

RESTRICTIONS ON WAGE GARNISHMENT IN SOUTH CAROLINA

South Carolina Legal Services
1-(888)-346-5592
contactus@sclegal.org
www.sclegal.org

Important to Note

Be sure to always check for updates on the statutes mentioned here.

Consult with a South Carolina Attorney about your right to challenge a garnishment in court if it happens to you.

Table of Contents

- I. Introduction
- II. What is wage garnishment?
- III. Exceptions to the no garnishment rule in South Carolina
- IV. Your employer's duties when garnishing
- V. Can my wages in S.C. be garnished for a debt incurred in another state if I am a S.C. resident?
- VI. Challenging a garnishment order issued in another state
- VII. Wage Garnishment for reasons other than consumer debt
- VIII. Tips to follow to determine if a wage garnishment order should be allowed

I. INTRODUCTION

Don't be afraid when a debt collector threatens you with wage garnishment if you live in South Carolina.

Many states allow garnishment of your wages for collection of debt. However, your wages CANNOT be garnished in the state of SOUTH CAROLINA except in the limited specific circumstances outlined here.

The only exceptions are related to money owed to the government (like taxes, student loans, federal government agencies) and child support.

Wage Garnishment in South Carolina

South Carolina has tight restrictions on wage garnishment.

- Only the states of Pennsylvania, North Carolina, and Texas have similar laws prohibiting wage garnishment.
- In other states where garnishment is allowed, federal law places limits on wage garnishment amounts.
- While states are free to impose stricter limits, South Carolina has made laws that restrict wage garnishment for consumer debts.
 - ▶ i.e., credit card debt, rental or lease agreements obtained through credit, purchases of goods at a particular store on credit, and cash advances or loans.

II. WHAT IS WAGE GARNISHMENT?

- ▶ A wage garnishment occurs when your employer (the garnishee) withholds a portion of your paycheck in compliance with a court order requiring payment of a debt to a third party.
- ▶ Wages can be only be garnished in South Carolina when money is owed to the government, when money is owed for court ordered support, or when a garnishment order has been entered in another state while the consumer was a resident there but the consumer later moves to South Carolina. **See S.C. Code of Laws 15-39-420(1) at next slide**
- ▶ A S.C. employer should only honor a garnishment order from a S.C. court, not from the court of any other state.
- ▶ Caution: Debt collectors threaten and even attempt to use wage garnishment in S.C. even though it violates the law.
- ▶ **YOU HAVE A RIGHT TO CHALLENGE A GARNISHMENT OF YOUR WAGES. MAKE SURE S.C. LAW IS FOLLOWED!**

S.C. LAW PROHIBITS GARNISHMENT OF WAGES (except in certain circumstances)

SECTION 15-39-420. Withholding of wages pursuant to foreign garnishment proceeding prohibited under certain circumstances

(1) No employer in this State shall withhold any portion of the wages of any employee residing in this State as a result of any garnishment proceedings brought in any court outside of this State **unless the creditor first obtains a judgment** against such employee growing out of the same indebtedness for which the garnishment proceedings were instituted **in a court of competent jurisdiction in South Carolina.** The burden of proving the competent jurisdiction of the court shall rest upon the creditor.

(2) The provisions of this section shall not apply to any debt incurred outside the State of South Carolina by such **employee nor shall there be any garnishment of earnings for personal services rendered by the employee regardless of where the debt was incurred.**

(3) Any employer violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars.

III. EXCEPTIONS TO THE NO GARNISHMENT RULE IN S.C.

Wage Garnishment is prohibited in South Carolina EXCEPT in 3 cases:

1. If a garnishment order has been entered in another state while the consumer was a resident there but the consumer later moves to South Carolina (but a court order from S.C. is required)
 2. If money is owed to the federal government
 1. For example, unpaid taxes, defaulted federal student loans
 3. If money is owed for child or spousal support (but a court order for the garnishment is required).
- Even in these situations, the amount or percent that can be garnished from your wages is limited.

Limitations on the amount that can be garnished from your wages if your debt is one of the exceptions

- ▶ South Carolina permits wage garnishment by certain public agencies, including the Internal Revenue Service which may garnish your wages for unpaid taxes.
- ▶ Except for federal taxes and some other exceptions, the amount that can be garnished is limited by the Federal Consumer Credit Protection Act (FCCPA). See 15 U.S. Code Chapter 41 Section 1673
- ▶ Currently, the limit is 25% of disposable earnings, or the amount by which disposable earnings for a week exceed thirty times the Federal minimum hourly wage in effect at the time the earnings are payable, whichever is less.

Note: If you have more than one garnishment, the total amount that can be garnished is limited to 25% total.

IV. Your Employer's Duties when Garnishing

YOUR EMPLOYER MUST NOTIFY YOU BEFORE GARNISHING YOUR WAGES

The South Carolina Payment of Wages Act requires your employer to provide you with written notification of your wages and working hours, place of payment and a list of itemized deductions from wages.

Because the employer is subject to penalties for violating a court ordered garnishment, you should act quickly to obtain an attorney and challenge the garnishment if you believe it is not warranted under the law.

S.C. Title 41- Labor and Employment: Payment of Wages

No adverse employment action due to garnishment allowed

An employer may NOT terminate, refuse to hire or penalize an employee because a creditor of the employee has garnished or attempted to garnish the employee's earnings.

S.C. Ann. § 37-5-104.

V. CAN MY WAGES IN S.C. BE GARNISHED FOR A DEBT INCURRED IN ANOTHER STATE IF I AM A S.C. RESIDENT ?

- ▶ A garnishment order might be entered against you in another state while you (the consumer) were a resident there . If you later move here to South Carolina that garnishment order can only be enforced if it is properly domesticated here.
- ▶ In order for such a garnishment order to be enforceable:
 - ▶ The court that issued that order must have had jurisdiction over you at the time the order was entered, among other procedural issues.

GARNISHMENT OF WAGES FOR DEBT INCURRED IN ANOTHER STATE WHILE LIVING IN S.C.

- ▶ S.C. Code Ann. § 15-39-420(2) excludes from wage garnishment any judgment debt incurred outside of South Carolina while the debtor was a resident of and living in South Carolina:

The provisions of this section shall not apply to any debt incurred outside the State of South Carolina by such employee nor shall there be any garnishment of earnings for personal services rendered by the employee regardless of where the debt was incurred.

- ▶ Debt must be incurred for payment of consumer related items or goods. S.C. Code Ann. § 15-39-420(2).

Applicability of a garnishment in another state to a S.C. resident, CONT.

Resident of SC

Debt is incurred here OR
Judgment obtained here

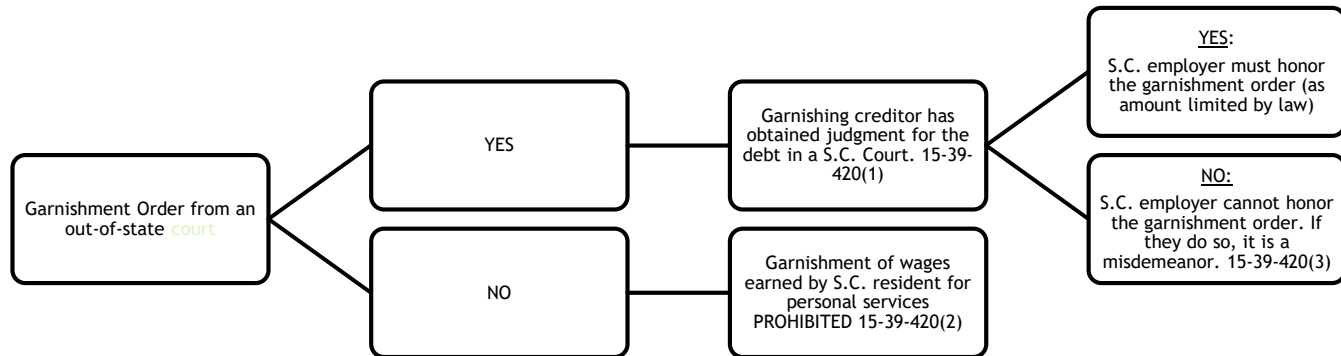
NO:
No wage garnishment

Resident of another state moves
to SC

Debt is incurred in
another state or
garnishment is ordered
before you move here

YES:
Creditors must domesticate
garnishment order
*However, if the
garnishment is ordered
after you move to SC, it is
not enforceable

Debt incurred by person now living in South Carolina



VI. CHALLENGING A GARNISHMENT ORDER ISSUED IN ANOTHER STATE

In S.C. your wages cannot be garnished for a consumer debt even when the creditor gets a judgment against you. S.C. Code Ann . § 37-5-104. However, in other states, a creditor might be able to get such a garnishment order. An out of state garnishment order (called a foreign order) cannot be enforced here in S.C. unless the creditor files a lawsuit here in S.C. and gets a judgment against you here in a South Carolina Court of competent jurisdiction in order to enforce a foreign order for wage garnishment. S.C. Code Ann. § 15-39-420(1)

That means they have to:

1. File a lawsuit against you in S.C. which you have the right to challenge and defend
2. Prove in the lawsuit that you owe them the consumer debt and how much you owe
3. Obtain a judgment from the S.C. Court
 - ▶ S.C. Code Ann. § 15-39-420 “(1) No employer in this State shall withhold any portion of the wages of any employee residing in this State as a result of any garnishment proceedings brought in any court outside of this State unless the creditor first obtains a judgment against such employee growing out of the same indebtedness for which the garnishment proceedings were instituted in a court of competent jurisdiction in South Carolina. The burden of proving the competent jurisdiction of the court shall rest upon the creditor.”

VII. WAGE GARNISHMENT FOR REASONS OTHER THAN CONSUMER DEBT

- ▶ Unpaid child support
- ▶ Unpaid federal taxes
- ▶ Federal student loans

WAGE GARNISHMENT FOR UNPAID CHILD SUPPORT

- ▶ Child support agencies can enforce overdue child support payments through wage garnishment. By the Consumer Credit Protection Act, child support garnishments are limited to 65 percent of disposable income if the non-paying parent is over 12 weeks in arrears; 60 percent if less than 12 weeks. If the non-paying parent has a second family to support, these percentages fall to 55 and 50, respectively.
 - ▶ S.C. Code Ann. § 20-7-1315
 - ▶ Note: The Court must order garnishment and you have the right to object to the wage garnishment.

GARNISHMENT FOR UNPAID CHILD SUPPORT

Child Support Garnishments can amount to:	If the non-paying parent is:
65% of disposable income	OVER 12 weeks in arrears
60% of disposable income	LESS than 12 weeks in arrears

*If the non-paying parent has a second family to support, these percentages fall to 55 and 50, respectively.

S.C. Code Ann. § 20-7-1315

WAGE GARNISHMENT FOR DEFAULTED FEDERAL STUDENT LOANS

- ▶ If you are in default on a federal student loan, the U.S. Department of Education or any entity collecting for this agency can garnish your wages without first getting a court judgment- this is called an administrative garnishment. The most that the Department of Education can garnish is 15% of your disposable income , but not more than 30 times the minimum wage.
- ▶ Note: Your wages cannot be garnished for a private student loan.

IF YOU DO NOT HAVE WAGES BUT YOUR INCOME IS SOCIAL SECURITY BENEFITS

If your income is from Social Security benefits rather than wages, you should be familiar with the limitations on garnishment of that income.

- ▶ Under a federal rule that became effective in May 2011, your bank is required automatically to protect up to two months of these benefits that are directly deposited into your account.
- ▶ In some cases, however, your federal benefits are not automatically protected.
- ▶ There are a number of circumstances when the Federal government can garnish Social Security benefits.
 - ▶ To enforce child support or alimony under 42 USC 659.
 - ▶ To enforce a valid garnishment for court-ordered victim restitution under 18 USC 3613.
 - ▶ To collect unpaid federal taxes under 26 USC 6334(c).
 - ▶ To have a portion of your check withheld to satisfy a current year federal income tax liability under 26 USC 3402 (P).
 - ▶ Other federal agencies will offset benefits to collect money from benefits to pay a non-tax debt owed to that agency according to the Debt Collection Act of 1996 (Public Law 104-134). An example of this is federal student loan debt.

VII. TIPS TO FOLLOW TO DETERMINE IF A WAGE GARNISHMENT ORDER SHOULD BE ALLOWED:

1. Wage garnishments must be supported by a South Carolina court order to be valid and enforceable—unless it falls under the exceptions listed above.
2. The order should detail the maximum percentage of disposable income to be garnished.
3. If garnishment is sought without a valid court order and/or without limitations, consult an attorney as soon as possible in order to challenge the garnishment.

South Carolina Legal Services

1-(888)-346-5592

contactus@sclegal.org

www.sclegal.org