

82-00100

# OFFICE OF THE ATTORNEY GENERAL



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Mrs. Barbara A. Pippin  
Register, Circuit Court  
Calhoun County  
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Anniston, AL 36202

Courts - Wages - Garnishment

Alabama Act 81-697, §§6-6-490 through 6-6-493, Code of Alabama 1975 (1981 Cum. Supp.), establishes the maximum amount of earnings which may be garnished for child support, and changes some procedures for obtaining garnishment for child support, but does not apply to alimony or other support cases, and does not expand the scope of garnishment to child support payments not yet in arrears.

Dear Mrs. Pippin:

In response to your October 13, 1981, request for Attorney General's opinions, your questions are answered as follows:

1. Which statutory limitations on the amount of wages subject to garnishment are to be followed in cases involving support payments; Section 6-10-7, 15 U.S.C. 1673(b), or the provisions of Act 81-697?

Sections 6-6-490 through 6-6-493, Code of Alabama 1975 (1981 Cum. Supp.), (Act No. 81-697), govern the amount of wages which may be garnished (or "garnisheed") for child support in Alabama. The newly codified act of the Legislature supersedes §6-10-7, Code of Alabama 1975, as to child support cases specifically, thereby raising the statutory maximum percentage of weekly earnings subject to garnishment for child support from 25 percent (25%) to 40 percent (40%).

Title 15 U.S.C.A. §1673(b)(Supp. 1981), does not take precedence over the state maximum since Alabama's provision is more restrictive than the federal statute. 15 U.S.C.A. §1677 (1974). See Ferry v. Ferry, 271 N.W.2d 450, 456 (Neb., 1978); Willhite v. Willhite, 546 P.2d 612, 616 (Okla., 1976).

2. Do the provisions of Act 81-697 limiting the amount of wages subject to garnishment apply only to child support cases or should they apply to all support cases, e.g., alimony cases?

By its express terms, the Alabama act (§§6-6-490 through 6-6-493, Code of Alabama 1975) applies only to child support cases, in contrast with the federal statute, 15 U.S.C.A. 1673(b)(Supp. 1981), which addresses "the support of any person" and treats the support of a spouse and dependent child identically. The recently enacted state provision applies specifically to "any case in which a responsible parent is under court order to provide child support." §6-6-490. Section 6-6-491 provides for a motion to be filed on behalf of a child concerning "delinquent child support," and the following section establishes another procedure for initiating wage garnishment proceedings expressly for child support. Nowhere in the statute is support of any person other than a child mentioned, nor does any part of the statute merely address support cases generally, therefore the applicability of the act is limited to child support cases exclusively.

3. Does the Act require that all garnishments for child support be filed on either a motion or a petition and require a judicial

hearing? If so, is a separate procedure applicable in alimony cases?

Sections 6-6-490 through 6-6-493 prescribe new methods for initiating garnishment proceedings for child support, but preempt only some of the general Alabama statutory procedures formerly utilized to secure garnishment in child support cases. §6-6-391 et seq., Code of Alabama 1975.

A hearing is not required by the act but is contemplated in case the plaintiff so demands, as provided by §6-6-450, Code of Alabama 1975, whose applicability is not removed by the passage of the later act, which changes only those procedures specifically addressed, including the means of initiating the proceedings and the method for service of process and answer. Cf., §§6-6-391, 6-6-393, 6-6-394, 6-6-450, Code of Alabama 1975.

The provisions of the new act, while not altering procedures applicable to alimony cases, would not prohibit the consolidation of garnishment proceedings for child support and alimony to the extent that they are compatible.

4. Does this Act now provide a scheme under Alabama law for a true means of continuing wage garnishment for support payments due in the future (more like wage assignment) or may garnishment writs still be entered only upon arrearages?

The new garnishment provisions for child support do not extend the reach of garnishment to payments not yet due or owing. Sections 6-6-491 and 6-6-492, Code of Alabama 1975, provide for the filing of a verified motion or petition alleging delinquent child support and specifying an amount of earnings sought to be garnished. A delinquency in one amount would not mandate garnishment for another amount exceeding the sum of support payments past due. Garnishment is designed not to enforce child support decrees prospectively but as one recourse for past violations of the decree resulting in debt to the plaintiff. See Fletcher v. Fletcher, 56 Ala. App. 492, 323 So. 2d 379, 380 (1975). The plaintiff cannot demand that an order for child support be liquidated

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immediately and the responsible parent's earnings subjected to garnishment indefinitely, before such support is due.

Thus the garnishment provided for by the act is "continuing" only in the sense that the parent's earnings will be subject to the order of garnishment not exceeding the statutory maximum for as long as necessary to pay the delinquent child support.

I hope these responses satisfy your inquiry. Please do not hesitate to contact me if this office may be of further assistance.

Sincerely yours,

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ATTORNEY GENERAL

BY -

  
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EDBH:sbh