**South Carolina General Assembly**

120th Session, 2013-2014

**H. 3824**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Sandifer

Document Path: l:\council\bills\ms\7156ahb13.docx

Introduced in the House on March 19, 2013

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Garnishment

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/19/2013 House Introduced and read first time ([House Journal‑page 18](file:///h:\HJ%20Archive\2013\03-19-13.docx))

3/19/2013 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 18](file:///h:\HJ%20Archive\2013\03-19-13.docx))

**VERSIONS OF THIS BILL**

[3/19/2013](file:///p:\pprever\2013-14\3824_20130319.docx)

**A** **BILL**

TO AMEND SECTION 37‑5‑104, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GARNISHMENT, SO AS TO ALLOW GARNISHMENT FOR A DEBT ARISING FROM A CONSUMER CREDIT SALE, CONSUMER LEASE, CONSUMER LOAN, OR CONSUMER RENTAL‑PURCHASE AGREEMENT AND PROVIDE THAT THE GARNISHMENT ACTION MUST BE BROUGHT IN MAGISTRATES COURT; BY ADDING SECTIONS 15‑19‑120, 15‑19‑130, 15‑19‑140, AND 15‑19‑150 ALL SO AS TO DEFINE NECESSARY TERMS, PROVIDE A PROCEDURE FOR THE GARNISHMENT OF WAGES UNDER CERTAIN CIRCUMSTANCES, AND PROVIDE THAT GARNISHMENT IS SUBJECT TO SPECIFIC DELINEATED LIMITATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 37‑5‑104 of the 1976 Code is amended to read:

“Section 37‑5‑104. ~~With respect to a debt arising from a consumer credit sale, a consumer lease, a consumer loan, or a consumer rental‑purchase agreement, regardless of where made, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings~~ A creditor upon obtainment of a judgment allowing such, may attach to unpaid earnings of the debtor by garnishment for a debt arising from a consumer credit sale, consumer lease, consumer loan, or consumer rental‑purchase agreement made within this State, pursuant to the method prescribed in Chapter 19, Title 15. The garnishment action must be maintained in magistrates court and is limited to recovery of the maximum amount allowable in magistrates court pursuant to Section 22‑3‑10. The recovery must include the amount of the judgment and all costs and charges associated with the judgment and garnishment up to the maximum amount allowable in magistrates court pursuant to Section 22‑3‑10.”

SECTION 2. Article 1, Chapter 19, Title 15 of the 1976 Code is amended by adding:

“Section 15‑19‑120. (A) As used in this section, the term:

(1) ‘Garnishment’ means a legal procedure by which a creditor can collect what a debtor owes by reaching the debtor’s earnings which are distributed by the garnishee.

(2) ‘Garnishee’ means a person including, but not limited to, the employer of the debtor who distributes the earnings of the debtor which are subject to an attachment by a creditor.

(3) ‘Disposable earnings’ means that part of the earnings of a debtor remaining after the deduction from those earnings of any amount required by law to be withheld.

(4) ‘Earnings’ means compensation paid or payable for personal services performed by a debtor in the regular course of business including, but not limited to, compensation designated as income, wages, tips, salary, commission or a bonus. The term includes compensation received by a debtor that is in the possession of the debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the debtor.

(B) The maximum amount of the aggregate disposable earnings of a debtor which are subject to garnishment may not exceed:

(1) twenty‑five percent of the debtor’s disposable earnings for the relevant workweek; or

(2) the amount by which the debtor’s disposable earnings for that week exceed fifty times the federal minimum hourly wage prescribed in section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. Section 206(a)(1), in effect at the time the earnings are payable, whichever is less.

(C) The restrictions of subsection (B) do not apply in the case of a:

(1) court order for the support of another person;

(2) court order of bankruptcy; or

(3) debt due for state or federal taxes.

(D) Except as otherwise provided in this subsection, the maximum amount of the aggregate disposable earnings of a debtor for any workweek which are subject to garnishment to enforce an order for the support of another person may not exceed:

(1) fifty percent of the debtor’s disposable earnings for that week if the debtor is supporting a spouse or child other than the spouse or child for whom the order of support was rendered; or

(2) sixty percent of the debtor’s disposable earnings for that week if the debtor is not supporting a spouse or child.

If the garnishment is to enforce a previous order of support with respect to a period occurring at least twelve weeks before the beginning of the workweek, the limits which apply to the situations described in items (1) and (2) are fifty‑five percent and sixty‑five percent, respectively.”

SECTION 3. Article 1, Chapter 19, Title 15 of the 1976 Code is amended by adding:

“Section 15‑19‑130. (A) If the garnishee indicates in his answer to interrogatories that he is the employer of the debtor, the writ of garnishment served on the garnishee is deemed to continue for one hundred eighty days or until the amount demanded in the writ is satisfied, whichever occurs earlier.

(B) A garnishee is entitled to a fee from the debtor of three dollars per pay period, not to exceed twelve dollars per month, for each withholding made of the debtor’s earnings. This subsection does not apply to the first pay period in which the debtor’s earnings are garnished.

(C) If the debtor’s employment by the garnishee is terminated before the writ of garnishment is satisfied, the garnishee:

(1) is liable only for the amount of earned but unpaid, disposable earnings that are subject to garnishment; and

(2) shall provide the creditor or the creditor’s attorney with the last known address of the debtor and the name of any new employer of the debtor, if known by the garnishee.

(D) The creditor who caused the writ of garnishment to be issued shall prepare an accounting and provide a report to the debtor, the sheriff, and each garnishee every one hundred eighty days which includes, but is not limited to, the amount owed by the debtor, the costs and fees allowed, and any accrued interest and costs on the judgment. The report must provide notice to the debtor of the debtor’s right to request a hearing to dispute any accrued interest, fee, or other charge. The creditor must submit this accounting with each subsequent application for writ made by the creditor concerning the same debt.”

SECTION 4. Article 1, Chapter 19, Title 15 of the 1976 Code is amended by adding:

“Section 15‑19‑140. (A) Without legal justification, if an employer of the debtor refuses to withhold earnings of the debtor demanded in a writ of garnishment or knowingly misrepresents the earnings of the debtor, the court may order the employer to appear and show cause why the employer should not be subject to the penalties provided in subsection (B).

(B) After a hearing upon the order to show cause, if the court determines that an employer, without legal justification, refused to withhold the earnings of a debtor demanded in a writ of garnishment or knowingly misrepresented the earnings of the debtor, the court shall order the employer to pay the creditor, if the creditor has received a judgment against the debtor, the amount of arrearages caused by the employer’s refusal to withhold or the employer’s misrepresentation of the debtor’s earnings. In addition, the court may order the employer to pay the creditor punitive damages of not more than one thousand dollars for each pay period in which the employer has, without legal justification, refused to withhold the debtor’s earnings or has misrepresented the earnings.”

SECTION 5. Article 1, Chapter 19, Title 15 of the 1976 Code is amended by adding:

“Section 15‑19‑150. It is unlawful for an employer to discharge or discipline an employee exclusively because the employer is required to withhold the employee’s earnings pursuant to a writ of garnishment.”

SECTION 6. This act takes effect upon approval by the Governor.

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