



House of Representatives

File No. 866

General Assembly

January Session, 2001

(Reprint of File No. 522)

Substitute House Bill No. 6536
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
June 2, 2001

**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 1. Section 52-367b of the general statutes is repealed and the
2 following 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 federal veterans'
39 benefits, Social Security benefits, including, but not limited to,
40 retirement, survivors' and disability benefits or supplemental security
41 income benefits were made to the judgment debtor's account during
42 the thirty-day period preceding the date that the execution was served
43 on the banking institution, then a banking institution shall leave the
44 lesser of the account balance or eight hundred dollars in the judgment
45 debtor's account; provided nothing in this subsection shall be
46 construed to limit a bank's right or obligation to remove such funds
47 from the debtor's account if required by any other provision of law or
48 by a court order. The judgment debtor shall have access to such funds

49 left in the judgment debtor's account pursuant to this subsection. The
50 banking institution may notify the judgment creditor that funds have
51 been left in the judgment debtor's account pursuant to this subsection.
52 Nothing in this subsection shall alter the exempt status of funds which
53 are exempt from execution under subsection (a) of this section or
54 under any other provision of state or federal law, or the right of a
55 judgment debtor to claim such exemption. Nothing in this subsection
56 shall be construed to affect any other rights or obligations of the
57 banking institution with regard to the funds in the judgment debtor's
58 account.

59 (d) [Upon] If any funds are removed from the debtor's account
60 pursuant to subsection (c) of this section, upon receipt of the execution
61 and exemption claim form from the serving officer, the banking
62 institution shall forthwith mail copies thereof, postage prepaid, to the
63 judgment debtor at [his] the judgment debtor's last known address
64 with respect to the affected accounts on the records of the banking
65 institution. The institution shall hold the amount removed from the
66 debtor's account pursuant to subsection (c) of this section for fifteen
67 days from the date of the mailing to the judgment debtor and during
68 such period shall not pay the serving officer.

69 (e) To prevent the banking institution from paying the serving
70 officer, as provided in subsection (h) of this section, the judgment
71 debtor shall give notice of a claim of exemption by delivering to the
72 banking institution, by mail or other means, the exemption claim form
73 or other written notice that an exemption is being claimed. The
74 banking institution may designate an address to which the notice of a
75 claim of exemption shall be delivered. Upon receipt of such notice, the
76 banking institution shall, within two business days, send a copy of
77 such notice to the clerk of the court which issued the execution.

78 (f) (1) Upon receipt of an exemption claim form, the clerk of the
79 court shall enter the appearance of the judgment debtor with the
80 address set forth in the exemption claim form. The clerk shall
81 forthwith send file-stamped copies of the form to the judgment

82 creditor and judgment debtor with a notice stating that the disputed
83 assets are being held for forty-five days from the date the exemption
84 claim form was received by the banking institution or until a court
85 order is entered regarding the disposition of the funds, whichever
86 occurs earlier, and the clerk shall automatically schedule the matter for
87 a short calendar hearing. The claim of exemption filed by such debtor
88 shall be prima facie evidence at such hearing of the existence of the
89 exemption.

90 (2) Upon receipt of notice from the banking institution pursuant to
91 subsection (c) of this section, a judgment creditor may, on an ex parte
92 basis, present to a judge of the Superior Court an affidavit sworn
93 under oath by a competent party demonstrating a reasonable belief
94 that such debtor's account contains funds which are not exempt from
95 execution and the amount of such nonexempt funds. Such affidavit
96 shall not be conclusory but is required to show the factual basis upon
97 which the reasonable belief is based. If such judge finds that the
98 creditor has demonstrated a reasonable belief that such debtor's
99 account contains funds which are not exempt from execution, such
100 judge shall authorize the judgment creditor to submit a written
101 application to the clerk of the court for a hearing on the exempt status
102 of funds left in the judgment debtor's account pursuant to subsection
103 (c) of this section. The judgment creditor shall promptly send a copy of
104 the application and the supporting affidavit to the judgment debtor.
105 Upon receipt of such application, the clerk of the court shall
106 automatically schedule the matter for a short calendar hearing and
107 shall give written notice to both the judgment creditor and the
108 judgment debtor. The notice to the judgment creditor pursuant to
109 subsection (c) of this section shall be prima facie evidence at such
110 hearing that the funds in the account are exempt funds. The burden of
111 proof shall be upon the judgment creditor to establish the amount of
112 funds which are not exempt.

113 (g) If an exemption claim is made pursuant to subsection (e) of this
114 section, the banking institution shall continue to hold the amount
115 removed from the judgment debtor's account for forty-five days or

116 until a court order is received regarding disposition of the funds,
117 whichever occurs earlier. If no order is received within forty-five days
118 of the date the banking institution sends a copy of the exemption claim
119 form or notice of exemption to the clerk of the court, the banking
120 institution shall return the funds to the judgment debtor's account.

121 (h) If no claim of exemption is received by the banking institution
122 within fifteen days of the mailing to the judgment debtor of the
123 execution and exemption claim form pursuant to subsection (d) of this
124 section, the banking institution shall, upon demand, forthwith pay the
125 serving officer the amount removed from the judgment debtor's
126 account, and the serving officer shall thereupon pay such sum, less
127 [his] such officer's fees, to the judgment creditor, except to the extent
128 otherwise ordered by a court.

129 (i) The court, after a hearing conducted pursuant to subsection (f) of
130 this section, shall enter an order determining the issues raised by the
131 claim of exemption. The clerk of the court shall forthwith send a copy
132 of such order to the banking institution. Such order shall be deemed to
133 be a final judgment for the purposes of appeal. No appeal shall be
134 taken except within seven days of the rendering of the order. The order
135 of the court may be implemented during such seven-day period,
136 unless stayed by the court.

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

142 (k) The exemption claim form, execution and clerk's notice
143 regarding the filing of a claim of exemption shall be in such form as
144 prescribed by the judges of the Superior Court or their designee. The
145 exemption claim form shall be dated and include a checklist and
146 description of the most common exemptions, instructions on the
147 manner of claiming the exemptions, and a space for the judgment

148 debtor to certify those exemptions claimed under penalty of false
149 statement.

150 (l) If records or testimony are subpoenaed from a banking
151 institution in connection with a hearing conducted pursuant to
152 subsection (f) of this section, the reasonable costs and expenses of the
153 banking institution in complying therewith shall be recoverable by it
154 from the party requiring such records or testimony, provided, the
155 banking institution shall be under no obligation to attempt to obtain
156 records or documentation relating to the account executed against
157 which are held by any other banking institution. The records of a
158 banking institution as to the dates and amounts of deposits into an
159 account in such institution shall, if certified as true and accurate by an
160 officer of the banking institution, be admissible as evidence without
161 the presence of the officer in any hearing conducted pursuant to
162 subsection (f) of this section to determine the legitimacy of a claim of
163 exemption made under this section.

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

170 (n) If the banking institution fails or refuses to pay over to the
171 serving officer the amount of such debt, not exceeding the amount due
172 on such execution, such banking institution shall be liable in an action
173 therefor to the judgment creditor named in such execution for the
174 amount of nonexempt moneys which it failed or refused to pay over,
175 [and the] excluding funds of up to eight hundred dollars which the
176 banking institution in good faith allowed the judgment debtor to
177 access pursuant to subsection (c) of this section. The amount so
178 recovered by such judgment creditor shall be applied toward the
179 payment of the amount due on such execution. Thereupon the rights of
180 the banking institution shall be subrogated to the rights of the

181 judgment creditor. If such banking institution pays exempt moneys
182 from the account of the judgment debtor over to the serving officer
183 contrary to the provisions of this section, such banking institution shall
184 be liable in an action therefor to the judgment debtor for any exempt
185 moneys so paid and such banking institution shall refund or waive any
186 charges or fees by the bank, including, but not limited to, dishonored
187 check fees, overdraft fees or minimum balance service charges and
188 legal process fees, which were assessed as a result of such payment of
189 exempt moneys. Thereupon the rights of the banking institution shall
190 be subrogated to the rights of the judgment debtor.

191 (o) Except as provided in subsection (n) of this section, no banking
192 institution or any officer, director or employee thereof shall be liable to
193 any person with respect to anything done or omitted in good faith or
194 through the commission of a bona fide error that occurred despite
195 reasonable procedures maintained by the banking institution to
196 prevent such errors in complying with the provisions of this section.

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

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

203 (r) For purposes of this subsection, "exempt" shall have the same
204 meaning as in subsection (c) of section 52-352a. Funds deposited in an
205 account that has been established for the express purpose of receiving
206 electronic direct deposits of public assistance payments from the
207 Department of Social Services shall be exempt.

208 Sec. 2. This act shall take effect January 1, 2002.

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 \$800 in the debtor's account(s) if a recent transfer of funds into said account(s) has occurred from certain readily identifiable benefits. Most or all of the \$800 would presumably be exempt under current practice. Consequently, there would be little or no impact on state collections.

House "A" reduced from \$1,000 to \$800 the minimal amount of money that must be left in a judgment debtor's account(s) and decreased the potential minimal revenue loss.

OLR Amended Bill Analysis

sHB 6536 (as amended by House "A")*

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 \$800 in the debtor's account (or the entire account balance, if it contains less than \$800) if it recently received by electronic direct deposit "readily identifiable" exempt federal veterans' or Social Security benefits and (2) give the debtor access to the money. Banks can depart from this requirement if directed by any other law or by court order, and creditors can obtain court hearings if they reasonably believe that nonexempt funds have been withheld.

The bill specifies that the requirement that banks leave this money in these accounts does not alter (1) the exempt status of funds that federal or state laws exempt from execution, (2) the account holder's right to claim exemptions, or (3) the bank's other rights or obligations with respect to the funds in these accounts. It permits a bank to notify the creditor that it has left funds in the debtor's account as a result of the bill's requirements and makes this notice prima facie evidence at court hearings that the funds are exempt.

*House Amendment "A" (1) reduces to \$800 the protected amount, (2) modifies the exempt funds covered, (3) changes the effective date from October 1, 2001 to January 1, 2002, (4) adds notice and hearing provisions, and (5) immunizes bank errors.

EFFECTIVE DATE: January 1, 2002

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 \$800 in the debtor's account (or the entire account balance, if it is less than \$800) if a readily identifiable exempt federal benefit was directly deposited electronically within the past 30 days. It makes banks that in good faith exclude this money, or do so by mistake, exempt from liability to creditors for doing so. Currently, banks that fail or refuse to release nonexempt funds to creditors become liable to them for the amount withheld.

The bill requires a bank to refund or waive all of its charges or fees, including dishonored check fees, overdraft fees or minimum balance service charges, and legal process fees for account holders from whose accounts it paid exempt money to a creditor. Current law limits a bank's liability to account holders to the amount paid out improperly.

It also appears to expand banks' immunity in execution matters by immunizing them from liability for bona fide errors that occur despite their having reasonable procedures to prevent them. Currently, only their good faith actions or omissions are immunized.

EX PARTE COURT PROCEDURES AND COURT HEARINGS

Under the bill, creditors can ask courts, on an ex parte basis, to schedule hearings when they reasonably believe that any of the funds a bank withheld pursuant to the bill are not exempt. A creditor must present a sworn affidavit to a Superior Court judge specifically describing the factual basis for its belief. If the judge finds that the creditor's belief is reasonable, he must authorize the creditor to submit a written application for a hearing. The court clerk must schedule the hearing and give written notice to both the creditor and debtor. The creditor must also promptly send the debtor a copy of its application and supporting affidavit.

At the hearing, the creditor must prove, by a preponderance of evidence, the amount of funds in an account that are not exempt.

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.

Legislative History

On May 4, the House referred the bill to the Banks Committee, which reported it favorably without changes on May 9.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 37 Nay 1

Banks Committee

Joint Favorable Report
Yea 17 Nay 0