

1 **Senate Bill No. 434**

2 (By Senator Palumbo)

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4 [Introduced January 26, 2012; referred to the Committee on the
5 Judiciary.]

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10 A BILL to amend and reenact §38-5-10 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §38-5A-3 of said
12 code, all relating to proceedings in aid of execution on
13 judgments; and providing that a suggestion and suggestee
14 execution shall contain the date of birth and last four digits
15 of the Social Security number of the judgment debtor.

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

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

20 **ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES;**
21 **SUGGESTION.**

22 **§38-5-10. Suggestion on judgment; summons against person**
23 **suggested.**

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

18 (b) The suggestion by the judgment creditor provided for
19 ~~herein~~ in this section shall include, to the extent possible, the
20 present address and the last four digits of the social security
21 number and date of birth of the judgment debtor, which information
22 shall be made available to the person suggested for purposes of
23 identifying the judgment debtor and facilitating a proper answer to
24 the suggestion.

1 **ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN**
2 **PRIVATE EMPLOYMENT.**

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

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

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

15 (b) The suggestee execution by the judgment creditor provided
16 in this section shall include, to the extent possible, the present
17 address, the last four digits of the social security number and
18 date of birth of the judgment debtor, which information shall be
19 made available for the purposes of identifying the judgment debtor
20 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 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.