Helping Georgians Manage Garnishment Actions

Georgia Watch

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EXECUTIVE SUMMARY

Being Poor Can Cost You

According to Georgia Attorney General Chris Carr, the number one consumer protection complaint to the Department of Law in 2020 was debt issues.[1] For middle and low-income families, basics like housing, healthcare, childcare, and putting food on the table have become a financial balancing act. Georgia is one of the top four states for personal bankruptcy filings, 67% above the national average.[2] With hardworking families already struggling to make ends meet, wage and bank garnishment are more bricks on the scale of the debt trap cycle. [3]

In 2019, the Administrative Office of the Courts of Georgia tracked 59,560 garnishment case filings—an increase of over 10,000 since 2016. Now, with the unprecedented challenges mounted on Georgians from the pandemic, more protections against garnishment are vital to ensure their financial stability. Moratoriums on debt, mortgage, and rent collection have revealed that millions of Americans juggle multiple forms of debt.[4] One missed payment and a family risks the cascading effect of defaulting on other loans. The Federal Reserve Bank of New York found that those in mortgage forbearance reduced their credit card debt at more than double the amount of those not in forbearance during the pandemic.[5] In other words, with a pause on their mortgage payments, low-income borrowers diverted those funds to pay down more debt.[6] Hundreds of thousands of Georgians rely on multiple forms of debt to ensure their families have access to basic needs. We need to ensure a financial emergency does not send them spiraling.

State exemption laws are a fundamental safeguard designed to protect consumers and their families from poverty, allowing them to achieve financial stability. But in a recent report from the National Consumer Law Center, Georgia has some of the weakest protections in the country, receiving an F rating for the state's failure to meet even the most basic standards.

This paper provides recommendations for state law amendments to help Georgians pay off their debt while still maintaining a livable wage. The policy recommendations that Georgia Watch urges legislators to adopt include:

- Setting the cutoff floor of earnings per week protected from garnishment to a more realistic $362.50 (50x the federal minimum wage); currently, the floor is $217.50 (30x the federal minimum wage);
- Setting the amount of wages that can be garnished from 25% to 15%.*
  - *Preferably setting the garnishment amount to 15% of those earnings that exceed the cutoff floor; and
- Creating a blanket exemption of $4,500 for consumer bank accounts to ensure Georgians can pay their bills and have access to emergency funds.

Introduction

"The system for resolving disputes about consumer debt is broken."

– The Federal Trade Commission[7]

In 2015, the U.S. District Court for the Northern District of Georgia ruled Georgia's garnishment statute partially unconstitutional for failure to provide fundamental due process protections.[8] In 2016, the Georgia General Assembly enacted House Bill 255 to replace that section of the Georgia Code and protect Georgians' rights.

In 2020, Georgia Governor Brian Kemp signed Senate Bill 433 into law, modifying the garnishment code to provide more favorable processes for creditors to file and sustain garnishment actions.[9] In the current "post-pandemic economy," we urge Georgia legislators to swing the pendulum back to protect its citizens from mounting debt and ensure they can financially survive a garnishment action.[10]

Georgia's wage garnishment practices do not protect living wages.

In the most extensive garnishment studies provided to the public, Automatic Data Processing (ADP) reported that U.S. citizens aged 35 to 44 had the highest garnishment rate at 10.5%; this range is the "age of peak debt load, child-rearing, and divorce."[11] ADP also found that some of the highest rates of garnishment were of employees in the Transportation, Manufacturing, and Construction industries—in Georgia, these industries account for 24% of its workforce.[12] Rather than further debilitate hardworking Georgians, we must enable them to pay back their debt.

! Our neighbors in North Carolina, South Carolina, and a few cities over in Texas do not permit wage garnishment for *any* consumer debt.[13] Article 16, Section 28 of the Texas Constitution prohibits it.[14]

Many forms of debt are not taken on by choice. 26% of Americans reported they could not pay for basic needs like food, heat, or rent due to medical debt issues.[15] Medical debt makes up more than 50% of collection items on credit reports, and it is the number one reason people file for bankruptcy.[16] 37% of individuals with medical debt issues have used their savings to pay for those debts, and 31% have taken on credit card debt to stay afloat.[17]

"I'd rather pay a hospital bill than a funeral bill for you," said Brigitte Cook's husband. But all Brigitte could think was, "We can't take another bill. We're going to lose the house. How am I going to pay for this?"[18]

- Georgia has one of the highest rates, 13.4%, of those living without health insurance.[19]
- 12% of Georgians are in the "coverage gap"—they do not qualify for Medicaid or meet the minimum tax credit amount to utilize the ACA marketplace.[20]

> "There is this new group of people who, on paper, look like they should be able to afford their bills… They're middle-class, they have relatively good credit ratings, they're not transient. But they have these big deductibles, and they can't afford their bills."
>
> -Craig Antico, founder of the nonprofit RIP Medical Debt[21]

A. Credit Bureaus Announce Changes to Medical Debt Reporting

The Consumer Financial Protection Bureau (CFPB) is examining whether it is appropriate for medical debt to appear on consumers' credit reports.[22] In response to these rising criticisms of medical debt reporting, the three main nationwide credit reporting agencies — Equifax, Experian, and TransUnion — have altered how they will report medical debt.[23]

Through the Medical Collections Reporting Change, all paid medical debts will be removed from credit reports beginning in July 2022. Medical debt shall only be placed on a credit report one year after the initial invoice — an increase from the initial six-month reporting period. Additionally, all medical bills less than $500 will no longer be included on credit reports in 2023. The credit reporting agencies anticipate that these changes will remove nearly 70% of medical debt from credit reports, positively affecting the credit scores of millions of consumers.

Although two-thirds of medical debt collections on credit reports will no longer be reported, the Medical Collections Reporting Change will likely have a varied geographic and socioeconomic impact.[24] Consumers living in the northern and eastern portions of the United States are more likely to have medical debt below $500 in collections, while consumers in the southern and western portions are more likely to have medical debt above $500 in collections. As a result, the northern and eastern portions of the U.S. will benefit more from the Medical Collections Reporting Changes than the southern and western portions of the United States.

Furthermore, lower-income residents in Black or Hispanic census tracts are more likely to have medical bills higher than $500 on their credit reports than residents of higher-income and majority-white census tracts, making them less likely to benefit from the Medical Collections Reporting Change.

With 16% of majority white communities in Georgia having medical debt in collections, compared to 20% of communities of color[1] in Georgia, further action is still required to protect consumers from predatory medical billing practices and to prohibit medical debt from being subject to garnishment.[25] The Medical Collections Reporting Change protects only a small number of Georgians. Further policy change needs to be done to protect Georgians from wage garnishment above $500 and to prohibit all garnishment of medical debt.

B. What happens when Georgians cannot afford garnishment actions?

According to the 2019 Survey of Consumer Finances by the Federal Reserve, households making under $60,000 had no more than $4,320 in their bank accounts.[26] When looking at the occupational divide for savings, those in managerial or professional jobs had $13,000 saved, while those in other occupations, like services industry, had under $3,220. Notably, the divide Is greater when considering family and housing structure. Couples with children had $7,500 saved, single persons with no children had $3,000, and single parents only $1,300. Homeowners had $10,000, while renters had only $1,640. Facing garnishment with these numbers, many Georgians take out high-cost, predatory loans, rely on community members to pass the hat, or apply for public assistance programs like Temporary Assistance for Needy Families (TANF) or the Georgia Food Stamp program.

Garnishment is the leading cause of bankruptcy filings for clients of Gwinnett Legal Aid's managing attorney Rachel Lazerus. It is the only way to put an immediate stop to garnishment.[27] **With Georgia's rate of filings at 67% above the national average, reform to garnishment practices would be a significant way to address this complex issue.**

If a debtor does not file for bankruptcy, the consequences of defaulting on a monthly payment can be severe. Defaulting on rent, utilities, or car payments can cause an entire household to lose their most basic necessities. To avoid this potential devastation, some Georgians seek help from loans, but the small-dollar loans most available to them are often "predatory loans."[28]

Predatory lenders seize opportunities to exploit the most vulnerable individuals and families in desperate need of cash to pay for housing, food, or emergency needs, like medical care or car repairs. In Georgia, car title loans can carry up to 300% interest, and installment loans charge as high as 60% annual percentage rates and fees on loans of $3,000 or less.[29]

70% of debt collection lawsuits in the past decade have resulted in default judgments.[30] Default judgments occur when a defendant fails to respond to a court's legal order—they may not be able to afford an attorney, may have not properly received notice, or do not understand what a garnishment action is. Debt collectors are aware of this gap in legal literacy, which fuels an industry in which "debt buyers" purchase old debt for pennies on the dollar, only to pursue consumers for the total amount.[31]

How Garnishment Works

A. Wage Garnishment

To pursue consumer debt through garnishment, Georgia follows the federal guidelines of deducting 25% of the defendant's disposable earnings OR the amount that exceeds $217.50 per week—whichever is less.[32] Disposable earnings are those earnings that remain after mandatory taxes and other deductions are withheld.[33] If the garnishment amount forces the debtor below 30x the federal minimum wage (30 hours multiplied by $7.25), or $217.50 per week, they cannot be garnished.

After an initial judgment determines that a debtor owes a creditor money:

1. The seizure method is determined by the creditor (wage or bank garnishment);
2. The debtor is notified of the selection; and,
3. The employer or bank is made the garnishee.
    - Wage garnishment is calculated by the employer depending on when the debtor employee is paid (weekly, bi-weekly, or monthly) and what exemptions the employee debtor has. Per OCGA 18-4-4, wage garnishments last up to three years.
    - Bank accounts can be frozen for weeks, sometimes longer—this can have devastating effects on debtors. Accounts can be frozen for days during court proceedings regardless of whether the judgment rules in favor of the creditor or debtor.

Chart 1: Current Wage Garnishment Practices
(For illustration purposes only. In many cases hours and pay will fluctuate from week to week.)

Average Yearly Wage	Disposable Earnings Per Week (After Withholdings*)	25% of weekly disposable earnings	Amount Exceeding 30x Min. Wage ($217.50)	Amount to Be Garnished (lesser of 2)	Weekly Spend After Garnishment
$16,100	$275.04	$68.76	$57.50	$57.50	$217.54
$20,000	$341.67	$85.42	124.15	$85.42	$256.24
$30,000	$512.50	$128.13	$295	$128.13	$384.37
$45,000	$768.75	$192.19	$551.25	$192.19	$576.56

Deductions vary, but the calculation simulates Federal, FICA, and State withholdings at 18% - roughly what a single person at the poverty level's base rate would be.[34]

"Debt buyer cases often end in default judgments. Half the time debtors don't know what a garnishment is or what it is about, so they don't know how to respond—especially if the debt is old. A lot of people need help because they're getting crushed. And attorneys don't have much leverage when there is already a judgment against their client."

– Cliff Dorsen, consumer law attorney at Georgia's Skaar & Feagle, LLP and member

The garnishment floor of $217.50 per week is calculated considering a full-time employee's minimum standard work week: 30 hours. Therefore, those who work more than 30 hours will be garnished below their current living standard, a standard in which they are already stretching their income. Losing 25% of their earnings can mean deciding between paying their mortgage or putting food on the table, toeing the line of the debt trap cycle.

- 56% of households in the Atlanta Metro Statistical Area are housing burdened—meaning they pay more than 30% of their income on housing.[35] These households could make $70,000 a year and still be critically impacted by a 25% garnishment action.
- To realistically meet a household's most basic needs, families need roughly twice the federal poverty threshold.[36] By 2020 calculations, this would mean a family of four with two children would need approximately $52,500 per year.[37]
- On the flip side, employers are subject to heavy penalties if they do not adequately comply with a garnishment action.[38]

In mid-September 2021, S. Butler paid a settlement to release her from a garnishment action. She was told her wages may be garnished for one paycheck cycle due to court processing but that the amount would be refunded. She was prepared for the hit to her finances for that one cycle. Only, in early October, she was garnished a second pay cycle. "My employer told me they hadn't received anything from the court saying I am no longer to be garnished—they're following procedure even though I told them about my settlement. **I have to wait for my refund of nearly $800 with rent to pay.**"

If one-fourth of adults are one $400 setback from being unable to pay their bills, how can they be expected to afford a garnishment action in its current state?[39]

B. Bank Account Garnishment

In 2014, a judgment was entered against a consumer for just over $2,000. The case was complete... only, in 2016, the *same* complaint was filed against her, this time for $3,124.47. Though her attorney listed this second filing as illegal under the Fair Debt Collection Act, the court froze the consumer's bank account to hear the case and make a determination. With her bank account frozen, the consumer was forced to sleep on friends' couches and ask for transportation. Despite these hardships, she maintained her full-time job. The court determined the filing was indeed abusive and awarded the consumer a remedy amount.

In Georgia, a bank account is not protected from being frozen during a bank garnishment action—the account owner must take some action to assert their ownership or prove that it contains exempt funds.[40] In other words, if the filing against someone is incorrect, they must *prove* this to the court while their funds are frozen.

Chart 2: Exempt from Garnishment[41]

Retirement (social security, certain retirement program funds, state pension, etc.)	**Military** (veterans benefits, etc.)	**Workers Compensation**
Government Benefits (unemployment, social security, Medicaid, aid to the blind and disabled, TANF, etc.)	**Certain Financial Accounts** (some joint account holders, certain escrow accounts held by the DoT, etc.)	**Family Support** (child support payments)
Insurance & Annuities (benefits payable to life insurance policy beneficiary, Federal Judges Survivor Annuities, etc.)	**Railroad** (railroad benefits such as retirement, disability, unemployment, etc.)	**Miscellaneous** (crime victim compensation funds, federal student loans, etc.)

With our recommended bank account exemption of $4,500, the above consumer would have been able to maintain her day-to-day life while her case proceeded. Georgians not only need and deserve access to their deposits and emergency funds, particularly before their garnishment action has been determined. They have mouths to feed and bills to pay—if they cannot cover these needs, they will fall further into financial hardship.

If a creditor wins an action for a bank garnishment, they may drain the account of all but exempt funds—leaving the debtor with little or nothing. As of December 2020, 37% of Georgians had one or more debts in collection, 47% of which were individuals in communities of color.[42] With over 1 million Earned Income Tax Credit Relief recipients, a 20% child poverty rate, and 14.4% of the population food insecure, a drained bank account is an avenue to further financial hardship.[43] With this bank garnishment practice allowance in Georgia, creditors have a workaround against the protections placed on wage garnishment.

The Garnishment Consensus

Twenty-seven states have set stronger protections against garnishment. At a minimum, they have raised the exempt disposable wage floor to 40-50x the federal minimum wage and/or capped wage garnishment at 10-15% of disposable earnings.[44] Some have blanket bank account exemptions already in place:

Chart 3: Existing Laws for Bank Garnishment that Self Execute

State	Amount Protected	Details	Enacted
California	$1,788	Changes yearly based on the minimum basic standard of adequate care for a family of four.	2019
Delaware	Complete prohibition.	Fundamentally unchanged since its enactment.	1871
Massachusetts	$2,500	Alongside a detailed list[45] of other monetary and physical property protections.	2010
New York	$3,600	240x the state or federal minimum wage, whichever is higher.	2008
Washington	$2,000	$1,000 is self-executing.	2021

In January of 2020, Alabama's Court of Appeals decided in Renter's Realty v. Ieisha Smith that Alabama citizens "have a constitutional right to protect up to $1,000 in wages … from garnishment."[46] That is—per paycheck, regardless of whether someone is paid weekly, bi-weekly, etc. Before Ieisha Smith lost her job and became homeless after the garnishment action against her, she made just enough to support her family. The decision argued that her wages were personal property and that the state's constitution protected $1,000 of said property.[47] This argument was in direct opposition to a 2015 law. Section 6-10-6.1 of the Alabama Code specified that wages were *not* personal property. However, the Alabama Court of Appeals looked to the Alabama constitution and declared the statute to represent "an unconstitutional overreach by the legislature and a violation of the separation of powers principles."[48]

Georgia's constitution exempts $1,600 of personal property from levy and sale:[49]

> ***Paragraph XXVI. Exemptions from levy and sale.*** *The General Assembly shall protect by law from levy and sale by virtue of any process under the laws of this state a portion of the property of each person in an amount of not less than $1,600.00 and shall have authority to define to whom any such additional exemptions shall be allowed; to specify the amount of such exemptions; to provide for the manner of exempting such property and for the sale, alienation, and encumbrance thereof; and to provide for the waiver of said exemptions by the debtor.*

Georgia lawmakers may look to what the Alabama Court of Appeals reasoned, that **the "purpose of the [$1,000] exemption law is to protect the debtor and his family from being deprived of the items necessary for subsistence, and possibly to prevent them from becoming a burden upon the public."**[50]

Policy Solutions & Conclusion

To protect hardworking Georgians from the debt trap cycle in the post-pandemic economy, we recommend the following changes:

- Set the cutoff floor of earnings per week protected from garnishment to a more realistic $362.50 (50x the federal minimum wage); currently, the floor is $217.50 (30x the federal minimum wage);
- Set the amount of wages that can be garnished from 25% to 15%.*
    - *Preferably set the garnishment amount to 15% of those earnings that exceed the cutoff floor; and
- Create a blanket exemption of $4,500 for consumer bank accounts to ensure Georgians can pay their bills and have access to emergency funds.

A. Wage Garnishment Protections

Right now, someone making just $20,000 per year could have as much as $341.68 garnished per month (see: Chart 1, pg. 8). To address this vulnerable bracket of people, and to ensure debt is still being paid once affordable, we recommend at a minimum lowering the amount subject to garnishment from 25% to 15%. To further protect the debtor's financial stability, we recommend garnishing only 15% of those earnings that exceed the cutoff floor. These options ensure that if a third-party debt collector buys old debt or the debtor is going through financial hardships, the garnishment action will not make debt repayment possible.

Chart 4: Wage Garnishment Reform Options

(For illustration purposes only. In many cases hours and pay will fluctuate from week to week.)

Average Yearly Wage	Disposable Earnings Per Week (After Withholdings)*	Amount Exceeding 50x Fed. Min. Wage ($362.50) Cutoff Floor	Garnishment at **15% of all funds**	Garnishment at **15% of amount *exceeding* cutoff floor**
$25,000	$427.08	$64.58	$64.06	$9.69
$35,000	$597.92	$235.42	$89.69	$35.31

*Deductions vary, but the calculation simulates Federal, FICA, and State withholdings at 18% - roughly what a single person at the poverty level's base rate would be.[51]

B. Bank Garnishment Protections

In their Model Family Financial Protection Act, The National Consumer Law Center (NCLC) recommends "$12,000 in cash, in a deposit account or other account of the debtor" to be exempt from garnishment.[52] Numerous financial outlets recommend saving anywhere from 3-9 months' worth of living expenses in case of job loss or a catastrophic health event.[53] In Georgia, the average monthly expenses for food, housing, and transportation for one person is roughly $1,500, and for a family of four is roughly $2,900.[54] From those numbers, three months of savings are $4,500 for the single person and $8,700 for the family. Our recommendation of $4,500 ensures households big and small can pay their monthly bills and have emergency funds should the worst happen during a garnishment action.

C. Conclusion

Georgia Watch believes these changes will lessen the debt burden on the public and, most importantly, help Georgians recover. Debtors do not *want* to take on more debt—they more often than not *have* to. Without increased state-level protections, Georgians will continue to experience exploitative debt collection practices, take out high-cost small-dollar loans, or file for bankruptcy, thus, continuing the debt trap cycle that impacts millions.[55]

To combat this, Georgia legislators can choose to ensure those who are garnished can afford to keep a roof over their heads while paying back their debt.

J. Laney's car was repossessed in 2009—at the time of repossession, she owed $10,000, but she received a letter stating it had been resold and thought that was the end of it. Over a decade later, in 2021, she realized her wages were suddenly being garnished for the same car. There had been a judgment on a case against her she knew nothing about. Today, from a default judgment, she owes the original amount on the car plus 12 years of interest. The amount? **$25,000.**

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