



Rep. Ann Williams

**Filed: 3/26/2012**

09700HB5434ham002

LRB097 16836 AJ0 67810 a

1 AMENDMENT TO HOUSE BILL 5434

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5434 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 changing Section 2-1402 and by adding Section 12-107.5 as  
6 follows:

7 (735 ILCS 5/2-1402) (from Ch. 110, par. 2-1402)

8 Sec. 2-1402. Supplementary proceedings.

9 (a) A judgment creditor, or his or her successor in  
10 interest when that interest is made to appear of record, is  
11 entitled to prosecute supplementary proceedings for the  
12 purposes of examining the judgment debtor or any other person  
13 to discover assets or income of the debtor not exempt from the  
14 enforcement of the judgment, a deduction order or garnishment,  
15 and of compelling the application of non-exempt assets or  
16 income discovered toward the payment of the amount due under

1 the judgment. A supplementary proceeding shall be commenced by  
2 the service of a citation issued by the clerk. The procedure  
3 for conducting supplementary proceedings shall be prescribed  
4 by rules. It is not a prerequisite to the commencement of a  
5 supplementary proceeding that a certified copy of the judgment  
6 has been returned wholly or partly unsatisfied. All citations  
7 issued by the clerk shall have the following language, or  
8 language substantially similar thereto, stated prominently on  
9 the front, in capital letters: "IF YOU FAIL YOUR FAILURE TO  
10 APPEAR IN COURT AS ~~HEREIN~~ DIRECTED IN THIS NOTICE, YOU MAY  
11 ~~CAUSE YOU TO~~ BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER  
12 TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY  
13 IMPRISONMENT IN THE COUNTY JAIL." The court shall not grant a  
14 continuance of the supplementary proceeding except upon good  
15 cause shown.

16 (b) Any citation served upon a judgment debtor or any other  
17 person shall include a certification by the attorney for the  
18 judgment creditor or the judgment creditor setting forth the  
19 amount of the judgment, the date of the judgment, or its  
20 revival date, the balance due thereon, the name of the court,  
21 and the number of the case, ~~and~~ a copy of the citation notice  
22 required by this subsection, and, in the case of a judgment  
23 against a debtor who is a natural person, a copy of the Income  
24 and Asset Form required by this Section. Service of a citation,  
25 citation notice, and Income and Asset Form upon a judgment  
26 debtor who is a natural person shall be by personal service or

1 abode service as provided in Section 2-203, and served by a  
2 person authorized to serve process as provided by rule.

3 Whenever a citation is served upon a person or party other than  
4 the judgment debtor, the officer or person serving the citation  
5 shall send to the judgment debtor, within three business days  
6 of the service upon the cited party, a copy of the citation and  
7 the citation notice, which may be sent by regular first-class  
8 mail to the judgment debtor's last known address. In no event  
9 shall a citation hearing be held sooner than five business days  
10 after the mailing of the citation and citation notice to the  
11 judgment debtor, except by agreement of the parties. The  
12 citation notice need not be mailed to a corporation,  
13 partnership, or association. The citation notice shall be in  
14 substantially the following form:

15 "CITATION NOTICE

16 (Name and address of Court)

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

18 Judgment Creditor v.

19 (Name of Judgment Debtor),

20 Judgment Debtor.

21 Address of Judgment Debtor: (Insert last known  
22 address)

23 Name and address of Attorney for Judgment

24 Creditor or of Judgment Creditor (If no

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

26 Amount of Judgment: \$ (Insert amount)

1 Name of Person Receiving Citation: (Insert name)

2 Court Date and Time: (Insert return date and time  
3 specified in citation)

4 NOTICE: The court has issued a citation against the person  
5 named above. The citation directs that person to appear in  
6 court to be examined for the purpose of allowing the judgment  
7 creditor to discover income and assets belonging to the  
8 judgment debtor or in which the judgment debtor has an  
9 interest. The citation was issued on the basis of a judgment  
10 against the judgment debtor in favor of the judgment creditor  
11 in the amount stated above. On or after the court date stated  
12 above, the court may compel the application of any discovered  
13 income or assets toward payment on the judgment.

14 The amount of income or assets that may be applied toward  
15 the judgment is limited by federal and Illinois law. The  
16 JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS  
17 AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH  
18 MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED  
19 ABOVE:

20 (1) Under Illinois or federal law, the exemptions of  
21 personal property owned by the debtor include the debtor's  
22 equity interest, not to exceed \$4,000 in value, in any  
23 personal property as chosen by the debtor; Social Security  
24 and SSI benefits; public assistance benefits; unemployment  
25 compensation benefits; worker's compensation benefits;  
26 veteran's benefits; circuit breaker property tax relief

1 benefits; the debtor's equity interest, not to exceed  
2 \$2,400 in value, in any one motor vehicle, and the debtor's  
3 equity interest, not to exceed \$1,500 in value, in any  
4 implements, professional books, or tools of the trade of  
5 the debtor.

6 (2) Under Illinois law, every person is entitled to an  
7 estate in homestead, when it is owned and occupied as a  
8 residence, to the extent in value of \$15,000, which  
9 homestead is exempt from judgment.

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

17 (4) Under federal law, the amount of wages that may be  
18 applied toward a judgment is limited to the lesser of (i)  
19 25% of disposable earnings for a week or (ii) the amount by  
20 which disposable earnings for a week exceed 30 times the  
21 federal minimum hourly wage.

22 (5) Pension and retirement benefits and refunds may be  
23 claimed as exempt under Illinois law.

24 The judgment debtor may have other possible exemptions  
25 under the law.

26 THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING

1 TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. THE  
2 JUDGMENT DEBTOR IS ENCOURAGED TO USE THE ENCLOSED INCOME AND  
3 ASSET FORM TO ASSIST WITH THIS PROCESS. The judgment debtor  
4 also has the right to seek a declaration at an earlier date, by  
5 notifying the clerk in writing at (insert address of clerk).  
6 When so notified, the Clerk of the Court will obtain a prompt  
7 hearing date from the court and will provide the necessary  
8 forms that must be prepared by the judgment debtor or the  
9 attorney for the judgment debtor and sent to the judgment  
10 creditor and the judgment creditor's attorney regarding the  
11 time and location of the hearing. This notice may be sent by  
12 regular first class mail."

13 (b-5) The Income and Asset Form, required to be served by  
14 the judgment creditor in subsection (b), shall be in the  
15 following form:

16 INCOME AND ASSET FORM

17 (CASE CAPTION)

18 To Judgment Debtor: Please complete this form and bring  
19 it with you to the hearing at (DATE, TIME, LOCATION). You  
20 should also bring to the hearing any documents you have to  
21 support the information you provide in this form, such as  
22 pay stubs and account statements. The information you  
23 provide will help the court determine whether you have any  
24 property or income that can be used to satisfy the judgment  
25 entered against you in this matter. The information you

1 provide must be accurate to the best of your knowledge.

2 If you fail to appear at this hearing, you could be  
3 held in contempt of court and possibly arrested.

4 In answer to the citation and supplemental proceedings  
5 served upon (INSERT NAME OF JUDGMENT DEBTOR), he or she  
6 answers as follows:

7 Name:.....

8 Home Phone Number:.....

9 Home Address:.....

10 Date of Birth:.....

11 Marital Status:.....

12 I have.....dependents.

13 Do you have a job? YES NO

14 Company's name I work for:.....

15 Company's address:.....

16 Job:

17 I earn \$..... per.....

18 If self employed, list here your business name and  
19 address:

20 .....

21 Income from self employment is \$..... per  
22 year.

23 I have the following benefits with my employer:

24 .....

1 I do not have a job, but I support myself through:

2 Government Assistance \$..... per month

3 Unemployment \$..... per month

4 Social Security \$..... per month

5 SSI \$..... per month

6 Pension \$..... per month

7 Other \$..... per month

8 Real Estate:

9 Do you own any real estate? YES NO

10 I own real estate at....., with names of other  
11 owners

12 .....

13 Additional real estate I own: .....

14 I have a beneficial interest in a land trust. The name  
15 and address of the trustee is:..... The beneficial  
16 interest is listed in my name and .....

17 There is a mortgage on my real estate. State the  
18 mortgage company's name and address for each parcel of real  
19 estate owned:

20 .....

21 An assignment of beneficial interest in the land trust  
22 was signed to secure a loan from.....

23 I have the following accounts:

24 Checking account at .....;

25 account balance \$.....

26 Savings account at .....;



1                    account balance \$.....

2                    Money market or certificate of deposit at .....

3                    Safe deposit box at .....

4                    Other accounts (please identify): .....

5                    I own:

6                    A vehicle (state year, make, model, and VIN): ....

7                    Jewelry (please specify): .....

8                    Other property described as:.....

9                    Stocks/Bonds.....

10                   Personal computer.....

11                   DVD player.....

12                   Television.....

13                   Stove.....

14                   Microwave.....

15                   Work tools.....

16                   Business equipment.....

17                   Farm equipment.....

18                   Other property (please specify):

19                   .....

20                   Signature:.....

21                   (c) When assets or income of the judgment debtor not exempt

22                   from the satisfaction of a judgment, a deduction order or

23                   garnishment are discovered, the court may, by appropriate order

24                   or judgment:

25                   (1) Compel the judgment debtor to deliver up, to be

26                   applied in satisfaction of the judgment, in whole or in

1 part, money, choses in action, property or effects in his  
2 or her possession or control, so discovered, capable of  
3 delivery and to which his or her title or right of  
4 possession is not substantially disputed.

5 (2) Compel the judgment debtor to pay to the judgment  
6 creditor or apply on the judgment, in installments, a  
7 portion of his or her income, however or whenever earned or  
8 acquired, as the court may deem proper, having due regard  
9 for the reasonable requirements of the judgment debtor and  
10 his or her family, if dependent upon him or her, as well as  
11 any payments required to be made by prior order of court or  
12 under wage assignments outstanding; provided that the  
13 judgment debtor shall not be compelled to pay income which  
14 would be considered exempt as wages under the Wage  
15 Deduction Statute. The court may modify an order for  
16 installment payments, from time to time, upon application  
17 of either party upon notice to the other.

18 (3) Compel any person cited, other than the judgment  
19 debtor, to deliver up any assets so discovered, to be  
20 applied in satisfaction of the judgment, in whole or in  
21 part, when those assets are held under such circumstances  
22 that in an action by the judgment debtor he or she could  
23 recover them in specie or obtain a judgment for the  
24 proceeds or value thereof as for conversion or  
25 embezzlement. A judgment creditor may recover a corporate  
26 judgment debtor's property on behalf of the judgment debtor

1 for use of the judgment creditor by filing an appropriate  
2 petition within the citation proceedings.

3 (4) Enter any order upon or judgment against the person  
4 cited that could be entered in any garnishment proceeding.

5 (5) Compel any person cited to execute an assignment of  
6 any chose in action or a conveyance of title to real or  
7 personal property or resign memberships in exchanges,  
8 clubs, or other entities in the same manner and to the same  
9 extent as a court could do in any proceeding by a judgment  
10 creditor to enforce payment of a judgment or in aid of the  
11 enforcement of a judgment.

12 (6) Authorize the judgment creditor to maintain an  
13 action against any person or corporation that, it appears  
14 upon proof satisfactory to the court, is indebted to the  
15 judgment debtor, for the recovery of the debt, forbid the  
16 transfer or other disposition of the debt until an action  
17 can be commenced and prosecuted to judgment, direct that  
18 the papers or proof in the possession or control of the  
19 debtor and necessary in the prosecution of the action be  
20 delivered to the creditor or impounded in court, and  
21 provide for the disposition of any moneys in excess of the  
22 sum required to pay the judgment creditor's judgment and  
23 costs allowed by the court.

24 (d) No order or judgment shall be entered under subsection  
25 (c) in favor of the judgment creditor unless there appears of  
26 record a certification ~~of mailing~~ showing that a copy of the

1 citation, ~~and~~ a copy of the citation notice, and, in the case  
2 of a judgment debtor who is a natural person, the Income and  
3 Asset Form were served upon ~~was mailed to~~ the judgment debtor  
4 as required by subsection (b), the judgment debtor has had an  
5 opportunity to assert exemptions, and the payments are from  
6 non-exempt sources. Any action properly initiated under this  
7 Section may proceed notwithstanding an absent or incomplete  
8 Income and Asset Form, and a judgment debtor may be examined  
9 for the purpose of allowing the judgment creditor to discover  
10 income and assets belonging to the judgment debtor or in which  
11 the judgment debtor has an interest.

12 (d-5) If upon examination the court determines that the  
13 judgment debtor does not possess any non-exempt income or  
14 assets, then the citation shall be dismissed.

15 (e) All property ordered to be delivered up shall, except  
16 as otherwise provided in this Section, be delivered to the  
17 sheriff to be collected by the sheriff or sold at public sale  
18 and the proceeds thereof applied towards the payment of costs  
19 and the satisfaction of the judgment. If the judgment debtor's  
20 property is of such a nature that it is not readily delivered  
21 up to the sheriff for public sale or if another method of sale  
22 is more appropriate to liquidate the property or enhance its  
23 value at sale, the court may order the sale of such property by  
24 the debtor, third party respondent, or by a selling agent other  
25 than the sheriff upon such terms as are just and equitable. The  
26 proceeds of sale, after deducting reasonable and necessary

1 expenses, are to be turned over to the creditor and applied to  
2 the balance due on the judgment.

3 (f) (1) The citation may prohibit the party to whom it is  
4 directed from making or allowing any transfer or other  
5 disposition of, or interfering with, any property not  
6 exempt from the enforcement of a judgment therefrom, a  
7 deduction order or garnishment, belonging to the judgment  
8 debtor or to which he or she may be entitled or which may  
9 thereafter be acquired by or become due to him or her, and  
10 from paying over or otherwise disposing of any moneys not  
11 so exempt which are due or to become due to the judgment  
12 debtor, until the further order of the court or the  
13 termination of the proceeding, whichever occurs first. The  
14 third party may not be obliged to withhold the payment of  
15 any moneys beyond double the amount of the balance due  
16 sought to be enforced by the judgment creditor. The court  
17 may punish any party who violates the restraining provision  
18 of a citation as and for a contempt, or if the party is a  
19 third party may enter judgment against him or her in the  
20 amount of the unpaid portion of the judgment and costs  
21 allowable under this Section, or in the amount of the value  
22 of the property transferred, whichever is lesser.

23 (2) The court may enjoin any person, whether or not a  
24 party to the supplementary proceeding, from making or  
25 allowing any transfer or other disposition of, or  
26 interference with, the property of the judgment debtor not

1 exempt from the enforcement of a judgment, a deduction  
2 order or garnishment, or the property or debt not so exempt  
3 concerning which any person is required to attend and be  
4 examined until further direction in the premises. The  
5 injunction order shall remain in effect until vacated by  
6 the court or until the proceeding is terminated, whichever  
7 first occurs.

8 (g) If it appears that any property, chose in action,  
9 credit or effect discovered, or any interest therein, is  
10 claimed by any person, the court shall, as in garnishment  
11 proceedings, permit or require the claimant to appear and  
12 maintain his or her right. The rights of the person cited and  
13 the rights of any adverse claimant shall be asserted and  
14 determined pursuant to the law relating to garnishment  
15 proceedings.

16 (h) Costs in proceedings authorized by this Section shall  
17 be allowed, assessed and paid in accordance with rules,  
18 provided that if the court determines, in its discretion, that  
19 costs incurred by the judgment creditor were improperly  
20 incurred, those costs shall be paid by the judgment creditor.

21 (i) This Section is in addition to and does not affect  
22 enforcement of judgments or proceedings supplementary thereto,  
23 by any other methods now or hereafter provided by law.

24 (j) This Section does not grant the power to any court to  
25 order installment or other payments from, or compel the sale,  
26 delivery, surrender, assignment or conveyance of any property

1 exempt by statute from the enforcement of a judgment thereon, a  
2 deduction order, garnishment, attachment, sequestration,  
3 process or other levy or seizure.

4 (k) (Blank).

5 (k-5) If the court determines that any property held by a  
6 third party respondent is wages pursuant to Section 12-801, the  
7 court shall proceed as if a wage deduction proceeding had been  
8 filed and proceed to enter such necessary and proper orders as  
9 would have been entered in a wage deduction proceeding  
10 including but not limited to the granting of the statutory  
11 exemptions allowed by Section 12-803 and all other remedies  
12 allowed plaintiff and defendant pursuant to Part 8 of Article  
13 12 of this Act.

14 (k-10) If a creditor discovers personal property of the  
15 judgment debtor that is subject to the lien of a citation to  
16 discover assets, the creditor may have the court impress a lien  
17 against a specific item of personal property, including a  
18 beneficial interest in a land trust. The lien survives the  
19 termination of the citation proceedings and remains as a lien  
20 against the personal property in the same manner that a  
21 judgment lien recorded against real property pursuant to  
22 Section 12-101 remains a lien on real property. If the judgment  
23 is revived before dormancy, the lien shall remain. A lien  
24 against personal property may, but need not, be recorded in the  
25 office of the recorder or filed as an informational filing  
26 pursuant to the Uniform Commercial Code.

1           (1) At any citation hearing at which the judgment debtor  
2 appears and seeks a declaration that certain of his or her  
3 income or assets are exempt, the court shall proceed to  
4 determine whether the property which the judgment debtor  
5 declares to be exempt is exempt from judgment. At any time  
6 before the return date specified on the citation, the judgment  
7 debtor may request, in writing, a hearing to declare exempt  
8 certain income and assets by notifying the clerk of the court  
9 before that time, using forms as may be provided by the clerk  
10 of the court. The clerk of the court will obtain a prompt  
11 hearing date from the court and will provide the necessary  
12 forms that must be prepared by the judgment debtor or the  
13 attorney for the judgment debtor and sent to the judgment  
14 creditor, or the judgment creditor's attorney, regarding the  
15 time and location of the hearing. This notice may be sent by  
16 regular first class mail. At the hearing, the court shall  
17 immediately, unless for good cause shown that the hearing is to  
18 be continued, shall proceed to determine whether the property  
19 which the judgment debtor declares to be exempt is exempt from  
20 judgment. The restraining provisions of subsection (f) shall  
21 not apply to any property determined by the court to be exempt.

22           (m) The judgment or balance due on the judgment becomes a  
23 lien when a citation is served in accordance with subsection  
24 (a) of this Section. The lien binds nonexempt personal  
25 property, including money, choses in action, and effects of the  
26 judgment debtor as follows:



1           (1) When the citation is directed against the judgment  
2 debtor, upon all personal property belonging to the  
3 judgment debtor in the possession or control of the  
4 judgment debtor or which may thereafter be acquired or come  
5 due to the judgment debtor to the time of the disposition  
6 of the citation.

7           (2) When the citation is directed against a third  
8 party, upon all personal property belonging to the judgment  
9 debtor in the possession or control of the third party or  
10 which thereafter may be acquired or come due the judgment  
11 debtor and comes into the possession or control of the  
12 third party to the time of the disposition of the citation.

13           The lien established under this Section does not affect the  
14 rights of citation respondents in property prior to the service  
15 of the citation upon them and does not affect the rights of  
16 bona fide purchasers or lenders without notice of the citation.  
17 The lien is effective for the period specified by Supreme Court  
18 Rule.

19           This subsection (m), as added by Public Act 88-48, is a  
20 declaration of existing law.

21           (n) If any provision of this Act or its application to any  
22 person or circumstance is held invalid, the invalidity of that  
23 provision or application does not affect the provisions or  
24 applications of the Act that can be given effect without the  
25 invalid provision or application.

26           (o) The changes to this Section made by this amendatory Act

1 of the 97th General Assembly apply only to supplementary  
2 proceedings commenced under this Section on or after the  
3 effective date of this amendatory Act of the 97th General  
4 Assembly.

5 (Source: P.A. 97-350, eff. 1-1-12.)

6 (735 ILCS 5/12-107.5 new)

7 Sec. 12-107.5. Body attachment order.

8 (a) No order of body attachment or other civil order for  
9 the incarceration or detention of a natural person respondent  
10 to answer for a charge of indirect civil contempt shall issue  
11 unless the respondent has first had an opportunity, after  
12 personal service or abode service of notice as provided in  
13 Section 2-203, and served by a person authorized to serve  
14 process as provided by rule, to appear in court to show cause  
15 why the respondent should not be held in contempt.

16 (b) The notice shall be an order to show cause.

17 (c) Any order issued pursuant to subsection (a) shall  
18 expire one year after the date of issue.

19 (d) The first order issued pursuant to subsection (a) and  
20 directed to a respondent may be in the nature of a recognizance  
21 bond in the sum of no more than \$1,000.

22 (e) Upon discharge of any bond secured by the posting of  
23 funds, the funds shall be returned to the respondent or other  
24 party posting the bond, unless the court after inquiry  
25 determines that: (1) the judgment debtor has willfully refused

1 to comply with a payment order entered in accordance with  
2 Section 2-1402 or an otherwise validly entered order; and (2)  
3 that any part of the funds constitute non-exempt funds of the  
4 judgment debtor, in which case the court may cause the  
5 non-exempt portion of the funds to be paid over to the judgment  
6 creditor.

7 Section 97. Severability. The provisions of this Act are  
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.".