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DEBTOR AND CREDITOR

Garnishment Proceedings: Provide for Exemptions

CODE SECTIONS: O.C.G.A. §§ 18-4-22 (amended), 18-4-22.1
(repealed)
BILL NUMBER: HB 1098
ACT NUMBER: 1089
SUMMARY: The Act exempts certain individual
retirement accounts from garnishment
except under some conditions. The Act
changes or repeals other provisions
relating to the exemption from
garnishment of certain pension, retirement
or benefit programs.
EFFECTIVE DATE: July 1, 1990

History

Garnishment is a "statutory proceeding whereby [a] person's property ... under control of [another is] applied to payment of [that person's debts] to [a] third person by proper statutory process against debtor and garnishee."¹ Prior to the Act, Georgia recognized two statutory exemptions to the garnishment process as it is defined under the Code.² These exemptions included funds and benefits from a pension or retirement program,³ and pension programs, retirement programs and employee benefit plans under the Federal Employee Retirement Income Security Act of 1974 (ERISA).⁴ There was no statutory exemption from garnishment for an Individual Retirement Account (IRA).⁵

HB 1098

The sponsor of HB 1098 introduced the bill after being contacted by a constituent concerned that an IRA may be subject to garnishment.⁶

1. BLACK'S LAW DICTIONARY 612 (5th ed. 1979).

2. O.C.G.A. § 18-4-20 (Supp. 1988).

3. O.C.G.A. § 18-4-22 (Supp. 1988).

4. 1981 Ga. Laws 804 (formerly found at O.C.G.A. § 18-4-22.1 (1981)).

5. *But cf.* Citizens Bank v. Shingler, 173 Ga. App. 511, 326 S.E.2d 861 (1985) (IRA in non-bankruptcy situation exempt from garnishment by federal law which preempts O.C.G.A. § 18-4-22).

6. Telephone interview with Representative Denny M. Dobbs, House District No. 74 (Mar. 30, 1990) [hereinafter Dobbs Interview].

That contact prompted the as-introduced version of the bill.⁷ Subsequently, it was discovered that existing Georgia law was actually in conflict with ERISA, prompting the Senate Judiciary Committee to add the ERISA and Internal Revenue Code exemptions by reference.⁸

Prior to the Act, Code section 18-4-22(a) provided only for an exemption from garnishment of "funds or benefits from a pension or retirement program."⁹ The Act extends the exemption to such programs "as defined in 29 U.S.C. Section 1002(2)(A)¹⁰ or funds or benefits from an individual retirement account as defined in Section 408 of the United States Internal Revenue Code of 1986, as amended . . ."¹¹ The exemption under this Code section extends until such time as the funds are paid out to a member or beneficiary of the program.¹² At that time, the funds will become subject to garnishment to the extent provided in Code section 18-4-20.¹³

The exemption does not apply when the "funds or benefits are currently due and payable or transferable to a member" or beneficiary of the program,¹⁴ or when "the garnishment is based upon a judgment for alimony or for child support . . ."¹⁵ Subsection (c) of the Act clarifies that those exceptions to the exemption do not include "the attachment

7. *Id.*

8. HB 1098 (SCS), 1990 Ga. Gen. Assem.

9. 1976 Ga. Laws 1608.

10. O.C.G.A. § 18-4-22(a) (Supp. 1990). 29 U.S.C. § 1002(2)(A) provides:

Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the benefits under the plan or the method of distributing benefits from the plan. 29 U.S.C. § 1002(2)(A) (1990).

11. O.C.G.A. § 18-4-22(a) (Supp. 1990) (footnote added). I.R.C. § 408 defines individual retirement account and individual retirement annuity; specifies when accounts established by employers or certain associations of employees shall be treated like individual retirement accounts; provides for the tax treatment of distributions from an individual retirement account or individual retirement annuity and for the tax treatment of the accounts and annuities themselves; provides for the treatment of community property; provides for the treatment of custodial accounts; requires the issuance of reports by the trustee; defines and allows an increase in the maximum limitations of accounts and annuities for simplified employee pensions and requires reports for such pensions; and, defines collectibles and provides that investments in collectibles shall be treated as distributions. I.R.C. § 408 (1986).

12. O.C.G.A. § 18-4-22(a) (Supp. 1990).

13. *Id.* 1985 Ga. Laws 1632 (formerly found at O.C.G.A. § 18-4-20 (Supp. 1989) (sets forth generally what type of property is subject to garnishment).

14. O.C.G.A. § 18-4-22(b)(1) (Supp. 1990).

15. O.C.G.A. § 18-4-22(b)(2) (Supp. 1990).

or alienation of welfare benefits as defined in 29 U.S.C. Section 1002(1) in the control of an administrator or trustee.”¹⁶

Former Code section 18-4-22.1 is repealed for housekeeping purposes.¹⁷ That section provided protection to employee benefit programs identical to the protection provided pension and retirement programs in Code section 18-4-22.¹⁸

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16. O.C.G.A. § 18-4-22(c) (Supp. 1990). 29 U.S.C. § 1002 (1) (1990) states that: (1) The terms “employee welfare benefit plan” and “welfare plan” mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947....

Id.

17. Dobbs Interview, *supra* note 6.

18. 1981 Ga. Laws 804 (formerly found at O.C.G.A. § 18-4-22.1 (1982)). *See supra* notes 10–13 and accompanying text.