

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 488]

Approved

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):

[] wages, salary, or other compensation.

[] some other debt due or property of the judgment debtor.

MAXIMUM PORTION OF DISPOSABLE EARNINGS

STATEMENT

SUBJECT TO GARNISHMENT

[] Support

Judgment Principal

\$ _____

[] 50% [] 55% [] 60% [] 65%

Credits

\$ _____

57	(if not specified, then 50%)	Interest	\$ _____
58	<input type="checkbox"/> state taxes, 100%	Judgment Costs	\$ _____
59	If none of the above is checked,	Attorney's Fees	\$ _____
60	then <i>subsection A of § 34-29</i> (a) applies.	Garnishment Costs	\$ _____
61		TOTAL BALANCE DUE	\$ _____
62		The garnishee shall rely on this amount.	

63 _____ Date of Judgment

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

66 TO THE GARNISHEE: You are hereby commanded to

- 67 (1) File a written answer with this court, or
- 68 (2) Deliver payment to this court, or
- 69 (3) Appear before this court on the return date and time shown on this summons to answer the Suggestion
70 for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there
71 is a liability as shown in the statement upon the garnishee.

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

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

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

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

84 _____ Date of Issuance of Summons

85 _____ Clerk

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

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

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

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

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

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

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

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

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

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

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

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

111 **§ 8.01-515. How garnishee examined; determining exemption from employee's withholding
112 certificate; amount due pursuant to exemptions in subsection A of § 34-29.**

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

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

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

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

129 **§ 34-3. Articles not exempt from taxes or levies or for their purchase price.**

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

136 **§ 34-29. Maximum portion of disposable earnings subject to garnishment.**

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

140 ~~(1)~~ 1. Twenty-five percent of his disposable earnings for that week; or

141 ~~(2)~~ 2. The amount by which his disposable earnings for that week exceed 40 times the federal minimum
 142 hourly wage prescribed by 29 U.S.C. § 206(a)(1) or the Virginia minimum hourly wage prescribed by
 143 § 40.1-28.10, whichever is greater, in effect at the time earnings are payable.

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

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

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

151 ~~(2)~~ 2. Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

152 ~~(3)~~ 3. Any debt due for any ~~state or~~ federal tax.

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

155 ~~(1)~~ 1. Sixty percent of such individual's disposable earnings for that week; or

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

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

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

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

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

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

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

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

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

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

180 ~~(g)~~ H. A depository wherein earnings have been deposited on behalf of and traceable to an individual shall

181 not be required to determine the portion of such earnings that are subject to garnishment.

182 **§ 58.1-105. Offers in compromise; Department may accept; authority and duty of Tax**
183 **Commissioner; currently not collectible status.**

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

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

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

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

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