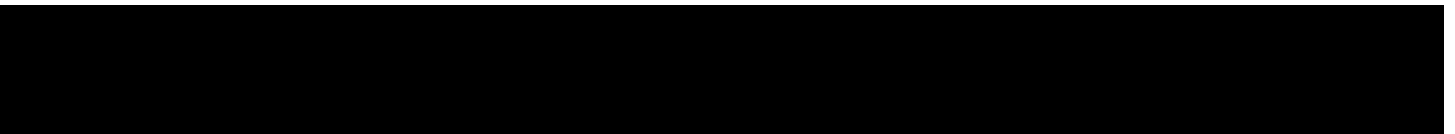




Helping Georgians Manage  
Garnishment Actions

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Georgia Watch



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# TABLE OF CONTENTS

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|                                 |    |
|---------------------------------|----|
| Executive Summary               | 1  |
| Introduction                    | 2  |
| How Garnishment Works           | 4  |
| A. Wage Garnishment             | 4  |
| B. Bank Account Garnishment     | 5  |
| The Garnishment Consensus       | 7  |
| Policy Solutions & Conclusion   | 8  |
| A. Wage Garnishment Protections | 8  |
| B. Bank Garnishment Protections | 9  |
| C. Conclusion                   | 9  |
| Endnotes                        | 10 |

# EXECUTIVE SUMMARY

## Being Poor Can Cost You

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According to Georgia Attorney General Chris Carr, the number one consumer protection complaint to the Department of Law in 2020 was debt issues.<sup>1</sup> 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.<sup>2</sup> With hardworking families already struggling to make ends meet, wage and bank garnishment are more bricks on the scale of the debt trap cycle.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> In other words, with a pause on their mortgage payments, low-income borrowers diverted those funds to pay down more debt.<sup>6</sup> 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.

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.

This paper provides real-life examples, statistics, research, and expert knowledge of garnishment practices in Georgia and how those practices impact the lives of its citizens.

# Introduction

“The system for resolving disputes about consumer debt is broken.”

– The Federal Trade Commission<sup>7</sup>

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.<sup>8</sup> 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 to creditors to file and sustain garnishment actions.<sup>9</sup> 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.<sup>10</sup>

## 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 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."<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Article 16, Section 28 of the Texas Constitution prohibits it.<sup>14</sup>

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.<sup>15</sup> Medical debt makes up more than 50% of collection items on credit reports, and it is the number one reason people file for bankruptcy.<sup>16</sup> 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.<sup>17</sup>

“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?”<sup>18</sup>

- ! Georgia has one of the highest rates, 13.4%, of those living without health insurance.<sup>19</sup>
- ! 12% of Georgians are in the “coverage gap”—they do not qualify for Medicaid and do not meet the minimum tax credit amount to utilize the ACA marketplace.<sup>20</sup>

"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<sup>21</sup>

## What happens when Georgians cannot afford garnishment actions?

Facing garnishment, many Georgians take out high cost, predatory loans, rely on members of their community to pass the hat, or apply for public assistance programs like Temporary Assistance for Needy Families (TANF), the Georgia Food Stamp program, and more.

**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.<sup>22</sup> **With Georgia's rate of filings at 67% above the national average, reform to garnishment practices would be a strong 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 available to them are often what is referred to as “predatory loans.”<sup>23</sup>

Predatory lenders seize opportunities to exploit the most vulnerable individuals and families in desperate need of cash to pay for their necessities, like housing or food, or for 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.<sup>24</sup>

70% of debt collection lawsuits in the past decade have resulted in default judgments because debtors cannot afford or understand the next steps to take.<sup>25</sup> 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 that the original lenders wrote off—only to pursue consumers for the total amount.<sup>26</sup>

# How Garnishment Works

## A. Wage Garnishment

In the pursuit of 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.<sup>27</sup> Disposable earnings are those earnings that remain after mandatory taxes and other deductions are withheld.<sup>28</sup> 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 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 may have.
  - Bank accounts are frozen during court proceedings regardless of whether the judgment rules in favor of the creditor or debtor. This can last for weeks, sometimes longer, and can have devastating effects on debtors.

### 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.<sup>29</sup>

"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 of the National Association of Consumer Advocates



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, and 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.<sup>30</sup> These households could be making \$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.<sup>31</sup> By 2020 calculations, this would mean a family of four with two children would need approximately \$52,500 per year.<sup>32</sup>
- ! On the flip side, employers are subject to heavy penalties if they do not properly comply with a garnishment action.<sup>33</sup>

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 financial setback from being unable to pay their bills, how can they be expected to afford a garnishment action at the current levels?<sup>34</sup>

## 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.<sup>35</sup> To put it another way, if the filing against someone is incorrect, they must prove this to the court while their funds are frozen.

Chart 2: Exempt from Garnishment<sup>36</sup>

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

With our recommended bank account exemption of \$4,500, the consumer on the previous page would have been able to maintain her day-to-day life while her case proceeded. Georgians not only need, but 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—and if they cannot do that, 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.<sup>37</sup> 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.<sup>38</sup> 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 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.<sup>39</sup> 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 year to year based on 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 <sup>40</sup> 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. Leisha Smith* that Alabama citizens "have a constitutional right to protect up to \$1,000 in wages ... from garnishment."<sup>41</sup> That is—per paycheck, regardless of whether someone is paid weekly, bi-weekly, etc. Before Leisha 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.<sup>42</sup> 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."<sup>43</sup>

Georgia's constitution exempts \$1,600 of personal property from levy and sale:<sup>44</sup>

**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."**<sup>45</sup>

# Policy Solutions & Conclusion

To protect hardworking Georgians from the debt trap cycle in the era of 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 even further protect the debtor's financial stability, we recommend garnishing only 15% of those earnings that exceed the cutoff floor.

### 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.<sup>46</sup>

## B. Bank Garnishment Protections

In their Model Family Financial Protection Act policy paper, The National Consumer Law Center (NCLC) recommends for "\$12,000 in cash, in a deposit account or other account of the debtor" to be exempt from garnishment.<sup>47</sup> Numerous financial outlets recommend that anywhere from 3-9 months' worth of living expenses be saved in case of job loss or a catastrophic health event.<sup>48</sup> 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.<sup>49</sup> Three months of savings comes to \$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 ensures they 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 important, help Georgians get back on their feet. Debtors do not *want* to take on more debt—they more often *have* to. Without increased state-level protections, Georgians will continue to experience exploitative debt collection practices and the need to take out high-cost small-dollar loans or file for bankruptcy, thus, continuing the debt trap cycle that impacts millions.<sup>50</sup>

Instead, Georgia legislators can choose to protect their most vulnerable citizens, and 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 had recently started being garnished for the same car—there had been a judgment on a case against her she knew nothing about. From a default judgment, she owes the original amount on the car plus 12 years of interest.

The amount now? **\$25,000.**

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55 Marietta Street NW, Suite 903  
Atlanta, GA 30303  
(404) 525-1085  
[www.georgiawatch.org](http://www.georgiawatch.org)