



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB2949

Introduced 2/23/2011, by Rep. Michelle Mussman

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/12-801	from Ch. 110, par. 12-801
735 ILCS 5/12-805	from Ch. 110, par. 12-805
735 ILCS 5/12-808	from Ch. 110, par. 12-808

Amends the wage deduction provisions of the Code of Civil Procedure. Provides that a lien on wages in a wage deduction based on a judgment arising from financial exploitation of an elderly person or person with a disability has priority over liens on wages in other wage deductions, except those for the support of a spouse or dependent children. Requires a summons for a wage deduction that is based on a judgment arising from financial exploitation of an elderly person or person with a disability to prominently state that it must be given priority over other wage deductions except for wage deductions for the support of a spouse or dependent children.

LRB097 06289 KTG 46365 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 12-801, 12-805, and 12-808 as follows:

6 (735 ILCS 5/12-801) (from Ch. 110, par. 12-801)

7 Sec. 12-801. Definitions. As used in Part 8 of Article XII  
8 of this Act:

9 "Deduction order" means an order entered pursuant to  
10 Section 12-811 of this Act.

11 "Employer" means the person named as employer in the  
12 affidavit filed under Section 12-805.

13 "Federal agency employer" means an agency of the federal  
14 government as defined in 5 USC 5520a(a)(1), as amended from  
15 time to time.

16 "Judgment creditor" means the recipient of any judgment,  
17 except a judgment by confession which has not been confirmed as  
18 provided in Part 8 of Article XII of this Act.

19 "Judgment debtor" means a person against whom a judgment  
20 has been obtained.

21 "Wages" means any hourly pay, salaries, commissions,  
22 bonuses, or other compensation owed by an employer to a  
23 judgment debtor.

1           "Judgment arising from financial exploitation of an  
2           elderly person or person with a disability" means a judgment  
3           entered under subsection (g) of Section 16-1.3 of the Criminal  
4           Code of 1961.

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

6           (735 ILCS 5/12-805) (from Ch. 110, par. 12-805)

7           Sec. 12-805. Summons; Issuance.

8           (a) Upon the filing by a judgment creditor, its attorney or  
9           other designee of (1) an affidavit that the affiant believes  
10          any person is indebted to the judgment debtor for wages due or  
11          to become due, as provided in Part 8 of Article XII of this  
12          Act, and includes the last address of the judgment debtor known  
13          to the affiant as well as the name of the judgment debtor, and  
14          a certification by the judgment creditor or his attorney that,  
15          before filing the affidavit, the wage deduction notice has been  
16          mailed to the judgment debtor by first class mail at the  
17          judgment debtor's last known address, and (2) written  
18          interrogatories to be answered by the employer with respect to  
19          the indebtedness, the clerk of the court in which the judgment  
20          was entered shall issue summons against the person named in the  
21          affidavit as employer commanding the employer to appear in the  
22          court and answer the interrogatories in writing under oath. The  
23          interrogatories shall elicit all the information necessary to  
24          determine the proper amount of non-exempt wages. The  
25          interrogatories shall require that the employer certify that a

1 copy of the completed interrogatories as specified in  
2 subsection (c) of Section 12-808 has been mailed or hand  
3 delivered to the judgment debtor and shall be in a form  
4 consistent with local court rules. The summons shall further  
5 command federal agency employers, upon effective service of  
6 summons pursuant to 5 USC 5520a, to commence to pay over  
7 deducted wages in accordance with Section 12-808. The summons  
8 shall be in a form consistent with local court rules. The  
9 summons shall be accompanied by a copy of the underlying  
10 judgment or a certification by the clerk of the court that  
11 entered the judgment, or by the attorney for the judgment  
12 creditor, setting forth the date and amount of the judgment,  
13 allowable costs expended, interest accumulated, credits paid  
14 by or on behalf of the judgment debtor and the balance due the  
15 judgment creditor, and one copy of a wage deduction notice in  
16 substantially the following form:

17 "WAGE DEDUCTION NOTICE

18 (Name and address of Court)

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

20 Judgment Creditor v.

21 (Name of Judgment Debtor),

22 Judgment Debtor.

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

24 Name and Address of Attorney for Judgment

25 Creditor or of Judgment Creditor (if no

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

1 Amount of Judgment: \$.....

2 Employer: (Name of Employer)

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

4 NOTICE: The court shall be asked to issue a wage deduction  
5 summons against the employer named above for wages due or about  
6 to become due to you. The wage deduction summons may be issued  
7 on the basis of a judgment against you in favor of the judgment  
8 creditor in the amount stated above.

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

11 (1) Under Illinois law, the amount of wages that may be  
12 deducted is limited to the lesser of (i) 15% of gross  
13 weekly wages or (ii) the amount by which disposable  
14 earnings for a week exceed the total of 45 times the  
15 federal minimum hourly wage or, under a wage deduction  
16 summons served on or after January 1, 2006, the minimum  
17 hourly wage prescribed by Section 4 of the Minimum Wage  
18 Law, whichever is greater.

19 (2) Under federal law, the amount of wages that may be  
20 deducted is limited to the lesser of (i) 25% of disposable  
21 earnings for a week or (ii) the amount by which disposable  
22 earnings for a week exceed 30 times the federal minimum  
23 hourly wage.

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

26 You have the right to request a hearing before the court to

1 dispute the wage deduction because the wages are exempt. To  
2 obtain a hearing in counties with a population of 1,000,000 or  
3 more, you must notify the Clerk of the Court in person and in  
4 writing at (insert address of Clerk) before the Return Date  
5 specified above or appear in court on the date and time on that  
6 Return Date. To obtain a hearing in counties with a population  
7 of less than 1,000,000, you must notify the Clerk of the Court  
8 in writing at (insert address of clerk) on or before the Return  
9 Date specified above. The Clerk of the Court will provide a  
10 hearing date and the necessary forms that must be prepared by  
11 you or your attorney and sent to the judgment creditor and the  
12 employer, or their attorney, regarding the time and location of  
13 the hearing. This notice may be sent by regular first class  
14 mail."

15 (b) In a county with a population of less than 1,000,000,  
16 unless otherwise provided by circuit court rule, at the request  
17 of the judgment creditor or his or her attorney and instead of  
18 personal service, service of a summons for a wage deduction may  
19 be made as follows:

20 (1) For each employer to be served, the judgment  
21 creditor or his or her attorney shall pay to the clerk of  
22 the court a fee of \$2, plus the cost of mailing, and  
23 furnish to the clerk an original and one copy of a summons,  
24 an original and one copy of the interrogatories and an  
25 affidavit setting forth the employer's mailing address, an  
26 original and one copy of the wage deduction notice required

1 by subsection (a) of this Section, and a copy of the  
2 judgment or certification described in subsection (a) of  
3 this Section. The original judgment shall be retained by  
4 the clerk.

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

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

26 (4) The clerk shall note the fact of service in a

1 permanent record.

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

6 (d) A summons for a wage deduction that is based on a  
7 judgment arising from financial exploitation of an elderly  
8 person or person with a disability shall prominently state that  
9 it must be given priority over other wage deductions except for  
10 wage deductions for the support of a spouse or dependent  
11 children.

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

13 (735 ILCS 5/12-808) (from Ch. 110, par. 12-808)

14 Sec. 12-808. Duty of employer.

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

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



1 modified.

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

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

26 A lien obtained hereunder shall have priority over any

1 subsequent lien obtained hereunder, except that liens for the  
2 support of a spouse or dependent children and liens based on  
3 judgments arising from financial exploitation of an elderly  
4 person or person with a disability shall have priority over all  
5 other liens obtained hereunder. Liens for the support of a  
6 spouse or dependent children have priority over liens based on  
7 judgments arising from financial exploitation of an elderly  
8 person or person with a disability. Subsequent summonses shall  
9 be effective in the order in which they are served.

10 (d) The Illinois Supreme Court may by rule allow an  
11 employer to file answers to interrogatories by facsimile  
12 transmission.

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

1 deducted wages shall be remitted to the creditor or creditor's  
2 attorney on a monthly basis.

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

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