

11-8-2016

SB 255 - Garnishment Proceedings

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Recommended Citation

Amy BeMent, Kianna Hawkins & Elizabeth Wedegis, *SB 255 - Garnishment Proceedings*, 33 GA. ST. U. L. REV. 41 (2016).

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DEBTOR AND CREDITOR

Garnishment Proceedings: Amend Title 18 of the Official Code of Georgia Annotated, Relating to Debtor and Creditor, so as to Modernize, Reorganize, and Provide Constitutional Protections in Garnishment Proceedings; Provide for Definitions; Provide for an Affidavit and Summons of Garnishment, Contents, and Procedure for Garnishment; Provide for Property Being Subject to and Exempt from Garnishment; Provide for a Garnishee's Answer to a Summons of Garnishment; Provide for Garnishee Expenses; Provide for a Defendant's and Third Party's Claim and Plaintiff's Traverse to a Garnishment Proceeding; Provide for Procedure for Claims and Traverses; Provide for Default Judgment and Opening of Default Judgments; Provide for Procedures Only Applicable to Financial Institutions; Provide for Release of Garnishment; Provide for Continuing Garnishments; Provide for Continuing Garnishment for Support of Family Members; Provide for and Require the Use of Certain Forms for Garnishment Proceedings; Amend Section 50 of Article 3 of Chapter 7 of Title 44 and Section 80 of Article 5 of Chapter 12 of Title 53 of the Official Code of Georgia Annotated, Relating to Demand for Possession and Spendthrift Provisions, Respectively, so as to Correct Cross-References; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODES SECTIONS:	O.C.G.A. §§ 18-4-1 to -135 (repealed); 18-4-1 to -89 (new); 44-7-50 (amended); 53-12-80 (amended)
BILL NUMBER:	SB 255
ACT NUMBER:	325
GEORGIA LAWS:	2016 Ga. Laws 8
SUMMARY:	The Act reorganizes and modernizes Georgia's garnishment code by requiring notice of garnishment exemptions to debtors, providing a process for the resolution of exemption claims, limiting the garnishment period

for financial accounts to twenty four hours, requiring service of garnishment summons to be performed upon a registered agent of a corporation, and mandating the use of the forms provided in the Act.

EFFECTIVE DATE: May 12, 2016

History

In September of 2015, U.S. District Court Senior Judge Marvin H. Shoob started a series of events that would lead to the passage of Senate Bill (SB) 255 when he declared Georgia's garnishment statute unconstitutional in *Strickland v. Alexander*.¹ Judge Shoob found the statute unconstitutional because it failed to provide debtors with fundamental due process protections.² Specifically, the statute did not provide notice to debtors of possible exemptions from garnishments, failed to inform them about the process for claiming any applicable exemptions, and did not provide a timely process for the resolution of exemption claims.³

This pivotal court case began in 2012 after Tony Strickland filed suit against the Clerk of Court for the State Court of Gwinnett County, Richard Alexander, as well as Discover Bank ("Discover"), JPMorgan Chase ("Chase"), and the law firm Greene & Cooper, LLP ("G & C").⁴ Mr. Strickland challenged the constitutionality of certain provisions within Georgia's garnishment statute, sought a declaratory judgment, injunctive relief, and both compensatory and punitive damages.⁵ Discover, Chase, and G & C were eventually dropped from the suit, and the case proceeded with Mr. Alexander as the sole defendant.⁶

1. Todd Van Dyke, Justin R. Barnes, & Erin J. Krinsky, JacksonLewis Publications, *Georgia's Garnishment Law on Shaky Ground*, NAT'L L. REV. (Sept. 23, 2015), <http://www.natlawreview.com/article/georgia-s-garnishment-law-shaky-ground>.

2. *Strickland v. Alexander*, 153 F. Supp. 3d 1397, 1416 (N.D. Ga. 2015).

3. *Id.*

4. *Id.* at 1401.

5. *Id.*

6. *Id.* at 1402.

Mr. Strickland was diagnosed with cancer in 2004.⁷ After his diagnosis, he began chemotherapy treatment and had to reduce his work hours. Consequently, he defaulted on a credit card with Discover Bank.⁸ In 2009, Mr. Strickland suffered a back injury at work and received a lump-sum settlement of workers' compensation benefits in 2011.⁹ He deposited that award in an account he held with Chase.¹⁰

In 2009, Discover, represented by G & C, sued Mr. Strickland in Fulton County State Court and won a default judgment for the delinquent credit card account in the amount of \$18,096.65.¹¹ Afterwards, in July of 2012, Discover filed a garnishment action against Mr. Strickland in the State Court of Gwinnett County.¹² On July 11, after Mr. Alexander had issued and served a garnishment summons, Chase froze Mr. Strickland's account, which contained the remaining \$15,652.67 of his workers' compensation benefits, even though workers' compensation proceeds are exempt from garnishment under Georgia law.¹³ Mr. Strickland received notice of the garnishment action from G & C, but the letter did not inform him that certain types of property, including his workers' compensation benefits, are exempt from garnishment.¹⁴ He also received a notice from Chase that mentioned exemptions may exist, but the notice did not specify the process for claiming an exemption.¹⁵ Mr. Strickland contacted G & C, but the firm refused to release the garnishment.¹⁶

On August 20, 2012, Chase filed its answer in the garnishment action and deposited the contents of Mr. Strickland's account with the court.¹⁷ Mr. Strickland's attorney emailed G & C about the improper garnishment on August 28, 2012, and filed a Claim for Funds Paid into Court on September 4 to retrieve the money Chase

7. *Id.* at 1399.

8. *Strickland*, 153 F. Supp. 3d at 1399.

9. *Id.*

10. *Id.*

11. *Id.* at 1399–1400.

12. *Id.* at 1400.

13. *Id.*

14. *Strickland*, 153 F. Supp. 3d at 1400.

15. *Id.*

16. *Id.*

17. *Id.*

deposited with the court.¹⁸ After Discover filed an answer to Mr. Strickland's claim, the trial court scheduled a hearing for October 24, 2012.¹⁹ The day before the hearing, Discover dismissed its garnishment action against Mr. Strickland.²⁰ Although the court entered an order returning the deposited funds to Mr. Strickland the following day, he did not receive his funds until November 2—115 days after the funds were initially frozen.²¹ During those four months, Mr. Strickland did not have access to his funds, could not afford his heart medication, and was forced to delay a necessary surgery to remove a blood clot in his hand.²²

Finally, after a protracted journey through the federal court system, Mr. Strickland won his case when Judge Shoob declared Georgia's garnishment statute unconstitutional on September 5, 2015.²³ Judge Shoob's ruling described Georgia's garnishment statute as "arcane" and criticized the lack of publicly available information explaining exemptions and the procedures for claiming them.²⁴ He also pointed to the "unconstitutional delay" in the procedure for resolving exemption claims.²⁵

While the decision in *Strickland* only enjoined Gwinnett County from issuing future garnishment summons, the effects reverberated throughout the state.²⁶ As Civil Court Judge and Chief Magistrate of Bibb County, William Randall, predicted just days after the decision, the garnishment process came to a standstill in many Georgia counties.²⁷ Magistrate courts in Fulton and Henry counties stopped processing garnishment filings.²⁸ Other counties, such as Cobb and DeKalb, scrambled to comply with the ruling by requiring creditors

18. *Id.*

19. *Id.* at 1401.

20. *Strickland*, 153 F. Supp. 3d at 1401.

21. *Id.* at 1401, 1416.

22. *Id.* at 1401.

23. *Id.* at 1397.

24. *Id.* at 1412–13.

25. *Id.* at 1414.

26. Arielle Kass, *Georgia's Garnishment Law Unconstitutional*, ATLANTA J.-CONST. (Sept. 9, 2015), <http://www.myajc.com/news/news/local-govt-politics/georgias-garnishment-law-unconstitutional/nbrF/>.

27. *Id.*

28. Arielle Kass, *Some Counties Adding Their Own Rules for Garnishments*, ATLANTA J.-CONST. (Sept. 22, 2015), <http://www.myajc.com/news/news/local-govt-politics/some-counties-adding-their-own-rules-for-garnishme/nkzC/>.

to prove that they had given notices of exemption to debtors and by shortening their exemption claim resolution process.²⁹

In October 2015, at the request of Georgia Attorney General Sam Olens, Judge Shoob modified his ruling.³⁰ Attorney General Olens urged Judge Shoob to reconsider his ruling and pointed to the “drastic effects” it was having throughout the state.³¹ In response, Judge Shoob noted that *Strickland* only involved the garnishment of funds from financial institutions, and modified his order to allow wage garnishments to continue in Gwinnett County.³² He emphasized that excluding wage garnishments from his order did not confirm their constitutionality, only that they were not the issue addressed in the case before the court.³³

In October, the Georgia General Assembly convened an advisory task force of attorneys and judges from around the state. For three months, the task force constructed legislation to address the deficiencies in Georgia’s garnishment statute.³⁴ Its efforts resulted in a complete rewrite of the garnishment code and produced Senate Bill (SB) 255, introduced by Senator Jesse Stone (R-23rd) in January of 2016.³⁵ Senator Stone described the bill as “a consumer protection and a pro-business bill at the same time.”³⁶ Representative Wendell Willard (R-51st), chairman of the House Judiciary Committee, expressed optimism that the law would clear the confusion surrounding garnishments in Georgia, stating “[w]e don’t have a good law right now. I would hope once we pass this law, the question

29. *Id.*

30. *Strickland v. Alexander*, 154 F. Supp. 3d 1347, 1351 (N.D. Ga. 2015).

31. Arielle Kass, *Officials Seek Some Garnishments, Federal Judge Ruled Georgia’s Process Unconstitutional*, ATLANTA J.-CONST., Sept. 29, 2015, 2015 WLNR 28855534.

32. *Strickland*, 154 F. Supp. 3d at 1350–51.

33. *Id.*; Arielle Kass, *Revised Court Ruling Allows Wage Garnishments in Gwinnett*, ATLANTA J.-CONST. (Oct. 5, 2015), <http://www.myajc.com/news/news/local-govt-politics/revised-court-ruling-allows-wage-garnishments-in-g/nnwL2/>.

34. Video Recording of House Judiciary Committee Meeting, Feb. 11, 2016 at 3 min., 37 sec. (remarks by Rep. Wendell Willard (R-51st), Chairman of the House Judiciary Committee), http://media.legis.ga.gov/hav/15_16/2016/committees/judi/judi021116EDITED.wmv [hereinafter February House Committee Video].

35. Arielle Kass, *Georgia Garnishment Law May Get Overhaul, More Protection for Debtors*, ATLANTA J.-CONST. (Jan. 6, 2016), <http://www.myajc.com/news/news/local-govt-politics/garnishment-law-may-get-overhaul/npYWW/>.

36. *Id.*

hanging over all the courts about what they can and cannot do will be removed.”³⁷

The proposed law clarified how exemptions would be publicized, outlined the procedure for claiming exemptions, mandated a hearing within ten days of a debtor’s claim of improper garnishment, and required money to be returned within forty-eight hours of a court’s ruling.³⁸ In addition, the proposed law included mandatory forms for statewide use in the garnishment process.³⁹

Although SB 255, as introduced, addressed many of the concerns expressed by the court in *Strickland*, stakeholders around the state raised other concerns.⁴⁰ Erik Heath, the Legal Aid attorney who handled Mr. Strickland’s case, expressed disappointment that the proposed law did not contain a requirement for garnishments to be filed in the county where the debtor lives, and that it did not require all account holders named on an account to be notified of a garnishment.⁴¹ Former state legislator and current Vice President of Hill Manufacturing Kevin Levitas criticized the “unfair burden” in the garnishment law that holds employers financially liable for the debts of their employee if the employer does not respond to the garnishment action within the time limit provided.⁴² He also urged that the law should require garnishment summons to be served on an officer or registered agent of a company to prevent documents being handed to lower-level employees who are not responsible for replying and may not understand the documents’ significance.⁴³

37. *Id.*

38. *Id.*

39. Arielle Kass, *Georgia Garnishment Law May Get Overhaul, More Protection for Debtors*, ATLANTA J.-CONST. (Jan. 6, 2016), <http://www.myajc.com/news/news/local-govt-politics/garnishment-law-may-get-overhaul/npvWW/>. The previous version of the code did not mandate particular forms and county clerks could formulate their own. As a result, each of Georgia’s 159 counties had varying forms and procedures. Eric J. Breihaupt, *Passing Constitutional Muster After Strickland v. Alexander: A Proposed Solution to Georgia’s Broken Garnishment Statutes*, STITES & HARBISON (Sept. 15, 2015), <http://www.stites.com/learning-center/legal-updates/passing-constitutional-muster-after-strickland-v.-alexander>.

40. Arielle Kass, *Georgia Garnishment Law May Get Overhaul, More Protection for Debtors*, ATLANTA J.-CONST. (Jan. 6, 2016), <http://www.myajc.com/news/news/local-govt-politics/garnishment-law-may-get-overhaul/npvWW/>.

41. *Id.*

42. Chuck Leddy, *Wage Garnishments in Georgia: The Law Needs Fixing*, ADP: COMPLIANCE INSIGHTS (Apr. 12, 2016), <http://www.adpcomplianceinsights.com/wage-garnishments-in-georgia-the-law-needs-fixing/>.

43. *Id.*

*Bill Tracking of SB 255**Consideration and Passage by the Senate*

Senators Stone, Charlie Bethel (R-54th), Fran Millar (R-40th), John Albers (R-56th), William Ligon, Jr. (R-3rd), and Burt Jones (R-25th) sponsored SB 255.⁴⁴ The Senate read the bill for the first time on January 12, 2016, and assigned it to the Senate Judiciary Committee.⁴⁵ The Senate Judiciary Committee substitute changed several sections of the bill, including Code section 18-4-5(a).⁴⁶ This section set out the maximum portion of disposable earnings subject to garnishment not to be exceeded for any work week, or earnings for a period other than a week.⁴⁷ The Senate Committee substituted \$7.25 per hour⁴⁸ for the federal minimum wage.⁴⁹ In addition, the Senate Committee added a paragraph to Code section 18-4-6(a) that stated funds in an unfunded plan maintained by an employer to defer compensation for highly compensated employees are not exempt from garnishment.⁵⁰ In Code section 18-4-7(b)(2), the Senate Committee clarified that “[a] summons of garnishment on a financial institution shall not be used for a continuing garnishment for support.”⁵¹ In Code section 18-4-15(a), the Senate Committee elaborated on how a defendant may become a party to the garnishment.⁵² Finally, the Senate Committee added that a defendant may raise a claim on behalf of a third party creditor to Code section 18-4-19(c)(4).⁵³ On February 3, 2016, the Senate Judiciary Committee favorably reported the bill by substitute.⁵⁴

44. Georgia General Assembly, SB 255, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/SB/255>.

45. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

46. *Compare* SB 255, as introduced, 2016 Ga. Gen. Assemb., with SB 255 (SCS), 2016 Ga. Gen. Assemb.

47. SB 255, as introduced § 1-1, p. 4, ll. 111–13, 2016 Ga. Gen. Assemb.

48. SB 255 (SCS), § 1-1, p. 4, ll. 111–13, 2016 Ga. Gen. Assemb.

49. SB 255, as introduced § 1-1, p. 4, ll. 111–13, 2016 Ga. Gen. Assemb.

50. SB 255 (SCS), § 1-1, p. 5, ll. 131–33, 2016 Ga. Gen. Assemb.

51. *Id.*

52. *Compare* SB 255, as introduced, § 1-1, p. 11, ll. 357–61, 2016 Ga. Gen. Assemb., with SB 255 (SCS), § 1-1, pp. 11–12, ll. 366–80, 2016 Ga. Gen. Assemb.

53. *Compare* SB 255, as introduced, § 1-1, p. 15, ll. 441–42, 2016 Ga. Gen. Assemb., with SB 255 (SCS), § 1-1, p. 14, ll. 456–60, 2016 Ga. Gen. Assemb.

54. *Compare* SB 255, as introduced, § 1-1, p. 15, ll. 441–42, 2016 Ga. Gen. Assemb., with SB 255

Creditors' attorneys proposed an amendment to Code section 18-4-4(c), to lengthen the timeframe for banks to report, but the Senate committee opposed amending this section of the bill.⁵⁵

The Senate read the bill for a second time on February 4, 2016, and for a third time on February 9, 2016.⁵⁶ Senators Ligon, Bethel, and Millar offered a floor amendment to strike the words “[e]ven when” on line 377 and to strike all of lines 378, 379, and 380.⁵⁷ This proposed amendment would have struck the inclusion of earnings held at financial institutions in garnishment exemptions provided in the Code Sections.⁵⁸ The Senate did not adopt the floor amendment.⁵⁹ The Senate passed SB 255 on February 9, 2016, by a vote of 50 to 0.⁶⁰

Consideration and Passage by the House

Representative Willard sponsored SB 255 in the House.⁶¹ After the first reading on February 10, 2016, and the second reading on February 11, 2016, the Rules Committee assigned the bill to the House Judiciary Committee.⁶² The House Judiciary Committee favorably reported the bill on February 16, 2016.⁶³ SB 255 was withdrawn from the General Calendar and recommitted to the House Committee on February 18, 2016.⁶⁴

The House Committee's most substantial change was to Code section 18-4-4(c), which dealt with the timeframe on bank reporting.⁶⁵ As the bill passed in the Senate, the period for garnishments served on a financial institution was twenty-four

(SCS), § 1-1, p. 14, ll. 456–60, 2016 Ga. Gen. Assemb.

55. See Telephone Interview with Rep. Wendell Willard (R-51st) (Apr. 17, 2016) [hereinafter Willard Interview].

56. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

57. Failed Senate Floor Amendment to SB 255, introduced by Sen. Ligon (R-3rd), Feb. 9, 2016).

58. SB 255 (SCS), § 1-1, p. 12, ll. 377–80, 2016 Ga. Gen. Assemb.

59. Failed Senate Floor Amendment to SB 255, introduced by Sen. Ligon (R-3rd), Feb. 9, 2016).

60. Georgia Senate Voting Record, SB 255, Vote #443 (Feb. 9, 2016).

61. Georgia General Assembly, SB 255, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/SB/255>.

62. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

63. *Id.*

64. *Id.*

65. Compare SB 255, as passed Senate, 2016 Ga. Gen. Assemb., with SB 255 (HCS), 2016 Ga. Gen. Assemb.

hours.⁶⁶ The shortened period was partly due to the increased speed of electronic banking as well as input from large Georgia banking institutions.⁶⁷ Members of the House Committee proposed amending the period for garnishments served on a financial institution to ten days, but this amendment did not pass.⁶⁸ Ultimately, the house reached a compromise and the period for garnishments served on financial institutions was extended to five days.⁶⁹

In Code section 18-4-10(c), the House Committee lengthened the filing period for garnishments where the garnishee is a financial institution from ten days to fifteen days.⁷⁰ The House Committee also added Code section 18-4-26, which states that the salaries of officials or employees of the state shall be subject to garnishment, except when the garnishment arises out of liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency.⁷¹

The Committee favorably reported the bill by substitute on March 15, 2016.⁷² SB 255 was postponed on March 22, 2016, and read for a third time on March 24, 2016.⁷³ The House passed SB 255 on March 24, 2016, by a vote of 174 to 1.⁷⁴ The House transmitted the bill to the Senate on March 24, 2016.⁷⁵ The Senate agreed to the House's substitute, as amended, on March 24, 2016, by a vote of 45 to 2.⁷⁶ The Senate sent the bill to Governor Nathan Deal (R) on March 31, 2016; the Governor signed the bill into law on April 12, 2016, and it became effective upon the Governor's signature.⁷⁷

66. SB 255, as passed Senate, § 1-1, p. 4, l. 99, 2016 Ga. Gen. Assemb.

67. Video Recording of House Proceedings, Feb. 11, 2016 at 13 min., 19 sec. (remarks by Sen. Jesse Stone (R-23rd)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives106.aspx> [hereinafter February House Video].

68. Video Recording of House Proceedings, Mar. 14, 2016 at 1 min., 2 sec. (remarks by Rep. Barry Fleming (R-121st)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives106.aspx> [hereinafter March House Video].

69. See Willard Interview, *supra* note 55; SB 255 (HCS) § 1-1, p. 4, l. 99, 2016 Ga. Gen. Assemb.

70. Compare SB 255, as passed Senate, § 1-1, p. 9, ll. 274-82, 2016 Ga. Gen. Assemb., with SB 255 (HCS), § 1-1, p. 9, ll. 274-83, 2016 Ga. Gen. Assemb.

71. SB 255 (HCS), § 1-1, p. 18, ll. 588-609, 2016 Ga. Gen. Assemb.

72. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

73. *Id.*

74. Georgia House of Representatives Voting Record, SB 255, Vote #839 (Mar. 24, 2016).

75. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

76. Georgia Senate Voting Record, SB 255, Vote #779 (Mar. 24, 2016).

77. State of Georgia Final Composite Status Sheet, SB 255, May 5, 2016.

The Act

The Act amends Title 18 of the Official Code of Georgia Annotated by enacting a new Chapter 4 to replace the repealed sections of Chapter 4.⁷⁸ Section 1 of the Act explains the new Chapter 4 of Title 18. Chapter 4 includes Code sections 18-4-1 through 18-4-89, and relates to garnishment proceedings.⁷⁹ Finally, Code section 18-4-1 sets out definitions for terms used in Chapter 4.⁸⁰

Code section 18-4-4(c) states that banks must receive garnishments within five days.⁸¹ The Act also requires notices to be provided to the garnishee.⁸² Additionally, Code section 18-4-6 requires the Georgia Attorney General to post and update a list of the type of funds exempt from garnishment.⁸³ Code section 18-4-8 requires the creditor/plaintiff to serve a copy of “the affidavit of garnishment, summons of garnishment, Notice to Defendant of Right Against Garnishment of Money, Including Wages, and Other Property, and Defendant’s Claim Form” on the garnishee.⁸⁴

Code section 18-4-15 requires the court to hold a hearing for a defendant’s filed claim within 10 days of the file date.⁸⁵ Code section 18-4-19 states that if the defendant’s funds in the possession of the court are found to be exempt, the funds must be returned to the defendant within 48 hours.⁸⁶

Code section 18-4-10 requires a financial institution to file its answer to the garnishment with the court between five and fifteen days after service.⁸⁷ Code section 18-4-42 states that non-financial institutions must file a first garnishee answer between thirty days and forty-five days after service.⁸⁸

78. 2016 Ga. Laws 8, § 1, at 8.

79. 2016 Ga. Laws 8, § 1, at 8–60.

80. O.C.G.A. § 18-4-1 (Supp. 2016).

81. O.C.G.A. § 18-4-4(c) (Supp. 2016).

82. O.C.G.A. § 18-4-5 (Supp. 2016).

83. O.C.G.A. § 18-4-6 (Supp. 2016).

84. O.C.G.A. § 18-4-8 (Supp. 2016).

85. O.C.G.A. § 18-4-15 (Supp. 2016).

86. O.C.G.A. § 18-4-19 (Supp. 2016).

87. O.C.G.A. § 18-4-10 (Supp. 2016).

88. O.C.G.A. § 18-4-42 (Supp. 2016).

Section 3 amends Code section 44-7-50(a), which relates to demand for possession.⁸⁹ If a tenant refuses to deliver possession when the owner demands it, the requirements for judicial approval to make an affidavit under oath to the facts are specified in Code section 18-4-3, amended from Code section 18-4-61.⁹⁰

Analysis

Intended Consequences and Public Policy

Lawmakers had one main objective when creating this Act: to ensure that Georgia's garnishment law safeguards debtors' constitutional rights.⁹¹ To accomplish this objective, first, lawmakers sought to make sure that debtors had notice of their rights.⁹² Second, they sought to ensure that defendants in garnishment actions have due process in defending their claims.⁹³

Under the old law, creditors were not required to inform a debtor-defendant of what monies were exempt from garnishment at any time during the garnishment proceedings.⁹⁴ According to Harriet Isenberg, a creditor's attorney, banks know as a matter of course which money in their accounts is exempted, so they do not report that money when responding to a garnishment notice.⁹⁵ However, in some cases, such as Mr. Strickland's, the defendant does not know that his money is exempted, the bank is unaware of the source of that money, and the creditor is allowed to illegally garnish exempted money.⁹⁶ SB 255 eliminates this problem by requiring that every defendant receive notice of all the sources of income that are exempted from garnishment.⁹⁷

89. 2016 Ga. Laws 8, § 3, at 59–60.

90. *Id.*

91. See Willard Interview, *supra* note 55.

92. *Id.*

93. *Id.*

94. Arielle Kass, *Georgia Garnishment Law May Get Overhaul, More Protection for Debtors*, ATLANTA J.-CONST. (Jan. 6, 2016), <http://www.myajc.com/news/news/local-govt-politics/garnishment-law-may-get-overhaul/npYW/>.

95. See Telephone Interview with Creditor's Attorney Harriet Isenberg (June, 10 2016) [hereinafter Isenberg Interview].

96. *Id.*

97. Arielle Kass, *Georgia Garnishment Law May Get Overhaul, More Protection for Debtors*, ATLANTA J.-CONST. (Jan. 6, 2016), <http://www.myajc.com/news/news/local-govt-politics/garnishment->

Furthermore, under the old garnishment law, it was unclear how a debtor could protect exempted funds from garnishment and how a debtor could retrieve funds that had been illegally withheld.⁹⁸ SB 255 mandates that along with providing notice of exemptions, creditors must also provide debtors with a form detailing how they can get their money back.⁹⁹

Although creditors' attorneys agree that notice of debtors' rights is important, they disagree with sending this notice to both consumer and commercial defendants.¹⁰⁰ Commercial defendants have no income exemptions. For example, commercial defendants should have no social security, veteran benefits, or worker's compensation claim awards within their business accounts.¹⁰¹ Sending businesses notice of exemptions for which they do not qualify is both confusing and a waste of resources.¹⁰²

The law seeks to give all debtors notice of their rights so that they receive adequate due process. SB 255 clarifies that debtors have a right to a speedy trial, and a speedy return of money if creditors improperly garnish money from them.¹⁰³ In Mr. Strickland's case, he had to forgo a critical surgery because of the bank's lengthy delay in returning his money.¹⁰⁴ This new law seeks to reduce the hardship placed on debtors if their funds are unconstitutionally taken.

Unresolved Issues of the Act

Although SB 255 addressed the issues raised by Judge Shoob, some unresolved issues still remain within the garnishment law.¹⁰⁵

law-may-get-overhaul/npvWW/. These exemptions include social security, worker's compensation, and welfare income. *Id.*

98. *Id.*

99. *Id.*

100. Isenberg Interview, *supra* note 95.

101. *Id.* A business's income is derived from the sale of products, or of goods and services, not from exempted income. *Id.*

102. *Id.*

103. Arielle Kass, *Gwinnett To Resume Garnishments Under New Georgia Law*, ATLANTA J.-CONST. (May 11, 2016), <http://www.myajc.com/news/news/local-govt-politics/gwinnett-to-resume-garnishments-under-new-georgia-/nrLbT/>.

104. *Strickland v. Alexander*, 153 F. Supp. 3d 1397, 1401 (N.D. Ga. 2015).

105. Arielle Kass, *Gwinnett To Resume Garnishments Under New Georgia Law*, ATLANTA J.-CONST. (May 11, 2016), <http://www.myajc.com/news/news/local-govt-politics/gwinnett-to-resume-garnishments-under-new-georgia-/nrLbT/>.

For example, the law does not require that joint account holders be notified of garnishments.¹⁰⁶ This could lead to exempted funds being improperly taken if they are shared in an account where the person receiving the exempted funds is not the primary account holder.¹⁰⁷ Also, creditors are allowed to file garnishments in any county in which a bank, as a garnishee, has an agent or place of business.¹⁰⁸ This poses a burden for defendants who live in rural counties and wish to assert their exemptions in court.¹⁰⁹ Lastly, the bill did not change the threshold for a basic wage exemption, and did not create a minimum threshold for bank account funds garnished.¹¹⁰ This creates a burden for low income or minimum wages debtors.¹¹¹

From the creditors' attorneys point of view, the new law is too lax on those who accrue debt.¹¹² For example, some feel the five-day timeframe to which bank deposits apply for garnishments is too short to afford creditors with an opportunity to effectively collect their money.¹¹³ Creditor advocates are concerned that if Georgia's garnishment laws continue to favor debtors, businesses will not perceive Georgia as a relatively attractive state to do business.¹¹⁴

SB 255 Compared to Legislation from Other States

According to Representative Willard, legislators did not model Georgia's law after any other state's, but did look at Florida and Alabama for guidance on some of the forms and language of the law.¹¹⁵ According to Ms. Isenberg, Georgia is considered a creditor's state, and even after SB 255, its garnishment law is more favorable to

106. *Id.*

107. *Id.*

108. *Support Revision of the Georgia Garnishment Statute To Add Consumer Protections*, GA. WATCH, (June 26, 2016), <http://www.georgiawatch.org/issue/support-revision-of-the-georgia-garnishment-statute-to-add-consumer-protections/>.

109. *Id.*

110. *Id.* As the law stands, the minimum amount of protection for a worker's wages is \$217. 50 per week; this means that any amount of money over this minimum can be garnished. *Id.* Also, there is no minimum threshold for how much money should be protected from garnishment. *Id.*

111. *Id.*

112. Isenberg Interview, *supra* note 95.

113. *Id.* Creditors' attorneys fought for the deposit period to be thirty days. *Id.*

114. *Id.*

115. Willard Interview, *supra* note 55.

creditors than the laws in neighboring states like North Carolina and South Carolina.¹¹⁶

No state has a perfect garnishment law, because each state's law is a reflection of its own values and political realities. Although SB 255 does not address all the issues expressed by debtor and creditor advocates, the bill does bring Georgia into compliance with the Constitution. From this baseline, advocates for both debtors and creditors can continue to lobby for more specific changes to improve Georgia's garnishment laws.

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116. Isenberg Interview, *supra* note 95.