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HOUSE BILL NO. 721

Offered January 11, 2006

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A BILL to amend and reenact §§ 8.01-511 and 8.01-512.3 of the Code of Virginia, relating to a garnishee's answer to a summons.

 Patron—McQuigg

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-511 and 8.01-512.3 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-511. Institution of garnishment proceedings.

On a suggestion by the judgment creditor that, by reason of the lien of his writ of fieri facias, there is a liability on any person other than the judgment debtor or that there is in the hands of some person in his capacity as personal representative of some decedent a sum of money to which a judgment debtor is or may be entitled as creditor or distributee of such decedent, upon which sum when determined such writ of fieri facias is a lien, a summons in the form prescribed by § 8.01-512.3 may (i) be sued out of the clerk's office of the court from which an execution on the judgment is issued so long as the judgment shall remain enforceable as provided in § 8.01-251, (ii) be sued out of the clerk's office to which an execution issued thereon has been returned as provided in § 16.1-99 against such person, or (iii) be sued out of the clerk's office from which an execution issued as provided in § 16.1-278.18. The summons and the notice and claim for exemption form required pursuant to § 8.01-512.4 shall be served on the garnishee, and shall be served on the judgment debtor promptly after service on the garnishee. Service on the judgment debtor and the garnishee shall be made pursuant to subdivision 1 or 2 of § 8.01-296. When making an application for garnishment, the judgment creditor shall set forth on the suggestion for summons in garnishment the last known address of the judgment debtor, and shall furnish the clerk, if service is to be made by the sheriff, or shall furnish any other person making service with an envelope, with first-class postage attached, addressed to such address. A copy of the summons and the notice and claim for exemptions form required under § 8.01-512.4 shall be sent by the clerk to the sheriff or provided by the judgment creditor to the person making service, with the process to be served. Promptly after service on the garnishee, the person making service shall mail such envelope by first-class mail to the judgment debtor at his last known address. If the person making service is unable to serve the judgment debtor pursuant to subdivision 1 of § 8.01-296, such mailing shall satisfy the mailing requirements of subdivision 2 b of § 8.01-296. The person making service shall note on his return the date of such mailing which, with the notation "copy mailed to judgment debtor" shall be sufficient proof of the mailing of such envelope with the required copy of the summons and the notice and claim for exemption form with no examination of such contents being required nor separate certification by the clerk or judgment creditor that the appropriate documents have been so inserted. If the person making service is unable to serve the judgment debtor pursuant to subdivision 1 or 2 of § 8.01-296, such mailing shall constitute service of process on the judgment debtor. The judgment creditor shall furnish the social security number of the judgment debtor to the clerk, except as hereinafter provided.

The judgment creditor may require the judgment debtor to furnish his correct social security number by the use of interrogatories. However, use of such interrogatories shall not be a required condition of a judgment creditor's diligent good faith effort to secure the judgment debtor's social security number. Such remedy shall be in addition to all other lawful remedies available to the judgment creditor.

Except as hereinafter provided, no summons shall be issued pursuant to this section for the garnishment of wages, salaries, commissions, or other earnings unless it: (i) is in the form prescribed by § 8.01-512.3, (ii) is directed to only one garnishee for the garnishment of only one judgment debtor and (iii) contains both the "TOTAL BALANCE DUE" and the social security number of the judgment debtor in the proper places as provided on the summons. Upon receipt of a summons not in compliance with this provision, the garnishee shall file a written answer to that effect *with the court and mail a copy to the judgment creditor or, if represented by counsel, to the judgment creditor's counsel* and shall have no liability to the judgment creditor, such summons being void upon transmission of the answer.

However, if the judgment that the judgment creditor seeks to enforce (i) does not involve a business, trade, or professional credit transaction entered into on or after January 1, 1984, or (ii) is based on any transaction entered into prior to January 1, 1984, then upon a representation by the judgment creditor, or his agent or attorney, that he has made a diligent good faith effort to secure the social security number

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59 of the judgment debtor and has been unable to do so, the garnishment shall be issued without the
 60 necessity for such number. In such cases, if the judgment debtor's correct social security number is not
 61 shown in the place provided on the summons, and the judgment debtor's name and address as shown on
 62 the garnishment summons do not match the name and current address of any employee as shown on the
 63 current payroll records of the garnishee, the garnishee shall file a written answer to that effect *with the*
 64 *court and mail a copy to the judgment creditor or, if represented by counsel, to the judgment creditor's*
 65 *counsel* and shall have no liability to the judgment creditor, such summons being void upon
 66 transmission of the answer.

67 The judgment creditor shall, in the suggestion, specify the amount of interest, if any, that is claimed
 68 to be due upon the judgment, calculated to the return day of the summons. He shall also set out such
 69 credits as may have been made upon the judgment.

70 No summons shall be issued pursuant to this section at the suggestion of the judgment creditor or his
 71 assignee against the wages of a judgment debtor unless the judgment creditor, or his agent or attorney,
 72 shall allege in his suggestion that the judgment for which enforcement is sought either (i) involves a
 73 business, trade, or professional credit transaction entered into on or after January 1, 1984, or (ii) does
 74 not involve a business, trade, or professional credit transaction entered into on or after January 1, 1984,
 75 and a diligent good faith effort has been made by the judgment creditor, or his agent or attorney, to
 76 secure the social security number of the judgment debtor.

77 In addition, the suggestion shall contain an allegation that:

78 1. The summons is based upon a judgment upon which a prior summons has been issued but not
 79 fully satisfied; or

80 2. No summons has been issued upon his suggestion against the same judgment debtor within a
 81 period of eighteen months, other than under the provisions of subdivision 1; or

82 3. The summons is based upon a judgment granted against a debtor upon a debt due or made for
 83 necessary food, rent or shelter, public utilities including telephone service, drugs, or medical care
 84 supplied the debtor by the judgment creditor or to one of his lawful dependents, and that it was not for
 85 luxuries or nonessentials; or

86 4. The summons is based upon a judgment for a debt due the judgment creditor to refinance a lawful
 87 loan made by an authorized lending institution; or

88 5. The summons is based upon a judgment on an obligation incurred as an endorser or comaker upon
 89 a lawful note; or

90 6. The summons is based upon a judgment for a debt or debts reaffirmed after bankruptcy.

91 Any judgment creditor who knowingly gives false information upon any such suggestion or
 92 certificate made under this chapter shall be guilty of a Class 1 misdemeanor.

93 § 8.01-512.3. Form of garnishment summons.

94 Any garnishment issued pursuant to § 8.01-511 shall be in the following form:

95 (a) Front side of summons:

96 GARNISHMENT SUMMONS

97 (Court Name)

98 (Name, address and telephone number of judgment creditor except that when the judgment creditor's
 99 attorney's name, address and telephone number appear on the summons, only the creditor's name shall
 100 be used.)

101 (Name, address and telephone number of judgment creditor's attorney)

102 (Name, street address and social security number of judgment debtor)

103 (Name and street address of garnishee)

104 Hearing Date and Time

105 MAXIMUM PORTION OF

106 DISPOSABLE EARNINGS SUBJECT

107 TO GARNISHMENT

108

109 ☐ Support

110 ☐ 50% ☐ 55% ☐ 60% ☐ 65%

111 (if not specified, then 50%)

112 ☐ state taxes, 100%

113 If none of the above is

114 checked, then § 34-29 (a)

115 applies.

STATEMENT

Judgment Principal \$...

Credits \$...

Interest \$...

Judgment Costs \$...

Attorney's Fees \$...

Garnishment Costs \$...

TOTAL BALANCE DUE \$...

The garnishee shall rely on this amount.

117 Date of Judgment

118 TO ANY AUTHORIZED OFFICER: You are hereby commanded to serve this summons on the
 119 judgment debtor and the garnishee.

TO THE GARNISHEE: You are hereby commanded to
 (1) File a written answer with this court *and mail a copy to the judgment creditor, or if represented by counsel, to the judgment creditor's counsel, or*

(2) Deliver payment to this court, or

(3) Appear before this court on the return date and time shown on this summons to answer the Suggestion for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there is a liability as shown in the statement upon the garnishee.

As garnishee, you shall withhold from the judgment debtor any sums of money to which the judgment debtor is or may be entitled from you during the period between the date of service of this summons on you and the date for your appearance in court, subject to the following limitations:

(1) The maximum amount that may be garnished is the "TOTAL BALANCE DUE" as shown on this summons.

(2) If the sums of money being garnished are earnings of the judgment debtor, then the provision of "MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT" shall apply.

If a garnishment summons is served on an employer having 1,000 or more employees, then money to which the judgment debtor is or may be entitled from his or her employer shall be considered those wages, salaries, commissions, or other earnings which, following service on the garnishee-employer, are determined and are payable to the judgment debtor under the garnishee-employer's normal payroll procedure with a reasonable time allowance for making a timely return by mail to this court.

..... Clerk
 Date of Issuance of Summons

.....
 Date of delivery of writ of fieri facias to sheriff if different from date of issuance of this summons.

(b) A plain language interpretation of § 34-29 shall appear on the reverse side of the summons as follows:

"The following statement is not the law but is an interpretation of the law which is intended to assist those who must respond to this garnishment. You may rely on this only for general guidance because the law itself is the final word. (Read the law, § 34-29 of the Code of Virginia, for a full explanation. A copy of § 34-29 is available at the clerk's office. If you do not understand the law, call a lawyer for help.)

An employer may take as much as 25 percent of an employee's disposable earnings to satisfy this garnishment. But if an employee makes the minimum wage or less for his week's earnings, the employee will ordinarily get to keep 30 times the minimum hourly wage."

But an employer may withhold a different amount of money from that above if:

(1) The employee must pay child support or spousal support and was ordered to do so by a court procedure or other legal procedure. No more than 65 percent of an employee's earnings may be withheld for support;

(2) Money is withheld by order of a bankruptcy court; or

(3) Money is withheld for a tax debt.

"Disposable earnings" means the money an employee makes after taxes and after other amounts required by law to be withheld are satisfied. Earnings can be salary, hourly wages, commissions, bonuses or otherwise, whether paid directly to the employee or not. After those earnings are in the bank for 30 days, they are not considered earnings any more.

If an employee tries to transfer, assign or in any way give his earnings to another person to avoid the garnishment, it will not be legal; earnings are still earnings.

An employee cannot be fired because he is garnished for one debt.

Financial institutions that receive an employee's paycheck by direct deposit do not have to determine what part of a person's earnings can be garnished.