



General Assembly

Substitute Bill No. 5780

February Session, 2000

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 Section 52-279 of the general statutes is repealed and the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] such member's conduct as a [policeman] police officer
14 except (1) when such [policeman] police officer has been dismissed
15 from the police force of which [he] such officer was a member at the
16 time of the incident which gave rise to the action, or (2) upon order of
17 the court to which the writ is returnable. No attachment shall be made
18 against the real or personal property of any member, teacher or
19 employee, as defined by section 10-235, of any board of education, the
20 Board of Governors of Higher Education or governing board of any

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

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38 repealed and the following is substituted in lieu thereof:

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

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

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

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

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

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

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

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

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

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

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

98 (b) If execution is desired against any such debt, the plaintiff
99 requesting the execution shall notify the clerk of the court. On
100 application of a judgment creditor or the judgment creditor's attorney,
101 stating that a judgment remains unsatisfied and the amount due
102 thereon, and subject to the expiration of any stay of enforcement and
103 expiration of any right of appeal, the clerk of the court in which the
104 money judgment was rendered shall issue an execution pursuant to
105 this section against the nonexempt debts due from a banking
106 institution. In the case of a consumer judgment, the application shall
107 indicate whether, pursuant to an instalment payment order under
108 subsection (b) of section 52-356d, the court has entered a stay of
109 execution and, if such a stay was entered, shall contain a statement of
110 the judgment creditor or the judgment creditor's attorney as to the
111 debtor's default on payments. The request for execution shall be
112 accompanied by an affidavit signed by the judgment creditor or the
113 judgment creditor's attorney attesting that the judgment creditor has
114 no knowledge or reason to believe that any funds contained in the
115 account are exempt. In a IV-D case, the request for execution shall be
116 accompanied by an affidavit signed by the levying officer attesting to
117 an overdue support amount of five hundred dollars or more which

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

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

151 ~~[(c)]~~ (d) If any such banking institution upon which such execution

152 is served and upon which such demand is made is indebted to the
153 judgment debtor and has verified that none of the funds deposited in
154 the debtor's account are exempt, it shall remove from the debtor's
155 account the amount of such [indebtedness] nonexempt funds not
156 exceeding the amount due on such execution before its midnight
157 deadline, as defined by section 42a-4-104.

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

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

179 [(f)] (g) Upon receipt of an exemption claim form, the clerk of the
180 court shall enter the appearance of the judgment debtor with the
181 address set forth in the exemption claim form. The clerk shall
182 forthwith send file-stamped copies of the form to the judgment
183 creditor and judgment debtor with a notice stating that the disputed
184 assets are being held for forty-five days from the date the exemption

185 claim form was received by the banking institution or until a court
186 order is entered regarding the disposition of the funds, whichever
187 occurs earlier, and the clerk shall automatically schedule the matter for
188 a short calendar hearing on the nonarguable calendar. The claim of
189 exemption filed by [such] the judgment debtor shall be prima facie
190 evidence at such hearing of the existence of the exemption.

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

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

212 (j) If, pursuant to subsection (c) of this subsection, the banking
213 institution returns the execution to the levying officer unsatisfied
214 because funds deposited in the debtor's account are exempt, the
215 judgment creditor may, on an ex parte basis, present evidence to a

216 judge of the Superior Court that such debtor's account contains funds
217 which are not exempt from execution, notwithstanding the return of
218 the execution to the levying officer by the banking institution, which
219 shall be prima facie evidence that such funds are exempt. If such judge
220 finds probable cause to believe that such debtor's account contains
221 funds which are not exempt from execution, such judge shall issue an
222 execution against the nonexempt debts due from such banking
223 institution. The judgment creditor may cause the execution to be
224 served pursuant to subsection (b) of this section and the banking
225 institution shall proceed pursuant to subsections (d) to (i), inclusive, of
226 this section as to such nonexempt funds.

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

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

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

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

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

269 [(n)] (p) If the banking institution fails or refuses to pay over to the
270 serving officer the amount of such debt, not exceeding the amount due
271 on such execution, such banking institution shall be liable in an action
272 therefor to the judgment creditor named in such execution for the
273 amount of nonexempt moneys which it failed or refused to pay over,
274 and the amount so recovered by such judgment creditor shall be
275 applied toward the payment of the amount due on such execution.
276 Thereupon the rights of the banking institution shall be subrogated to
277 the rights of the judgment creditor. If such banking institution pays
278 exempt moneys from the account of the judgment debtor over to the
279 serving officer contrary to the provisions of this section, such banking
280 institution shall be liable in an action therefor to the judgment debtor
281 for any exempt moneys so paid. Thereupon the rights of the banking

282 institution shall be subrogated to the rights of the judgment debtor.

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

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

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

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

JUD Committee Vote: Yea 40 Nay 0 JFS