



General Assembly

February Session, 2000

Raised Bill No. 5780

LCO No. 1939

Referred to Committee on Judiciary

Introduced by:
(JUD)

An Act Concerning Execution Upon Funds Which Are Exempt From Attachment.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-279 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 Attachments may be granted upon all complaints containing a
4 money demand against the estate of the defendant, both real and
5 personal. No attachment shall be made in any action for slander, libel
6 or invasion of privacy except upon order of the court to which the writ
7 is made returnable. No attachment shall be made against the real or
8 personal property of any municipal official in any action against the
9 municipality or its officials acting within the scope of their authority
10 except upon order of the court to which the writ is returnable. No
11 attachment shall be made against the real or personal property of a
12 member of the state or any municipal police force in an action
13 involving his conduct as a policeman except (1) when such policeman
14 has been dismissed from the police force of which he was a member at
15 the time of the incident which gave rise to the action or (2) upon order
16 of the court to which the writ is returnable. No attachment shall be

17 made against the real or personal property of any member, teacher or
18 employee, as defined by section 10-235, of any board of education, the
19 Board of Governors of Higher Education or governing board of any
20 state institution of higher education, in any action against any board or
21 commission as defined by said section or against any such member,
22 teacher or employee involving his conduct as such member, teacher or
23 employee, or against any member of any other appointed or elected
24 municipal board or commission in any action against such board or
25 commission or against such member involving his conduct as such
26 member, except upon order of the court to which the writ is
27 returnable. No attachment shall be made against the real or personal
28 property of any Connecticut canine control officer or regional
29 Connecticut canine control officer, appointed under the provisions of
30 section 22-328, in any action against any such officer involving his
31 conduct as such officer except upon order of the court to which the
32 writ is returnable. No attachment shall be made against any property
33 exempt from attachment under any other provisions of state or federal
34 law.

35 Sec. 2. Subsection (a) of section 52-351b of the general statutes is
36 repealed and the following is substituted in lieu thereof:

37 (a) A judgment creditor may obtain discovery from the judgment
38 debtor, or from any third person he reasonably believes, in good faith,
39 may have assets of the judgment debtor, or from any financial
40 institution to the extent provided by this section, of any matters
41 relevant to satisfaction of the money judgment. The judgment creditor
42 shall commence any discovery proceeding by serving an initial set of
43 interrogatories, in a prescribed form containing such questions as to
44 the assets and employment of the judgment debtor as may be
45 approved by the judges of the Superior Court or their designee, on the
46 person from whom discovery is sought. Service of an initial set of
47 interrogatories relevant to obtaining satisfaction of a money judgment
48 of a small claims session of the Superior Court may be made, upon
49 request of the judgment creditor, by the clerk of the court sending such

50 interrogatories by certified mail, return receipt requested, to the person
51 from whom discovery is sought, provided the judgment creditor pays
52 to such clerk a fee of five dollars for each mailing requested. Questions
53 contained in the interrogatory form shall be in clear and simple
54 language and shall be placed on the page in such manner as to leave
55 space under each question for the person served to insert his answer.
56 Such person shall answer the interrogatories and return them to the
57 judgment creditor within thirty days of the date of service.
58 Interrogatories served on a judgment debtor shall be signed by such
59 debtor under penalty of false statement. With respect to assets, the
60 person served is required to reveal information concerning the
61 amount, nature and location of the judgment debtor's nonexempt
62 assets up to an amount clearly sufficient in value to ensure full
63 satisfaction of the judgment with interest and costs, provided
64 disclosure shall be first required as to assets subject to levy or
65 foreclosure within the state. If interrogatories are served on a financial
66 institution, the financial institution shall disclose only whether it holds
67 funds of the judgment debtor on account [and] the balance of such
68 funds [] up to the amount necessary to satisfy the judgment and
69 whether the account contains exempt funds.

70 Sec. 3. Section 52-352a of the general statutes is repealed and the
71 following is substituted in lieu thereof:

72 For the purposes of this [section and sections 52-352b and 52-353]
73 chapter, the following terms shall have the following meanings:

74 (a) "Value" means fair market value of the exemptioner's equity or
75 unencumbered interest in the property;

76 (b) "Necessary" means reasonably required to meet the needs of the
77 exemptioner and his or her dependents including any special needs by
78 reason of health or physical infirmity;

79 (c) "Exempt" means, unless otherwise specified, not subject to any
80 form of process or court order for the purpose of debt collection;

81 (d) "Exemptioner" means the natural person entitled to an
82 exemption under this section or section 52-352b;

83 (e) "Homestead" means owner-occupied real property or mobile
84 manufactured home, as defined in subdivision (1) of section 21-64,
85 used as a primary residence.

86 Sec. 4. Section 52-367b of the general statutes is repealed and the
87 following is substituted in lieu thereof:

88 (a) Execution may be granted pursuant to this section against any
89 debts due from any banking institution to a judgment debtor who is a
90 natural person, except to the extent such debts are protected from
91 execution by sections 52-352a, as amended by this act, 52-352b, 52-352c,
92 of the general statutes revised to 1983, 52-354 of the general statutes
93 revised to 1983, 52-361 of the general statutes revised to 1983 and
94 section 52-361a, as well as any other laws or regulations of this state or
95 of the United States which exempt such debts from execution.

96 (b) If execution is desired against any such debt, the plaintiff
97 requesting the execution shall notify the clerk of the court. On
98 application of a judgment creditor or his attorney, stating that a
99 judgment remains unsatisfied and the amount due thereon, and
100 subject to the expiration of any stay of enforcement and expiration of
101 any right of appeal, the clerk of the court in which the money
102 judgment was rendered shall issue an execution pursuant to this
103 section against the nonexempt debts due from a banking institution.
104 The application shall indicate whether, pursuant to an instalment
105 payment order under subsection (b) of section 52-356d, the court has
106 entered a stay of execution and, if such a stay was entered, shall
107 contain a statement of the judgment creditor or his attorney as to the
108 debtor's default on payments. The request for execution shall be
109 accompanied by an affidavit signed by the judgment creditor or his
110 attorney attesting that, upon information and belief, the funds
111 contained in the account are nonexempt. In a IV-D case, the request for
112 execution shall be accompanied by an affidavit signed by the levying

113 officer attesting to an overdue support amount of five hundred dollars
114 or more which accrued after the entry of an initial family support
115 judgment. If the papers are in order, the clerk shall issue such
116 execution containing a direction that the officer serving the same shall,
117 within seven days from the receipt by the officer of such execution,
118 make demand (1) upon the main office of any banking institution
119 having its main office within the county of such officer or (2) if such
120 main office is not within such officer's county and such banking
121 institution has one or more branch offices within such county, upon an
122 employee of such a branch office, such employee and branch office
123 having been designated by the banking institution in accordance with
124 regulations adopted by the Commissioner of Banking in accordance
125 with chapter 54, for payment of any such nonexempt debt due to the
126 judgment debtor and, after having made such demand, shall serve a
127 true and attested copy of the execution, together with the affidavit and
128 exemption claim form prescribed by subsection [(k)] (m) of this
129 section, with his doings endorsed thereon, with the banking institution
130 officer upon whom such demand is made. The execution, affidavit and
131 exemption claim form shall be accompanied by a notice in clear and
132 simple language of judgment debtor rights, including a statement of
133 the right of the judgment debtor to request an instalment payment
134 order staying execution pursuant to section 52-356d and a statement
135 that, pursuant to section 52-212, a judgment debtor may, for reasonable
136 cause, move that the judgment be set aside within four months of
137 rendition.

138 (c) If any such banking institution upon which such execution is
139 served and upon which such demand is made is indebted to the
140 judgment debtor, it shall verify that funds deposited in the debtor's
141 account are nonexempt. If any of the funds deposited in the debtor's
142 account are exempt under any provision of state or federal law, the
143 banking institution shall forthwith return the execution to the levying
144 officer unsatisfied; and such return of the execution to the levying
145 officer by the banking institution shall be prima facie evidence that
146 such funds are exempt.

147 ~~[(c)]~~ (d) If any such banking institution upon which such execution
148 is served and upon which such demand is made is indebted to the
149 judgment debtor and has verified that none of the funds deposited in
150 the debtor's account are exempt, it shall remove from the debtor's
151 account the amount of such ~~[indebtedness]~~ nonexempt funds not
152 exceeding the amount due on such execution before its midnight
153 deadline, as defined by section 42a-4-104.

154 ~~[(d)]~~ (e) Upon receipt of the execution, ~~[and]~~ exemption claim form
155 and notice of rights from the serving officer and upon verification that
156 the funds deposited in the debtor's account are nonexempt, the
157 banking institution shall forthwith mail copies thereof, postage
158 prepaid, to the judgment debtor at his last known address with respect
159 to the affected accounts on the records of the banking institution. No
160 notice shall be required if the execution is returned to the levying
161 officer unsatisfied. The institution shall hold the amount removed
162 from the debtor's account pursuant to subsection ~~[(c)]~~ (d) of this
163 section for fifteen days from the date of the mailing to the judgment
164 debtor and during such period shall not pay the serving officer.

165 ~~[(e)]~~ (f) To prevent the banking institution from paying the serving
166 officer, as provided in subsection ~~[(h)]~~ (i) of this section, the judgment
167 debtor shall give notice of a claim of exemption by delivering to the
168 banking institution, by mail or other means, the exemption claim form
169 or other written notice that an exemption is being claimed. The
170 banking institution may designate an address to which the notice of a
171 claim of exemption shall be delivered. Upon receipt of such notice, the
172 banking institution shall, within two business days, send a copy of
173 such notice to the clerk of the court which issued the execution.

174 ~~[(f)]~~ (g) Upon receipt of an exemption claim form, the clerk of the
175 court shall enter the appearance of the judgment debtor with the
176 address set forth in the exemption claim form. The clerk shall
177 forthwith send file-stamped copies of the form to the judgment
178 creditor and judgment debtor with a notice stating that the disputed

179 assets are being held for forty-five days from the date the exemption
180 claim form was received by the banking institution or until a court
181 order is entered regarding the disposition of the funds, whichever
182 occurs earlier, and the clerk shall automatically schedule the matter for
183 a short calendar hearing on the nonarguable calendar. The claim of
184 exemption filed by [such] the judgment debtor shall be prima facie
185 evidence at such hearing of the existence of the exemption.

186 [(g)] (h) If an exemption claim is made pursuant to subsection [(e)]
187 (f) of this section, the banking institution shall continue to hold the
188 amount removed from the judgment debtor's account for forty-five
189 days or until a court order is received regarding disposition of the
190 funds, whichever occurs earlier. If no order is received within forty-
191 five days of the date the banking institution sends a copy of the
192 exemption claim form or notice of exemption to the clerk of the court,
193 the banking institution shall return the funds to the judgment debtor's
194 account.

195 [(h)] (i) If no claim of exemption is received by the banking
196 institution within fifteen days of the mailing to the judgment debtor of
197 the execution and exemption claim form pursuant to subsection [(d)]
198 (e) of this section, the banking institution shall, upon demand,
199 forthwith pay the serving officer the amount removed from the
200 judgment debtor's account, and the serving officer shall thereupon pay
201 such sum, less his fees, to the judgment creditor, except to the extent
202 otherwise ordered by a court. Failure of the judgment debtor to give
203 notice of a claim of exemption to the banking institution within fifteen
204 days of the date of the mailing shall not preclude the judgment debtor
205 from recovering exempt funds from the judgment creditor.

206 (j) If, pursuant to subsection (c) of this subsection, the banking
207 institution returns the execution to the levying officer unsatisfied
208 because funds deposited in the debtor's account are exempt, the

209 judgment creditor may, on an ex parte basis, present evidence to a
210 judge of the Superior Court that such debtor's account contains funds
211 which are not exempt from execution, notwithstanding the return of
212 the execution to the levying officer by the banking institution, which
213 shall be prima facie evidence that such funds are exempt. If such judge
214 of the Superior Court finds probable cause to believe that such debtor's
215 account contains funds which are not exempt from execution, such
216 judge shall issue an execution against the nonexempt debts from such
217 banking institution. The judgment creditor may cause the execution to
218 be served pursuant to subsection (b) of this section and the banking
219 institution shall proceed pursuant to subsections (d) through (i),
220 inclusive, of this section as to such nonexempt funds.

221 ~~[(i)]~~ ~~(k)~~ The court, after a hearing conducted pursuant to subsection
222 ~~[(f)]~~ ~~(g)~~ of this section, shall enter an order determining the issues
223 raised by the claim of exemption. The clerk of the court shall forthwith
224 send a copy of such order to the banking institution. Such order shall
225 be deemed to be a final judgment for the purposes of appeal. No
226 appeal shall be taken except within seven days of the rendering of the
227 order. The order of the court may be implemented during such seven-
228 day period, unless stayed by the court.

229 ~~[(j)]~~ ~~(l)~~ If both exempt and nonexempt moneys have been deposited
230 into an account, for the purposes of determining which moneys are
231 exempt under this section, the moneys most recently deposited as of
232 the time the execution is levied shall be deemed to be the moneys
233 remaining in the account.

234 ~~[(k)]~~ ~~(m)~~ The exemption claim form, execution and clerk's notice
235 regarding the filing of a claim of exemption shall be in such form as
236 prescribed by the judges of the Superior Court or their designee. The
237 exemption claim form shall be dated and include a checklist and
238 description of the most common exemptions, instructions on the
239 manner of claiming the exemptions, and a space for the judgment
240 debtor to certify those exemptions claimed under penalty of false

241 statement.

242 [(l)] (n) If records or testimony are subpoenaed from a banking
243 institution in connection with a hearing conducted pursuant to
244 subsection [(f)] (g) of this section, the reasonable costs and expenses of
245 the banking institution in complying therewith shall be recoverable by
246 it from the party requiring such records or testimony, provided, the
247 banking institution shall be under no obligation to attempt to obtain
248 records or documentation relating to the account executed against
249 which are held by any other banking institution. The records of a
250 banking institution as to the dates and amounts of deposits into an
251 account in such institution shall, if certified as true and accurate by an
252 officer of the banking institution, be admissible as evidence without
253 the presence of the officer in any hearing conducted pursuant to
254 subsection [(f)] (g) of this section to determine the legitimacy of a claim
255 of exemption made under this section.

256 [(m)] (o) If there are moneys to be removed from the debtor's
257 account, prior to the removal of such moneys pursuant to subsection
258 [(c)] (d) of this section the banking institution shall receive from the
259 serving officer as representative of the judgment creditor a fee of eight
260 dollars for its costs in complying with the provisions of this section
261 which fee may be recoverable by the creditor as a taxable cost of the
262 action.

263 [(n)] (p) If the banking institution fails or refuses to pay over to the
264 serving officer the amount of such debt, not exceeding the amount due
265 on such execution, such banking institution shall be liable in an action
266 therefor to the judgment creditor named in such execution for the
267 amount of nonexempt moneys which it failed or refused to pay over,
268 and the amount so recovered by such judgment creditor shall be
269 applied toward the payment of the amount due on such execution.
270 Thereupon the rights of the banking institution shall be subrogated to
271 the rights of the judgment creditor. If such banking institution pays
272 exempt moneys from the account of the judgment debtor over to the

273 serving officer contrary to the provisions of this section, such banking
274 institution shall be liable in an action therefor to the judgment debtor
275 for any exempt moneys so paid. Thereupon the rights of the banking
276 institution shall be subrogated to the rights of the judgment debtor.

277 [(o)] (q) Except as provided in subsection [(n)] (p) of this section, no
278 banking institution or any officer, director or employee thereof shall be
279 liable to any person with respect to anything done or omitted in good
280 faith in complying with the provisions of this section.

281 [(p)] (r) Nothing in this section shall in any way restrict the rights
282 and remedies otherwise available to a judgment debtor at law or in
283 equity.

284 [(q)] (s) Nothing in this section shall in any way affect any rights of
285 the banking institution with respect to uncollected funds credited to
286 the account of the judgment debtor, which rights shall be superior to
287 those of the judgment creditor.

288 [(r)] (t) For purposes of this subsection, "exempt" shall have the
289 same meaning as in subsection (c) of section 52-352a, as amended by
290 this act. Funds deposited in an account that has been established for
291 the express purpose of receiving electronic direct deposits of public
292 assistance payments from the Department of Social Services shall be
293 exempt.

Statement of Purpose:

To prevent execution upon funds, such as Social Security payments,
which are by law exempt from execution.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]