

## ARTICLE 1

### 18-4-1.

As used in this chapter, the term:

- (1) 'Disposable earnings' means that part of the earnings of an individual remaining after the deduction for federal income tax, state income tax, withholdings for the Federal Insurance Contributions Act (FICA), and other mandatory deductions required by law.
- (2) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, fee, bonus, tips, overtime, or severance pay, including recurring periodic payments from pensions or retirement plans, including, but not limited to, the United States Department of Veterans Affairs, Railroad Retirement Board, Keoghs, and individual retirement accounts.
- (3) 'Entity' means a public corporation or a corporation, limited liability company, partnership, limited partnership, professional corporation, firm, or other business organization other than a natural person.
- (4) 'Financial institution' means every federal or state chartered commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe-deposit companies, trust companies, any money market mutual fund, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
- (5) 'Garnishee answer' or 'garnishee's answer' means the response filed by a garnishee responding to a summons of garnishment detailing the money or other property of the defendant that is in the possession of the garnishee or declaring that the garnishee holds no such money or other property of the defendant.
- (6) 'Public corporation' means any department, agency, branch of government, or political subdivision, as such term is defined in [Code Section 50-15-1](#), or any public board, bureau, commission, or authority created by the General Assembly.

### 18-4-2.

- (a) The procedure in garnishment cases shall be uniform in all courts throughout this state that have jurisdiction to preside over garnishment proceedings.
- (b) In all cases when a money judgment was obtained in a court of this state or a federal court or is being enforced in this state as provided in Article 5 of Chapter 12 of Title 9, the 'Uniform Foreign-Country Money Judgments Recognition Act,' or Article 6 of Chapter 12 of Title 9, the 'Uniform Enforcement of Foreign Judgments Law,' the plaintiff shall be entitled to the process of garnishment.
- (c) Except as otherwise provided in this chapter, Chapter 11 of Title 9 shall apply in garnishment proceedings.
- (d) Any affidavit, garnishee answer, or pleading required or permitted by this chapter shall be amendable at any time before judgment is entered or before money or other property subject to garnishment is distributed by the court.

### 18-4-3.

- (a) The plaintiff, the plaintiff's attorney, or the plaintiff's agent shall make, on personal knowledge or belief, an affidavit setting forth that the plaintiff has a judgment against a

named defendant, the amount remaining due on the judgment, the name of the court which rendered the judgment, and the case number thereof.

- (b) Upon the filing of the affidavit described in subsection (a) of this Code section with the clerk of any court having jurisdiction to preside over garnishment proceedings, such clerk shall cause a summons of garnishment to issue, provided that the plaintiff's affidavit is:
  - (1) Made before any officer authorized to administer oaths, a notary public, such clerk, or the deputy clerk of the court in which the garnishment is filed; and
  - (2) Submitted to and approved by any judge of the court in which the garnishment is filed or submitted to and approved by any clerk or deputy clerk of such court if the court has promulgated rules authorizing the clerk or deputy clerk of such court to review and approve affidavits of garnishment.
- (c) An affidavit of garnishment may be electronically submitted to the clerk or deputy clerk of the court if the court has promulgated rules authorizing such submission.
- (d) The form for an affidavit of garnishment is set forth in Code Section 18-4-71.

#### 18-4-4.

- (a) All obligations owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all obligations accruing from the garnishee to the defendant throughout the garnishment period shall be subject to the process of garnishment. No payment made by the garnishee to the defendant or on his or her behalf, or by any arrangement between the defendant and the garnishee, after the date of service of the summons of garnishment upon the garnishee shall defeat the lien of such garnishment.
- (b) All money or other property of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or control of the garnishee throughout the garnishment period shall be subject to the process of garnishment, provided that, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.
- (c) The garnishment period shall begin on the day of service of the summons of garnishment and, for:
  - (1) A continuing garnishment, shall include the next 179 days;
  - (2) Garnishments, other than a continuing garnishment or continuing garnishment for support, served on a financial institution, shall include the next five days;
  - (3) A continuing garnishment for support, shall remain for so long as the defendant is employed by the garnishee and shall not terminate until the original arrearage is retired; and
  - (4) All other garnishments, shall include the next 29 days.

#### 18-4-5.

- (a)
  - (1) Subject to the limitations set forth in [Code Sections 18-4-6](#) and 18-4-53, the maximum part of disposable earnings for any work week which is subject to garnishment shall not exceed the lesser of:

- (b) Twenty-five percent of the defendant's disposable earnings for that week; or
- (B) The amount by which the defendant's disposable earnings for that week exceed \$ 217.00.
  - (2) In case of earnings for a period other than a week, a multiple of \$ 7.25 per hour shall be used.
- (b) The limitation on garnishment set forth in subsection (a) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of continuing garnishment for support as provided in Article 3 of this chapter.
- (c) No employer shall discharge an employee by reason of the fact that such employee's earnings have been subjected to garnishment for any one obligation, even though more than one summons of garnishment may be served upon such employer with respect to the obligation.

#### 18-4-6.

- (a)
  - (1) Certain earnings or property of the defendant may be exempt from the process of garnishment.
  - (2) Funds or benefits from an individual retirement account or from a pension or retirement program shall be exempt from the process of garnishment until paid or otherwise distributed to a member of such program or beneficiary thereof. Such funds or benefits, when paid or otherwise distributed to such member or beneficiary, shall be exempt from the process of garnishment only to the extent of the limitations provided in [Code Section 18-4-5](#) for other disposable earnings, unless a greater exemption is otherwise provided by law.
  - (3) Funds in an unfunded plan maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees shall not be exempt from the process of garnishment.
  - (4) Exempt property shall not be considered disposable earnings for purposes of [Code Section 18-4-5](#) or subsection (b) of Code Section 18-4-53.
- (b) Not later than ten days after the effective date of this Code section, the Attorney General shall create and maintain on the Department of Law's website a list of exemptions that a defendant may be allowed by law to claim in relation to a garnishment of his or her earnings or property. The Attorney General shall revise such list when exemptions are repealed, revised, or created by law. The Attorney General shall transmit a copy of such list to each clerk of court in this state who issues summonses of garnishment and transmit a revised list when a change is made to such list.
- (c) Each clerk of court in this state who issues summonses of garnishment shall post and update such list of exemptions as promulgated by the Attorney General and shall provide such list to individuals upon request.
- (d) A defendant may claim an exemption as provided in Code Section 18-4-15.
- (e) The fact that an exemption is not identified by the Attorney General shall not preclude a defendant from claiming an exemption.

#### 18-4-7.

(a) The amount shown on the summons of garnishment shall not exceed the amount the defendant owes the plaintiff pursuant to a judgment.

(b)

(1) A summons of garnishment, or an attachment thereto, shall state on its face with particularity all of the following information, to the extent reasonably available to the plaintiff:

(A) The name of the defendant and, to the extent such would reasonably enable the garnishee to properly respond to the summons of garnishment, all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof;

(B) The service address and the current address of the defendant and, to the extent such would reasonably enable the garnishee to properly respond to the summons of garnishment and such is reasonably available to the plaintiff, the past addresses of the defendant; and

(C) The social security number or federal tax identification number of the defendant; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with [Code Section 9-11-7.1](#) or 15-10-54, as applicable. The defendant's full social security number or federal tax identification number shall be made known to the garnishee and defendant in accordance with [Code Section 9-11-7.1](#) or 15-10-54, as applicable, to the extent such information is reasonably available to the plaintiff.

(2) A summons of garnishment on a financial institution shall not be used for a continuing garnishment or continuing garnishment for support. A summons of garnishment on a financial institution, or an attachment thereto, shall also state with particularity the defendant's account, identification, or tracking numbers known to the plaintiff used by the garnishee in the identification or administration of the defendant's funds or property; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with [Code Section 9-11-7.1](#) or 15-10-54, as applicable. The defendant's account, identification, or tracking numbers shall be made known to the garnishee and defendant in accordance with [Code Section 9-11-7.1](#) or 15-10-54, as applicable, to the extent such information is known to the plaintiff.

(3) A misspelling of any information required by this subsection, other than the surname of a natural person defendant, shall not invalidate a summons of garnishment, so long as such information is not misleading in a search of the garnishee's records.

(c) The form for a summons of garnishment is set forth in Code Section 18-4-74, and the optional attachment thereto is set forth in Code Section 18-4-75. The form for a summons of garnishment on a financial institution is set forth in Code Section 18-4-76, and the attachment thereto is set forth in Code Section 18-4-77. The form for a summons of garnishment on a financial institution shall not be used for a continuing garnishment or continuing garnishment for support.

(d) When a plaintiff uses the incorrect form for a summons of garnishment of any type, the garnishment shall not be valid and the garnishee shall be relieved of all liability.

18-4-8.

(a) The plaintiff shall serve the garnishee, as provided in [Code Section 9-11-4](#), or, when the garnishment is filed in a magistrate court, the plaintiff may serve the garnishee by using the constable of the magistrate court in the manner set forth in [Code Section 9-11-4](#), with 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. The plaintiff shall fill in the style of the case, except for the civil action file number, and the garnishment court information on such notice and claim form. Such notice and claim form are set forth in [Code Section 18-4-82](#).

(b)

(1) Not more than three business days after service of the summons of garnishment on the garnishee, the plaintiff shall cause a copy of the affidavit of garnishment, a copy of the summons of garnishment, a copy of the Notice to Defendant of Right Against Garnishment of Money, Including Wages, and Other Property, and a copy of the Defendant's Claim Form as described in subsection (a) of this Code section, using one of the following methods:

(A)

(i) To be sent to the defendant at the defendant's last known address by:

(I) Regular mail; and

(II) Registered or certified mail or statutory overnight delivery, return receipt requested.

(ii) The return receipt indicating receipt by the defendant, the envelope bearing the official notification from the United States Postal Service of the defendant's refusal to accept delivery of such registered or certified mail, the envelope bearing the official notification from a commercial firm of the defendant's refusal to accept such statutory overnight delivery, or an official written notice from the United States Postal Service of the defendant's refusal to accept delivery of such registered or certified mail shall be filed with the clerk of the court in which the garnishment is pending.

(iii) The defendant's refusal to accept or failure to claim such registered or certified mail or statutory overnight delivery addressed to such defendant shall be deemed notice to such defendant;

(B)

(i) To be delivered personally to the defendant by:

(I) An individual who is not a party and is not younger than 18 years of age;

(II) An individual who has been appointed by the court to serve process or is a permanent process server;

(III) The sheriff of the county where the action is brought or where the defendant is found or by such sheriff's deputy;

(IV) The marshal or sheriff of the court or by such official's deputy;

(V) The constable of the magistrate court, when the garnishment is filed in a magistrate court, or by the constable's deputy; or

(VI) A certified process server as provided in [Code Section 9-11-4.1](#).

- (ii) A certification by the person making the delivery shall be filed with the clerk of the court in which the garnishment is pending; or
- (C) To be sent to the defendant by regular mail at the address at which the defendant was served as shown on the return of service in the action resulting in the judgment when it shall appear by affidavit to the satisfaction of the clerk of the court that the defendant resides out of this state, has departed this state, cannot, after due diligence, be found within this state, or has concealed his or her place of residence from the plaintiff. A certificate of such mailing shall be filed with the clerk of the court in which the garnishment is pending by the person mailing such notice.
- (2) The methods of notification specified in this subsection shall be cumulative and may be used in any sequence or combination. When it appears that a plaintiff has reasonably, diligently, and in good faith attempted to use one method, another method thereafter may be utilized; for the time during which the attempt was being made, the time limit shall be tolled for the subsequent method.
- (3) No money or other property paid or delivered to the court by the garnishee shall be distributed nor shall any judgment be rendered against the garnishee until:
  - (A) Ten days have elapsed from the date of compliance with at least one method of notification provided by this subsection; and
  - (B) If a garnishee answer was filed:
    - (i) Twenty days have elapsed from the filing of the garnishee's answer without a claim having been filed by any defendant or third party and without a traverse having been filed by the plaintiff; or
    - (ii) All traverses filed prior to the twenty-first day from the filing of the garnishee's answer have been adjudicated and all claims have been adjudicated.

#### 18-4-9.

- (a) Summonses of garnishment may issue from time to time until the judgment is paid or the garnishment proceeding is otherwise terminated.
- (b) No new summons of garnishment on the same affidavit of garnishment shall be issued after two years from the date of the original filing of such affidavit. The garnishment proceeding based on such affidavit shall automatically stand dismissed unless there are funds remaining in the registry of the court or a new summons of garnishment has been issued in the preceding 30 days.

#### 18-4-10.

- (a) The summons of garnishment shall state that if the garnishee fails to file a garnishee's answer to such summons in a timely manner, a judgment by default shall be entered against the garnishee for the amount remaining due on a judgment as shown in the plaintiff's affidavit of garnishment.
- (b) The summons of garnishment shall be directed to the garnishee, commanding the garnishee to respond and state what money or other property is subject to garnishment. Except as provided in subsection (c) of this Code section and Articles 2 and 3 of this chapter, the garnishee's answer shall be filed with the court issuing the summons not sooner than 30 days and not later than 45 days after service of the summons, and the money or other property subject to garnishment shall be paid to or delivered to the court concurrently with such garnishee's answer.

(c) When the garnishee is a financial institution and the garnishment is not a continuing garnishment or continuing garnishment for support, such garnishee's answer shall be filed with the court issuing the summons of garnishment not sooner than five days and not later than 15 days after the date of service of the summons, and the money or other property subject to garnishment shall be paid to or delivered to the court concurrently with such garnishee's answer. If the defendant does not have an active account with and is not the owner of any money or other property in the possession of such financial institution, then the garnishee may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 15 days after the date of service of the summons.

#### 18-4-11.

(a) Within the time prescribed by Code Section 18-4-10, the garnishee shall file a garnishee answer. Along with the garnishee's answer, the garnishee shall pay or deliver to the court the money or other property admitted in the garnishee's answer to be subject to garnishment.

(b) If in responding to the summons of garnishment the garnishee shall state that the property of the defendant includes property in a safe-deposit box or similar property, the garnishee shall respond to the court issuing the summons of garnishment as to the existence of such safe-deposit box and shall restrict access to any contents of such safe-deposit box until the earlier of:

(1) Further order of such court regarding the disposition of the contents of such safe-deposit box; or

(2) The elapsing of 120 days from the date of filing of the garnishee answer unless such time has been extended by the court.

(c) If the garnishee has been served with a summons in more than one garnishment case involving the same defendant, the garnishee shall state in each garnishee answer that the money or other property is being paid or delivered to a specifically named court subject to the demands of other cases and shall give the numbers of all such cases in each garnishee answer.

(d) If the garnishee is unable to respond with the specific information required by this Code section, the garnishee's inability shall be stated in the garnishee's answer, together with all the facts plainly, fully, and distinctly set forth, so as to enable the court to give judgment thereon.

(e) The form for a garnishee answer is set forth in [Code Section 18-4-84](#), and the form for a financial institution garnishee answer is set forth in [Code Section 18-4-85](#).

#### 18-4-12.

(a) When a garnishment proceeding is filed in a court under any provision of this chapter involving an entity as garnishee, the execution and filing of a garnishee answer may be done by an entity's authorized officer or employee and shall not constitute the practice of law. If a claim or traverse is filed to such entity's garnishee answer in a court of record, an attorney shall be required to represent such entity in further garnishment proceedings.

(b) An entity's payment into court of any money or other property of the defendant, or money or other property which is admitted to be subject to garnishment, may be done by an entity's authorized officer or employee and shall not constitute the practice of law.

**18-4-13.**

(a) All garnishee answers shall, concurrently with filing, be served by the garnishee upon the plaintiff or the plaintiff's attorney and the defendant or the defendant's attorney.

(b)

(1) Service of the garnishee's answer upon the plaintiff shall be shown by the:

(A) Written acknowledgment of the plaintiff or the plaintiff's attorney; or

(B) Certificate of the garnishee or the garnishee's attorney, attached to the garnishee's answer, that a copy of the garnishee's answer was mailed to the plaintiff or the plaintiff's attorney.

(2) No service upon the plaintiff shall be required unless the name and address of the plaintiff or the plaintiff's attorney shall legibly appear on the face of the summons of garnishment.

(3) If the garnishee fails to serve the plaintiff, the plaintiff shall be allowed 20 days from the time the plaintiff receives actual notice of the garnishee's answer to traverse the garnishee's answer.

(c)

(1) Service of the garnishee's answer upon the defendant shall be shown by the:

(A) Written acknowledgment of the defendant or the defendant's attorney; or

(B) Certificate of the garnishee or the garnishee's attorney, attached to the garnishee's answer, that a copy of the garnishee's answer was mailed to the:

(i) Defendant's attorney; or

(ii) Defendant at the last address known to the garnishee.

(2) No service upon the defendant shall be required by a financial institution garnishee if the defendant does not have an active account with and is not the owner of any money or other property in the possession of such financial institution.

(d) The garnishee shall provide the defendant, by regular mail at the defendant's last address known to the garnishee, with the Notice to Defendant of Right Against Garnishment of Money, Including Wages, and Other Property and the Defendant's Claim Form that it received from the plaintiff as set forth in subsection (a) of [Code Section 18-4-8](#).

**18-4-14.**

(a) The garnishee shall be entitled to the garnishee's actual reasonable expenses, including attorney's fees, in preparing and filing a garnishee's answer. The amount of expenses incurred shall be taxed in the bill of costs and shall be paid by the party upon whom the cost is cast, as costs are cast in other cases. The garnishee may deduct \$ 50.00 or 10 percent of the amount paid into court, whichever is greater, not to exceed \$ 100.00, as reasonable attorney's fees or expenses.

(b) If the garnishee can show that the garnishee's actual attorney's fees or expenses exceed the amount provided for in subsection (a) of this Code section, the garnishee shall petition the court for a hearing at the time of filing the garnishee's answer without deducting from the amount paid into court. Upon hearing from the parties, the court may enter an order



for payment of actual attorney's fees or expenses proven by the garnishee to have been incurred reasonably in preparing and filing the garnishee's answer.

- (c) In the event the garnishee makes the deduction permitted in subsection (a) of this Code section but the costs are later cast upon the garnishee, the garnishee shall forthwith refund to the defendant the funds deducted; if the costs are later cast against the plaintiff, the court shall enter judgment in favor of the defendant and against the plaintiff for the amount of the deductions made by the garnishee.
- (d) Nothing in this Code section shall limit the reimbursement of costs incurred by a financial institution as provided in [Code Section 7-1-237](#).

#### 18-4-15.

- (a) A garnishment proceeding is an action between the plaintiff and garnishee; provided, however, that at any time before a judgment is entered or before money or other property subject to garnishment is distributed, the defendant may become a party to the garnishment by filing a claim with the clerk of court and may use the form set forth in [Code Section 18-4-82](#). A defendant's claim shall assert the basis upon which he or she claims that his or her money or other property is exempt from garnishment. Money or other property may be exempt from garnishment for a variety of reasons, including, but not limited to, the limitations on garnishment as provided in [Code Sections 18-4-5](#) and 18-4-53, exemptions as provided in [Code Section 18-4-6](#), the plaintiff not having a judgment against the defendant, the amount claimed due by the plaintiff being erroneous, such money or other property being subject to a claim held by a third party that is superior to the judgment described in the affidavit of garnishment, or other legal or statutory defenses. Even when earnings are held at a financial institution, such money may be exempt from garnishment due to the limitations on garnishment as provided in [Code Sections 18-4-5](#) and 18-4-53, exemptions as provided in [Code Section 18-4-6](#), or other reasons.
- (b) The defendant shall serve a copy of his or her claim upon the plaintiff and garnishee. The clerk of court shall transmit a copy of the defendant's claim to the plaintiff and garnishee. If the defendant's claim alleges that money or other property in the possession of the court may be subject to a claim held by a third party that is superior to the judgment described in the affidavit of garnishment, the defendant shall serve a copy of his or her claim upon the third party named in such claim.
- (c) The defendant shall become a party to all proceedings by filing a claim pursuant to this Code section.
- (d) Upon the filing of the defendant's claim, a judge of the court in which the garnishment is pending shall order a hearing to be held not more than ten days from the date the claim is filed. The form for the order for such hearing is set forth in [Code Section 18-4-83](#). Such hearing shall be available to the defendant as a matter of right after filing his or her claim, and no further summons of garnishment shall issue nor shall any money or other property paid or delivered to the court as subject to garnishment be disbursed until the hearing shall be held.
- (e) The validity of the judgment upon which a garnishment is based shall only be challenged in accordance with Chapter 11 of Title 9, and no such challenge shall be entertained in the garnishment case. However, when the court finds that the defendant has attacked the validity of the judgment upon which the garnishment is based in an appropriate forum, the judge may order the garnishment be stayed until the validity of the judgment has been determined in such forum.

(f) The filing of a claim by the defendant shall not relieve the garnishee of the duties of filing a garnishee answer, of withholding money or other property subject to garnishment, or of paying or delivering to the court any money or other property subject to garnishment.

(g) A party's failure to include the civil action file number on a defendant's claim shall not affect the validity of such claim.

#### 18-4-16.

Within 20 days after the plaintiff has been served with the garnishee's answer, the plaintiff may file a traverse stating that the garnishee's answer is untrue or legally insufficient. Such statement places in issue all questions of law and fact concerning the garnishee's answer. The form for a plaintiff's traverse is set forth in [Code Section 18-4-87](#).

#### 18-4-17.

At any time before judgment is entered on the garnishee's answer or money or other property subject to garnishment is distributed, any person may file a third-party claim in writing under oath stating that he or she has a claim superior to that of the plaintiff to the money or other property in the hands of the garnishee subject to the process of garnishment, and the third-party claimant shall be a party to all further proceedings upon the garnishment. A third-party claimant shall serve his or her claim upon the plaintiff, defendant, and garnishee. The form for a third-party claim is set forth in [Code Section 18-4-88](#).

#### 18-4-18.

When money or other property in court is subject to a third-party claim or to more than one garnishment case, the party with the oldest entered judgment shall have priority to such money or other property and any interested party to any one of the garnishment cases may make a motion to the court where such money or other property has been deposited for the distribution of such money or other property. Each party of interest in each case and the clerk of court shall be served with a copy of the motion. Upon hearing the motion, the court shall enter an order directing that the clerk be paid the court cost of each garnishment proceeding first, and all remaining money or other property shall be distributed in accordance with the laws governing the relative priority of claims, judgments, and liens.

#### 18-4-19.

(a) After the garnishee's answer is filed, the defendant's claim shall be tried first, the plaintiff's traverse shall be tried second, and third-party claims shall be tried last; provided, however, that the court shall retain the money or other property subject to garnishment until the completion of the trial of all claims and traverses which are filed under this chapter. The court may consolidate or bifurcate such actions for trial in the court's discretion.

(b) If a claim or traverse has been filed, all parties of record may introduce evidence to establish their respective interests in the money or other property in court, and the court shall direct that such money or other property be distributed in accordance with the laws governing the relative priority of claims, judgments, and liens.

(c) When the defendant prevails upon the trial of his or her claim:

(1) That the plaintiff does not have a judgment against the defendant or that the plaintiff's affidavit of garnishment is untrue or is legally insufficient, the garnishment case shall be dismissed by the court, and any money or other property belonging to the defendant in the possession of the court shall be restored to the defendant unless another claim or traverse thereto has been filed;

- (2) That the amount shown to be due on the plaintiff's affidavit of garnishment is incorrect, the court may allow the summons of garnishment to be amended to the amount proven to be owed, and if such amount is less than the amount shown to be due by the plaintiff, any money or other property belonging to the defendant in the possession of the court in excess of the amount due shall be restored to the defendant unless another claim or traverse thereto has been filed;
  - (3) That the money or other property belonging to the defendant in the possession of the court is exempt from garnishment, such exempt money or other property shall be restored directly to the defendant. The court shall order such restoration within 48 hours; and
  - (4) Based on any legal or statutory defense or that money or other property in the possession of the court may be subject to a claim held by a third party that is superior to the judgment described in the affidavit of garnishment, the court shall determine the disposition of the money or other property belonging to the defendant in the possession of the court.
- (d) On the trial of the plaintiff's traverse, if the court finds the garnishee has failed to respond properly to the summons of garnishment, the court shall disallow any expenses demanded by the garnishee and shall enter a judgment for any money or other property paid or delivered to the court with the garnishee's answer, plus any money or other property the court finds subject to garnishment which the garnishee has failed to pay or deliver to the court; provided, however, that the total amount of such judgment shall not exceed the amount shown to be due by the plaintiff, together with the costs of the garnishment proceeding.

#### 18-4-20.

When no claim has been filed and no traverse has been filed within 20 days after the garnishee's answer is filed:

- (1) If money is paid or delivered to the court by the garnishee, the clerk of the court shall pay the money to the plaintiff or the plaintiff's attorney upon application, and the garnishee shall be automatically discharged from further liability with respect to the summons of garnishment so answered;
- (2) If property is delivered to the court by the garnishee, the sheriff, marshal, constable, or like officer of the court shall sell the property in the manner provided by law for the sale of property levied under an execution, and the garnishee shall be automatically discharged from further liability with respect to the summons of garnishment so answered. The proceeds of such sale shall be paid or delivered to the plaintiff or the plaintiff's attorney upon application; or
- (3) If money or other property admitted to be subject to the garnishment is not paid or delivered to the court, judgment shall be entered for the plaintiff and against the garnishee for such money or other property and execution shall issue on the judgment.

#### 18-4-21.

Except as provided in [Code Section 18-4-22](#), when a garnishee fails or refuses to file a garnishee answer by the forty-fifth day after service of the summons of garnishment, such garnishee shall automatically be in default. The default may be opened as a matter of right by the filing of a garnishee answer within 15 days of the day of default and payment of costs. If the case is still in default after the expiration of the period of 15 days, judgment by default may

be entered at any time thereafter against such garnishee for the amount remaining due on the judgment obtained against the defendant as shown in the plaintiff's affidavit of garnishment.

**18-4-22.**

When a garnishee is a financial institution and fails or refuses to file a garnishee answer by the fifteenth day after the date of service of the summons of garnishment, such garnishee shall automatically be in default. The default may be opened as a matter of right by the filing of a garnishee answer within 15 days of the day of default and payment of costs. If the case is still in default after the expiration of the period of 15 days, judgment by default may be entered at any time thereafter against such garnishee for the amount remaining due on the judgment obtained against the defendant as shown in the plaintiff's affidavit of garnishment.

**18-4-23.**

(a) A garnishee may be relieved from liability for failure to file a garnishee answer if the plaintiff failed to provide the information required by paragraph (2) of subsection (b) of [Code Section 18-4-7](#) that would reasonably enable the garnishee to respond properly to the summons of garnishment and a good faith effort to locate the requested property was made by the garnishee based on the information provided by the plaintiff. In determining whether a garnishee may be relieved of liability, the court shall consider and compare the accuracy and quantity of the information supplied by the plaintiff pursuant to paragraph (2) of subsection (b) of [Code Section 18-4-7](#) with the manner in which such garnishee maintains and locates its records, the compliance by such garnishee with its own procedures, and the conformity of the record systems and procedures with reasonable commercial standards prevailing in the area in which such garnishee is located.

(b) A garnishee and a plaintiff shall not be subject to liability to any party or nonparty to the garnishment at issue arising from the attachment of a lien or the freezing, payment, or delivery into court of money or other property reasonably believed to be that of the defendant if such attachment, freezing, payment, or delivery is reasonably required by a good faith effort to comply with the summons of garnishment. In determining whether such compliance by a garnishee is reasonable, the court shall consider and compare the accuracy and quantity of the information supplied by the plaintiff pursuant to paragraph (2) of subsection (b) of [Code Section 18-4-7](#) with the manner in which such garnishee maintains and locates its records, the compliance by such garnishee with its own procedures, and the conformity of the record systems and procedures with reasonable commercial standards prevailing in the area in which such garnishee is located.

(c)

(1) As used in this subsection, the term:

(A) 'Association account' means any account or safe-deposit box or similar property maintained by a corporation, statutory close corporation, limited liability company, partnership, limited partnership, limited liability partnership, foundation, trust, national, state, or local government or quasi-government entity, or other incorporated or unincorporated association.

(B) 'Fiduciary account' means any account or safe-deposit box maintained by any party in a fiduciary capacity for any other party other than the defendant in garnishment. Without limiting the foregoing, such term 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.

(2)

- (A) A garnishee shall not be liable for failure to pay or deliver to the court money or other property in an association account that may be subject to garnishment by reason of the fact that a defendant is an authorized signer on such association account, unless the summons of garnishment alleges that the association account is being used by the defendant for an improper or unlawful purpose.
- (B) A garnishee shall not be liable for failure to pay or deliver to the court money or other property in a fiduciary account that may be subject to garnishment if such fiduciary account specifically is exempted from garnishment as set forth in [Code Section 18-4-6](#).
- (C) A garnishee shall not be liable for failure to pay or deliver to the court money or other property in a fiduciary account that may be subject to garnishment by reason of the fact that a defendant is a fiduciary of the fiduciary account, unless 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.

#### 18-4-24.

- (a) When a default judgment is rendered against a garnishee under [Code Section 18-4-21](#), 18-4-22, or 18-4-43, the plaintiff shall serve the garnishee, as provided in [Code Section 9-11-4](#), or, when the garnishment is filed in a magistrate court, the plaintiff may serve the garnishee by using the constable of the magistrate court in the manner set forth in [Code Section 9-11-4](#), with a copy of such default judgment. On a motion filed not later than 90 days from the date the garnishee was served with such default judgment, the garnishee may, upon payment of all accrued costs of court, have such default judgment modified so that the amount of such default judgment shall be reduced to an amount equal to the greater of \$ 50.00 or \$ 50.00 plus 100 percent of the amount by which the garnishee was indebted to the defendant from the time of service of the summons of garnishment through and including the last day on which a timely garnishee answer could have been made for all money or other property belonging to the defendant which came into the garnishee's hands from the time of service of the summons through and including the last day on which a timely answer could have been made and less any exemption allowed the defendant.
- (b) On the trial of a motion to modify a default judgment, the burden of proof shall be upon any plaintiff who objects to the timeliness of the motion to establish that such motion was not filed within the time provided for by this Code section.

#### 18-4-25.

- (a) A release of a summons of garnishment:
  - (1) Shall relieve the garnishee from any obligation to file a garnishee answer to any summons of garnishment pending on the date of the release and shall authorize the garnishee to pay or deliver to the defendant any money or other property in the garnishee's possession belonging to the defendant; and
  - (2) Shall not operate as a dismissal of the garnishment proceeding.

**(b)** It shall be the duty of the clerk of the court in which garnishment proceedings are pending to issue a release of garnishment if:

**(1)** The plaintiff or the plaintiff's attorney requests a release in writing;

**(2)** The amount shown to be due on the plaintiff's affidavit of garnishment together with the costs of the garnishment proceeding are paid into court;

**(3)** A judge enters an order, after a hearing required by this chapter, directing that the garnishment be released; or

**(4)** The garnishment is dismissed.

**(c)** The form for a release of garnishment is set forth in [Code Section 18-4-89](#).

#### **18-4-26.**

**(a)** Money due officials or employees of a municipal corporation or county of this state or of the state government, or any department or institution thereof, as salary for services performed for or on behalf of the municipal corporation or county of this state or the state, or any department or institution thereof, shall be subject to garnishment, except that in no event shall the officials' or employees' salary for services performed for or on behalf of any municipal corporation or county of this state or the state, or any department or institution thereof, be garnished when the judgment serving as a basis for the issuance of the summons of garnishment arises out of the liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency. In such cases, the summons of garnishment shall be directed to such political entity and served upon the person authorized by law to draw the warrant on the treasury of the government or to issue a check for such salary due, or upon the chief administrative officer of the political subdivision, department, agency, or instrumentality; and such entity shall be required to respond to such summons in accordance with the mandate thereof and as provided by this chapter.

**(b)** For purposes of this Code section only, the state and its political subdivisions, departments, agencies, and instrumentalities shall be deemed private persons; and jurisdiction for the purpose of issuing a summons of garnishment shall be restricted to a court located in the county in which the warrant is drawn on the treasury of the government or in which the check is issued for the salary due the official or employee of the state or its political subdivisions, departments, agencies, or instrumentalities.

#### **ARTICLE 2**

#### **18-4-40.**

**(a)** In addition to garnishment proceedings otherwise available under this chapter, in all cases when a money judgment was obtained in a court of this state or a federal court or is being enforced in this state as provided in Article 5 of Chapter 12 of Title 9, the 'Uniform Foreign-Country Money Judgments Recognition Act,' or Article 6 of Chapter 12 of Title 9, the 'Uniform Enforcement of Foreign Judgments Law,' a plaintiff shall be entitled to the process of continuing garnishment against any garnishee who is an employer of the defendant against whom the judgment has been obtained.

**(b)** Unless otherwise specifically provided in this article, Article 1 of this chapter shall apply to this article.

#### **18-4-41.**

- (a) In addition to the information required by subsection (a) of [Code Section 18-4-3](#), an affidavit of continuing garnishment shall state that the plaintiff believes that the garnishee is or may be an employer of the defendant and subject to continuing garnishment.
- (b) Only one summons of continuing garnishment shall issue on one affidavit of continuing garnishment.
- (c) The plaintiff shall serve a summons of continuing garnishment and provide notice of exemptions in the same manner as provided for in [Code Section 18-4-8](#).
- (d) The form for an affidavit of continuing garnishment is set forth in Code Section 18-4-72. The form for a summons of continuing garnishment is set forth in Code Section 18-4-78, and the optional attachment thereto is set forth in Code Section 18-4-79.

#### 18-4-42.

- (a) As used in this Code section, the term 'previous garnishee answer date' means the date upon which the immediately preceding garnishee answer was filed.
- (b) If the garnishee owes the defendant any sum for wages earned as the garnishee's employee, the garnishee answer shall state specifically when the wages were earned by the defendant, whether the wages were earned on a daily, weekly, or monthly basis, the rate of pay and hours worked, and the basis for computation of earnings.
- (c) The summons of continuing garnishment shall be directed to the garnishee, commanding the garnishee:
  - (1) To file a first garnishee answer with the court issuing such summons not sooner than 30 days and not later than 45 days after service of the summons of continuing garnishment, for the period of time from the date of service through and including the day of the first garnishee answer;
  - (2) To file subsequent garnishee answers with such court for the remaining period covered by the summons of continuing garnishment; and
  - (3) To accompany all such garnishee answers with any money subject to continuing garnishment.
- (d)
  - (1) Subsequent garnishee answers shall be filed not later than 45 days after the previous garnishee answer date stating what money of the defendant is subject to continuing garnishment from the previous garnishee answer date through and including the date on which the next garnishee answer is filed.
  - (2) Subsequent garnishee answers shall not be required on a summons of continuing garnishment if the preceding garnishee answer filed states what money of the defendant is subject to continuing garnishment from the previous garnishee answer date to and including the one hundred seventy-ninth day after service of the summons of continuing garnishment.
  - (3) Notwithstanding the other provisions of this subsection, the last garnishee answer shall be filed not later than the one hundred ninety-fifth day after service of the summons of continuing garnishment.
- (e) The summons of continuing garnishment shall state that if the garnishee fails to file a garnishee's answer to such summons in a timely manner, a judgment by default shall be

entered against the garnishee for the amount remaining due on a judgment as shown in the plaintiff's affidavit of continuing garnishment.

**(f)**

- (1)** If the employment relationship between the garnishee and the defendant does not exist at the time of service of the summons of continuing garnishment, the garnishee shall state in the garnishee answer that such relationship does not exist and may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after service of the summons of continuing garnishment.
  - (2)** When the defendant has been an employee of the garnishee, and if the defendant is no longer employed by the garnishee, the garnishee may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after service of the summons of continuing garnishment.
  - (3)** If the employment relationship between the garnishee and the defendant terminates on or after service of the summons of continuing garnishment, the garnishee shall state in the garnishee answer that such relationship has been terminated, giving the date of termination, and may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after service of the summons of continuing garnishment.
  - (4)** Upon the termination of employment of the defendant by the garnishee, the garnishee shall be required to file a final garnishee answer stating the date of the defendant's termination.
- (g)** When a garnishee answer is made pursuant to subsection (f) of this Code section, no claim has been filed, and no traverse has been filed within 20 days after such garnishee answer is filed, the garnishee shall be discharged from further liability and obligation in the same manner as set forth under [Code Section 18-4-20](#) for that summons with respect to the period of continuing garnishment remaining after the employment relationship is terminated.
- (h)** The form for a garnishee's answer to a continuing garnishment is set forth in [Code Section 18-4-86](#).

#### **18-4-43.**

- (a)** When a garnishee fails or refuses to file a garnishee answer at least once every 45 days, such garnishee shall automatically be in default. The default may be opened as provided in [Code Section 18-4-21](#). If the case is still in default after the expiration of the period of 15 days, judgment by default may be entered at any time thereafter against such garnishee for the amount remaining due on the judgment obtained against the defendant as shown in the plaintiff's affidavit of continuing garnishment.
- (b)** A garnishee may obtain relief from a default judgment upon the same conditions as provided in Code Section 18-4-24.

#### **ARTICLE 3**

#### **18-4-50.**

As used in this article, the term:



- (1) 'Earnings' shall have the same meaning as set forth in [Code Section 18-4-1](#) and shall include disability or retirement benefits that are received from the Social Security Administration pursuant to Title II of the federal Social Security Act, disability benefits that are received pursuant to the federal Veterans' Benefits Act of 2010, [38 U.S.C. Section 101](#), et seq., workers' compensation benefits, whether temporary or permanent, and unemployment insurance benefits.
- (2) 'Judgment' means an order for periodic support obtained:
  - (A) In a court of this state;
  - (B) In a court of another state which has been registered pursuant to [Code Section 19-11-77](#) under the 'Uniform Reciprocal Enforcement of Support Act' or as provided in Article 3 of Chapter 11 of Title 19, the 'Uniform Interstate Family Support Act,' or Article 6 of Chapter 12 of Title 9, the 'Uniform Enforcement of Foreign Judgments Law';
  - (C) By a final administrative order for support issued by the Department of Human Services; or
  - (D) By a final administrative order issued by a governmental agency of another state.
- (3) 'Periodic support' means money required to be paid regularly on a daily, weekly, monthly, or other similar specified frequency for the support of a minor child of the defendant or a spouse or former spouse of the defendant.

#### 18-4-51.

- (a) In addition to garnishment proceedings otherwise available under this chapter, in all cases when a judgment was obtained or is being enforced, a plaintiff shall be entitled to the process of continuing garnishment for support against any garnishee who is an employer of the defendant against whom the judgment has been obtained.
- (b) Unless otherwise specifically provided in this article, Articles 1 and 2 of this chapter shall apply to this article.

#### 18-4-52.

- (a) In addition to the information required by subsection (a) of [Code Sections 18-4-3](#) and [18-4-41](#), the plaintiff shall attach a certified copy of the judgment to be enforced to the affidavit of continuing garnishment for support and shall state the following in such affidavit:
  - (1) That the defendant is in arrears on the obligation of support in an amount equal to or in excess of one month's obligation as decreed in such judgment;
  - (2) The amount of arrearage which exists under such judgment as of the date of the execution of the affidavit;
  - (3) The amount of support due under the judgment for each obligee named therein, taking into account the possible attainment of majority or emancipation or death of any minor child named in such judgment; and
  - (4) The date of the termination of the obligation of support of each obligee named in the judgment, based upon the terms of such judgment, or, as to any obligee who is a minor child, the date each such obligee shall attain the age of 18 years.
- (b) Such affidavit may be amended from time to time by subsequent affidavits of any party showing a modification or other amendment to the original judgment being enforced. Such amended or subsequent affidavits shall include a certified copy of any such modification

or amendment and shall contain the information required by paragraphs (1) through (4) of subsection (a) of this Code section.

(c) The plaintiff shall serve the summons of continuing garnishment for support and provide notice of exemptions in the same manner as provided for in [Code Section 18-4-8](#).

(d) The form for an affidavit of continuing garnishment for support is set forth in Code Section 18-4-73.

#### 18-4-53.

(a) A summons of continuing garnishment for support shall contain a notice to the garnishee that such garnishment is based on a judgment governed by this article. The form for a summons of continuing garnishment for support is set forth in [Code Section 18-4-80](#), and the optional attachment thereto is set forth in [Code Section 18-4-81](#).

(b) Subject to the limitations set forth in [Code Section 18-4-6](#), the maximum part of disposable earnings for any work week which shall be subject to continuing garnishment for support shall not exceed 50 percent of the defendant's disposable earnings for that week.

(c) Funds or benefits from an individual retirement account or from a pension or retirement program shall not be exempt from the process of continuing garnishment for support except as provided in subsection (b) of this Code section for other disposable earnings, unless a greater exemption is otherwise provided by law.

#### 18-4-54.

(a) The money paid into court with the initial garnishee answer, after deduction for costs, shall be first applied to the support payment required to be paid on a periodic basis that has accrued on a daily basis, by converting the periodic amount to an annual amount and dividing by 365, from the date of the plaintiff's affidavit of continuing garnishment for support to the date of the initial garnishee answer. All sums in excess of such payment shall be applied to the original arrearage. As used in this subsection, the term 'original arrearage' means the sum of arrears existing as of the date of the making of the plaintiff's affidavit of continuing garnishment for support, plus any amounts includable pursuant to subsection (c) of this Code section.

(b) If the amount claimed as original arrearage as of the date of the making of the plaintiff's affidavit of continuing garnishment for support is not satisfied by the money payable into court under the initial garnishee answer, after application of the funds as set forth in subsection (a) of this Code section, the garnishee shall file further garnishee answers no later than 45 days after the previous garnishee answer date, stating the earnings accrued and the basis of their accrual and tendering such money accruing in such period. The amounts paid into court pursuant to subsequent garnishee answers, over and above the periodic payment accruing within such period, shall be applied to the original arrearage until the same is retired.

(c) If the money paid into court pursuant to any garnishee answer is less than the sums due under the support requirement accruing over the same period of time, after allowance for any costs deductible from same, the resulting difference shall be added to the amount due as original arrearage until the same is retired by subsequent payments.

(d) The garnishee shall file additional garnishee answers until the original arrearage is retired and all support payments are current.

- (e) Upon the termination of employment of the defendant by the garnishee, the garnishee shall be required to file a final garnishee answer stating the date of the defendant's termination.

**18-4-55.**

The continuing garnishment for support described in this article shall attach for so long as the defendant is employed by the garnishee and shall not terminate until the original arrearage is retired and all support payments are current. The garnishee may rely upon the information as to the termination date of the duty of support of any individual claimed in the affidavit of continuing garnishment for support, the amount of the duty of support to be paid, any sums paid by the defendant between the date of the filing of such affidavit and the date of the initial garnishee answer, and the amount of the original arrearage existing as of the date of such affidavit, unless the defendant files a claim against such affidavit or the garnishee's answer and the court enters any finding otherwise.

**ARTICLE 4**

**18-4-70.**

- (a) For the purpose of this chapter, the forms contained in this article shall be required to be used; provided, however, that a party may use its own format so long as it contains all of the information in the form. A defendant may use the form provided in [Code Section 18-4-82](#) to file a claim or may use the defendant's own pleading. When a case involves more than one plaintiff or defendant or necessitates the inclusion of additional information, the form may be expanded to allow for the information pertaining to all parties and such additional information to be displayed.
- (b) The certificates of service provided within the forms in this article are included as examples. A party may modify a certificate of service in accordance with the circumstances of the case, including, but not limited to, transmission by e-mail as provided in subsection (b) of [Code Section 9-11-5](#) or by court rule.
- (c) A court may combine multiple forms.