



Sen. William R. Haine

Filed: 4/24/2012

09700HB5434sam001

LRB097 16836 AJ0 68716 a

1 AMENDMENT TO HOUSE BILL 5434

2 AMENDMENT NO. _____. Amend House Bill 5434 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-1402 and by adding Section 12-107.5 as
6 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

1 the judgment. A supplementary proceeding shall be commenced by
2 the service of a citation issued by the clerk. The procedure
3 for conducting supplementary proceedings shall be prescribed
4 by rules. It is not a prerequisite to the commencement of a
5 supplementary proceeding that a certified copy of the judgment
6 has been returned wholly or partly unsatisfied. All citations
7 issued by the clerk shall have the following language, or
8 language substantially similar thereto, stated prominently on
9 the front, in capital letters: "IF YOU FAIL YOUR FAILURE TO
10 APPEAR IN COURT AS ~~HEREIN~~ DIRECTED IN THIS NOTICE, YOU MAY
11 ~~CAUSE YOU TO~~ BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER
12 TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY
13 IMPRISONMENT IN THE COUNTY JAIL." The court shall not grant a
14 continuance of the supplementary proceeding except upon good
15 cause shown.

16 (b) Any citation served upon a judgment debtor or any other
17 person shall include a certification by the attorney for the
18 judgment creditor or the judgment creditor setting forth the
19 amount of the judgment, the date of the judgment, or its
20 revival date, the balance due thereon, the name of the court,
21 and the number of the case, and a copy of the citation notice
22 required by this subsection. Whenever a citation is served upon
23 a person or party other than the judgment debtor, the officer
24 or person serving the citation shall send to the judgment
25 debtor, within three business days of the service upon the
26 cited party, a copy of the citation and the citation notice,

1 which may be sent by regular first-class mail to the judgment
2 debtor's last known address. In no event shall a citation
3 hearing be held sooner than five business days after the
4 mailing of the citation and citation notice to the judgment
5 debtor, except by agreement of the parties. The citation notice
6 need not be mailed to a corporation, partnership, or
7 association. The citation notice shall be in substantially the
8 following form:

9 "CITATION NOTICE

10 (Name and address of Court)

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

12 Judgment Creditor v.

13 (Name of Judgment Debtor),

14 Judgment Debtor.

15 Address of Judgment Debtor: (Insert last known
16 address)

17 Name and address of Attorney for Judgment

18 Creditor or of Judgment Creditor (If no

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

20 Amount of Judgment: \$ (Insert amount)

21 Name of Person Receiving Citation: (Insert name)

22 Court Date and Time: (Insert return date and time
23 specified in citation)

24 NOTICE: The court has issued a citation against the person
25 named above. The citation directs that person to appear in
26 court to be examined for the purpose of allowing the judgment

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

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

14 (1) Under Illinois or federal law, the exemptions of
15 personal property owned by the debtor include the debtor's
16 equity interest, not to exceed \$4,000 in value, in any
17 personal property as chosen by the debtor; Social Security
18 and SSI benefits; public assistance benefits; unemployment
19 compensation benefits; worker's compensation benefits;
20 veteran's benefits; circuit breaker property tax relief
21 benefits; the debtor's equity interest, not to exceed
22 \$2,400 in value, in any one motor vehicle, and the debtor's
23 equity interest, not to exceed \$1,500 in value, in any
24 implements, professional books, or tools of the trade of
25 the debtor.

26 (2) Under Illinois law, every person is entitled to an

1 estate in homestead, when it is owned and occupied as a
2 residence, to the extent in value of \$15,000, which
3 homestead is exempt from judgment.

4 (3) Under Illinois law, the amount of wages that may be
5 applied toward a judgment is limited to the lesser of (i)
6 15% of gross weekly wages or (ii) the amount by which
7 disposable earnings for a week exceed the total of 45 times
8 the federal minimum hourly wage or, under a wage deduction
9 summons served on or after January 1, 2006, the Illinois
10 minimum hourly wage, whichever is greater.

11 (4) Under federal law, the amount of wages that may be
12 applied toward a judgment is limited to the lesser of (i)
13 25% of disposable earnings for a week or (ii) the amount by
14 which disposable earnings for a week exceed 30 times the
15 federal minimum hourly wage.

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

18 The judgment debtor may have other possible exemptions
19 under the law.

20 THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING
21 TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The
22 judgment debtor also has the right to seek a declaration at an
23 earlier date, by notifying the clerk in writing at (insert
24 address of clerk). When so notified, the Clerk of the Court
25 will obtain a prompt hearing date from the court and will
26 provide the necessary forms that must be prepared by the

1 judgment debtor or the attorney for the judgment debtor and
2 sent to the judgment creditor and the judgment creditor's
3 attorney regarding the time and location of the hearing. This
4 notice may be sent by regular first class mail."

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

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

13 INCOME AND ASSET FORM

14 (CASE CAPTION)

15 To Judgment Debtor: Please complete this form and bring
16 it with you to the hearing at (DATE, TIME, LOCATION). You
17 should also bring to the hearing any documents you have to
18 support the information you provide in this form, such as
19 pay stubs and account statements. The information you
20 provide will help the court determine whether you have any
21 property or income that can be used to satisfy the judgment
22 entered against you in this matter. The information you
23 provide must be accurate to the best of your knowledge.

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

1 In answer to the citation and supplemental proceedings
 2 served upon (INSERT NAME OF JUDGMENT DEBTOR), he or she
 3 answers as follows:

4 Name:.....
 5 Home Phone Number:.....
 6 Home Address:.....
 7 Date of Birth:.....
 8 Marital Status:.....
 9 I have.....dependents.
 10 Do you have a job? YES NO
 11 Company's name I work for:.....
 12 Company's address:.....

13 Job:
 14 I earn \$..... per.....
 15 If self employed, list here your business name and
 16 address:
 17
 18 Income from self employment is \$..... per
 19 year.

20 I have the following benefits with my employer:
 21

22 I do not have a job, but I support myself through:
 23 Government Assistance \$..... per month
 24 Unemployment \$..... per month

1 Social Security \$..... per month

2 SSI \$..... per month

3 Pension \$..... per month

4 Other \$..... per month

5 Real Estate:

6 Do you own any real estate? YES NO

7 I own real estate at....., with names of other
8 owners

9

10 Additional real estate I own:

11 I have a beneficial interest in a land trust. The name
12 and address of the trustee is:..... The beneficial
13 interest is listed in my name and

14 There is a mortgage on my real estate. State the
15 mortgage company's name and address for each parcel of real
16 estate owned:

17

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

20 I have the following accounts:

21 Checking account at;

22 account balance \$.....

23 Savings account at;

24 account balance \$.....

25 Money market or certificate of deposit at

26 Safe deposit box at

1 Other accounts (please identify):

2 I own:

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

4 Jewelry (please specify):

5 Other property described as:.....

6 Stocks/Bonds.....

7 Personal computer.....

8 DVD player.....

9 Television.....

10 Stove.....

11 Microwave.....

12 Work tools.....

13 Business equipment.....

14 Farm equipment.....

15 Other property (please specify):

16

17 Signature:.....

18 (b-10) Any action properly initiated under this Section may
19 proceed notwithstanding an absent or incomplete Income and
20 Asset Form, and a judgment debtor may be examined for the
21 purpose of allowing the judgment creditor to discover income
22 and assets belonging to the judgment debtor or in which the
23 judgment debtor has an interest.

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

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

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

15 (e) All property ordered to be delivered up shall, except
16 as otherwise provided in this Section, be delivered to the
17 sheriff to be collected by the sheriff or sold at public sale
18 and the proceeds thereof applied towards the payment of costs
19 and the satisfaction of the judgment. If the judgment debtor's
20 property is of such a nature that it is not readily delivered
21 up to the sheriff for public sale or if another method of sale
22 is more appropriate to liquidate the property or enhance its
23 value at sale, the court may order the sale of such property by
24 the debtor, third party respondent, or by a selling agent other
25 than the sheriff upon such terms as are just and equitable. The
26 proceeds of sale, after deducting reasonable and necessary

1 expenses, are to be turned over to the creditor and applied to
2 the balance due on the judgment.

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

23 (2) The court may enjoin any person, whether or not a
24 party to the supplementary proceeding, from making or
25 allowing any transfer or other disposition of, or
26 interference with, the property of the judgment debtor not

1 exempt from the enforcement of a judgment, a deduction
2 order or garnishment, or the property or debt not so exempt
3 concerning which any person is required to attend and be
4 examined until further direction in the premises. The
5 injunction order shall remain in effect until vacated by
6 the court or until the proceeding is terminated, whichever
7 first occurs.

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

16 (h) Costs in proceedings authorized by this Section shall
17 be allowed, assessed and paid in accordance with rules,
18 provided that if the court determines, in its discretion, that
19 costs incurred by the judgment creditor were improperly
20 incurred, those costs shall be paid by the judgment creditor.

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

24 (j) This Section does not grant the power to any court to
25 order installment or other payments from, or compel the sale,
26 delivery, surrender, assignment or conveyance of any property

1 exempt by statute from the enforcement of a judgment thereon, a
2 deduction order, garnishment, attachment, sequestration,
3 process or other levy or seizure.

4 (k) (Blank).

5 (k-5) If the court determines that any property held by a
6 third party respondent is wages pursuant to Section 12-801, the
7 court shall proceed as if a wage deduction proceeding had been
8 filed and proceed to enter such necessary and proper orders as
9 would have been entered in a wage deduction proceeding
10 including but not limited to the granting of the statutory
11 exemptions allowed by Section 12-803 and all other remedies
12 allowed plaintiff and defendant pursuant to Part 8 of Article
13 12 of this Act.

14 (k-10) If a creditor discovers personal property of the
15 judgment debtor that is subject to the lien of a citation to
16 discover assets, the creditor may have the court impress a lien
17 against a specific item of personal property, including a
18 beneficial interest in a land trust. The lien survives the
19 termination of the citation proceedings and remains as a lien
20 against the personal property in the same manner that a
21 judgment lien recorded against real property pursuant to
22 Section 12-101 remains a lien on real property. If the judgment
23 is revived before dormancy, the lien shall remain. A lien
24 against personal property may, but need not, be recorded in the
25 office of the recorder or filed as an informational filing
26 pursuant to the Uniform Commercial Code.

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

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

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

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

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

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

21 (n) If any provision of this Act or its application to any
22 person or circumstance is held invalid, the invalidity of that
23 provision or application does not affect the provisions or
24 applications of the Act that can be given effect without the
25 invalid provision or application.

26 (o) The changes to this Section made by this amendatory Act

1 of the 97th General Assembly apply only to supplementary
2 proceedings commenced under this Section on or after the
3 effective date of this amendatory Act of the 97th General
4 Assembly.

5 (Source: P.A. 97-350, eff. 1-1-12.)

6 (735 ILCS 5/12-107.5 new)

7 Sec. 12-107.5. Body attachment order.

8 (a) No order of body attachment or other civil order for
9 the incarceration or detention of a natural person respondent
10 to answer for a charge of indirect civil contempt shall issue
11 unless the respondent has first had an opportunity, after
12 personal service or abode service of notice as provided in
13 Supreme Court Rule 105, and served by a person authorized to
14 serve process as provided by rule, to appear in court to show
15 cause why the respondent should not be held in contempt.

16 (b) The notice shall be an order to show cause.

17 (c) Any order issued pursuant to subsection (a) shall
18 expire one year after the date of issue.

19 (d) The first order issued pursuant to subsection (a) and
20 directed to a respondent may be in the nature of a recognizance
21 bond in the sum of no more than \$1,000.

22 (e) Upon discharge of any bond secured by the posting of
23 funds, the funds shall be returned to the respondent or other
24 party posting the bond, less applicable fees, unless the court
25 after inquiry determines that: (1) the judgment debtor

1 willfully has refused to comply with a payment order entered in
2 accordance with Section 2-1402 or an otherwise validly entered
3 order; (2) the bond money belongs to the debtor as opposed to a
4 third party; and (3) that any part of the funds constitute
5 non-exempt funds of the judgment debtor, in which case the
6 court may cause the non-exempt portion of the funds to be paid
7 over to the judgment creditor.

8 Section 97. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."