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HOUSE BILL NO. 1100
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on General Laws and Technology
on _____)
(Patron Prior to Substitute—Delegate Hernandez)

A BILL to amend and reenact §§ 2.2-804, 8.01-512.3, 8.01-515, 34-29, and 58.1-3952 of the Code of Virginia, relating to wage garnishments; treasurers' liens for unpaid taxes and charges.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-804, 8.01-512.3, 8.01-515, 34-29, and 58.1-3952 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

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

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

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

41 **§ 8.01-512.3. Form of garnishment summons.**

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

43 (a) Front side of summons:

44 GARNISHMENT SUMMONS

45 (Court Name)

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

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

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

51 (Name and street address of garnishee)

52 _____ Hearing Date and Time

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

- | | | | |
|------|---|---|----------|
| 54 a | <input type="checkbox"/> wages, salary, or other compensation. | <input type="checkbox"/> some other debt due or property of the | |
| 55 | | judgment debtor. | |
| 56 b | MAXIMUM PORTION OF DISPOSABLE | STATEMENT | |
| 57 | EARNINGS SUBJECT TO GARNISHMENT | Judgment Principal | \$ _____ |
| 58 c | <input type="checkbox"/> Support | Credits | \$ _____ |
| 59 d | <input type="checkbox"/> 50% <input type="checkbox"/> 55% <input type="checkbox"/> 60% <input type="checkbox"/> 65% | Interest | \$ _____ |
| 60 e | (if not specified, then 50%) | Judgment Costs | \$ _____ |
| 61 f | <input type="checkbox"/> state taxes, 100% | Attorney's Fees | \$ _____ |
| 62 g | If none of the above is checked, | Garnishment Costs | \$ _____ |
| 63 h | then <i>subsection A of § 34-29</i> (a) applies. | TOTAL BALANCE DUE | \$ _____ |
| 64 i | | The garnishee shall rely on this amount. | |
| 65 j | | | |

66 _____

67 Date of Judgment

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

70 TO THE GARNISHEE: You are hereby commanded to

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

72 (2) Deliver payment to this court, or

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

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

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

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

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

88 _____

89 Date of Issuance of Summons

90 _____

91 Clerk

92 _____

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

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

95 "The following statement is not the law but is an interpretation of the law which is intended to assist those

96 who must respond to this garnishment. You may rely on this only for general guidance because the law itself
97 is the final word. (Read the law, § 34-29 of the Code of Virginia, for a full explanation. A copy of § 34-29 is
98 available at the clerk's office. If you do not understand the law, call a lawyer for help.)

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

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

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

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

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

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

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

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

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

117 **§ 8.01-515. How garnishee examined; determining exemption from employee's withholding**
118 **certificate; amount due pursuant to exemptions in subsection A of § 34-29.**

119 A person so summoned shall appear in person and be examined on oath or he may file a statement. A
120 corporation so summoned shall appear by an authorized agent who shall be examined on oath or may file a
121 statement, not under seal of such authorized agent. Such statement shall show the amount the garnishee is
122 indebted to the judgment debtor, if any, or what property or effects, if any, the garnishee has or holds which
123 belongs to the judgment debtor, or in which he has an interest. Payment to the court of any amount by the
124 garnishee shall have the same force and effect as a statement which contains the information required by this

125 section. If the judgment debtor or judgment creditor disputes the verity or accuracy of such statement or
126 amount and so desires, then summons shall issue requiring the appearance of such person or authorized agent
127 for examination on oath, and requiring him to produce such books and papers as may be necessary to
128 determine the fact.

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

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

135 **§ 34-29. Maximum portion of disposable earnings subject to garnishment.**

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

139 ~~(1)~~ 1. Twenty-five percent of his disposable earnings for that week; or

140 ~~(2)~~ 2. The amount by which his disposable earnings for that week exceed 40 times the federal minimum
141 hourly wage prescribed by 29 U.S.C. § 206(a)(1) or the Virginia minimum hourly wage prescribed by
142 § 40.1-28.10, whichever is greater, in effect at the time earnings are payable.

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

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

147 ~~(1)~~ 1. Any order for the support of any person issued by a court of competent jurisdiction or in accordance
148 with an administrative procedure that is established by state law, affords substantial due process, and is
149 subject to judicial review.

150 ~~(2)~~ 2. Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

151 ~~(3)~~ 3. Any debt due for any state or federal tax.

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

154 ~~(1)~~ 1. Sixty percent of such individual's disposable earnings for that week; or

155 ~~(2)~~ 2. If such individual is supporting a spouse or dependent child other than the spouse or child with
156 respect to whose support such order was issued, 50 percent of such individual's disposable earnings for that
157 week.

158 The 50 percent specified in subdivision ~~(2)~~ 2 shall be 55 percent and the 60 percent specified in
159 subdivision ~~(4)~~ 1 shall be 65 percent if and to the extent that such earnings are subject to garnishment to
160 enforce an order for support for a period that is more than 12 weeks prior to the beginning of such workweek.

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

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

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

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

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

171 ~~(3)~~ The term "garnishment" "Garnishment" means any legal or equitable procedure through which the
172 earnings of any individual are required to be withheld for payment of any debt. "Garnishment" does not
173 include a treasurer's lien issued with respect to wages or salary pursuant to § 58.1-3952.

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

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

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

181 **§ 58.1-3952. Collection out of estate in hands of or debts due by third party; treasurer's liens.**

182 A. For the purposes of this section:

183 "Disposable earnings" means that part of the earnings of any individual remaining after the deduction
184 from those earnings of any amounts required by law to be withheld.

185 "Earnings" means compensation paid or payable for personal services, whether denominated as wages,

186 salary, commission, bonus, payments to an independent contractor, or otherwise, and whether paid directly
187 to the individual or deposited with another entity or person on behalf of and traceable to the individual, and
188 includes periodic payments pursuant to a pension or retirement program.

189 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
190 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services
191 under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

192 B. The treasurer or other tax collector of any county, city, or town may apply in writing a treasurer's lien
193 to any person indebted to or having in his hands estate of a taxpayer or other debtor for payment of taxes, or
194 other charges collected by the treasurer, more than ~~thirty~~ 30 days delinquent out of such debt or estate.
195 Immediately upon delivery of a treasurer's lien to a third party, such lien shall constitute a continuing lien
196 upon the debt or estate that is in the hands of the third party recipient, or may come into the hands of the
197 third party recipient, up to the total amount of the delinquent taxes or other charges plus accrued interest and
198 penalties, without the requirement for further notice or process, until the delinquent obligations have been
199 satisfied in full.

200 If the subject of a treasurer's lien is wages or salary due or to become due in the future to the delinquent
201 taxpayer, such lien shall be for no more than 25 percent of the delinquent taxpayer's disposable earnings for
202 each pay period during the pendency of the lien, except that the 25 percent limitation shall not apply:

203 1. If the lien issuer determines, based upon tax return information maintained by the Tax Commissioner
204 and accessed in accordance with the requirements of § 58.1-3, that the adjusted gross income reported on the
205 most recent income tax return for the delinquent taxpayer exceeds 250 percent of the poverty guideline
206 amount corresponding to a household of an equal number of persons as listed in the poverty guidelines
207 published during the year in which the lien is issued;

208 2. If the treasurer determines, by clear and convincing evidence, that the delinquent taxpayer or the
209 property assessed with such taxes is no longer in the jurisdiction, or the taxpayer is attempting to flee the
210 jurisdiction or is improperly disposing of assets with the intent to hinder or delay the collection of the
211 delinquent taxes; provided, however, that the taxpayer may challenge such determination by filing a motion
212 to reduce the lien in the circuit court of the jurisdiction to which delinquent taxes are owed, and the lien is
213 reduced to 25 percent from the time of filing until such time as the court has disposed of the motion; or

214 3. To any portion of the delinquent obligations that were collected and held in trust by the delinquent
215 taxpayer to remit to the appropriate local governing authority, including county food and beverage taxes
216 levied pursuant to § 58.1-3833, admission taxes levied pursuant to § 58.1-3818, and transient occupancy

217 *taxes levied pursuant to § 58.1-3819.*

218 *C. A delinquent taxpayer may present information to the treasurer to establish that such taxpayer's*
219 *present earnings, current household size, or other circumstances are likely to result in an adjusted gross*
220 *income for that present tax year that is equal to or less than 250 percent of the poverty guideline amount*
221 *corresponding to a household of an equal number of persons as listed in the poverty guidelines published*
222 *during the year in which the lien is issued. Upon verification of the information presented, the treasurer shall*
223 *promptly advise the recipient of the treasurer's lien that the lien is thereafter limited to not more than 25*
224 *percent of the delinquent taxpayer's disposable earnings for each pay period until the lien is satisfied.*

225 *D. Payment by ~~such person~~ the recipient of a treasurer's lien of such taxes, penalties and interest, or other*
226 *charges either in whole or in part, shall entitle ~~him~~ the recipient to a credit against such debt or estate in the*
227 *amount of the total payment made. ~~The taxes, penalties and interest, or other charges shall constitute a lien on~~*
228 *the debt or estate due the taxpayer or other debtor from the time the application is received. For each*
229 *application treasurer's lien served, the ~~person applied to~~ recipient of the lien shall be entitled to collect and*
230 *retain, from the amounts subject to the lien, a fee of twenty dollars which shall constitute a charge or credit*
231 *against the debt to or estate of the taxpayer or other debtor. The treasurer or collector shall send a copy of the*
232 *application treasurer's lien to the taxpayer or other debtor, with a notice informing him of the remedies*
233 *provided in this chapter.*

234 *E. If the ~~person applied to~~ recipient of a treasurer's lien does not pay so much as ought to be recovered*
235 *out of the debt or estate, the treasurer or collector shall procure a summons directing ~~such person~~ the recipient*
236 *of the lien to appear before the appropriate court, where proper payment may be enforced. Any person so*
237 *summoned shall have the same rights of removal and appeal as are provided by law for the enforcement of*
238 *demands between individuals. For purposes of this section, the term "person" shall include ~~but shall not be~~*
239 *limited to individuals, corporations, partnerships, institutions, and other such entities, as well as the*
240 *Commonwealth and its agencies and political subdivisions. However, in no event shall the Commonwealth,*
241 *its agencies, or its political subdivisions incur any liability for the failure to pay ~~the a treasurer's or other tax~~*
242 *collector's application under lien pursuant to this section.*

243 *B. F. 1. Unless otherwise exempted, the wages and salaries of all employees of this Commonwealth, other*
244 *than state officers, shall be subject to this section. Whenever the salary or wages of such employees as above*
245 *mentioned shall be so attached, the ~~application treasurer's lien~~ shall be mailed to the debtor and to the officer*
246 *or supervisor who is head of the department, agency, or institution where the employee is employed, or other*
247 *officer through whom the debtor's salary or wages is paid, provided that process shall not be served upon the*

248 State Treasurer or the State Comptroller except as to employees of their respective departments, and upon
249 such service the officer or supervisor shall, on or before the return day of the ~~application~~ *lien*, transmit to the
250 treasurer or other tax collector issuing the ~~application~~ *lien* a certificate showing the amount due from the
251 Commonwealth to such debtor, up to the return day of the ~~application~~ *lien*, which amount the officer or
252 supervisor shall hold subject to further instruction from the treasurer or other tax collector. However, in no
253 case shall the officer or supervisor hold more than the sum of taxes, penalties and interest, and other charges
254 stated in the ~~application~~ *treasurer's lien*. Such certificate shall be evidence of all facts therein stated, unless a
255 court of appropriate jurisdiction directs that the deposition of the officer or supervisor, or such other officer
256 through whom the debtor's salary or wages be paid, be taken, in which event the deposition of the officer or
257 supervisor shall be taken in his office and returned to the clerk of the court in which the summons is, just as
258 other depositions are returned, and in no such case shall the officer or supervisor be required to leave his
259 office to testify. In all proceedings under this section, the amount found to be due the debtor by the
260 Commonwealth shall be paid as directed by the court.

261 *2. The maximum part of the aggregate disposable earnings of an individual for any workweek that is*
262 *subjected to lien shall not exceed the amount by which his disposable earnings for that week exceed 40 times*
263 *the Virginia minimum hourly wage prescribed by § 40.1-28.10 in effect at the time earnings are payable. No*
264 *employer may discharge any employee by reason of the fact that his earnings have been subjected to lien for*
265 *any one indebtedness.*

266 *G. No court of the Commonwealth and no state agency or officer may make, execute, or enforce any order*
267 *or process in violation of this section.*