



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3785

Introduced 2/11/2010, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1402	from Ch. 110, par. 2-1402
735 ILCS 5/12-901	from Ch. 110, par. 12-901
735 ILCS 5/12-904	from Ch. 110, par. 12-904
735 ILCS 5/12-906	from Ch. 110, par. 12-906
735 ILCS 5/12-909	from Ch. 110, par. 12-909
735 ILCS 5/12-910	from Ch. 110, par. 12-910
735 ILCS 5/12-911	from Ch. 110, par. 12-911
735 ILCS 5/12-912	from Ch. 110, par. 12-912

Amends the Code of Civil Procedure. Increases the allowable amount of an estate of homestead property used as a residence from \$15,000 to \$30,000 for an individual and from \$30,000 to \$60,000 for 2 or more individuals, except that for an individual 65 years of age or older the allowable amount of an estate of homestead property used as a residence increases from \$15,000 to \$45,000.

LRB096 20506 AJO 36185 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 Sections 2-1402, 12-901, 12-904, 12-906, 12-909,
6 12-910, 12-911, and 12-912 as follows:

7 (735 ILCS 5/2-1402) (from Ch. 110, par. 2-1402)

8 Sec. 2-1402. Supplementary proceedings.

9 (a) A judgment creditor, or his or her successor in
10 interest when that interest is made to appear of record, is
11 entitled to prosecute supplementary proceedings for the
12 purposes of examining the judgment debtor or any other person
13 to discover assets or income of the debtor not exempt from the
14 enforcement of the judgment, a deduction order or garnishment,
15 and of compelling the application of non-exempt assets or
16 income discovered toward the payment of the amount due under
17 the judgment. A supplementary proceeding shall be commenced by
18 the service of a citation issued by the clerk. The procedure
19 for conducting supplementary proceedings shall be prescribed
20 by rules. It is not a prerequisite to the commencement of a
21 supplementary proceeding that a certified copy of the judgment
22 has been returned wholly or partly unsatisfied. All citations
23 issued by the clerk shall have the following language, or

1 language substantially similar thereto, stated prominently on
2 the front, in capital letters: "YOUR FAILURE TO APPEAR IN COURT
3 AS HEREIN DIRECTED MAY CAUSE YOU TO BE ARRESTED AND BROUGHT
4 BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT,
5 WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL."
6 The court shall not grant a continuance of the supplementary
7 proceeding except upon good cause shown.

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

1 "CITATION NOTICE

2 (Name and address of Court)

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

4 Judgment Creditor v.

5 (Name of Judgment Debtor),

6 Judgment Debtor.

7 Address of Judgment Debtor: (Insert last known

8 address)

9 Name and address of Attorney for Judgment

10 Creditor or of Judgment Creditor (If no

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

12 Amount of Judgment: \$ (Insert amount)

13 Name of Person Receiving Citation: (Insert name)

14 Court Date and Time: (Insert return date and time

15 specified in citation)

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

26 The amount of income or assets that may be applied toward

1 the judgment is limited by federal and Illinois law. The
2 JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS
3 AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH
4 MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED
5 ABOVE:

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

18 (2) Under Illinois law, every person is entitled to an
19 estate in homestead, when it is owned and occupied as a
20 residence, to the extent in value of \$30,000 or \$45,000 if
21 the person is age 65 or older ~~\$15,000~~, which homestead is
22 exempt from judgment.

23 (3) Under Illinois law, the amount of wages that may be
24 applied toward a judgment is limited to the lesser of (i)
25 15% of gross weekly wages or (ii) the amount by which
26 disposable earnings for a week exceed the total of 45 times

1 the federal minimum hourly wage or, under a wage deduction
2 summons served on or after January 1, 2006, the Illinois
3 minimum hourly wage, whichever is greater.

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

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

11 The judgment debtor may have other possible exemptions
12 under the law.

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

24 (c) When assets or income of the judgment debtor not exempt
25 from the satisfaction of a judgment, a deduction order or
26 garnishment are discovered, the court may, by appropriate order

1 or judgment:

2 (1) Compel the judgment debtor to deliver up, to be
3 applied in satisfaction of the judgment, in whole or in
4 part, money, choses in action, property or effects in his
5 or her possession or control, so discovered, capable of
6 delivery and to which his or her title or right of
7 possession is not substantially disputed.

8 (2) Compel the judgment debtor to pay to the judgment
9 creditor or apply on the judgment, in installments, a
10 portion of his or her income, however or whenever earned or
11 acquired, as the court may deem proper, having due regard
12 for the reasonable requirements of the judgment debtor and
13 his or her family, if dependent upon him or her, as well as
14 any payments required to be made by prior order of court or
15 under wage assignments outstanding; provided that the
16 judgment debtor shall not be compelled to pay income which
17 would be considered exempt as wages under the Wage
18 Deduction Statute. The court may modify an order for
19 installment payments, from time to time, upon application
20 of either party upon notice to the other.

21 (3) Compel any person cited, other than the judgment
22 debtor, to deliver up any assets so discovered, to be
23 applied in satisfaction of the judgment, in whole or in
24 part, when those assets are held under such circumstances
25 that in an action by the judgment debtor he or she could
26 recover them in specie or obtain a judgment for the

1 proceeds or value thereof as for conversion or
2 embezzlement. A judgment creditor may recover a corporate
3 judgment debtor's property on behalf of the judgment debtor
4 for use of the judgment creditor by filing an appropriate
5 petition within the citation proceedings.

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

8 (5) Compel any person cited to execute an assignment of
9 any chose in action or a conveyance of title to real or
10 personal property or resign memberships in exchanges,
11 clubs, or other entities in the same manner and to the same
12 extent as a court could do in any proceeding by a judgment
13 creditor to enforce payment of a judgment or in aid of the
14 enforcement of a judgment.

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

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

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

20 (f) (1) The citation may prohibit the party to whom it is
21 directed from making or allowing any transfer or other
22 disposition of, or interfering with, any property not
23 exempt from the enforcement of a judgment therefrom, a
24 deduction order or garnishment, belonging to the judgment
25 debtor or to which he or she may be entitled or which may
26 thereafter be acquired by or become due to him or her, and

1 from paying over or otherwise disposing of any moneys not
2 so exempt which are due or to become due to the judgment
3 debtor, until the further order of the court or the
4 termination of the proceeding, whichever occurs first. The
5 third party may not be obliged to withhold the payment of
6 any moneys beyond double the amount of the balance due
7 sought to be enforced by the judgment creditor. The court
8 may punish any party who violates the restraining provision
9 of a citation as and for a contempt, or if the party is a
10 third party may enter judgment against him or her in the
11 amount of the unpaid portion of the judgment and costs
12 allowable under this Section, or in the amount of the value
13 of the property transferred, whichever is lesser.

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

25 (g) If it appears that any property, chose in action,
26 credit or effect discovered, or any interest therein, is

1 claimed by any person, the court shall, as in garnishment
2 proceedings, permit or require the claimant to appear and
3 maintain his or her right. The rights of the person cited and
4 the rights of any adverse claimant shall be asserted and
5 determined pursuant to the law relating to garnishment
6 proceedings.

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

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

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

21 (k) (Blank).

22 (k-5) If the court determines that any property held by a
23 third party respondent is wages pursuant to Section 12-801, the
24 court shall proceed as if a wage deduction proceeding had been
25 filed and proceed to enter such necessary and proper orders as
26 would have been entered in a wage deduction proceeding

1 including but not limited to the granting of the statutory
2 exemptions allowed by Section 12-803 and all other remedies
3 allowed plaintiff and defendant pursuant to Part 8 of Article
4 12 of this Act.

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

26 (m) The judgment or balance due on the judgment becomes a

1 lien when a citation is served in accordance with subsection
2 (a) of this Section. The lien binds nonexempt personal
3 property, including money, choses in action, and effects of the
4 judgment debtor as follows:

5 (1) When the citation is directed against the judgment
6 debtor, upon all personal property belonging to the
7 judgment debtor in the possession or control of the
8 judgment debtor or which may thereafter be acquired or come
9 due to the judgment debtor to the time of the disposition
10 of the citation.

11 (2) When the citation is directed against a third
12 party, upon all personal property belonging to the judgment
13 debtor in the possession or control of the third party or
14 which thereafter may be acquired or come due the judgment
15 debtor and comes into the possession or control of the
16 third party to the time of the disposition of the citation.

17 The lien established under this Section does not affect the
18 rights of citation respondents in property prior to the service
19 of the citation upon them and does not affect the rights of
20 bona fide purchasers or lenders without notice of the citation.
21 The lien is effective for the period specified by Supreme Court
22 Rule.

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

25 (n) If any provision of this Act or its application to any
26 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. 94-293, eff. 1-1-06; 94-306, eff. 1-1-06; 95-331,
5 eff. 8-21-07; 95-661, eff. 1-1-08.)

6 (735 ILCS 5/12-901) (from Ch. 110, par. 12-901)

7 Sec. 12-901. Amount. Every individual is entitled to an
8 estate of homestead to the extent in value of \$30,000 ~~\$15,000~~
9 of his or her interest in a farm or lot of land and buildings
10 thereon, a condominium, or personal property, owned or rightly
11 possessed by lease or otherwise and occupied by him or her as a
12 residence, or in a cooperative that owns property that the
13 individual uses as a residence. This estate of homestead shall
14 be increased to \$45,000 if the individual is age 65 or older.
15 That homestead and all right in and title to that homestead is
16 exempt from attachment, judgment, levy, or judgment sale for
17 the payment of his or her debts or other purposes and from the
18 laws of conveyance, descent, and legacy, except as provided in
19 this Code or in Section 20-6 of the Probate Act of 1975. This
20 Section is not applicable between joint tenants or tenants in
21 common but it is applicable as to any creditors of those
22 persons. If 2 or more individuals own property that is exempt
23 as a homestead, the value of the exemption of each individual
24 may not exceed his or her proportionate share of \$60,000
25 ~~\$30,000~~ based upon percentage of ownership.

1 (Source: P.A. 94-293, eff. 1-1-06.)

2 (735 ILCS 5/12-904) (from Ch. 110, par. 12-904)

3 Sec. 12-904. Release, waiver or conveyance. No release,
4 waiver or conveyance of the estate so exempted shall be valid,
5 unless the same is in writing, signed by the individual and his
6 or her spouse, if he or she have one, or possession is
7 abandoned or given pursuant to the conveyance; or if the
8 exception is continued to a child or children without the order
9 of a court directing a release thereof; but if a conveyance is
10 made by an individual as grantor to his or her spouse, such
11 conveyance shall be effectual to pass the title expressed
12 therein to be conveyed thereby, whether or not the grantor in
13 such conveyance is joined therein by his or her spouse. In any
14 case where such release, waiver or conveyance is taken by way
15 of mortgage or security, the same shall only be operative as to
16 such specific release, waiver or conveyance; and when the same
17 includes different pieces of land, or the homestead is of
18 greater value than \$30,000 or \$45,000 for a person age 65 or
19 older ~~\$15,000~~, the other lands shall first be sold before
20 resorting to the homestead, and in case of the sale of such
21 homestead, if any balance remains after the payment of the debt
22 and costs, such balance shall, to the extent of \$30,000 or
23 \$45,000 for a person age 65 or older ~~\$15,000~~ be exempt, and be
24 applied upon such homestead exemption in the manner provided by
25 law.

1 (Source: P.A. 94-293, eff. 1-1-06.)

2 (735 ILCS 5/12-906) (from Ch. 110, par. 12-906)

3 Sec. 12-906. Proceeds of sale. When a homestead is conveyed
4 by the owner thereof, such conveyance shall not subject the
5 premises to any lien or incumbrance to which it would not be
6 subject in the possession of such owner; and the proceeds
7 thereof, to the extent of the amount of \$30,000 or \$45,000 for
8 a person age 65 or older ~~\$15,000~~, shall be exempt from judgment
9 or other process, for one year after the receipt thereof, by
10 the person entitled to the exemption, and if reinvested in a
11 homestead the same shall be entitled to the same exemption as
12 the original homestead.

13 (Source: P.A. 94-293, eff. 1-1-06.)

14 (735 ILCS 5/12-909) (from Ch. 110, par. 12-909)

15 Sec. 12-909. Bid for less than exempted amount. No sale
16 shall be made of the premises on such judgment unless a greater
17 sum than \$30,000 or \$45,000 for a person age 65 or older
18 ~~\$15,000~~ is bid therefor. If a greater sum is not so bid, the
19 judgment may be set aside or modified, or the enforcement of
20 the judgment released, as for lack of property.

21 (Source: P.A. 94-293, eff. 1-1-06.)

22 (735 ILCS 5/12-910) (from Ch. 110, par. 12-910)

23 Sec. 12-910. Proceedings to enforce judgment. If in the

1 opinion of the judgment creditors, or the officer holding a
2 certified copy of a judgment for enforcement against such
3 individuals, the premises claimed by him or her as exempt are
4 worth more than \$30,000 or \$45,000 for a person age 65 or older
5 ~~\$15,000~~, such officer shall summon 3 individuals, as
6 commissioners, who shall, upon oath, to be administered to them
7 by the officer, appraise the premises, and if, in their
8 opinion, the property may be divided without damage to the
9 interest of the parties, they shall set off so much of the
10 premises, including the dwelling house, as in their opinion is
11 worth \$30,000 or \$45,000 for a person age 65 or older ~~\$15,000~~,
12 and the residue of the premises may be advertised and sold by
13 such officer. Each commissioner shall receive for his or her
14 services the sum of \$5 per day for each day necessarily engaged
15 in such service. The officer summoning such commissioners shall
16 receive such fees as may be allowed for serving summons, but
17 shall be entitled to charge mileage for only the actual
18 distance traveled from the premises to be appraised, to the
19 residence of the commissioners summoned. The officer shall not
20 be required to summon commissioners until the judgment
21 creditor, or some one for him or her, shall advance to the
22 officer one day's fees for the commissioners, and unless the
23 creditor shall advance such fees the officer shall not be
24 required to enforce the judgment. The costs of such
25 appraisement shall not be taxed against the judgment debtor
26 unless such appraisement shows that the judgment debtor has

1 property subject to such judgment.

2 (Source: P.A. 94-293, eff. 1-1-06.)

3 (735 ILCS 5/12-911) (from Ch. 110, par. 12-911)

4 Sec. 12-911. Notice to judgment debtor. In case the value
5 of the premises is, in the opinion of the commissioners, more
6 than \$30,000 or \$45,000 for a person age 65 or older ~~\$15,000~~,
7 and cannot be divided as is provided for in Section 12-910 of
8 this Act, they shall make and sign an appraisal of the value
9 thereof, and deliver the same to the officer, who shall deliver
10 a copy thereof to the judgment debtor, or to some one of the
11 family of the age of 13 years or upwards, with a notice thereto
12 attached that unless the judgment debtor pays to such officer
13 the surplus over and above \$30,000 or \$45,000 for a person age
14 65 or older ~~\$15,000~~ on the amount due on the judgment within 60
15 days thereafter, such premises will be sold.

16 (Source: P.A. 94-293, eff. 1-1-06.)

17 (735 ILCS 5/12-912) (from Ch. 110, par. 12-912)

18 Sec. 12-912. Sale of premises - Distribution of proceeds.
19 In case of such surplus, or the amount due on the judgment is
20 not paid within the 60 days, the officer may advertise and sell
21 the premises, and out of the proceeds of such sale pay to such
22 judgment debtor the sum of \$30,000 or \$45,000 for a person age
23 65 or older ~~\$15,000~~, and apply the balance on the judgment.

24 (Source: P.A. 94-293, eff. 1-1-06.)