



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB1752

Introduced 2/25/2005, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1402
735 ILCS 5/12-803

from Ch. 110, par. 2-1402
from Ch. 110, par. 12-803

Amends the Code of Civil Procedure. Provides that the amount of wages that may be applied toward a judgment is limited to the lesser of (1) 15% of gross weekly wages or (2) the amount by which the disposable earnings for the week exceed the greater of 45 times the federal minimum hourly wage or the minimum hourly wage prescribed by the Minimum Wage Law. Effective immediately.

LRB094 10620 LCB 40957 b

1 AN ACT concerning civil liabilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 2-1402 and 12-803 as follows:

6 (735 ILCS 5/2-1402) (from Ch. 110, par. 2-1402)

7 Sec. 2-1402. Supplementary proceedings.

8 (a) A judgment creditor, or his or her successor in
9 interest when that interest is made to appear of record, is
10 entitled to prosecute supplementary proceedings for the
11 purposes of examining the judgment debtor or any other person
12 to discover assets or income of the debtor not exempt from the
13 enforcement of the judgment, a deduction order or garnishment,
14 and of compelling the application of non-exempt assets or
15 income discovered toward the payment of the amount due under
16 the judgment. A supplementary proceeding shall be commenced by
17 the service of a citation issued by the clerk. The procedure
18 for conducting supplementary proceedings shall be prescribed
19 by rules. It is not a prerequisite to the commencement of a
20 supplementary proceeding that a certified copy of the judgment
21 has been returned wholly or partly unsatisfied. All citations
22 issued by the clerk shall have the following language, or
23 language substantially similar thereto, stated prominently on
24 the front, in capital letters: "YOUR FAILURE TO APPEAR IN COURT
25 AS HEREIN DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT
26 BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT,
27 WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL."
28 The court shall not grant a continuance of the supplementary
29 proceeding except upon good cause shown.

30 (b) Any citation served upon a judgment debtor or any other
31 person shall include a certification by the attorney for the
32 judgment creditor or the judgment creditor setting forth the

1 amount of the judgment, the date of the judgment, or its
2 revival date, the balance due thereon, the name of the court,
3 and the number of the case, and a copy of the citation notice
4 required by this subsection. Whenever a citation is served upon
5 a person or party other than the judgment debtor, the officer
6 or person serving the citation shall send to the judgment
7 debtor, within three business days of the service upon the
8 cited party, a copy of the citation and the citation notice,
9 which may be sent by regular first-class mail to the judgment
10 debtor's last known address. In no event shall a citation
11 hearing be held sooner than five business days after the
12 mailing of the citation and citation notice to the judgment
13 debtor, except by agreement of the parties. The citation notice
14 need not be mailed to a corporation, partnership, or
15 association. The citation notice shall be in substantially the
16 following form:

17 "CITATION NOTICE

18 (Name and address of Court)

19 Name of Case: (Name of Judgment Creditor),

20 Judgment Creditor v.

21 (Name of Judgment Debtor),

22 Judgment Debtor.

23 Address of Judgment Debtor: (Insert last known
24 address)

25 Name and address of Attorney for Judgment

26 Creditor or of Judgment Creditor (If no

27 attorney is listed): (Insert name and address)

28 Amount of Judgment: \$ (Insert amount)

29 Name of Person Receiving Citation: (Insert name)

30 Court Date and Time: (Insert return date and time
31 specified in citation)

32 NOTICE: The court has issued a citation against the person
33 named above. The citation directs that person to appear in
34 court to be examined for the purpose of allowing the judgment
35 creditor to discover income and assets belonging to the
36 judgment debtor or in which the judgment debtor has an

1 interest. The citation was issued on the basis of a judgment
2 against the judgment debtor in favor of the judgment creditor
3 in the amount stated above. On or after the court date stated
4 above, the court may compel the application of any discovered
5 income or assets toward payment on the judgment.

6 The amount of income or assets that may be applied toward
7 the judgment is limited by federal and Illinois law. The
8 JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS
9 AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH
10 MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED
11 ABOVE:

12 (1) Under Illinois or federal law, the exemptions of
13 personal property owned by the debtor include the debtor's
14 equity interest, not to exceed \$2,000 in value, in any
15 personal property as chosen by the debtor; Social Security
16 and SSI benefits; public assistance benefits; unemployment
17 compensation benefits; worker's compensation benefits;
18 veteran's benefits; circuit breaker property tax relief
19 benefits; the debtor's equity interest, not to exceed
20 \$1,200 in value, in any one motor vehicle, and the debtor's
21 equity interest, not to exceed \$750 in value, in any
22 implements, professional books, or tools of the trade of
23 the debtor.

24 (2) Under Illinois law, every person is entitled to an
25 estate in homestead, when it is owned and occupied as a
26 residence, to the extent in value of \$7,500, which
27 homestead is exempt from judgment.

28 (3) Under Illinois law, the amount of wages that may be
29 applied toward a judgment is limited to the lesser of (i)
30 15% of gross weekly wages or (ii) the amount by which
31 disposable earnings for a week exceed the total of 45 times
32 the federal minimum hourly wage or the Illinois minimum
33 hourly wage, whichever is greater.

34 (4) Under federal law, the amount of wages that may be
35 applied toward a judgment is limited to the lesser of (i)
36 25% of disposable earnings for a week or (ii) the amount by

1 which disposable earnings for a week exceed 30 times the
2 federal minimum hourly wage.

3 (5) Pension and retirement benefits and refunds may be
4 claimed as exempt under Illinois law.

5 The judgment debtor may have other possible exemptions
6 under the law.

7 THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING
8 TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The
9 judgment debtor also has the right to seek a declaration at an
10 earlier date, by notifying the clerk in writing at (insert
11 address of clerk). When so notified, the Clerk of the Court
12 will obtain a prompt hearing date from the court and will
13 provide the necessary forms that must be prepared by the
14 judgment debtor or the attorney for the judgment debtor and
15 sent to the judgment creditor and the judgment creditor's
16 attorney regarding the time and location of the hearing. This
17 notice may be sent by regular first class mail."

18 (c) When assets or income of the judgment debtor not exempt
19 from the satisfaction of a judgment, a deduction order or
20 garnishment are discovered, the court may, by appropriate order
21 or judgment:

22 (1) Compel the judgment debtor to deliver up, to be
23 applied in satisfaction of the judgment, in whole or in
24 part, money, choses in action, property or effects in his
25 or her possession or control, so discovered, capable of
26 delivery and to which his or her title or right of
27 possession is not substantially disputed.

28 (2) Compel the judgment debtor to pay to the judgment
29 creditor or apply on the judgment, in installments, a
30 portion of his or her income, however or whenever earned or
31 acquired, as the court may deem proper, having due regard
32 for the reasonable requirements of the judgment debtor and
33 his or her family, if dependent upon him or her, as well as
34 any payments required to be made by prior order of court or
35 under wage assignments outstanding; provided that the
36 judgment debtor shall not be compelled to pay income which

1 would be considered exempt as wages under the Wage
2 Deduction Statute. The court may modify an order for
3 installment payments, from time to time, upon application
4 of either party upon notice to the other.

5 (3) Compel any person cited, other than the judgment
6 debtor, to deliver up any assets so discovered, to be
7 applied in satisfaction of the judgment, in whole or in
8 part, when those assets are held under such circumstances
9 that in an action by the judgment debtor he or she could
10 recover them in specie or obtain a judgment for the
11 proceeds or value thereof as for conversion or
12 embezzlement.

13 (4) Enter any order upon or judgment against the person
14 cited that could be entered in any garnishment proceeding.

15 (5) Compel any person cited to execute an assignment of
16 any chose in action or a conveyance of title to real or
17 personal property, in the same manner and to the same
18 extent as a court could do in any proceeding by a judgment
19 creditor to enforce payment of a judgment or in aid of the
20 enforcement of a judgment.

21 (6) Authorize the judgment creditor to maintain an
22 action against any person or corporation that, it appears
23 upon proof satisfactory to the court, is indebted to the
24 judgment debtor, for the recovery of the debt, forbid the
25 transfer or other disposition of the debt until an action
26 can be commenced and prosecuted to judgment, direct that
27 the papers or proof in the possession or control of the
28 debtor and necessary in the prosecution of the action be
29 delivered to the creditor or impounded in court, and
30 provide for the disposition of any moneys in excess of the
31 sum required to pay the judgment creditor's judgment and
32 costs allowed by the court.

33 (d) No order or judgment shall be entered under subsection
34 (c) in favor of the judgment creditor unless there appears of
35 record a certification of mailing showing that a copy of the
36 citation and a copy of the citation notice was mailed to the

1 judgment debtor as required by subsection (b).

2 (e) All property ordered to be delivered up shall, except
3 as otherwise provided in this Section, be delivered to the
4 sheriff to be collected by the sheriff or sold at public sale
5 and the proceeds thereof applied towards the payment of costs
6 and the satisfaction of the judgment.

7 (f) (1) The citation may prohibit the party to whom it is
8 directed from making or allowing any transfer or other
9 disposition of, or interfering with, any property not
10 exempt from the enforcement of a judgment therefrom, a
11 deduction order or garnishment, belonging to the judgment
12 debtor or to which he or she may be entitled or which may
13 thereafter be acquired by or become due to him or her, and
14 from paying over or otherwise disposing of any moneys not
15 so exempt which are due or to become due to the judgment
16 debtor, until the further order of the court or the
17 termination of the proceeding, whichever occurs first. The
18 third party may not be obliged to withhold the payment of
19 any moneys beyond double the amount of the balance due
20 sought to be enforced by the judgment creditor. The court
21 may punish any party who violates the restraining provision
22 of a citation as and for a contempt, or if the party is a
23 third party may enter judgment against him or her in the
24 amount of the unpaid portion of the judgment and costs
25 allowable under this Section, or in the amount of the value
26 of the property transferred, whichever is lesser.

27 (2) The court may enjoin any person, whether or not a
28 party to the supplementary proceeding, from making or
29 allowing any transfer or other disposition of, or
30 interference with, the property of the judgment debtor not
31 exempt from the enforcement of a judgment, a deduction
32 order or garnishment, or the property or debt not so exempt
33 concerning which any person is required to attend and be
34 examined until further direction in the premises. The
35 injunction order shall remain in effect until vacated by
36 the court or until the proceeding is terminated, whichever

1 first occurs.

2 (g) If it appears that any property, chose in action,
3 credit or effect discovered, or any interest therein, is
4 claimed by any person, the court shall, as in garnishment
5 proceedings, permit or require the claimant to appear and
6 maintain his or her right. The rights of the person cited and
7 the rights of any adverse claimant shall be asserted and
8 determined pursuant to the law relating to garnishment
9 proceedings.

10 (h) Costs in proceedings authorized by this Section shall
11 be allowed, assessed and paid in accordance with rules,
12 provided that if the court determines, in its discretion, that
13 costs incurred by the judgment creditor were improperly
14 incurred, those costs shall be paid by the judgment creditor.

15 (i) This Section is in addition to and does not affect
16 enforcement of judgments or proceedings supplementary thereto,
17 by any other methods now or hereafter provided by law.

18 (j) This Section does not grant the power to any court to
19 order installment or other payments from, or compel the sale,
20 delivery, surrender, assignment or conveyance of any property
21 exempt by statute from the enforcement of a judgment thereon, a
22 deduction order, garnishment, attachment, sequestration,
23 process or other levy or seizure.

24 (k) (Blank).

25 (l) At any citation hearing at which the judgment debtor
26 appears and seeks a declaration that certain of his or her
27 income or assets are exempt, the court shall proceed to
28 determine whether the property which the judgment debtor
29 declares to be exempt is exempt from judgment. At any time
30 before the return date specified on the citation, the judgment
31 debtor may request, in writing, a hearing to declare exempt
32 certain income and assets by notifying the clerk of the court
33 before that time, using forms as may be provided by the clerk
34 of the court. The clerk of the court will obtain a prompt
35 hearing date from the court and will provide the necessary
36 forms that must be prepared by the judgment debtor or the

1 attorney for the judgment debtor and sent to the judgment
2 creditor, or the judgment creditor's attorney, regarding the
3 time and location of the hearing. This notice may be sent by
4 regular first class mail. At the hearing, the court shall
5 immediately, unless for good cause shown that the hearing is to
6 be continued, shall proceed to determine whether the property
7 which the judgment debtor declares to be exempt is exempt from
8 judgment. The restraining provisions of subsection (f) shall
9 not apply to any property determined by the court to be exempt.

10 (m) The judgment or balance due on the judgment becomes a
11 lien when a citation is served in accordance with subsection
12 (a) of this Section. The lien binds nonexempt personal
13 property, including money, choses in action, and effects of the
14 judgment debtor as follows:

15 (1) When the citation is directed against the judgment
16 debtor, upon all personal property belonging to the
17 judgment debtor in the possession or control of the
18 judgment debtor or which may thereafter be acquired or come
19 due to the judgment debtor to the time of the disposition
20 of the citation.

21 (2) When the citation is directed against a third
22 party, upon all personal property belonging to the judgment
23 debtor in the possession or control of the third party or
24 which thereafter may be acquired or come due the judgment
25 debtor and comes into the possession or control of the
26 third party to the time of the disposition of the citation.

27 The lien established under this Section does not affect the
28 rights of citation respondents in property prior to the service
29 of the citation upon them and does not affect the rights of
30 bona fide purchasers or lenders without notice of the citation.
31 The lien is effective for the period specified by Supreme Court
32 Rule.

33 This subsection (m), as added by Public Act 88-48, is a
34 declaration of existing law.

35 (n) If any provision of this Act or its application to any
36 person or circumstance is held invalid, the invalidity of that

1 provision or application does not affect the provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application.

4 (Source: P.A. 88-48; 88-299; 88-667, eff. 9-16-94; 88-670, eff.
5 12-2-94; 89-364, eff. 1-1-96.)

6 (735 ILCS 5/12-803) (from Ch. 110, par. 12-803)

7 Sec. 12-803. Maximum wages subject to collection. The
8 maximum wages, salary, commissions and bonuses subject to
9 collection under a deduction order, for any work week shall not
10 exceed the lesser of (1) 15% of such gross amount paid for that
11 week or (2) the amount by which disposable earnings for a week
12 exceed 45 times the Federal Minimum Hourly Wage prescribed by
13 Section 206(a)(1) of Title 29 of the United States Code, as
14 amended, or the minimum hourly wage prescribed by Section 4 of
15 the Minimum Wage Law, whichever is greater, in effect at the
16 time the amounts are payable. This provision (and no other)
17 applies irrespective of the place where the compensation was
18 earned or payable and the State where the employee resides. No
19 amounts required by law to be withheld may be taken from the
20 amount collected by the creditor. The term "disposable
21 earnings" means that part of the earnings of any individual
22 remaining after the deduction from those earnings of any
23 amounts required by law to be withheld.

24 (Source: P.A. 87-569.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.