

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 1100]

Approved

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 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 ☐ wages, salary, or other compensation. ☐ some other debt due or property of the judgment debtor.

b MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

STATEMENT

c ☐ Support

Judgment Principal

\$ _____

d ☐ 50% ☐ 55% ☐ 60% ☐ 65%

Credits

\$ _____

ENROLLED

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e	(if not specified, then 50%)	Interest	\$ _____
f	☐ 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.)

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

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

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

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

(3) Money is withheld for a tax debt.

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

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

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

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

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

A person so summoned shall appear in person and be examined on oath or he may file a statement. A corporation so summoned shall appear by an authorized agent who shall be examined on oath or may file a statement, not under seal of such authorized agent. Such statement shall show the amount the garnishee is

indebted to the judgment debtor, if any, or what property or effects, if any, the garnishee has or holds which belongs to the judgment debtor, or in which he has an interest. Payment to the court of any amount by the garnishee shall have the same force and effect as a statement which contains the information required by this section. If the judgment debtor or judgment creditor disputes the verity or accuracy of such statement or amount and so desires, then summons shall issue requiring the appearance of such person or authorized agent 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.

§ 34-29. 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.

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

- ~~(1)~~ 1. Sixty percent of such individual's disposable earnings for that week; or
- ~~(2)~~ 2. If such individual is supporting a spouse or dependent child other than the spouse or child with respect to whose support such order was issued, 50 percent of such individual's disposable earnings for that week.

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

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

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

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

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

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

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

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

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

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

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

A. For the purposes of this section:

"Disposable earnings" means that part of the earnings of any individual remaining after the deduction

from those earnings of any amounts required by law to be withheld.

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

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

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

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

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

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

3. To any portion of the delinquent obligations that were collected and held in trust by the delinquent taxpayer to remit to the appropriate local governing authority, including county food and beverage taxes levied pursuant to § 58.1-3833, admission taxes levied pursuant to § 58.1-3818, and transient occupancy taxes levied pursuant to § 58.1-3819.

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

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

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

~~B. F. 1.~~ Unless otherwise exempted, the wages and salaries of all employees of this Commonwealth, other than state officers, shall be subject to this section. Whenever the salary or wages of such employees as above mentioned shall be so attached, the ~~application treasurer's lien~~ shall be mailed to the debtor and to the officer

or supervisor who is head of the department, agency, or institution where the employee is employed, or other officer through whom the debtor's salary or wages is paid, provided that process shall not be served upon the State Treasurer or the State Comptroller except as to employees of their respective departments, and upon such service the officer or supervisor shall, on or before the return day of the ~~application~~ *lien*, transmit to the treasurer or other tax collector issuing the ~~application~~ *lien* a certificate showing the amount due from the Commonwealth to such debtor, up to the return day of the ~~application~~ *lien*, which amount the officer or supervisor shall hold subject to further instruction from the treasurer or other tax collector. However, in no case shall the officer or supervisor hold more than the sum of taxes, penalties and interest, and other charges stated in the ~~application~~ *treasurer's lien*. Such certificate shall be evidence of all facts therein stated, unless a court of appropriate jurisdiction directs that the deposition of the officer or supervisor, or such other officer through whom the debtor's salary or wages be paid, be taken, in which event the deposition of the officer or supervisor shall be taken in his office and returned to the clerk of the court in which the summons is, just as other depositions are returned, and in no such case shall the officer or supervisor be required to leave his office to testify. In all proceedings under this section, the amount found to be due the debtor by the Commonwealth shall be paid as directed by the court.

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

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