

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 434**

4 (By Senator Palumbo)

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6 [Originating in the Committee on the Judiciary;
7 reported February 3, 2012]

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12 A BILL to amend and reenact §38-5-10 of the Code of West Virginia,
13 1931, as amended; and to amend and reenact §38-5A-3 of said
14 code, all relating to proceedings in aid of execution on
15 judgments; and providing that a suggestion and suggestee
16 execution shall contain the date of birth and last four digits
17 of the Social Security number of the judgment debtor.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §38-5-10 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; and that §38-5A-3 of said code be amended
21 and reenacted, all to read as follows:

22 **ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES;**
23 **SUGGESTION.**

1 **§38-5-10. Suggestion on judgment; summons against person**
2 **suggested.**

3 (a) Upon a suggestion by the judgment creditor that a person
4 is indebted or liable to the judgment debtor or has in the person's
5 possession or control personal property belonging to the judgment
6 debtor, which debt or liability could be enforced when due, or
7 which property could be recovered when it became returnable by the
8 judgment debtor in a court of law and which debt or liability or
9 property is subject to the judgment creditor's writ of fieri
10 facias, a summons against such person may be issued out of the
11 office of the clerk of the circuit court or of the magistrate court
12 of the county in which the judgment creditor obtained the writ of
13 fieri facias, requiring such person to answer the suggestion in
14 writing and under oath. Service of a summons issued under this
15 section may be made as provided by subdivision (1), subsection (d)
16 of rule four of the rules of civil procedure for trial courts of
17 record. The return day for a summons issued under this section is
18 governed by the provisions of rule sixty-nine of the rules of civil
19 procedure for trial courts of record.

20 (b) The suggestion by the judgment creditor provided for
21 herein in this section shall include, to the extent possible, the
22 present address, ~~and~~ the last four digits of the Social Security
23 number and date of birth of the judgment debtor, which information
24 shall be made available to the person suggested for purposes of

1 identifying the judgment debtor and facilitating a proper answer to
2 the suggestion.

3 **ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN**
4 **PRIVATE EMPLOYMENT.**

5 **§38-5A-3. Application for suggestee execution against salary or**
6 **wages; extent of lien and continuing levy; exemption;**
7 **priority among suggestee executions.**

8 (a) A judgment creditor may apply to the court in which the
9 judgment was recovered or a court having jurisdiction of the same,
10 without notice to the judgment debtor, for a suggestee execution
11 against any money due or to become due within one year after the
12 issuance of such execution to the judgment debtor as salary or
13 wages arising out of any private employment. If satisfactory proof
14 shall be made, by affidavit or otherwise, of such facts and the
15 fact that the amount due or to become due as salary or wages after
16 the deduction of all state and federal taxes exceeds in any week
17 thirty times the federal minimum hourly wage then in effect, the
18 court, if not a court of record, or if a court of record the clerk
19 thereof, shall issue a suggestee execution against the salary or
20 wages of the judgment debtor and upon presentation of such
21 execution by the officer to whom delivered for collection to the
22 person or persons from which such salary or wages are due and owing
23 or thereafter may become due and owing to the judgment debtor, the

1 execution and the expenses thereof shall become a lien and
2 continuing levy upon the salary or wages due or to become due to
3 the judgment debtor within one year after the issuance of the same,
4 unless sooner vacated or modified as hereinafter provided, to an
5 amount equal to twenty percent thereof and no more, but in no event
6 shall the payments in satisfaction of such an execution reduce the
7 amount payable to the judgment debtor to an amount per week that is
8 less than thirty times the federal minimum hourly wage then in
9 effect. Only one such execution shall be satisfied, at one time,
10 except that in the event two or more such executions have been
11 served and satisfaction of the one having priority is completed
12 without exhausting the amount of the salary or wages then due and
13 payable that is subject to suggestion under this article the
14 balance of such amount shall be paid in satisfaction, in the order
15 of their priority, of junior suggestee executions against such
16 salary or wages theretofore served.

17 (b) The suggestee execution by the judgment creditor provided
18 in this section shall include, to the extent possible, the present
19 address, the last four digits of the Social Security number and
20 date of birth of the judgment debtor, which information shall be
21 made available for the purpose of properly identifying the judgment
22 debtor whose salary or wages are being levied upon.

(NOTE: The purpose of this bill is to provide that a suggestion and suggestee execution shall contain, to the extent possible, the date of birth and last four digits of the social security number of the judgment debtor in order to identify the debtor in proceedings in aid of execution on judgments.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)