

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 434

(By Senator Palumbo)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

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

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

18 rule sixty-nine of the rules of civil procedure for trial courts
19 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 Secu-
23 rity number and date of birth of the judgment debtor, which
24 information shall be made available to the person suggested
25 for purposes of identifying the judgment debtor and facilitat-
26 ing a proper answer to the suggestion.

**ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PER-
SONS ENGAGED IN PRIVATE EMPLOYMENT.**

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

1 (a) A judgment creditor may apply to the court in which
2 the judgment was recovered or a court having jurisdiction of
3 the same, without notice to the judgment debtor, for a
4 suggestee execution against any money due or to become due
5 within one year after the issuance of such execution to the
6 judgment debtor as salary or wages arising out of any private
7 employment. If satisfactory proof shall be made, by affidavit
8 or otherwise, of such facts and the fact that the amount due

9 or to become due as salary or wages after the deduction of all
10 state and federal taxes exceeds in any week thirty times the
11 federal minimum hourly wage then in effect, the court, if not
12 a court of record, or if a court of record the clerk thereof,
13 shall issue a suggestee execution against the salary or wages
14 of the judgment debtor and upon presentation of such
15 execution by the officer to whom delivered for collection to
16 the person or persons from which such salary or wages are
17 due and owing or thereafter may become due and owing to
18 the judgment debtor, the execution and the expenses thereof
19 shall become a lien and continuing levy upon the salary or
20 wages due or to become due to the judgment debtor within
21 one year after the issuance of the same, unless sooner
22 vacated or modified as hereinafter provided, to an amount
23 equal to twenty percent thereof and no more, but in no event
24 shall the payments in satisfaction of such an execution
25 reduce the amount payable to the judgment debtor to an
26 amount per week that is less than thirty times the federal
27 minimum hourly wage then in effect. Only one such execu-
28 tion shall be satisfied, at one time, except that in the event
29 two or more such executions have been served and satisfac-
30 tion of the one having priority is completed without exhaust-

31 ing the amount of the salary or wages then due and payable
32 that is subject to suggestion under this article the balance of
33 such amount shall be paid in satisfaction, in the order of
34 their priority, of junior suggestee executions against such
35 salary or wages theretofore served.

36 (b) The suggestee execution by the judgment creditor
37 provided in this section shall include, to the extent possible,
38 the present address, the last four digits of the Social Security
39 number and date of birth of the judgment debtor, which
40 information shall be made available for the purpose of
41 properly identifying the judgment debtor whose salary or
42 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.)