

9-1-1997

## DEBTOR AND CREDITOR Garnishment Proceedings: Provide Definitions; Provide Immunization and Reimbursement for Costs of Banks and Other Financial Institutions; Provide Procedures for Banks in Possession of Property

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### Recommended Citation

Dorsey E. Hopson II, *DEBTOR AND CREDITOR Garnishment Proceedings: Provide Definitions; Provide Immunization and Reimbursement for Costs of Banks and Other Financial Institutions; Provide Procedures for Banks in Possession of Property*, 14 GA. ST. U. L. REV. (1997).

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## DEBTOR AND CREDITOR

*Garnishment Proceedings: Provide Definitions; Provide Immunization and Reimbursement for Costs of Banks and Other Financial Institutions; Provide Procedures for Banks in Possession of Property*

CODE SECTIONS: O.C.G.A. §§ 18-4-20, -66, -84, -92.1, -97  
(amended)  
BILL NUMBER: HB 307  
ACT NUMBER: 347  
GEORGIA LAWS: 1997 Ga. Laws 941  
SUMMARY: The Act requires that additional information be provided by creditors to banks and other financial institutions on certain affidavits and summonses when creditors attempt to garnish funds from a debtor's account. The Act immunizes banks and other financial institutions from liability if they fail to pay money from a debtor's account if the information needed to positively identify the debtor's account is not received by them. The Act further details the procedures a bank must follow when it has property or money in its safe deposit box, which is subject to garnishment by a creditor. The Act immunizes certain association and fiduciary accounts from garnishment proceedings. The Act provides reimbursements to banks and other financial institutions for the costs they incur in turning money or property subject to garnishment over to the court.  
EFFECTIVE DATE: July 1, 1997

### *History*

Banks and other financial institutions are the backbone of Georgia's economic prosperity.<sup>1</sup> Millions of Georgians put their trust and hard-earned money into these institutions, creating huge responsibilities for the institutions.<sup>2</sup> When a customer deposits money in a checking

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1. See Telephone Interview with Joe Brannen, Georgia Bankers Association (Apr. 22, 1997).  
2. See *id.*

account, a savings account, or any other account, that customer expects the money to be available for withdrawal when needed.<sup>3</sup>

Many customers, however, fail to make good on debts owed to creditors.<sup>4</sup> Debtors often go to great lengths to avoid paying their creditors.<sup>5</sup> One tool that creditors use to secure payment of a debt is a garnishment proceeding.<sup>6</sup> Under prior law, a creditor who named a bank as a garnishee only had to provide the bank with the debtor's name, address, and amount of money owed.<sup>7</sup> After receiving this information, the bank was under a duty to locate the customer's account and pay the claimed amount owed.<sup>8</sup> The money was not paid directly to the creditor; rather it was paid into court until garnishment proceedings were complete.<sup>9</sup> Banks, being under a duty to turn over funds that were subject to garnishment, were held liable for failure to turn over money on behalf of a named defendant debtor.<sup>10</sup> The problem with this system was that banks often had several customers with the same or similar names.<sup>11</sup> Banks were required to figure out exactly which customer was the named defendant.<sup>12</sup> This placed a bank in an unfortunate position because if it turned over funds from the wrong account, it faced potential liability to its customer.<sup>13</sup> On the other hand, if the bank failed to turn the money over, claiming uncertainty as to which account was subject to garnishment, the bank faced possible sanctions from the court.<sup>14</sup>

Representative Larry Smith sponsored the bill for two primary reasons: first, to require plaintiff creditors to provide more information about defendant debtors<sup>15</sup> to ensure that banks paid money out of the

3. *See id.*

4. *See* Telephone Interview with Chris Simpson, Collection Attorney (Apr. 22, 1997) [hereinafter Simpson Interview].

5. *See id.*

6. *See id.*

7. *See* 1985 Ga. Laws 1632, § 2, at 1633 (formerly found at O.C.G.A. § 18-4-20 (1991)).

8. *See id.*

9. *See id.*

10. *See* Rob Chambers, *Investment Bankers Play Musical Chairs*, ATLANTA CONST., Apr. 4, 1997, at F2.

11. *See* Telephone Interview with Rep. Larry Smith, House District No. 109 (Apr. 22, 1997) [hereinafter Smith Interview].

12. *See id.*

13. *See id.*

14. *See* *Mobile Paint Mfg. Co., v. Johnston*, 219 Ga. App. 299, 464 S.E.2d 903 (1995). In *Mobile Paint*, the court concluded that although the garnishee bank was unable to locate an account without a social security number, tax identification number, account number, or business name, the bank was not relieved of its responsibilities under the garnishment statute to discover an account on which the judgment debtor was signatory. *Id.* at 300, 474 S.E.2d at 905.

15. *See* Smith Interview, *supra* note 11.

correct accounts;<sup>16</sup> and second, to exempt trust accounts and association accounts from garnishment proceedings.<sup>17</sup>

### HB 307

#### *Introduction*

The Georgia General Assembly referred HB 307 to the House Judiciary Committee.<sup>18</sup> The Chairman of the House Judiciary Committee then formed a subcommittee to further study and redraft the bill.<sup>19</sup> Several substantive changes were made before the bill was passed on the House floor.<sup>20</sup> After the bill was sent to the Senate, it was referred to the Senate Judiciary Committee.<sup>21</sup> The Senate Judiciary Committee also made substantive changes to the bill.<sup>22</sup> The bill was amended to strike a balance between the rights of both banks and creditors.<sup>23</sup>

#### *Definitions*

The Act protects association accounts and fiduciary accounts from most garnishment proceedings.<sup>24</sup> The Act defines an association account as "any account, or any safe-deposit box or similar property, maintained by a corporation, statutory close corporation, limited liability company, partnership, limited partnership, foundation, trust, a national, state or local government or quasi-government entity, or any other incorporated or unincorporated association."<sup>25</sup> Fiduciary accounts are defined as "any account, or any safe-deposit box, maintained by any party in a fiduciary capacity or any other party other than the defendant in garnishment. . . . [T]he 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."<sup>26</sup>

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16. *See id.*

17. *See id.*

18. *See* Final Composite Status Sheet, Mar. 28, 1997.

19. *See id.*

20. Compare HB 307, as introduced, 1997 Ga. Gen. Assem., with HB 307 (HCS), 1997 Ga. Gen. Assem.

21. *See* Final Composite Status Sheet, Mar. 28, 1997.

22. Compare HB 307 (HCS), 1997 Ga. Gen. Assem., with HB 307 (SCS), 1997 Ga. Gen. Assem.

23. *See* Smith Interview, *supra*, note 11.

24. *See* O.C.G.A. § 18-4-92.1(a) (Supp. 1997).

25. *Id.* § 18-4-92.1(c)(1)(A).

26. *Id.* § 18-4-92.1(c)(1)(B).

The Act immunizes banks from liability for failure to turn over to the court "property, money, or effects in an association account"<sup>27</sup> if that property is "subject to garnishment by reason of the fact that the defendant is an authorized signer on such association account."<sup>28</sup> The effect of this Code section fundamentally changes the garnishment law in Georgia.<sup>29</sup> Before the passage of the Act, association accounts were not immune from garnishment proceedings.<sup>30</sup> The immunity will not apply to an association account, however, if the account is being used for an unlawful or improper purpose.<sup>31</sup>

The Act also immunizes banks from liability for failure to deliver to the court "property, money, or effects in a fiduciary account"<sup>32</sup> if that property is "subject to garnishment by reason of the fact that a defendant is a fiduciary of the fiduciary account."<sup>33</sup> This immunity does not apply if "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."<sup>34</sup>

### *Safe Deposit Boxes*

The Act provides a new procedure for property belonging to a defendant debtor that is located in a garnishee's safe deposit box.<sup>35</sup> When a bank answers a summons of garnishment and possesses property in a safe-deposit box, "the garnishee shall state that the property of the defendant includes property in a safe-deposit box."<sup>36</sup> The bank must then keep the contents of the safe-deposit box until the court either releases the garnishment or requires the bank to open the safe-deposit box and deliver its contents.<sup>37</sup> If neither of these conditions are met, the bank can release the contents of the box to the defendant after "120 days from the date of filing of the answer to the summons . . . unless such time has been extended by the court."<sup>38</sup> This

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27. *Id.* § 18-4-92.1(c)(2)(A).

28. *Id.* Nor shall a garnishee be liable for failure to deliver property, money, or effects in a fiduciary account. *See id.* § 18-4-92.1(c)(2)(B).

29. *See* Simpson Interview, *supra* note 4.

30. *See id.*

31. *See* O.C.G.A. § 18-4-92.1(c)(2)(A) (Supp. 1997).

32. *Id.* § 18-4-92.1(c)(2)(C).

33. *Id.*

34. *Id.*

35. *See id.* § 18-4-84.

36. *Id.*

37. *See id.* § 18-4-84(1).

38. *Id.* § 18-4-84(2).

Code section was added to clarify the garnishment procedures when property in a safe-deposit box is subject to garnishment.<sup>39</sup>

*New Information Required in Summons of Garnishment*

Perhaps the most controversial part of the Act is the Code section that requires a plaintiff seeking garnishment to provide banks with additional information about a defendant before the bank is required to turn over funds from the defendant's account.<sup>40</sup> The Act requires a plaintiff to "state with particularity"<sup>41</sup> information that was not previously needed.<sup>42</sup> Previously, a plaintiff only had to present to a bank a summons of garnishment that listed the defendant's name, address, and amount of money owed.<sup>43</sup> Now, a plaintiff seeking garnishment must present the defendant's name and "to the extent such would reasonably enable the garnishee to answer properly the summons, all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof."<sup>44</sup> Further, the plaintiff must provide the bank with the service address and the current address of the defendant.<sup>45</sup> In addition to the name and address of the defendant, the Act requires the plaintiff to produce the "social security number or federal tax identification number of the defendant"<sup>46</sup> and the "[a]ccount, 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."<sup>47</sup>

Opponents of the Act argue that the new requirements place an impossible burden on plaintiffs because it is extremely difficult for a plaintiff to have all of this information.<sup>48</sup> While a creditor may have access to a debtor's social security number or tax number, rarely will it know a debtor's account, identification or tracking numbers.<sup>49</sup> Opponents further argue that some debtors are tricky and will do everything in their power to avoid debt collection.<sup>50</sup> These actions range from giving false information to changing personal and corporate

39. See Smith Interview, *supra* note 11.

40. See *id.*; see also Simpson Interview, *supra* note 4.

41. See O.C.G.A. § 18-4-20(i) (Supp. 1997).

42. 1985 Ga. Laws 1632 (formerly found at O.C.G.A. § 18-4-20 (1991)).

43. See Simpson Interview, *supra* note 4; 1985 Ga. Laws 1632 (formerly found at O.C.G.A. § 18-4-20 (1991)).

44. O.C.G.A. § 18-4-20(i)(1) (Supp. 1997)

45. See *id.* § 18-4-20(i)(2).

46. *Id.* § 18-4-20(i)(3).

47. *Id.* § 18-4-20(i)(4).

48. See Simpson Interview, *supra*, note 4.

49. See *id.*

50. See *id.*

names every time debtors suspect garnishment proceedings are near.<sup>51</sup> Opponents also claim that it is much easier for a bank than a plaintiff to ascertain this information by looking at records.<sup>52</sup> The Act “removes the accountability from banks and financial institutions and places an impossible burden on plaintiffs.”<sup>53</sup> One opponent stated at a committee meeting that, while it seems that the legislation protects banks, in reality it protects judgment debtors because it is too easy for the banks to avoid diligence in finding the right information or account.<sup>54</sup>

Proponents of the legislation, on the other hand, argue that the legislation is necessary to protect banks from unnecessary liability as well as to protect their goodwill.<sup>55</sup> Banks hold funds for businesses and those businesses have the right to expect that their money will be available when needed.<sup>56</sup> Representative Smith argues that this expectation will not be met if an account is mistakenly garnished because a plaintiff provided a bank with a name similar to the name of another customer.<sup>57</sup> Furthermore, because there are a number of legally recognized accounts, clarification of which accounts are subject to garnishment is necessary.<sup>58</sup>

### *Relief from Liability*

The Act provides a bank relief from liability if a plaintiff does not provide it with all of the statutorily enumerated requirements listed in subsection (i) of Code section 18-4-20.<sup>59</sup> Before the Act, a bank was held liable for failing to turn over money.<sup>60</sup> Now, in the event the information required by statute is not provided, a bank is relieved from liability if it makes a “good faith effort to locate the requested property . . . based on the information provided by the plaintiff.”<sup>61</sup> Further, in considering whether a bank should be relieved of liability, the court “shall consider and compare the accuracy and quantity of the information supplied by the plaintiff . . . 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

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51. *See id.*

52. *See* Record of Proceedings in the House Judiciary Committee (Feb. 18, 1997) (remarks by Ms. Churniak, Representative of Judgment Collectors) (available in Georgia State University College of Law Library).

53. *Id.*

54. *Id.*

55. *See* Smith Interview, *supra* note 11.

56. *See id.*

57. *Id.*

58. *See id.*

59. O.C.G.A. § 18-4-92.1(a) (Supp. 1997).

60. *See* Chambers, *supra* note 10.

61. O.C.G.A. § 18-4-92.1(a) (Supp. 1997).

systems and procedures with reasonable commercial standards prevailing in the area in which the garnishee is located.<sup>62</sup>

Proponents contend that this approach is fair and reasonable.<sup>63</sup> Banks are still required to make a good faith effort to locate a debtor in an effort to comply with the garnishment proceedings.<sup>64</sup> However, the bank will not be liable if it is unable to locate a debtor after making a good faith effort to do so.<sup>65</sup>

#### *New Form Required*

The Act also requires creditor plaintiffs to use a new and special attachment to the summons of garnishment when they are attempting to garnish defendants' funds from a bank.<sup>66</sup> The form sets forth the information required under Code section 18-4-20(i).<sup>67</sup>

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62. *Id.*

63. *See* Smith Interview, *supra* note 11.

64. *See id.*

65. *See id.*

66. O.C.G.A. § 18-4-66(7) (Supp. 1997).

67. *Id.* § 18-4-20(i)(1) to (3).