



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0530

Introduced 2/4/2009, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1303	from Ch. 110, par. 2-1303
735 ILCS 5/12-805	from Ch. 110, par. 12-805
735 ILCS 5/12-808	from Ch. 110, par. 12-808
735 ILCS 5/12-811	from Ch. 110, par. 12-811

Amends the Code of Civil Procedure. Provides that if the court finds that a judgment debtor is a family supporter and entitled to relief, the court may prospectively reduce the interest rate on a judgment to a rate not lower than 3%, taking into consideration the needs of the judgment debtor's dependents and the judgment debtor's ability to meet those needs. Provides that any party may request a readjustment of a reduced interest rate on a judgment based on a relevant change in circumstances. Provides that a judgment debtor shall be notified that the court may reduce the amount of wages withheld and reduce the rate of interest on the judgment, if the court finds that the judgment debtor is a "family supporter" and the full wage garnishment would result in a denial of necessities to the judgment debtor's dependents who are disabled or under the age of 18. Provides that under the Act, (1) "family supporter" means a person who supports and resides with one or more dependent children under the age of 18 or a dependent disabled person and whose relationship with the dependent child or disabled person is that of parent, stepparent, son, daughter, sibling, uncle, aunt, grandparent, or guardian; and (2) "dependent" means a child under the age of 18 or disabled person who resides with and is supported by the judgment debtor.

LRB096 03817 AJ0 13849 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 2-1303, 12-805, 12-808, and 12-811 as
6 follows:

7 (735 ILCS 5/2-1303) (from Ch. 110, par. 2-1303)

8 Sec. 2-1303. Interest on judgment.

9 (a) Judgments recovered in any court shall draw interest at
10 the rate of 9% per annum from the date of the judgment until
11 satisfied, a rate as low as 3% per annum when the judgment
12 debtor qualifies for relief under subsection (b), or, 6% per
13 annum when the judgment debtor is a unit of local government,
14 as defined in Section 1 of Article VII of the Constitution, a
15 school district, a community college district, or any other
16 governmental entity. When judgment is entered upon any award,
17 report or verdict, interest shall be computed at the above
18 rate, from the time when made or rendered to the time of
19 entering judgment upon the same, and included in the judgment.
20 Interest shall be computed and charged only on the unsatisfied
21 portion of the judgment as it exists from time to time. The
22 judgment debtor may by tender of payment of judgment, costs and
23 interest accrued to the date of tender, stop the further

1 accrual of interest on such judgment notwithstanding the
2 prosecution of an appeal, or other steps to reverse, vacate or
3 modify the judgment.

4 (b) Whenever the court finds that the judgment debtor is a
5 family supporter and entitled to relief, pursuant to Section
6 12-811, the court may prospectively reduce the interest rate on
7 a judgment, taking into consideration the needs of the judgment
8 debtor's dependents and the judgment debtor's ability to meet
9 those needs. A reduction in the rate of interest on a judgment
10 ordered by the court shall be prospective only and shall not be
11 below 3% per annum. Subsequent to the entry of an order
12 reducing the rate of interest on a judgment pursuant to this
13 subsection, any party may request that a prospective
14 readjustment in the rate be made, based on a relevant change in
15 circumstances.

16 (Source: P.A. 85-907.)

17 (735 ILCS 5/12-805) (from Ch. 110, par. 12-805)

18 Sec. 12-805. Summons; Issuance.

19 (a) Upon the filing by a judgment creditor, its attorney or
20 other designee of (1) an affidavit that the affiant believes
21 any person is indebted to the judgment debtor for wages due or
22 to become due, as provided in Part 8 of Article XII of this
23 Act, and includes the last address of the judgment debtor known
24 to the affiant as well as the name of the judgment debtor, and
25 a certification by the judgment creditor or his attorney that,

1 before filing the affidavit, the wage deduction notice has been
2 mailed to the judgment debtor by first class mail at the
3 judgment debtor's last known address, and (2) written
4 interrogatories to be answered by the employer with respect to
5 the indebtedness, the clerk of the court in which the judgment
6 was entered shall issue summons against the person named in the
7 affidavit as employer commanding the employer to appear in the
8 court and answer the interrogatories in writing under oath. The
9 interrogatories shall elicit all the information necessary to
10 determine the proper amount of non-exempt wages. The
11 interrogatories shall require that the employer certify that a
12 copy of the completed interrogatories as specified in
13 subsection (c) of Section 12-808 has been mailed or hand
14 delivered to the judgment debtor and shall be in a form
15 consistent with local court rules. The summons shall further
16 command federal agency employers, upon effective service of
17 summons pursuant to 5 USC 5520a, to commence to pay over
18 deducted wages in accordance with Section 12-808. The summons
19 shall be in a form consistent with local court rules. The
20 summons shall be accompanied by a copy of the underlying
21 judgment or a certification by the clerk of the court that
22 entered the judgment, or by the attorney for the judgment
23 creditor, setting forth the date and amount of the judgment,
24 allowable costs expended, interest accumulated, credits paid
25 by or on behalf of the judgment debtor and the balance due the
26 judgment creditor, and one copy of a wage deduction notice in

1 substantially the following form:

2 "WAGE DEDUCTION NOTICE

3 (Name and address of Court)

4 Name of Case: (Name of Judgment Creditor),

5 Judgment Creditor v.

6 (Name of Judgment Debtor),

7 Judgment Debtor.

8 Address of Judgment Debtor: (Insert last known address)

9 Name and Address of Attorney for Judgment

10 Creditor or of Judgment Creditor (if no

11 attorney is listed): (Insert name and address)

12 Amount of Judgment: \$.....

13 Employer: (Name of Employer)

14 Return Date: (Insert return date specified in summons)

15 NOTICE: The court shall be asked to issue a wage deduction
16 summons against the employer named above for wages due or about
17 to become due to you. The wage deduction summons may be issued
18 on the basis of a judgment against you in favor of the judgment
19 creditor in the amount stated above.

20 The amount of wages that may be deducted is limited by
21 federal and Illinois law.

22 (1) Under Illinois law, the amount of wages that may be
23 deducted is limited to the lesser of (i) 15% of gross
24 weekly wages or (ii) the amount by which disposable
25 earnings for a week exceed the total of 50 ~~45~~ times the
26 federal minimum hourly wage or, under a wage deduction

1 summons served on or after January 1, 2006, the minimum
2 hourly wage prescribed by Section 4 of the Minimum Wage
3 Law, whichever is greater.

4 (2) Under federal law, the amount of wages that may be
5 deducted is limited to the lesser of (i) 25% of disposable
6 earnings for a week or (ii) the amount by which disposable
7 earnings for a week exceed 30 times the federal minimum
8 hourly wage.

9 (3) Pension and retirement benefits and refunds may be
10 claimed as exempt from wage deduction under Illinois law.

11 (4) Under Illinois law, the court may enter an order
12 reducing the amount of wages withheld and reducing the rate
13 of interest a judgment debtor is obligated to pay on the
14 judgment, if the court finds that the judgment debtor is a
15 "family supporter" and the full wage garnishment would
16 result in a denial of necessities to the judgment debtor's
17 dependents who reside with the judgment debtor and who are
18 under the age of 18 or disabled. "Dependent" means a child
19 under the age of 18 or disabled person who resides with and
20 is supported by the judgment debtor.

21 You have the right to request a hearing before the court to
22 dispute the wage deduction because the wages are exempt. If you
23 are the "family supporter", you have the right to request: (1)
24 a reduction in the amount of the wage garnishment because the
25 full wage garnishment would result in a denial of necessities
26 to your dependents who reside with you and who are under the

1 age of 18 or disabled; and (2) a reduction in the interest rate
2 on the judgment if the court determines that you are a family
3 supporter and entitled to relief taking into consideration the
4 needs of your dependents and your ability to meet those needs.
5 You are a "family supporter", if you actually support and
6 reside with one or more dependent children under the age of 18
7 or a dependent disabled adult and your relationship with the
8 dependent child or dependent disabled adult is that of parent,
9 stepparent, son, daughter, sibling, uncle, aunt, grandparent,
10 or guardian. To obtain a hearing in counties with a population
11 of 1,000,000 or more, you must notify the Clerk of the Court in
12 person and in writing at (insert address of Clerk) before the
13 Return Date specified above or appear in court on the date and
14 time on that Return Date. To obtain a hearing in counties with
15 a population of less than 1,000,000, you must notify the Clerk
16 of the Court in writing at (insert address of clerk) on or
17 before the Return Date specified above. The Clerk of the Court
18 will provide a hearing date and the necessary forms that must
19 be prepared by you or your attorney and sent to the judgment
20 creditor and the employer, or their attorney, regarding the
21 time and location of the hearing. This notice may be sent by
22 regular first class mail."

23 (b) In a county with a population of less than 1,000,000,
24 unless otherwise provided by circuit court rule, at the request
25 of the judgment creditor or his or her attorney and instead of
26 personal service, service of a summons for a wage deduction may

1 be made as follows:

2 (1) For each employer to be served, the judgment
3 creditor or his or her attorney shall pay to the clerk of
4 the court a fee of \$2, plus the cost of mailing, and
5 furnish to the clerk an original and one copy of a summons,
6 an original and one copy of the interrogatories and an
7 affidavit setting forth the employer's mailing address, an
8 original and one copy of the wage deduction notice required
9 by subsection (a) of this Section, and a copy of the
10 judgment or certification described in subsection (a) of
11 this Section. The original judgment shall be retained by
12 the clerk.

13 (2) The clerk shall mail to the employer, at the
14 address appearing in the affidavit, the copy of the
15 judgment or certification described in subsection (a) of
16 this Section, the summons, the interrogatories, and the
17 wage deduction notice required by subsection (a) of this
18 Section, by certified or registered mail, return receipt
19 requested, showing to whom delivered and the date and
20 address of delivery. This Mailing shall be mailed on a
21 "restricted delivery" basis when service is directed to a
22 natural person. The envelope and return receipt shall bear
23 the return address of the clerk, and the return receipt
24 shall be stamped with the docket number of the case. The
25 receipt for certified or registered mail shall state the
26 name and address of the addressee, the date of the mailing,

1 shall identify the documents mailed, and shall be attached
2 to the original summons.

3 (3) The return receipt must be attached to the original
4 summons and, if it shows delivery at least 3 days before
5 the return date, shall constitute proof of service of any
6 documents identified on the return receipt as having been
7 mailed.

8 (4) The clerk shall note the fact of service in a
9 permanent record.

10 (c) Instead of personal service, a summons for a wage
11 deduction may be served and returned in the manner provided by
12 Supreme Court rule for service, otherwise than by publication,
13 of a notice for additional relief upon a party in default.

14 (Source: P.A. 94-306, eff. 1-1-06.)

15 (735 ILCS 5/12-808) (from Ch. 110, par. 12-808)

16 Sec. 12-808. Duty of employer.

17 (a) An employer served as herein provided shall pay the
18 employee the amount of his or her exempt wages.

19 (b) To the extent of the amount due upon the judgment and
20 costs, the employer shall hold, subject to order of court, any
21 non-exempt wages due or which subsequently come due. The
22 judgment or balance due thereon is a lien on wages due at the
23 time of the service of summons, and such lien shall continue as
24 to subsequent earnings until the total amount due upon the
25 judgment and costs is paid, except that such lien on subsequent

1 earnings shall terminate sooner if the employment relationship
2 is terminated or if the underlying judgment is vacated or
3 modified.

4 (b-5) If the employer is a federal agency employer and the
5 creditor is represented by an attorney, then the employer, upon
6 service of summons and to the extent of the amount due upon the
7 judgment and costs, shall commence to pay over to the attorney
8 for the judgment creditor any non-exempt wages due or that
9 subsequently come due. The attorney for the judgment creditor
10 shall thereafter hold the deducted wages subject to further
11 order of the court and shall make answer to the court regarding
12 amounts received from the federal agency employer. The federal
13 agency employer's periodic payments shall be considered a
14 sufficient answer to the interrogatories.

15 (c) Except as provided in subsection (b-5), the employer
16 shall file, on or before the return date or within the further
17 time that the court for cause may allow, a written answer under
18 oath to the interrogatories, setting forth the amount due as
19 wages to the judgment debtor for the payroll periods ending
20 immediately prior to the service of the summons and a summary
21 of the computation used to determine the amount of non-exempt
22 wages. Except as provided in subsection (b-5), the employer
23 shall mail by first class mail or hand deliver a copy of the
24 answer to the judgment debtor at the address specified in the
25 affidavit filed under Section 12-805 of this Act, or at any
26 other address or location of the judgment debtor known to the

1 employer.

2 A lien obtained hereunder shall have priority over any
3 subsequent lien obtained hereunder, except that liens for the
4 support of a spouse or dependent children shall have priority
5 over all other liens obtained hereunder. Subsequent summonses
6 shall be effective in the order in which they are served.

7 (d) The Illinois Supreme Court may by rule allow an
8 employer to file answers to interrogatories by facsimile
9 transmission.

10 (e) Pursuant to answer under oath to the interrogatories by
11 the employer, an order shall be entered compelling the employer
12 to deduct from wages of the judgment debtor subject to
13 collection under a deduction order an amount which is the
14 lesser of (i) 15% of the gross amount of the wages or (ii) the
15 amount by which disposable earnings for a week exceed 50 ~~45~~
16 times the Federal Minimum Hourly Wage prescribed by Section
17 206(a)(1) of Title 29 of the United States Code, as amended, in
18 effect at the time the amounts are payable, for each pay period
19 in which statutory exemptions under Section 12-804 and child
20 support garnishments, if any, leave funds to be remitted or,
21 under a wage deduction summons served on or after January 1,
22 2006, the minimum hourly wage prescribed by Section 4 of the
23 Minimum Wage Law, whichever is greater. The order shall further
24 provide that deducted wages shall be remitted to the creditor
25 or creditor's attorney on a monthly basis.

26 (f) If after the entry of a deduction order, the employer

1 ceases to remit funds to the plaintiff pursuant to the order
2 without a lawful excuse (which would terminate the employer's
3 obligation under the deduction order such as the debtor having
4 filed a bankruptcy, the debtor having left employment or the
5 employer having received service of a support order against the
6 judgment debtor having priority over the wage deduction
7 proceedings), the court shall, upon plaintiff's motion, enter a
8 conditional judgment against the employer for the balance due
9 on the judgment. The plaintiff may then issue a Summons After
10 Conditional Judgment. After service of the Summons After
11 Conditional Judgment, the employer may show cause why the
12 conditional judgment, or some portion thereof should not be
13 made a final judgment. If the employer shall fail to respond or
14 show cause why the conditional judgment or some portion thereof
15 should not be made final, the court shall confirm the
16 conditional judgment and make it final as to the employer plus
17 additional court costs.

18 (g) Notwithstanding any other provision, the court may
19 enter an order reducing the amount of wages withheld, if the
20 court finds that the judgment debtor is a family supporter and
21 the full wage garnishment would result in a denial of
22 necessities to his or her dependents who are under the age of
23 18 or disabled. The term "family supporter" means an individual
24 who actually supports and resides with one or more dependent
25 children under the age of 18 or a dependent disabled adult and
26 whose relationship with the dependent child or dependent

1 disabled adult is that of parent, stepparent, son, daughter,
2 sibling, uncle, aunt, grandparent, or guardian. "Dependent"
3 means a child under the age of 18 or disabled person who
4 resides with and is supported by the judgment debtor.

5 (Source: P.A. 94-306, eff. 1-1-06; 95-661, eff. 1-1-08.)

6 (735 ILCS 5/12-811) (from Ch. 110, par. 12-811)

7 Sec. 12-811. Trial and judgment.

8 (a) The judgment creditor or the judgment debtor may
9 contest the truth or sufficiency of the employer's answer and,
10 in accordance with local court rules, the court shall
11 immediately, unless for good cause the hearing is postponed,
12 proceed to try the issues. The answer of the employer may be
13 contested without further pleading.

14 (b) At any time on or before the return date, the judgment
15 debtor may request a hearing to dispute the wage deduction
16 because the wages are exempt or to reduce the amount of wages
17 withheld because the judgment debtor is a family supporter
18 under this Section by notifying the clerk of court before that
19 time, using forms as may be provided by the clerk of the court.
20 To obtain a hearing in counties with a population of 1,000,000
21 or more, the judgment debtor must notify the clerk of court in
22 person and in writing at the clerk's office before the return
23 date specified in the summons or appear in court on the date
24 and time specified in the summons. To obtain a hearing in
25 counties with a population of less than 1,000,000, the judgment

1 debtor must notify the clerk of the court in writing at the
2 clerk's office on or before the return date specified in the
3 summons. The Clerk of Court will provide a hearing date and the
4 necessary forms that must be prepared by the judgment debtor or
5 the attorney for the judgment debtor and sent to the judgment
6 creditor and the employer, or their attorney, regarding the
7 time and location of the hearing. This notice may be sent by
8 regular first class mail. At the hearing the court shall
9 immediately, unless for good cause the hearing is continued,
10 proceed to try the issues.

11 (b-5) Notwithstanding any other provision, the court may
12 enter an order reducing the amount of wages withheld and reduce
13 the rate of interest the judgment debtor is obligated to pay on
14 the judgment, if the court finds that the judgment debtor is
15 obligated to pay on the judgment, the judgment debtor is a
16 family supporter, and the full wage garnishment would result in
17 a denial of necessities to his or her dependents who are under
18 the age of 18 or disabled. For purposes of this Act:

19 (1) "family supporter" means an individual who
20 actually supports and resides with one or more dependent
21 children under the age of 18 or a dependent disabled adult
22 and whose relationship with the dependent child or
23 dependent disabled adult is that of parent, stepparent,
24 son, daughter, sibling, uncle, aunt, grandparent or
25 guardian; and

26 (2) "dependent" means a child under the age of 18 or

1 disabled person who resides with and is supported by the
2 judgment debtor.

3 (c) The trial shall be conducted as in other civil cases.

4 (d) If the finding is against an employer, a deduction
5 order shall be entered against the employer and in favor of the
6 judgment debtor to whom the employer is indebted, in the same
7 manner as if the facts are admitted.

8 (e) No deduction order shall be entered in favor of the
9 judgment creditor unless the affidavit filed by the judgment
10 creditor certifies that a copy of the wage deduction notice has
11 been mailed to the judgment debtor, under Section 12-805, and
12 the employer's answer provides a summary of the computation
13 used to determine the amount of non-exempt wages. If the
14 employer is a federal agency employer, a deduction order shall
15 be entered in favor of the judgment creditor if (i) the
16 affidavit filed by the judgment creditor certifies that a copy
17 of the wage deduction notice has been mailed to the judgment
18 debtor under Section 12-805 and (ii) the federal agency
19 employer identifies, on or with its periodic payments made
20 under subsection (b-5) of Section 12-808, the computation
21 method used to determine the amount of non-exempt wages. A
22 federal agency employer shall not be required to provide a
23 summary of the computation used to determine the amount of
24 non-exempt wages.

25 (Source: P.A. 89-28, eff. 6-23-95.)