



House of Representatives

General Assembly

File No. 522

January Session, 2001

Substitute House Bill No. 6536

House of Representatives, April 30, 2001

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EXECUTION UPON FUNDS IN BANK ACCOUNTS WHICH ARE EXEMPT FROM EXECUTION.

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

1 Section 52-367b of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) Execution may be granted pursuant to this section against any
4 debts due from any banking institution to a judgment debtor who is a
5 natural person, except to the extent such debts are protected from
6 execution by sections 52-352a, 52-352b, 52-352c, of the general statutes
7 revised to 1983, 52-354 of the general statutes revised to 1983, 52-361 of
8 the general statutes revised to 1983 and section 52-361a, as well as any
9 other laws or regulations of this state or of the United States which
10 exempt such debts from execution.

11 (b) If execution is desired against any such debt, the plaintiff
12 requesting the execution shall notify the clerk of the court. In a IV-D

13 case, the request for execution shall be accompanied by an affidavit
14 signed by the levying officer attesting to an overdue support amount
15 of five hundred dollars or more which accrued after the entry of an
16 initial family support judgment. If the papers are in order, the clerk
17 shall issue such execution containing a direction that the officer
18 serving the same shall, within seven days from the receipt by the
19 officer of such execution, make demand (1) upon the main office of any
20 banking institution having its main office within the county of such
21 officer, or (2) if such main office is not within such officer's county and
22 such banking institution has one or more branch offices within such
23 county, upon an employee of such a branch office, such employee and
24 branch office having been designated by the banking institution in
25 accordance with regulations adopted by the Commissioner of Banking
26 in accordance with chapter 54, for payment of any such nonexempt
27 debt due to the judgment debtor and, after having made such demand,
28 shall serve a true and attested copy of the execution, together with the
29 affidavit and exemption claim form prescribed by subsection (k) of this
30 section, with [his] such officer's doings endorsed thereon, with the
31 banking institution officer upon whom such demand is made.

32 (c) If any such banking institution upon which such execution is
33 served and upon which such demand is made is indebted to the
34 judgment debtor, it shall remove from the debtor's account the amount
35 of such indebtedness not exceeding the amount due on such execution
36 before its midnight deadline, as defined by section 42a-4-104.
37 Notwithstanding the provisions of this subsection, if electronic direct
38 deposits that are readily identifiable as exempt government benefits
39 payments were made to the judgment debtor's account during the
40 thirty-day period preceding the date that the execution was served on
41 the banking institution, then a banking institution shall, except to the
42 extent prohibited by a court order, leave funds in the amount of one
43 thousand dollars in the judgment debtor's account. The judgment
44 debtor shall have access to such funds left in the judgment debtor's
45 account pursuant to this subsection. Nothing in this subsection shall

46 alter the exempt status of funds which are exempt from execution
47 under subsection (a) of this subsection or under any other provision of
48 state or federal law, or the right of a judgment debtor to claim such
49 exemption.

50 (d) Upon receipt of the execution and exemption claim form from
51 the serving officer, the banking institution shall forthwith mail copies
52 thereof, postage prepaid, to the judgment debtor at [his] the judgment
53 debtor's last known address with respect to the affected accounts on
54 the records of the banking institution. The institution shall hold the
55 amount removed from the debtor's account pursuant to subsection (c)
56 of this section for fifteen days from the date of the mailing to the
57 judgment debtor and during such period shall not pay the serving
58 officer.

59 (e) To prevent the banking institution from paying the serving
60 officer, as provided in subsection (h) of this section, the judgment
61 debtor shall give notice of a claim of exemption by delivering to the
62 banking institution, by mail or other means, the exemption claim form
63 or other written notice that an exemption is being claimed. The
64 banking institution may designate an address to which the notice of a
65 claim of exemption shall be delivered. Upon receipt of such notice, the
66 banking institution shall, within two business days, send a copy of
67 such notice to the clerk of the court which issued the execution.

68 (f) Upon receipt of an exemption claim form, the clerk of the court
69 shall enter the appearance of the judgment debtor with the address set
70 forth in the exemption claim form. The clerk shall forthwith send file-
71 stamped copies of the form to the judgment creditor and judgment
72 debtor with a notice stating that the disputed assets are being held for
73 forty-five days from the date the exemption claim form was received
74 by the banking institution or until a court order is entered regarding
75 the disposition of the funds, whichever occurs earlier, and the clerk
76 shall automatically schedule the matter for a short calendar hearing.

77 The claim of exemption filed by such debtor shall be prima facie
78 evidence at such hearing of the existence of the exemption.

79 (g) If an exemption claim is made pursuant to subsection (e) of this
80 section, the banking institution shall continue to hold the amount
81 removed from the judgment debtor's account for forty-five days or
82 until a court order is received regarding disposition of the funds,
83 whichever occurs earlier. If no order is received within forty-five days
84 of the date the banking institution sends a copy of the exemption claim
85 form or notice of exemption to the clerk of the court, the banking
86 institution shall return the funds to the judgment debtor's account.

87 (h) If no claim of exemption is received by the banking institution
88 within fifteen days of the mailing to the judgment debtor of the
89 execution and exemption claim form pursuant to subsection (d) of this
90 section, the banking institution shall, upon demand, forthwith pay the
91 serving officer the amount removed from the judgment debtor's
92 account, and the serving officer shall thereupon pay such sum, less
93 [his] such officer's fees, to the judgment creditor, except to the extent
94 otherwise ordered by a court.

95 (i) The court, after a hearing conducted pursuant to subsection (f) of
96 this section, shall enter an order determining the issues raised by the
97 claim of exemption. The clerk of the court shall forthwith send a copy
98 of such order to the banking institution. Such order shall be deemed to
99 be a final judgment for the purposes of appeal. No appeal shall be
100 taken except within seven days of the rendering of the order. The order
101 of the court may be implemented during such seven-day period,
102 unless stayed by the court.

103 (j) If both exempt and nonexempt moneys have been deposited into
104 an account, for the purposes of determining which moneys are exempt
105 under this section, the moneys most recently deposited as of the time
106 the execution is levied shall be deemed to be the moneys remaining in
107 the account.

108 (k) The exemption claim form, execution and clerk's notice
109 regarding the filing of a claim of exemption shall be in such form as
110 prescribed by the judges of the Superior Court or their designee. The
111 exemption claim form shall be dated and include a checklist and
112 description of the most common exemptions, instructions on the
113 manner of claiming the exemptions, and a space for the judgment
114 debtor to certify those exemptions claimed under penalty of false
115 statement.

116 (l) If records or testimony are subpoenaed from a banking
117 institution in connection with a hearing conducted pursuant to
118 subsection (f) of this section, the reasonable costs and expenses of the
119 banking institution in complying therewith shall be recoverable by it
120 from the party requiring such records or testimony, provided, the
121 banking institution shall be under no obligation to attempt to obtain
122 records or documentation relating to the account executed against
123 which are held by any other banking institution. The records of a
124 banking institution as to the dates and amounts of deposits into an
125 account in such institution shall, if certified as true and accurate by an
126 officer of the banking institution, be admissible as evidence without
127 the presence of the officer in any hearing conducted pursuant to
128 subsection (f) of this section to determine the legitimacy of a claim of
129 exemption made under this section.

130 (m) If there are moneys to be removed from the debtor's account,
131 prior to the removal of such moneys pursuant to subsection (c) of this
132 section the banking institution shall receive from the serving officer as
133 representative of the judgment creditor a fee of eight dollars for its
134 costs in complying with the provisions of this section which fee may be
135 recoverable by the creditor as a taxable cost of the action.

136 (n) If the banking institution fails or refuses to pay over to the
137 serving officer the amount of such debt, not exceeding the amount due
138 on such execution, such banking institution shall be liable in an action

139 therefor to the judgment creditor named in such execution for the
140 amount of nonexempt moneys which it failed or refused to pay over,
141 [and the] excluding funds in the amount of one thousand dollars
142 which the banking institution allowed the judgment debtor to access
143 pursuant to subsection (c) of this section. The amount so recovered by
144 such judgment creditor shall be applied toward the payment of the
145 amount due on such execution. Thereupon the rights of the banking
146 institution shall be subrogated to the rights of the judgment creditor. If
147 such banking institution pays exempt moneys from the account of the
148 judgment debtor over to the serving officer contrary to the provisions
149 of this section, such banking institution shall be liable in an action
150 therefor to the judgment debtor for any exempt moneys so paid and
151 such banking institution shall refund or waive any charges or fees,
152 including, but not limited to, dishonored check fees, overdraft fees or
153 minimum balance service charges and legal process fees, which were
154 assessed as a result of such payment of exempt moneys. Thereupon the
155 rights of the banking institution shall be subrogated to the rights of the
156 judgment debtor.

157 (o) Except as provided in subsection (n) of this section, no banking
158 institution or any officer, director or employee thereof shall be liable to
159 any person with respect to anything done or omitted in good faith in
160 complying with the provisions of this section.

161 (p) Nothing in this section shall in any way restrict the rights and
162 remedies otherwise available to a judgment debtor at law or in equity.

163 (q) Nothing in this section shall in any way affect any rights of the
164 banking institution with respect to uncollected funds credited to the
165 account of the judgment debtor, which rights shall be superior to those
166 of the judgment creditor.

167 (r) For purposes of this subsection, "exempt" shall have the same
168 meaning as in subsection (c) of section 52-352a. Funds deposited in an
169 account that has been established for the express purpose of receiving

170 electronic direct deposits of public assistance payments from the
171 Department of Social Services shall be exempt.

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Revenue Loss

Affected Agencies: Various

Municipal Impact: None

Explanation

State Impact:

The bill could result in a minimal revenue loss to state collections by requiring banks served with court-ordered judgments against debtors to leave \$1,000 in the debtor's account if it recently received by electronic direct deposit a "readily identifiable" exempt government benefit. Currently, debtors can claim that certain funds are exempt and the superior court must decide whether or not the funds can be executed. The \$1,000 amount specified in the bill would presumably be exempt under current practice. Consequently, there would be little to no impact on state collections.

OLR BILL ANALYSIS

sHB 6536

AN ACT CONCERNING EXECUTION UPON FUNDS IN BANK ACCOUNTS WHICH ARE EXEMPT FROM EXECUTION.

SUMMARY:

By law, a creditor may obtain a court-ordered judgment against someone who owes him money (debtor). The creditor may execute or serve an order on any banking institution (banks, savings and loan institutions, and credit unions, hereafter "banks") where the debtor has an account. Unless the debtor claims that money in the account is exempt from execution, the bank must release funds, up to the amount of the judgment, to the creditor.

This bill requires banks served with these orders to (1) leave \$1,000 in the debtor's account if it recently received by electronic direct deposit a "readily identifiable" exempt government benefit and (2) give the debtor access to the money. (Exempt government benefits include public assistance, Social Security, veterans', workers' compensation, and some unemployment benefits.) Banks can depart from this procedure to the extent that a court order prohibits its use.

The bill specifies that it does not alter the exempt status of funds under current law or the right of an account holder to claim exemption.

EFFECTIVE DATE: October 1, 2001

BANK LIABILITY TO CREDITORS AND ACCOUNT HOLDERS

When a creditor serves an order on the debtor's bank, the bill requires the bank to ignore \$1,000 in the debtor's account if a readily identifiable exempt government benefit was directly deposited electronically within the past 30 days. It makes banks that exclude the \$1,000 exempt from liability to creditors for doing so. Currently, banks that fail to release non-exempt funds to creditors become liable to them

for the amount withheld.

The bill also requires banks to refund or waive any charges or fees, including dishonored check fees, overdraft fees or minimum balance service charges, and legal process fees that they assessed against the account holder as a result of paying exempt money to a creditor. Current law limits a bank's liability to account holders to the amount improperly paid out.

BACKGROUND

Bank And Creditor Obligations

By law, creditors cannot attach or seize exempt funds to satisfy a court judgment. But they may apply to a court clerk for an order directing a bank to pay over funds in a debtor's account.

Banks served with such orders must remove funds from the account up to the amount of the judgment and mail the account holder notice and a form he must return to the bank if he claims that any of the removed funds are exempt.

When the debtor claims an exemption, the bank must notify the Superior Court and continue to hold the funds for the earlier of 45 days or until a court issues a disposition order for the disputed funds. If the debtor does not return the claim form to the bank within 15 days of the date of mailing, the bank pays over the funds to the creditor on request.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 37 Nay 1