

HOUSE BILL NO. 488
AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on _____)

(Patron Prior to Substitute—Delegate Hernandez)

A BILL to amend and reenact §§ 2.2-804, 8.01-512.3, 8.01-515, 34-3, 34-29, and 58.1-105 of the Code of Virginia, relating to wage garnishment; state tax debt.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-804, 8.01-512.3, 8.01-515, 34-3, 34-29, and 58.1-105 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-804. Recovery of certain improper payments to state officers and employees.

A. Any officer or employee of the Commonwealth who obtains any compensation or payment to which the officer or employee is not entitled shall be liable for repayment to the employer. Such recipient officer or employee shall not be liable for repayment if the recipient officer or employee proves by a preponderance of the evidence that the improper payment occurred through no fault of the recipient officer or employee and such officer or employee had no actual knowledge of the error and could not have reasonably detected the error.

B. Any officer or employee of the Commonwealth who authorizes any other officer or employee to obtain any compensation or payment to which the recipient officer or employee is not entitled, where such authorization is made with actual or constructive knowledge that the recipient officer or employee was not entitled to such compensation or payment, shall be liable for repayment to the employer.

C. When a change or error in records results in any officer or employee receiving any compensation or payment to which he is not entitled, upon discovery of the improper payment the employer shall take appropriate action to correct the error as soon as practicable and adjust future payments to the correct compensation or payment amount.

D. If the officer or employee leaves state service, liability is disputed, or recovery cannot otherwise be accomplished, the employer shall request the Attorney General to bring an action for restitution pursuant to this section in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq.). Claims under this section may be compromised pursuant to and consistent with § 2.2-514.

E. If the officer or employee (i) does not dispute liability under subsection A or B, (ii) receives

overpayments stemming from erroneous good faith under-withholdings for retirement, health insurance, or other benefit program enrollments, (iii) receives overpayments of less than \$500 from erroneous good faith wage, salary, or expense reimbursements, or (iv) is determined to be liable by a court of competent jurisdiction, the employer shall be authorized to use payroll deductions to recover the erroneous payments made to the officer or employee. Payroll deductions made pursuant to this section shall be limited to 25 percent of disposable earnings as defined in subsection ~~(d)~~ E of § 34-29.

F. The provisions of this section shall apply to all officers and employees of the Commonwealth whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.).

G. The provisions of this section shall not apply to good faith disbursements made to beneficiaries of the Virginia Retirement System.

§ 8.01-512.3. Form of garnishment summons.

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

(a) Front side of summons:

GARNISHMENT SUMMONS

(Court Name)

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

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

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

(Name and street address of garnishee)

_____ Hearing Date and Time

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

- | | | |
|---|---|--|
| a | <input type="checkbox"/> wages, salary, or other compensation. | <input type="checkbox"/> some other debt due or property of the judgment debtor. |
| b | MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT | STATEMENT |
| c | <input type="checkbox"/> Support | Judgment Principal \$ _____ |
| d | <input type="checkbox"/> 50% <input type="checkbox"/> 55% <input type="checkbox"/> 60% <input type="checkbox"/> 65% | Credits \$ _____ |
| e | (if not specified, then 50%) | Interest \$ _____ |
| f | <input checked="" type="checkbox"/> state taxes, 100% | Judgment Costs \$ _____ |
| g | If none of the above is checked, | Attorney's Fees \$ _____ |
| h | then <i>subsection A of § 34-29</i> (a) applies. | Garnishment Costs \$ _____ |
| i | | TOTAL BALANCE DUE \$ _____ |
| j | | The garnishee shall rely on this amount. |

_____ Date of Judgment

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

TO THE GARNISHEE: You are hereby commanded to

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

(2) Deliver payment to this court, or

(3) Appear before this court on the return date and time shown on this summons to answer the Suggestion for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there is a liability as shown in the statement upon the garnishee.

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

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

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

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

_____ Date of Issuance of Summons

_____ Clerk

_____ Date of delivery of writ of fieri facias to sheriff if different from date of issuance of this summons.

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

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

96 An employer may take as much as 25 percent of an employee's disposable earnings to satisfy this
97 garnishment. But if an employee makes the minimum wage or less for his week's earnings, the employee will
98 ordinarily get to keep 40 times the minimum hourly wage."

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

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

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

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

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

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

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

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

114 **§ 8.01-515. How garnishee examined; determining exemption from employee's withholding**
115 **certificate; amount due pursuant to exemptions in subsection A of § 34-29.**

116 A person so summoned shall appear in person and be examined on oath or he may file a statement. A
117 corporation so summoned shall appear by an authorized agent who shall be examined on oath or may file a
118 statement, not under seal of such authorized agent. Such statement shall show the amount the garnishee is
119 indebted to the judgment debtor, if any, or what property or effects, if any, the garnishee has or holds which
120 belongs to the judgment debtor, or in which he has an interest. Payment to the court of any amount by the
121 garnishee shall have the same force and effect as a statement which contains the information required by this
122 section. If the judgment debtor or judgment creditor disputes the verity or accuracy of such statement or
123 amount and so desires, then summons shall issue requiring the appearance of such person or authorized agent
124 for examination on oath, and requiring him to produce such books and papers as may be necessary to

determine the fact.

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

The employer may apply the exemptions provided in *subsection A of § 34-29* ~~(a)~~ unless otherwise specified on the summons, or unless otherwise ordered by the court.

§ 34-3. Articles not exempt from taxes or levies or for their purchase price.

The exemptions under §§ 34-4, 34-4.1, 34-26, 34-27, ~~34-29~~, and 64.2-311 shall not extend to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of any articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § 55.1-2810 as to such animal so trespassing. If an article purchased and not paid for is exchanged or converted into other property of the debtor, such property shall not be exempt from payment of the unpaid purchase money debt.

§ 34-29. Maximum portion of disposable earnings subject to garnishment.

~~(a)~~ A. Except as provided in subsections ~~(b)~~ ~~and (b1)~~ B and C, the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment may not exceed the lesser of the following amounts:

- ~~(1)~~ 1. Twenty-five percent of his disposable earnings for that week; or
- ~~(2)~~ 2. The amount by which his disposable earnings for that week exceed 40 times the federal minimum hourly wage prescribed by 29 U.S.C. § 206(a)(1) or the Virginia minimum hourly wage prescribed by § 40.1-28.10, whichever is greater, in effect at the time earnings are payable.

In the case of earnings for any pay period other than a week, the State Commissioner of Labor and Industry shall by regulation prescribe a multiple of the federal or Virginia minimum hourly wage equivalent in effect to that set forth in this section.

~~(b)~~ B. The restrictions of subsection ~~(a)~~ A do not apply in the case of:

~~(1)~~ 1. Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

~~(2)~~ 2. Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

~~(3)~~ 3. Any debt due for any ~~state or~~ federal tax.

156 ~~(b1)~~ C. The maximum part of the aggregate disposable earnings of an individual for any workweek that is
157 subject to garnishment to enforce any order for the support of any person shall not exceed:

158 ~~(1)~~ 1. Sixty percent of such individual's disposable earnings for that week; or

159 ~~(2)~~ 2. If such individual is supporting a spouse or dependent child other than the spouse or child with
160 respect to whose support such order was issued, 50 percent of such individual's disposable earnings for that
161 week.

162 The 50 percent specified in subdivision ~~(2)~~ 2 shall be 55 percent and the 60 percent specified in
163 subdivision ~~(1)~~ 1 shall be 65 percent if and to the extent that such earnings are subject to garnishment to
164 enforce an order for support for a period that is more than 12 weeks prior to the beginning of such workweek.

165 ~~(e)~~ D. No court of the Commonwealth and no state agency or officer may make, execute, or enforce any
166 order or process in violation of this section.

167 The exemptions allowed herein shall be granted to any person so entitled without any further proceedings.

168 ~~(d)~~ E. For the purposes of this section:

169 ~~(1)~~ The term "~~earnings~~" "*Earnings*" means compensation paid or payable for personal services, whether
170 denominated as wages, salary, commission, bonus, payments to an independent contractor, or otherwise,
171 whether paid directly to the individual or deposited with another entity or person on behalf of and traceable to
172 the individual, and includes periodic payments pursuant to a pension or retirement program.

173 ~~(2)~~ The term "~~disposable earnings~~" "*Disposable earnings*" means that part of the earnings of any
174 individual remaining after the deduction from those earnings of any amounts required by law to be withheld;
175 and.

176 ~~(3)~~ The term "~~garnishment~~" "*Garnishment*" means any legal or equitable procedure through which the
177 earnings of any individual are required to be withheld for payment of any debt.

178 ~~(e)~~ F. Every assignment, sale, transfer, pledge, or mortgage of the wages or salary of an individual that is
179 exempted by this section, to the extent of the exemption provided by this section, shall be void and
180 unenforceable by any process of law.

181 ~~(f)~~ G. No employer may discharge any employee by reason of the fact that his earnings have been
182 subjected to garnishment for any one indebtedness.

183 ~~(g)~~ H. A depository wherein earnings have been deposited on behalf of and traceable to an individual shall
184 not be required to determine the portion of such earnings that are subject to garnishment.

185 **§ 58.1-105. Offers in compromise; Department may accept; authority and duty of Tax**
186 **Commissioner; currently not collectible status.**

187 A. In all cases in which under the laws of this Commonwealth a prosecution is authorized for violation of
188 the revenue laws and in all cases in which a penalty is imposed upon the taxpayer for failure to comply with
189 the requirements of the tax laws, the Department shall in its discretion have authority to accept offers made in
190 compromise of such prosecution and in compromise or in lieu of such penalties. An offer in lieu of the
191 assessment of a penalty shall be deemed to be made by the filing of a return or payment of tax without
192 payment of a penalty if information filed with the return or payment of tax or obtained from other sources
193 demonstrates reasonable cause for the failure or omission for which the penalty would be imposed. The
194 reason for the acceptance of such offers in compromise shall be preserved among the records of the
195 Department.

196 B. The Tax Commissioner may compromise and settle doubtful or disputed claims for taxes or tax
197 liability of doubtful collectibility. An offer in compromise shall be deemed accepted only when the taxpayer
198 is notified in writing of the acceptance by the Tax Commissioner. Whenever such a compromise and
199 settlement is made, the Tax Commissioner shall make a complete record of the case showing the tax assessed,
200 recommendations, reports and audits of departmental personnel, if any, the taxpayer's grounds for dispute or
201 contest together with all evidences thereof, and the amounts, conditions and settlement or compromise of
202 same.

203 C. The Department may deposit into the state treasury all payments submitted with offers in compromise,
204 unless the taxpayer specifically and clearly directs otherwise.

205 *D. The Department shall recognize Currently Not Collectible (CNC) status granted by the Internal*
206 *Revenue Service and offer taxpayers with federal CNC status a similar Virginia status that provides*
207 *individual income taxpayers comparable protections from collection activities. The Department shall develop*
208 *guidelines establishing procedures to apply for such status, and make information on applying for such*
209 *Virginia status publicly available. Such guidelines shall be exempt from the provisions of the Administrative*
210 *Process Act (§ 2.2-4000 et seq.).*

211 **2. That the provisions of this act shall become effective on July 1, 2027.**