

**98TH GENERAL ASSEMBLY****State of Illinois****2013 and 2014****SB0036**

Introduced 1/10/2013, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1402

from Ch. 110, par. 2-1402

Amends the Code of Civil Procedure. In a Section concerning supplementary proceedings, provides notice requirements in proceedings commenced by a unit of local government that may result in the immobilization of a vehicle. Provides that a unit of local government may serve a citation to discover assets by registered or certified mail, return receipt requested, to the judgment debtor's address on record with the Secretary of State, with exceptions, and that service of a citation to discover assets in this manner is effective upon mailing of the citation to discover assets. Provides that a judgment creditor which is a unit of local government may immobilize a vehicle of the judgment debtor for the purpose of facilitating enforcement of and satisfying, in whole or in part, the judgment. Provides that immobilization may not occur until the judgment debtor has had the opportunity to appear and contest the immobilization at the citation hearing, or the judgment debtor has failed to appear at the citation hearing. Provides that if a unit of local government immobilizes a vehicle, it shall affix a notice of immobilization to the vehicle at the time the restraint device is attached to the vehicle. Provides that the notice shall provide information regarding the procedure to have the device removed. Provides that the judgment debtor shall, within 24 hours of the immobilization, follow the procedures listed on the notice to pay the applicable costs. Provides that if the judgment debtor fails to respond within 24 hours of the immobilization, the unit of local government may tow and impound the vehicle. Provides that the vehicle shall be eligible for auction or public sale if, within 21 days after the vehicle is towed and impounded, the judgment debtor fails to pay all applicable costs.

LRB098 02694 HEP 32700 b

1 AN ACT concerning civil law.

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 Section 2-1402 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

1 the front, in capital letters: "IF YOU FAIL TO APPEAR IN COURT
2 AS DIRECTED IN THIS NOTICE, YOU MAY BE ARRESTED AND BROUGHT
3 BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT,
4 WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL."

5 The court shall not grant a continuance of the supplementary
6 proceeding except upon good cause shown.

7 (b) Any citation served upon a judgment debtor or any other
8 person shall include a certification by the attorney for the
9 judgment creditor or the judgment creditor setting forth the
10 amount of the judgment, the date of the judgment, or its
11 revival date, the balance due thereon, the name of the court,
12 and the number of the case, and a copy of the citation notice
13 required by this subsection. Whenever a citation is served upon
14 a person or party other than the judgment debtor, the officer
15 or person serving the citation shall send to the judgment
16 debtor, within three business days of the service upon the
17 cited party, a copy of the citation and the citation notice,
18 which may be sent by regular first-class mail to the judgment
19 debtor's last known address. In no event shall a citation
20 hearing be held sooner than five business days after the
21 mailing of the citation and citation notice to the judgment
22 debtor, except by agreement of the parties. The citation notice
23 need not be mailed to a corporation, partnership, or
24 association. The citation notice shall be in substantially the
25 following form:

26 "CITATION NOTICE

1 (Name and address of Court)
2 Name of Case: (Name of Judgment Creditor),
3 Judgment Creditor v.
4 (Name of Judgment Debtor),
5 Judgment Debtor.
6 Address of Judgment Debtor: (Insert last known
7 address)
8 Name and address of Attorney for Judgment
9 Creditor or of Judgment Creditor (If no
10 attorney is listed): (Insert name and address)
11 Amount of Judgment: \$ (Insert amount)
12 Name of Person Receiving Citation: (Insert name)
13 Court Date and Time: (Insert return date and time
14 specified in citation)

15 NOTICE: The court has issued a citation against the person
16 named above. The citation directs that person to appear in
17 court to be examined for the purpose of allowing the judgment
18 creditor to discover income and assets belonging to the
19 judgment debtor or in which the judgment debtor has an
20 interest. The citation was issued on the basis of a judgment
21 against the judgment debtor in favor of the judgment creditor
22 in the amount stated above. On or after the court date stated
23 above, the court may compel the application of any discovered
24 income or assets toward payment on the judgment.

25 The amount of income or assets that may be applied toward
26 the judgment is limited by federal and Illinois law. The

1 JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS
2 AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH
3 MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED
4 ABOVE:

5 (1) Under Illinois or federal law, the exemptions of
6 personal property owned by the debtor include the debtor's
7 equity interest, not to exceed \$4,000 in value, in any
8 personal property as chosen by the debtor; Social Security
9 and SSI benefits; public assistance benefits; unemployment
10 compensation benefits; worker's compensation benefits;
11 veteran's benefits; circuit breaker property tax relief
12 benefits; the debtor's equity interest, not to exceed
13 \$2,400 in value, in any one motor vehicle, and the debtor's
14 equity interest, not to exceed \$1,500 in value, in any
15 implements, professional books, or tools of the trade of
16 the debtor.

17 (2) Under Illinois law, every person is entitled to an
18 estate in homestead, when it is owned and occupied as a
19 residence, to the extent in value of \$15,000, which
20 homestead is exempt from judgment.

21 (3) Under Illinois law, the amount of wages that may be
22 applied toward a judgment is limited to the lesser of (i)
23 15% of gross weekly wages or (ii) the amount by which
24 disposable earnings for a week exceed the total of 45 times
25 the federal minimum hourly wage or, under a wage deduction
26 summons served on or after January 1, 2006, the Illinois

1 minimum hourly wage, whichever is greater.

2 (4) Under federal law, the amount of wages that may be
3 applied toward a judgment is limited to the lesser of (i)
4 25% of disposable earnings for a week or (ii) the amount by
5 which disposable earnings for a week exceed 30 times the
6 federal minimum hourly wage.

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

9 The judgment debtor may have other possible exemptions
10 under the law.

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

22 (b-1) Any citation served upon a judgment debtor who is a
23 natural person shall be served by personal service or abode
24 service as provided in Supreme Court Rule 105 and shall include
25 a copy of the Income and Asset Form set forth in subsection
26 (b-5).

1 (b-5) The Income and Asset Form required to be served by
 2 the judgment creditor in subsection (b-1) shall be in
 3 substantially the following form:

4 INCOME AND ASSET FORM

5 To Judgment Debtor: Please complete this form and bring
 6 it with you to the hearing referenced in the enclosed
 7 citation notice. You should also bring to the hearing any
 8 documents you have to support the information you provide
 9 in this form, such as pay stubs and account statements. The
 10 information you provide will help the court determine
 11 whether you have any property or income that can be used to
 12 satisfy the judgment entered against you in this matter.
 13 The information you provide must be accurate to the best of
 14 your knowledge.

15 If you fail to appear at this hearing, you could be
 16 held in contempt of court and possibly arrested.

17 In answer to the citation and supplemental proceedings
 18 served upon the judgment debtor, he or she answers as
 19 follows:

- 20 Name:.....
- 21 Home Phone Number:.....
- 22 Home Address:.....
- 23 Date of Birth:.....
- 24 Marital Status:.....

1 I have.....dependents.

2 Do you have a job? YES NO

3 Company's name I work for:.....

4 Company's address:.....

5 Job:

6 I earn \$..... per.....

7 If self employed, list here your business name and
8 address:

9

10 Income from self employment is \$..... per
11 year.

12 I have the following benefits with my employer:

13

14 I do not have a job, but I support myself through:

15 Government Assistance \$..... per month

16 Unemployment \$..... per month

17 Social Security \$..... per month

18 SSI \$..... per month

19 Pension \$..... per month

20 Other \$..... per month

21 Real Estate:

22 Do you own any real estate? YES NO

23 I own real estate at....., with names of other
24 owners

25

1 Additional real estate I own:

2 I have a beneficial interest in a land trust. The name
3 and address of the trustee is:..... The beneficial
4 interest is listed in my name and

5 There is a mortgage on my real estate. State the
6 mortgage company's name and address for each parcel of real
7 estate owned:

8

9 An assignment of beneficial interest in the land trust
10 was signed to secure a loan from.....

11 I have the following accounts:

12 Checking account at;
13 account balance \$.....

14 Savings account at;
15 account balance \$.....

16 Money market or certificate of deposit at

17 Safe deposit box at

18 Other accounts (please identify):

19 I own:

20 A vehicle (state year, make, model, and VIN):

21 Jewelry (please specify):

22 Other property described as:.....

23 Stocks/Bonds.....

24 Personal computer.....

25 DVD player.....

26 Television.....

1 Stove.....

2 Microwave.....

3 Work tools.....

4 Business equipment.....

5 Farm equipment.....

6 Other property (please specify):

7

8 Signature:.....

9 (b-10) Any action properly initiated under this Section may

10 proceed notwithstanding an absent or incomplete Income and

11 Asset Form, and a judgment debtor may be examined for the

12 purpose of allowing the judgment creditor to discover income

13 and assets belonging to the judgment debtor or in which the

14 judgment debtor has an interest.

15 (b-15) In a supplementary proceeding commenced by a unit of

16 local government under this Section that may result in the

17 immobilization of a vehicle under subsection (k-15) of this

18 Section, in addition to any other language required by this

19 Section, the citation issued to the judgment debtor shall

20 include the following language, or substantially similar

21 language, stated prominently in capital letters: "A JUDGMENT

22 HAS BEEN ENTERED AGAINST YOU IN [INSERT NAME OF CASE] . AS A

23 RESULT, [INSERT NAME OF JUDGMENT CREDITOR] , A UNIT OF LOCAL

24 GOVERNMENT, MAY IMMOBILIZE YOUR VEHICLE UNTIL THE JUDGMENT HAS

25 BEEN SATISFIED. IF YOU WISH TO CONTEST THIS DETERMINATION OR

26 THE IMMOBILIZATION OF YOUR VEHICLE, YOU MUST APPEAR AT THE

1 HEARING REFERENCED IN THE ENCLOSED CITATION NOTICE."

2 A unit of local government may serve a citation to discover
3 assets by registered or certified mail, return receipt
4 requested, to the judgment debtor's address on record with the
5 Secretary of State, unless the unit of local government has
6 actual knowledge that the judgment debtor resides at a
7 different address. Service of a citation to discover assets in
8 this manner is effective upon mailing of the citation to
9 discover assets.

10 (c) When assets or income of the judgment debtor not exempt
11 from the satisfaction of a judgment, a deduction order or
12 garnishment are discovered, the court may, by appropriate order
13 or judgment:

14 (1) Compel the judgment debtor to deliver up, to be
15 applied in satisfaction of the judgment, in whole or in
16 part, money, choses in action, property or effects in his
17 or her possession or control, so discovered, capable of
18 delivery and to which his or her title or right of
19 possession is not substantially disputed.

20 (2) Compel the judgment debtor to pay to the judgment
21 creditor or apply on the judgment, in installments, a
22 portion of his or her income, however or whenever earned or
23 acquired, as the court may deem proper, having due regard
24 for the reasonable requirements of the judgment debtor and
25 his or her family, if dependent upon him or her, as well as
26 any payments required to be made by prior order of court or

1 under wage assignments outstanding; provided that the
2 judgment debtor shall not be compelled to pay income which
3 would be considered exempt as wages under the Wage
4 Deduction Statute. The court may modify an order for
5 installment payments, from time to time, upon application
6 of either party upon notice to the other.

7 (3) Compel any person cited, other than the judgment
8 debtor, to deliver up any assets so discovered, to be
9 applied in satisfaction of the judgment, in whole or in
10 part, when those assets are held under such circumstances
11 that in an action by the judgment debtor he or she could
12 recover them in specie or obtain a judgment for the
13 proceeds or value thereof as for conversion or
14 embezzlement. A judgment creditor may recover a corporate
15 judgment debtor's property on behalf of the judgment debtor
16 for use of the judgment creditor by filing an appropriate
17 petition within the citation proceedings.

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

20 (5) Compel any person cited to execute an assignment of
21 any chose in action or a conveyance of title to real or
22 personal property or resign memberships in exchanges,
23 clubs, or other entities in the same manner and to the same
24 extent as a court could do in any proceeding by a judgment
25 creditor to enforce payment of a judgment or in aid of the
26 enforcement of a judgment.

1 (6) Authorize the judgment creditor to maintain an
2 action against any person or corporation that, it appears
3 upon proof satisfactory to the court, is indebted to the
4 judgment debtor, for the recovery of the debt, forbid the
5 transfer or other disposition of the debt until an action
6 can be commenced and prosecuted to judgment, direct that
7 the papers or proof in the possession or control of the
8 debtor and necessary in the prosecution of the action be
9 delivered to the creditor or impounded in court, and
10 provide for the disposition of any moneys in excess of the
11 sum required to pay the judgment creditor's judgment and
12 costs allowed by the court.

13 (c-5) If a citation is directed to a judgment debtor who is
14 a natural person, no payment order shall be entered under
15 subsection (c) unless the Income and Asset Form was served upon
16 the judgment debtor as required by subsection (b-1), the
17 judgment debtor has had an opportunity to assert exemptions,
18 and the payments are from non-exempt sources.

19 (d) No order or judgment shall be entered under subsection
20 (c) in favor of the judgment creditor unless there appears of
21 record a certification of mailing showing that a copy of the
22 citation and a copy of the citation notice was mailed to the
23 judgment debtor as required by subsection (b).

24 (d-5) If upon examination the court determines that the
25 judgment debtor does not possess any non-exempt income or
26 assets, then the citation shall be dismissed.

1 (e) All property ordered to be delivered up shall, except
2 as otherwise provided in this Section, be delivered to the
3 sheriff to be collected by the sheriff or sold at public sale
4 and the proceeds thereof applied towards the payment of costs
5 and the satisfaction of the judgment. If the judgment debtor's
6 property is of such a nature that it is not readily delivered
7 up to the sheriff for public sale or if another method of sale
8 is more appropriate to liquidate the property or enhance its
9 value at sale, the court may order the sale of such property by
10 the debtor, third party respondent, or by a selling agent other
11 than the sheriff upon such terms as are just and equitable. The
12 proceeds of sale, after deducting reasonable and necessary
13 expenses, are to be turned over to the creditor and applied to
14 the balance due on the judgment.

15 (f) (1) The citation may prohibit the party to whom it is
16 directed from making or allowing any transfer or other
17 disposition of, or interfering with, any property not
18 exempt from the enforcement of a judgment therefrom, a
19 deduction order or garnishment, belonging to the judgment
20 debtor or to which he or she may be entitled or which may
21 thereafter be acquired by or become due to him or her, and
22 from paying over or otherwise disposing of any moneys not
23 so exempt which are due or to become due to the judgment
24 debtor, until the further order of the court or the
25 termination of the proceeding, whichever occurs first. The
26 third party may not be obliged to withhold the payment of

1 any moneys beyond double the amount of the balance due
2 sought to be enforced by the judgment creditor. The court
3 may punish any party who violates the restraining provision
4 of a citation as and for a contempt, or if the party is a
5 third party may enter judgment against him or her in the
6 amount of the unpaid portion of the judgment and costs
7 allowable under this Section, or in the amount of the value
8 of the property transferred, whichever is lesser.

9 (2) The court may enjoin any person, whether or not a
10 party to the supplementary proceeding, from making or
11 allowing any transfer or other disposition of, or
12 interference with, the property of the judgment debtor not
13 exempt from the enforcement of a judgment, a deduction
14 order or garnishment, or the property or debt not so exempt
15 concerning which any person is required to attend and be
16 examined until further direction in the premises. The
17 injunction order shall remain in effect until vacated by
18 the court or until the proceeding is terminated, whichever
19 first occurs.

20 (g) If it appears that any property, chose in action,
21 credit or effect discovered, or any interest therein, is
22 claimed by any person, the court shall, as in garnishment
23 proceedings, permit or require the claimant to appear and
24 maintain his or her right. The rights of the person cited and
25 the rights of any adverse claimant shall be asserted and
26 determined pursuant to the law relating to garnishment

1 proceedings.

2 (h) Costs in proceedings authorized by this Section shall
3 be allowed, assessed and paid in accordance with rules,
4 provided that if the court determines, in its discretion, that
5 costs incurred by the judgment creditor were improperly
6 incurred, those costs shall be paid by the judgment creditor.

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

10 (j) This Section does not grant the power to any court to
11 order installment or other payments from, or compel the sale,
12 delivery, surrender, assignment or conveyance of any property
13 exempt by statute from the enforcement of a judgment thereon, a
14 deduction order, garnishment, attachment, sequestration,
15 process or other levy or seizure.

16 (k) (Blank).

17 (k-5) If the court determines that any property held by a
18 third party respondent is wages pursuant to Section 12-801, the
19 court shall proceed as if a wage deduction proceeding had been
20 filed and proceed to enter such necessary and proper orders as
21 would have been entered in a wage deduction proceeding
22 including but not limited to the granting of the statutory
23 exemptions allowed by Section 12-803 and all other remedies
24 allowed plaintiff and defendant pursuant to Part 8 of Article
25 12 of this Act.

26 (k-10) If a creditor discovers personal property of the

1 judgment debtor that is subject to the lien of a citation to
2 discover assets, the creditor may have the court impress a lien
3 against a specific item of personal property, including a
4 beneficial interest in a land trust. The lien survives the
5 termination of the citation proceedings and remains as a lien
6 against the personal property in the same manner that a
7 judgment lien recorded against real property pursuant to
8 Section 12-101 remains a lien on real property. If the judgment
9 is revived before dormancy, the lien shall remain. A lien
10 against personal property may, but need not, be recorded in the
11 office of the recorder or filed as an informational filing
12 pursuant to the Uniform Commercial Code.

13 (k-15) If a judgment creditor is a unit of local government
14 as defined in Article 7, Section 1 of the Illinois
15 Constitution, the unit of local government may immobilize a
16 vehicle of the judgment debtor for the purpose of facilitating
17 enforcement of and satisfying, in whole or in part, the
18 judgment. Immobilization may not occur until the judgment
19 debtor has had the opportunity to appear and contest the
20 immobilization at the citation hearing, or the judgment debtor
21 has failed to appear at the citation hearing as required by
22 this Section. If a unit of local government immobilizes a
23 vehicle under this subsection, it shall affix a notice of
24 immobilization to the vehicle at the time the restraint device
25 is attached to the vehicle. This notice shall provide
26 information regarding the procedure to have the device removed.

1 The judgment debtor shall, within 24 hours of the
2 immobilization, follow the procedures listed on the notice of
3 immobilization to:

4 (1) pay any reasonable immobilization fee imposed by
5 the unit of local government; and

6 (2) pay the entire outstanding amount of the judgment,
7 subject to any applicable exemptions, make other
8 arrangements such as a qualified payment plan with the unit
9 of local government, or both.

10 If the judgment debtor fails to respond within 24 hours of
11 the immobilization, the unit of local government may tow and
12 impound the vehicle. The vehicle shall be eligible for auction
13 or public sale if, within 21 days after the vehicle is towed
14 and impounded, the judgment debtor fails:

15 (1) to pay any reasonable immobilization fee and all
16 towing and storage charges imposed by the unit of local
17 government; and

18 (2) to pay the entire outstanding amount of the
19 judgment, subject to any applicable exemptions, make other
20 arrangements, such as a qualified payment plan with the
21 unit of local government, or both.

22 (1) At any citation hearing at which the judgment debtor
23 appears and seeks a declaration that certain of his or her
24 income or assets are exempt, the court shall proceed to
25 determine whether the property which the judgment debtor
26 declares to be exempt is exempt from judgment. At any time

1 before the return date specified on the citation, the judgment
2 debtor may request, in writing, a hearing to declare exempt
3 certain income and assets by notifying the clerk of the court
4 before that time, using forms as may be provided by the clerk
5 of the court. The clerk of the court will obtain a prompt
6 hearing date from the court and will provide the necessary
7 forms that must be prepared by the judgment debtor or the
8 attorney for the judgment debtor and sent to the judgment
9 creditor, or the judgment creditor's attorney, regarding the
10 time and location of the hearing. This notice may be sent by
11 regular first class mail. At the hearing, the court shall
12 immediately, unless for good cause shown that the hearing is to
13 be continued, shall proceed to determine whether the property
14 which the judgment debtor declares to be exempt is exempt from
15 judgment. The restraining provisions of subsection (f) shall
16 not apply to any property determined by the court to be exempt.

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

22 (1) When the citation is directed against the judgment
23 debtor, upon all personal property belonging to the
24 judgment debtor in the possession or control of the
25 judgment debtor or which may thereafter be acquired or come
26 due to the judgment debtor to the time of the disposition

1 of the citation.

2 (2) When the citation is directed against a third
3 party, upon all personal property belonging to the judgment
4 debtor in the possession or control of the third party or
5 which thereafter may be acquired or come due the judgment
6 debtor and comes into the possession or control of the
7 third party to the time of the disposition of the citation.

8 The lien established under this Section does not affect the
9 rights of citation respondents in property prior to the service
10 of the citation upon them and does not affect the rights of
11 bona fide purchasers or lenders without notice of the citation.
12 The lien is effective for the period specified by Supreme Court
13 Rule.

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

16 (n) If any provision of this Act or its application to any
17 person or circumstance is held invalid, the invalidity of that
18 provision or application does not affect the provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application.

21 (o) The changes to this Section made by this amendatory Act
22 of the 97th General Assembly apply only to supplementary
23 proceedings commenced under this Section on or after the
24 effective date of this amendatory Act of the 97th General
25 Assembly. The requirements or limitations set forth in
26 subsections (b-1), (b-5), (b-10), (c-5), and (d-5) do not apply

1 to the enforcement of any order or judgment resulting from an
2 adjudication of a municipal ordinance violation that is subject
3 to Supreme Court Rules 570 through 579, or from an
4 administrative adjudication of such an ordinance violation.
5 (Source: P.A. 97-350, eff. 1-1-12; 97-848, eff. 7-25-12.)