of such payment.

(3) Authority for other voluntary withholding

The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments

Pension

Disability Benefits

Unemployment

45 U.S.C. § 231m(a) (Railroad Retirement Act);

The maximum that the Defense Finance & Accounting Service (DFAS) will garnish, outlined in 5 CFR §581.402, is the following:

50% if the servicemember is providing more than half the support to other dependents not covered by the order.

55% if the servicemember is providing more than half the support to other dependents not covered by the order, but has a support arrearage.

60% if the servicemember is not providing more than half the support to other dependents not covered by the order.

65% if the servicemember is not providing more than half the support to other dependents not covered by the order, but has a support arrearage.

[END OF STATUTORY SUPPLEMENT]