

HB 2586 AM

RECEIVED

1995 APR -5 PM 4:40

OFFICE OF WEST VIRGINIA  
SPEAKER OF HOUSE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

*Com. Sub. for*

HOUSE BILL No. *2586*

(By Delegate *BEANE, ET AL*)



Passed *MARCH 10,* 1995

In Effect *90 days from* Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 2586**

(BY DELEGATES BEANE, GALLAGHER, MANUEL AND JOHNSON)

---

[Passed March 10, 1995; in effect ninety days from passage.]

---

AN ACT to amend and reenact section ten, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four and five, article five-a of said chapter, all relating to revising the procedures for collection against judgment debtors; providing that service of a summons against a suggestee and the return thereof is governed by the rules of civil procedure for trial courts of record; prescribing the method of service of notice of execution on a judgment debtor and of a suggestee execution on a suggestee; increasing the fee which may be charged for serving a notice on a judgment debtor; allowing service of a suggestee execution on a suggestee by certified mail or by the sheriff; permitting a clerk to issue a suggestion in the county where the judgment is entered and to mail it to the sheriff of another county for service; and making technical and grammatical corrections.

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

That section ten, article five, chapter thirty-eight of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four and five, article five-a of said chapter, be amended and reenacted, all to read as follows:

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

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

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

20 (b) The suggestion by the judgment creditor provided  
21 for herein shall include, to the extent possible, the present  
22 address and social security number of the judgment debt-  
23 or, which information shall be made available to the per-  
24 son suggested for purposes of identifying the judgment  
25 debtor and facilitating a proper answer to the suggestion.

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

**§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.**

1 A certified copy of an execution issued under this  
2 article against salary or wages shall be served upon the  
3 judgment debtor. Such service shall be made by the court  
4 or the clerk of the court who issued the execution by mail-  
5 ing the copy to the judgment debtor or his agent autho-  
6 rized to accept service of process by certified mail, return  
7 receipt requested. The day and hour of such mailing shall  
8 be clearly noted on the face of the original execution and  
9 the clerk of the court or the officer to whom it is delivered  
10 for collection shall not make service upon the suggestee  
11 until the expiration of five days from that time. The fee  
12 for service of notice under this section shall be one dollar  
13 and an additional allowance for postage, certification fee,  
14 or other expenses incurred in effecting service.

**§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.**

1 (a) Service of a suggestee execution against salary or  
2 wages may be made by the clerk of the circuit court or the  
3 magistrate court clerk, as the case may be, by sending a  
4 copy of the suggestee execution to the suggestee by certi-  
5 fied mail, return receipt requested, with delivery restricted  
6 to the addressee. If the registered mail is unclaimed, or  
7 otherwise is not accepted or is refused by the suggestee,  
8 then service of the suggestee execution shall be made in  
9 the same manner as a summons commencing an action is  
10 served, in accordance with the rules of civil procedure for  
11 trial courts of record: *Provided*, That if the suggestee is  
12 located in a county other than the county where the  
13 suggestee execution issues, the clerk may mail the  
14 suggestee execution by first class mail to the sheriff of the  
15 other county for such service.

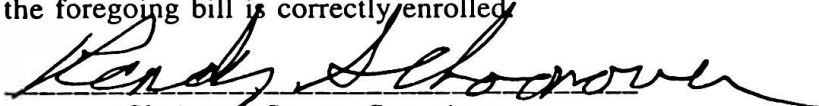
16 (b) If the suggestee served with the execution is in-  
17 debted or will in the future become indebted to the judg-

18 ment debtor for salary or wages, then during the time the  
19 execution remains a lien on any indebtedness for salary  
20 and wages, the suggestee is required to pay over to the  
21 officer serving the same or to the judgment creditor the  
22 percentage of the indebtedness required by section three  
23 of this article, until the execution is wholly satisfied. The  
24 suggestee shall deduct the amounts paid from the amounts  
25 payable to the judgment debtor as salary or wages, and the  
26 deduction of these amounts is a bar to any further action  
27 by the judgment creditor against the wages or salary of the  
28 judgment debtor.

29 (c) Once every ninety days during the life of such  
30 execution and any renewal execution, the suggestee upon  
31 whom the execution or any renewal execution is served  
32 shall pay over to the officer who served the same or to the  
33 judgment creditor the full amount of money held or re-  
34 tained pursuant to such execution or renewal execution  
35 during the preceding ninety days.

36 If the suggestee upon whom the execution is served,  
37 fails or refuses to pay over to the officer serving the exe-  
38 cution or to the judgment creditor the required percentage  
39 of the indebtedness, as aforesaid, he or she shall be liable  
40 to an action therefor by the judgment creditor named in  
41 the execution and the amount recovered in the action shall  
42 be applied in satisfaction of the execution.

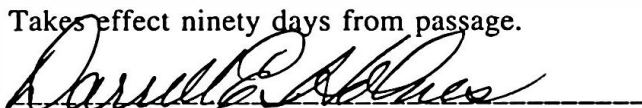
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/31/95

Time 2:42 pm