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HOUSE BILL NO. 1093

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 8.01-512.3, 8.01-514, 8.01-515, 8.01-516.1, 8.01-517, and 8.01-520 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-520.1, relating to garnishment.

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-512.3, 8.01-514, 8.01-515, 8.01-516.1, 8.01-517, and 8.01-520 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-520.1 as follows:

§ 8.01-512.3. Form of garnishment summons.

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

(a) Front side of summons:

GARNISHMENT SUMMONS

(Court Name)

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

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

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

(Name and street address of garnishee)

..... Hearing Date and Time

This is a garnishment against (check only one of the designations below):

[] wages, salary, or other compensation. [] some other debt due or property of the judgment debtor.

Table with 3 columns: Description, Statement, Amount. Rows include MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT, Judgment Principal, Credits, Interest, Judgment Costs, Attorney's Fees, Garnishment Costs.

[] Support (if not specified, then 50%)

[] 50% [] 55% [] 60% [] 65%

[] state taxes, 100%

If none of the above is checked, then § 34-29 (a) applies.

TOTAL BALANCE DUE \$... The garnishee shall rely on this amount.

.....

Date of Judgment

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

TO THE GARNISHEE: You are hereby commanded to

(1) File a written answer with this court; or

(2) Deliver payment to this court, the judgment creditor or the judgment creditor's attorney; 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

56 fieri facias, there is a liability as shown in the statement upon the garnishee.

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

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

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

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

69 Clerk
70 Date of Issuance of Summons

71
72 Date of delivery of writ of fieri facias to sheriff if

73 different from date of issuance of this summons.

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

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

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

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

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

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

89 (3) Money is withheld for a tax debt.

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

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

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

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

99 § 8.01-514. When garnishment summons returnable.

100 The summons in garnishment, whether issued by a circuit court or a district court, may be directed to
101 a sheriff of any county or city wherein the judgment debtor resides or where the garnishment defendant
102 resides or where either may be found and shall be made returnable to the court that issued it ~~within 90~~
103 ~~days from the writ's issuance, except that, in the case of a wage garnishment, the summons shall be~~
104 ~~returnable not more than 180 days after such issuance on such date as fixed by the court.~~

105 § 8.01-515. How garnishee examined; determining exemption from employee's withholding
106 certificate; amount due pursuant to exemptions in § 34-29 (a).

107 A person so summoned shall appear in person and be examined on oath or he may file a statement.
108 A corporation so summoned shall appear by an authorized agent who shall be examined on oath or may
109 file a statement, not under seal of such authorized agent. Such statement shall show the amount the
110 garnishee is indebted to the judgment debtor, if any, or what property or effects, if any, the garnishee
111 has or holds which belongs to the judgment debtor, or in which he has an interest. Payment to the ~~court~~
112 ~~judgment creditor or the judgment creditor's attorney~~ of any amount by the garnishee shall have the
113 same force and effect as a statement which contains the information required by this section. If the
114 judgment debtor or judgment creditor disputes the verity or accuracy of such statement or amount and
115 so desires, then summons shall issue requiring the appearance of such person or authorized agent for
116 examination on oath, and requiring him to produce such books and papers as may be necessary to

117 determine the fact.

118 In determining the exemption to which the employee is entitled, the employer may until otherwise
119 ordered by the court rely upon the information contained in the employee's withholding exemption
120 certificate filed by the employee for federal income tax purposes, and any person showing more than
121 one exemption thereon shall be considered by him to be a householder or head of a family.

122 The employer may apply the exemptions provided in § 34-29 (a) unless otherwise specified on the
123 summons, or unless otherwise ordered by the court.

124 § 8.01-516.1. Garnishment dispositions.

125 A. If the amount of liability is not disputed and the garnishee admits liability to the court either by
126 (i) examination on the return date of the summons, or (ii) written statement as provided by § 8.01-515
127 on or before the return date of the summons, the court shall order the delivery of such estate or payment
128 of the value of such estate ~~into court~~ *to the judgment creditor or the judgment creditor's attorney*
129 without entering judgment against the garnishee. Should a garnishee fail to comply with the order within
130 ~~thirty~~ 30 days after service of such order on the garnishee, then judgment may be entered against the
131 garnishee.

132 B. Upon certification by the judgment creditor, its bona fide employee, or its attorney that its claim
133 has been satisfied or that it desires its action against the garnishee to be dismissed for any other reason,
134 the court, or clerk thereof, where the action has been filed, shall, by written order, which may be served
135 by the sheriff, notify the garnishee to cease withholding assets of the judgment debtor, and to treat any
136 funds previously withheld as if the original garnishment action had not been filed. The court in which
137 the garnishment action was filed shall then dismiss the action on or before the return date.

138 C. *If any portion of the judgment remains unsatisfied after the return day of the summons, any*
139 *subsequent garnishment based on the same judgment, even if sought against a different garnishee, shall*
140 *be considered a continuation of the original garnishment proceeding and shall maintain the same case*
141 *number as the original proceeding.*

142 § 8.01-517. Exemption of portion of wages; payment of excess.

143 Notwithstanding the provisions of §§ 8.01-515 and 8.01-516.1, any employer against whom any
144 garnishment is served in connection with an action or judgment against an employee may pay to such
145 employee when due wages or salary not exceeding the amount exempted by § 34-29 unless such
146 exemptions shall have been specifically disallowed by the court and shall answer such garnishment
147 summons by a written statement verified by affidavit, showing the amount of wages or salary due on the
148 return date of the garnishment summons and the amount of wages or salary so exempted, and if there
149 shall be an excess of wages or salary so due over the amount of the exemptions, the employer may pay
150 the amount of such excess ~~into the court where the garnishment summons is returnable to the judgment~~
151 *creditor or the judgment creditor's attorney*, which payment ~~when determined by the court to be correct~~
152 will constitute a discharge of any liability of the employer to the employee for the wages or salary so
153 withheld.

154 § 8.01-520. Payment, etc., by garnishee before return of summons.

155 Any person, summoned under § 8.01-511, before the return day of the summons, may pay what he is
156 liable for to the ~~clerk of the court issuing the summons and such clerk~~ *judgment creditor or the*
157 *judgment creditor's attorney who shall give a receipt, upon request, for what is so paid.*

158 § 8.01-520.1. Report of judgment creditor.

159 *Within 15 days after the end of each month in which payments are received by the judgment creditor*
160 *or the judgment creditor's attorney for the account of the judgment debtor, the judgment creditor or his*
161 *attorney shall send via first-class mail, postage prepaid, to the garnishee and the judgment debtor a*
162 *statement disclosing the payments received and the manner in which they were credited. The judgment*
163 *creditor or his attorney shall retain a copy of each statement until 90 days after the termination of the*
164 *garnishment proceeding and shall provide a copy upon request to any party or the court.*