

1 AMENDMENT TO SENATE BILL 1234

2 AMENDMENT NO. _____. Amend Senate Bill 1234, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Civil Procedure is amended by
6 changing Sections 2-1402, 12-901, 12-904, 12-906, 12-909,
7 12-910, 12-911, and 12-912 as follows:

8 (735 ILCS 5/2-1402) (from Ch. 110, par. 2-1402)
9 Sec. 2-1402. Supplementary proceedings.

10 (a) A judgment creditor, or his or her successor in
11 interest when that interest is made to appear of record, is
12 entitled to prosecute supplementary proceedings for the
13 purposes of examining the judgment debtor or any other person
14 to discover assets or income of the debtor not exempt from
15 the enforcement of the judgment, a deduction order or
16 garnishment, and of compelling the application of non-exempt
17 assets or income discovered toward the payment of the amount
18 due under the judgment. A supplementary proceeding shall be
19 commenced by the service of a citation issued by the clerk.
20 The procedure for conducting supplementary proceedings shall
21 be prescribed by rules. It is not a prerequisite to the
22 commencement of a supplementary proceeding that a certified

1 copy of the judgment has been returned wholly or partly
2 unsatisfied. All citations issued by the clerk shall have the
3 following language, or language substantially similar
4 thereto, stated prominently on the front, in capital letters:
5 "YOUR FAILURE TO APPEAR IN COURT AS HEREIN DIRECTED MAY CAUSE
6 YOU TO BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO
7 A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY
8 IMPRISONMENT IN THE COUNTY JAIL." The court shall not grant a
9 continuance of the supplementary proceeding except upon good
10 cause shown.

11 (b) Any citation served upon a judgment debtor or any
12 other person shall include a certification by the attorney
13 for the judgment creditor or the judgment creditor setting
14 forth the amount of the judgment, the date of the judgment,
15 or its revival date, the balance due thereon, the name of the
16 court, and the number of the case, and a copy of the citation
17 notice required by this subsection. Whenever a citation is
18 served upon a person or party other than the judgment debtor,
19 the officer or person serving the citation shall send to the
20 judgment debtor, within three business days of the service
21 upon the cited party, a copy of the citation and the citation
22 notice, which may be sent by regular first-class mail to the
23 judgment debtor's last known address. In no event shall a
24 citation hearing be held sooner than five business days after
25 the mailing of the citation and citation notice to the
26 judgment debtor, except by agreement of the parties. The
27 citation notice need not be mailed to a corporation,
28 partnership, or association. The citation notice shall be in
29 substantially the following form:

30 "CITATION NOTICE

31 (Name and address of Court)

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

33 Judgment Creditor v.

34 (Name of Judgment Debtor),

1 Judgment Debtor.
 2 Address of Judgment Debtor: (Insert last known
 3 address)
 4 Name and address of Attorney for Judgment
 5 Creditor or of Judgment Creditor (If no
 6 attorney is listed): (Insert name and address)
 7 Amount of Judgment: \$ (Insert amount)
 8 Name of Person Receiving Citation: (Insert name)
 9 Court Date and Time: (Insert return date and time
 10 specified in citation)

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

21 The amount of income or assets that may be applied toward
 22 the judgment is limited by federal and Illinois law. The
 23 JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS
 24 AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH
 25 MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED
 26 ABOVE:

27 (1) Under Illinois or federal law, the exemptions
 28 of personal property owned by the debtor include the
 29 debtor's equity interest, not to exceed \$2,000 in value,
 30 in any personal property as chosen by the debtor; Social
 31 Security and SSI benefits; public assistance benefits;
 32 unemployment compensation benefits; worker's compensation
 33 benefits; veteran's benefits; circuit breaker property
 34 tax relief benefits; the debtor's equity interest, not to

1 exceed \$1,200 in value, in any one motor vehicle, and the
2 debtor's equity interest, not to exceed \$750 in value, in
3 any implements, professional books, or tools of the trade
4 of the debtor.

5 (2) Under Illinois law, every person is entitled to
6 an estate in homestead, when it is owned and occupied as
7 a residence, to the extent in value of \$15,000 (except as
8 otherwise provided in subsection (b) of Section 12-901 of
9 the Code of Civil Procedure) \$7,500, which homestead is
10 exempt from judgment.

11 (3) Under Illinois law, the amount of wages that
12 may be applied toward a judgment is limited to the lesser
13 of (i) 15% of gross weekly wages or (ii) the amount by
14 which disposable earnings for a week exceed the total of
15 45 times the federal minimum hourly wage.

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

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

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

25 THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING
26 TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The
27 judgment debtor also has the right to seek a declaration at
28 an earlier date, by notifying the clerk in writing at (insert
29 address of clerk). When so notified, the Clerk of the Court
30 will obtain a prompt hearing date from the court and will
31 provide the necessary forms that must be prepared by the
32 judgment debtor or the attorney for the judgment debtor and
33 sent to the judgment creditor and the judgment creditor's
34 attorney regarding the time and location of the hearing.

1 This notice may be sent by regular first class mail."

2 (c) When assets or income of the judgment debtor not
3 exempt from the satisfaction of a judgment, a deduction order
4 or garnishment are discovered, the court may, by appropriate
5 order or judgment:

6 (1) Compel the judgment debtor to deliver up, to be
7 applied in satisfaction of the judgment, in whole or in
8 part, money, choses in action, property or effects in his
9 or her possession or control, so discovered, capable of
10 delivery and to which his or her title or right of
11 possession is not substantially disputed.

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

26 (3) Compel any person cited, other than the
27 judgment debtor, to deliver up any assets so discovered,
28 to be applied in satisfaction of the judgment, in whole
29 or in part, when those assets are held under such
30 circumstances that in an action by the judgment debtor he
31 or she could recover them in specie or obtain a judgment
32 for the proceeds or value thereof as for conversion or
33 embezzlement.

34 (4) Enter any order upon or judgment against the

1 person cited that could be entered in any garnishment
2 proceeding.

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

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

21 (d) No order or judgment shall be entered under
22 subsection (c) in favor of the judgment creditor unless there
23 appears of record a certification of mailing showing that a
24 copy of the citation and a copy of the citation notice was
25 mailed to the judgment debtor as required by subsection (b).

26 (e) All property ordered to be delivered up shall,
27 except as otherwise provided in this Section, be delivered to
28 the sheriff to be collected by the sheriff or sold at public
29 sale and the proceeds thereof applied towards the payment of
30 costs and the satisfaction of the judgment.

31 (f) (1) The citation may prohibit the party to whom it
32 is directed from making or allowing any transfer or other
33 disposition of, or interfering with, any property not
34 exempt from the enforcement of a judgment therefrom, a

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

18 (2) The court may enjoin any person, whether or not
19 a party to the supplementary proceeding, from making or
20 allowing any transfer or other disposition of, or
21 interference with, the property of the judgment debtor
22 not exempt from the enforcement of a judgment, a
23 deduction order or garnishment, or the property or debt
24 not so exempt concerning which any person is required to
25 attend and be examined until further direction in the
26 premises. The injunction order shall remain in effect
27 until vacated by the court or until the proceeding is
28 terminated, whichever first occurs.

29 (g) If it appears that any property, chose in action,
30 credit or effect discovered, or any interest therein, is
31 claimed by any person, the court shall, as in garnishment
32 proceedings, permit or require the claimant to appear and
33 maintain his or her right. The rights of the person cited
34 and the rights of any adverse claimant shall be asserted and

1 determined pursuant to the law relating to garnishment
2 proceedings.

3 (h) Costs in proceedings authorized by this Section
4 shall be allowed, assessed and paid in accordance with rules,
5 provided that if the court determines, in its discretion,
6 that costs incurred by the judgment creditor were improperly
7 incurred, those costs shall be paid by the judgment creditor.

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

12 (j) This Section does not grant the power to any court
13 to order installment or other payments from, or compel the
14 sale, delivery, surrender, assignment or conveyance of any
15 property exempt by statute from the enforcement of a judgment
16 thereon, a deduction order, garnishment, attachment,
17 sequestration, process or other levy or seizure.

18 (k) (Blank).

19 (l) At any citation hearing at which the judgment debtor
20 appears and seeks a declaration that certain of his or her
21 income or assets are exempt, the court shall proceed to
22 determine whether the property which the judgment debtor
23 declares to be exempt is exempt from judgment. At any time
24 before the return date specified on the citation, the
25 judgment debtor may request, in writing, a hearing to declare
26 exempt certain income and assets by notifying the clerk of
27 the court before that time, using forms as may be provided by
28 the clerk of the court. The clerk of the court will obtain a
29 prompt hearing date from the court and will provide the
30 necessary forms that must be prepared by the judgment debtor
31 or the attorney for the judgment debtor and sent to the
32 judgment creditor, or the judgment creditor's attorney,
33 regarding the time and location of the hearing. This notice
34 may be sent by regular first class mail. At the hearing, the

1 court shall immediately, unless for good cause shown that the
2 hearing is to be continued, shall proceed to determine
3 whether the property which the judgment debtor declares to be
4 exempt is exempt from judgment. The restraining provisions
5 of subsection (f) shall not apply to any property determined
6 by the court to be exempt.

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

12 (1) When the citation is directed against the
13 judgment debtor, upon all personal property belonging to
14 the judgment debtor in the possession or control of the
15 judgment debtor or which may thereafter be acquired or
16 come due to the judgment debtor to the time of the
17 disposition of the citation.

18 (2) When the citation is directed against a third
19 party, upon all personal property belonging to the
20 judgment debtor in the possession or control of the third
21 party or which thereafter may be acquired or come due the
22 judgment debtor and comes into the possession or control
23 of the third party to the time of the disposition of the
24 citation.

25 The lien established under this Section does not affect
26 the rights of citation respondents in property prior to the
27 service of the citation upon them and does not affect the
28 rights of bona fide purchasers or lenders without notice of
29 the citation. The lien is effective for the period specified
30 by Supreme Court Rule.

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

33 (n) If any provision of this Act or its application to
34 any person or circumstance is held invalid, the invalidity of

1 that provision or application does not affect the provisions
2 or applications of the Act that can be given effect without
3 the invalid provision or application.

4 (Source: P.A. 88-48; 88-299; 88-667, eff. 9-16-94; 88-670,
5 eff. 12-2-94; 89-364, eff. 1-1-96.)

6 (735 ILCS 5/12-901) (from Ch. 110, par. 12-901)
7 Sec. 12-901. Amount.

8 (a) Except as otherwise provided in subsection (b),
9 every individual is entitled to an estate of homestead to the
10 extent in value of \$15,000 ~~\$7,500~~ of his or her interest in a
11 farm or lot of land and buildings thereon, a condominium, or
12 personal property, owned or rightly possessed by lease or
13 otherwise and occupied by him or her as a residence, or in a
14 cooperative that owns property that the individual uses as a
15 residence. That homestead and all right in and title to that
16 homestead is exempt from attachment, judgment, levy, or
17 judgment sale for the payment of his or her debts or other
18 purposes and from the laws of conveyance, descent, and
19 legacy, except as provided in this Code or in Section 20-6 of
20 the Probate Act of 1975. This subsection (a) ~~Section~~ is not
21 applicable between joint tenants or tenants in common but it
22 is applicable as to any creditors of those persons. If 2 or
23 more individuals own property that is exempt as a homestead,
24 the value of the exemption of each individual may not exceed
25 his or her proportionate share of \$30,000 ~~\$15,000~~ based upon
26 percentage of ownership.

27 (b) With regard solely to a lien arising under Section 9
28 of the Condominium Property Act, every individual is entitled
29 to an estate of homestead to the extent in value of \$7,500
30 of his or her interest in a condominium that the individual
31 uses as a residence. That homestead and all right in and
32 title to that homestead is exempt from attachment,
33 judgment, levy, or judgment sale for the payment of his

1 or her debts or other purposes and from the laws of
 2 conveyance, descent, and legacy, except as provided in this
 3 Code or in Section 20-6 of the Probate Act of 1975. This
 4 subsection (b) is not applicable between joint tenants
 5 or tenants in common but it is applicable as to any creditors
 6 of those persons. If 2 or more individuals own property that
 7 is exempt as a homestead, the value of the exemption of each
 8 individual may not exceed his or her proportionate share of
 9 \$15,000 based upon percentage of ownership.

10 (Source: P.A. 88-672, eff. 12-14-94.)

11 (735 ILCS 5/12-904) (from Ch. 110, par. 12-904)

12 Sec. 12-904. Release, waiver or conveyance. No release,
 13 waiver or conveyance of the estate so exempted shall be
 14 valid, unless the same is in writing, signed by the
 15 individual and his or her spouse, if he or she have one, or
 16 possession is abandoned or given pursuant to the conveyance;
 17 or if the exception is continued to a child or children
 18 without the order of a court directing a release thereof; but
 19 if a conveyance is made by an individual as grantor to his or
 20 her spouse, such conveyance shall be effectual to pass the
 21 title expressed therein to be conveyed thereby, whether or
 22 not the grantor in such conveyance is joined therein by his
 23 or her spouse. A waiver under this Section must be in the
 24 form of a written document that (i) contains only the waiver
 25 provisions and (ii) is separate from any other documents in a
 26 transaction. In any case where such release, waiver or
 27 conveyance is taken by way of mortgage or security, the same
 28 shall only be operative as to such specific release, waiver
 29 or conveyance; and when the same includes different pieces of
 30 land, or the homestead is of greater value than \$15,000 (or
 31 \$7,500 if subsection (b) of Section 12-901 applies) \$7,500,
 32 the other lands shall first be sold before resorting to the
 33 homestead, and in case of the sale of such homestead, if any

1 balance remains after the payment of the debt and costs, such
2 balance shall, to the extent of \$15,000 (or \$7,500 if
3 subsection (b) of Section 12-901 applies) \$7,500 be exempt,
4 and be applied upon such homestead exemption in the manner
5 provided by law.

6 (Source: P.A. 82-783.)

7 (735 ILCS 5/12-906) (from Ch. 110, par. 12-906)

8 Sec. 12-906. Proceeds of sale. When a homestead is
9 conveyed by the owner thereof, such conveyance shall not
10 subject the premises to any lien or incumbrance to which it
11 would not be subject in the possession of such owner; and the
12 proceeds thereof, to the extent of the amount of \$15,000 (or
13 \$7,500 if subsection (b) of Section 12-901 applies) \$7,500,
14 shall be exempt from judgment or other process, for one year
15 after the receipt thereof, by the person entitled to the
16 exemption, and if reinvested in a homestead the same shall be
17 entitled to the same exemption as the original homestead.

18 (Source: P.A. 82-783.)

19 (735 ILCS 5/12-909) (from Ch. 110, par. 12-909)

20 Sec. 12-909. Bid for less than exempted amount. No sale
21 shall be made of the premises on such judgment unless a
22 greater sum than \$15,000 (or \$7,500 if subsection (b) of
23 Section 12-901 applies) \$7,500 is bid therefor. If a greater
24 sum is not so bid, the judgment may be set aside or modified,
25 or the enforcement of the judgment released, as for lack of
26 property.

27 (Source: P.A. 82-783.)

28 (735 ILCS 5/12-910) (from Ch. 110, par. 12-910)

29 Sec. 12-910. Proceedings to enforce judgment. If in the
30 opinion of the judgment creditors, their successors or
31 assigns, or the officer holding a certified copy of a

1 judgment for enforcement against such individuals, the
2 premises claimed by him or her as exempt are worth more than
3 \$15,000 (or \$7,500 if subsection (b) of Section 12-901
4 applies) \$7,500, the judgment creditor or the successor or
5 assignee of the judgment creditor shall first deliver to the
6 officer holding a certified copy of the judgment a written
7 appraisal of the premises prepared by a State certified
8 general real estate appraiser or a State certified
9 residential real estate appraiser, and if in the opinion of
10 the person, firm, corporation, or other entity conducting the
11 appraisal, such--officer--shall--summon--3--individuals,--as
12 commissioners,--who--shall,--upon-oath,--to-be-administered-to
13 them-by-the-officer,--appraise-the-premises,--and-if,--in--their
14 opinion, the property may be divided without damage to the
15 interest of the parties, the State certified general real
16 estate appraiser or State certified residential real estate
17 appraiser they shall set off so much of the premises,
18 including the dwelling house, as in the State certified
19 general real estate appraiser's or the State certified
20 residential real estate appraiser's their opinion is worth
21 \$15,000 (or \$7,500 if subsection (b) of Section 12-901
22 applies) \$7,500, and the residue of the premises may be
23 advertised and sold by the such officer, subject to any
24 existing encumbrances. Each-commissioner--shall--receive--for
25 his--or--her--services--the--sum--of--\$5-per-day-for-each-day
26 necessarily-engaged-in-such-service.--The--officer--summoning
27 such--commissioners-shall-receive-such-fees-as-may-be-allowed
28 for-serving-summons,--but-shall-be-entitled-to-charge--mileage
29 for-only-the-actual-distance-traveled-from-the-premises-to-be
30 appraised,--to--the--residence-of-the-commissioners-summoned.
31 The-officer-shall-not-be--required--to--summon--commissioners
32 until--the--judgment--creditor,--or--some-one-for-him-or-her,
33 shall--advance--to--the--officer--one--day's--fees--for--the
34 commissioners,--and--unless--the--creditor-shall-advance-such

1 fees-the--officer--shall--not--be--required--to--enforce--the
 2 judgment. The costs of such appraisal shall not be taxed
 3 against the judgment debtor unless the such appraisal
 4 shows that the judgment debtor has property subject to the
 5 such judgment.

6 (Source: P.A. 83-707.)

7 (735 ILCS 5/12-911) (from Ch. 110, par. 12-911)

8 Sec. 12-911. Notice to judgment debtor. In case the
 9 value of the premises is, in the opinion of the State
 10 certified general real estate appraiser or State certified
 11 residential real estate appraiser commissioners, more than
 12 \$15,000 (or \$7,500 if subsection (b) of Section 12-901
 13 applies) \$7,500, and cannot be divided as is provided for in
 14 Section 12-910 of this Act, the State certified general real
 15 estate appraiser or State certified residential real estate
 16 appraiser they shall make and sign an appraisal of the value
 17 thereof, which shall be delivered to the officer. The
 18 officer shall then mail by certified mail, or cause to be
 19 mailed by certified mail, a notice to the judgment debtor
 20 stating that unless the judgment is satisfied the property
 21 will be sold. The notice shall contain the scheduled date of
 22 sale which shall not be less than 60 days from the date of
 23 the notice. and deliver the same to the--officer,--who--shall
 24 deliver a copy thereof to the judgment debtor, or to some one
 25 of--the--family--of--the--age--of--13--years--or--upwards,--with--a
 26 notice thereto attached that unless the judgment debtor--pays
 27 to--such--officer--the--surplus--over--and--above--\$7,500--on--the
 28 amount due on the judgment within 60--days--thereafter,--such
 29 premises will be sold.

30 (Source: P.A. 83-356.)

31 (735 ILCS 5/12-912) (from Ch. 110, par. 12-912)

32 Sec. 12-912. Sale of premises - Distribution of proceeds.

1 In case of such surplus, or the amount due on the judgment is
2 not paid within the 60 days, the officer may advertise and
3 sell the premises, and out of the proceeds of such sale pay
4 to such judgment debtor the sum of \$15,000 (or \$7,500 if
5 subsection (b) of Section 12-901 applies) \$7,500, and apply
6 the balance on the judgment.

7 (Source: P.A. 82-783.)

8 Section 99. Effective date. This Act takes effect on
9 January 1, 2002."