



General Assembly

**Substitute Bill No. 5514**

February Session, 2002

**AN ACT CONCERNING BANK ACCOUNT EXECUTIONS.**

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

1 Section 1. Section 52-367b of the general statutes, as amended by  
2 section 1 of public act 01-196 and section 12 of public act 01-9 of the  
3 June special session, is repealed and the following is substituted in lieu  
4 thereof (*Effective January 1, 2003*):

5 (a) Execution may be granted pursuant to this section against any  
6 debts due from any banking institution to a judgment debtor who is a  
7 natural person, except to the extent such debts are protected from  
8 execution by sections 52-352a, 52-352b, 52-352c, of the general statutes,  
9 revision of 1958, revised to 1983, 52-354 of the general statutes, revision  
10 of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958,  
11 revised to 1983 and section 52-361a, as well as by any other laws or  
12 regulations of this state or of the United States which exempt such  
13 debts from execution.

14 (b) If execution is desired against any such debt, the plaintiff  
15 requesting the execution shall notify the clerk of the court. In a IV-D  
16 case, the request for execution shall be accompanied by an affidavit  
17 signed by the [levying] servicing officer attesting to an overdue support  
18 amount of five hundred dollars or more which accrued after the entry  
19 of an initial family support judgment. If the papers are in order, the  
20 clerk shall issue such execution containing a direction that the officer

21 serving [the same] such execution shall, within seven days from the  
22 receipt by the servicing officer of such execution, make demand (1) upon  
23 the main office of any banking institution having its main office within  
24 the county of [such] the servicing officer, or (2) if such main office is not  
25 within [such] the servicing officer's county and such banking institution  
26 has one or more branch offices within such county, upon an employee  
27 of such a branch office, such employee and branch office having been  
28 designated by the banking institution in accordance with regulations  
29 adopted by the Commissioner of Banking, in accordance with chapter  
30 54, for payment of any such nonexempt debt due to the judgment  
31 debtor and, after having made such demand, shall serve a true and  
32 attested copy of the execution, together with the affidavit and  
33 exemption claim form prescribed by subsection (k) of this section, with  
34 [such] the servicing officer's [doings] actions endorsed thereon, with the  
35 banking institution officer upon whom such demand is made. If the  
36 officer serving such execution has made an initial demand pursuant to  
37 this subsection within such seven-day period, the servicing officer may  
38 make additional demands [on] upon the main office of other banking  
39 institutions or employees of other branch offices pursuant to  
40 subdivision (1) or (2) of this subsection, provided any such additional  
41 demand is made not later than forty-five days from the receipt by the  
42 servicing officer of such execution.

43 (c) If any such banking institution upon which such execution is  
44 served and upon which such demand is made is indebted to the  
45 judgment debtor, [it] the banking institution shall remove from the  
46 judgment debtor's account the amount of such indebtedness not  
47 exceeding the amount due on such execution before its midnight  
48 deadline, as defined [by] in section 42a-4-104. Notwithstanding the  
49 provisions of this subsection, if electronic direct deposits that are  
50 readily identifiable as exempt federal veterans' benefits, Social Security  
51 benefits, including, but not limited to, retirement, survivors' and  
52 disability benefits, [or] supplemental security income benefits or child  
53 support payments processed and received pursuant to Title IV-D of  
54 the Social Security Act were made to the judgment debtor's account

55 during the thirty-day period preceding the date that the execution was  
56 served on the banking institution, then a banking institution shall  
57 leave the lesser of the account balance or [eight hundred] one thousand  
58 dollars in the judgment debtor's account, [;] provided nothing in this  
59 subsection shall be construed to limit a [bank's] banking institution's  
60 right or obligation to remove such funds from the judgment debtor's  
61 account if required by any other provision of law or by a court order.  
62 The judgment debtor shall have access to such funds left in the  
63 judgment debtor's account pursuant to this subsection. The banking  
64 institution may notify the judgment creditor that funds have been left  
65 in the judgment debtor's account pursuant to this subsection. Nothing  
66 in this subsection shall alter the exempt status of funds which are  
67 exempt from execution under subsection (a) of this section or under  
68 any other provision of state or federal law, or the right of a judgment  
69 debtor to claim such exemption. Nothing in this subsection shall be  
70 construed to affect any other rights or obligations of the banking  
71 institution with regard to the funds in the judgment debtor's account.

72 (d) If any funds are removed from the judgment debtor's account  
73 pursuant to subsection (c) of this section, upon receipt of the execution  
74 and exemption claim form from the serving officer, the banking  
75 institution shall forthwith mail copies thereof, postage prepaid, to the  
76 judgment debtor at the judgment debtor's last known address with  
77 respect to the affected accounts on the records of the banking  
78 institution. The banking institution shall hold the amount removed  
79 from the judgment debtor's account pursuant to subsection (c) of this  
80 section for fifteen days from the date of the mailing to the judgment  
81 debtor and during such period shall not pay the serving officer.

82 (e) To prevent the banking institution from paying the serving  
83 officer, as provided in subsection (h) of this section, the judgment  
84 debtor shall give notice of a claim of exemption by delivering to the  
85 banking institution, by mail or other means, the exemption claim form  
86 or other written notice that an exemption is being claimed. The  
87 banking institution may designate an address to which the notice of a  
88 claim of exemption shall be delivered. Upon receipt of such notice, the

89 banking institution shall, within two business days, send a copy of  
90 such notice to the clerk of the court which issued the execution.

91 (f) (1) Upon receipt of an exemption claim form, the clerk of the  
92 court shall enter the appearance of the judgment debtor with the  
93 address set forth in the exemption claim form. The clerk shall  
94 forthwith send file-stamped copies of the form to the judgment  
95 creditor and judgment debtor with a notice stating that the disputed  
96 [assets] funds are being held for forty-five days from the date the  
97 exemption claim form was received by the banking institution or until  
98 a court order is entered regarding the disposition of the funds,  
99 whichever occurs earlier, and the clerk shall automatically schedule  
100 the matter for a short calendar hearing. The claim of exemption filed  
101 by such judgment debtor shall be prima facie evidence at such hearing  
102 of the existence of the exemption.

103 (2) Upon receipt of notice from the banking institution pursuant to  
104 subsection (c) of this section, a judgment creditor may, on an ex parte  
105 basis, present to a judge of the Superior Court an affidavit sworn  
106 under oath by a competent party demonstrating a reasonable belief  
107 that such judgment debtor's account contains funds which are not  
108 exempt from execution and the amount of such nonexempt funds.  
109 Such affidavit shall not be conclusory but is required to show the  
110 factual basis upon which the reasonable belief is based. If such judge  
111 finds that the judgment creditor has demonstrated a reasonable belief  
112 that such judgment debtor's account contains funds which are not  
113 exempt from execution, such judge shall authorize the judgment  
114 creditor to submit a written application to the clerk of the court for a  
115 hearing on the exempt status of funds left in the judgment debtor's  
116 account pursuant to subsection (c) of this section. The judgment  
117 creditor shall promptly send a copy of the application and the  
118 supporting affidavit to the judgment debtor. Upon receipt of such  
119 application, the clerk of the court shall automatically schedule the  
120 matter for a short calendar hearing and shall give written notice to  
121 both the judgment creditor and the judgment debtor. The notice to the  
122 judgment creditor pursuant to subsection (c) of this section shall be

123 prima facie evidence at such hearing that the funds in the account are  
124 exempt funds. The burden of proof shall be upon the judgment  
125 creditor to establish the amount of funds which are not exempt.

126 (g) If an exemption claim is made pursuant to subsection (e) of this  
127 section, the banking institution shall continue to hold the amount  
128 removed from the judgment debtor's account for forty-five days or  
129 until a court order is received regarding disposition of the funds,  
130 whichever occurs earlier. If no such order is received within forty-five  
131 days of the date the banking institution sends a copy of the exemption  
132 claim form or notice of exemption to the clerk of the court, the banking  
133 institution shall return the funds to the judgment debtor's account.

134 (h) If no claim of exemption is received by the banking institution  
135 within fifteen days of the mailing to the judgment debtor of the  
136 execution and exemption claim form pursuant to subsection (d) of this  
137 section, the banking institution shall, upon demand, forthwith pay the  
138 serving officer the amount removed from the judgment debtor's  
139 account, and the serving officer shall thereupon pay such sum, less  
140 such serving officer's fees, to the judgment creditor, except to the  
141 extent otherwise ordered by a court.

142 (i) The court, after a hearing conducted pursuant to subsection (f) of  
143 this section, shall enter an order determining the issues raised by the  
144 claim of exemption. The clerk of the court shall forthwith send a copy  
145 of such order to the banking institution. Such order shall be deemed to  
146 be a final judgment for the purposes of appeal. No appeal shall be  
147 taken except within seven days of the rendering of the order. The order  
148 of the court may be implemented during such seven-day period,  
149 unless stayed by the court.

150 (j) If both exempt and nonexempt moneys have been deposited into  
151 an account, for the purposes of determining which moneys are exempt  
152 under this section, the moneys most recently deposited as of the time  
153 the execution is [levied] served shall be deemed to be the moneys  
154 remaining in the account.

155 (k) The execution, exemption claim form [, execution] and clerk's  
156 notice regarding the filing of a claim of exemption shall be in such  
157 form as prescribed by the judges of the Superior Court or their  
158 designee. The exemption claim form shall be dated and include a  
159 checklist and description of the most common exemptions, instructions  
160 on the manner of claiming the exemptions [,] and a space for the  
161 judgment debtor to certify those exemptions claimed under penalty of  
162 false statement.

163 (l) If records or testimony are subpoenaed from a banking  
164 institution in connection with a hearing conducted pursuant to  
165 subsection (f) of this section, the reasonable costs and expenses of the  
166 banking institution in complying [therewith] with the subpoena shall  
167 be recoverable by [it] the banking institution from the party requiring  
168 such records or testimony, provided, the banking institution shall be  
169 under no obligation to attempt to obtain records or documentation  
170 relating to the account executed against which are held by any other  
171 banking institution. The records of a banking institution as to the dates  
172 and amounts of deposits into an account in [such] the banking  
173 institution shall, if certified as true and accurate by an officer of the  
174 banking institution, be admissible as evidence without the presence of  
175 the officer in any hearing conducted pursuant to subsection (f) of this  
176 section to determine the legitimacy of a claim of exemption made  
177 under this section.

178 (m) If there are moneys to be removed from the judgment debtor's  
179 account, prior to the removal of such moneys pursuant to subsection  
180 (c) of this section, the banking institution shall receive from the serving  
181 officer as representative of the judgment creditor a fee of eight dollars  
182 for [its] the banking institution's costs in complying with the  
183 provisions of this section which fee may be recoverable by the  
184 judgment creditor as a taxable cost of the action.

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

188 therefor to the judgment creditor named in such execution for the  
189 amount of nonexempt moneys which [it] the banking institution failed  
190 or refused to pay over, excluding funds of up to [eight hundred] one  
191 thousand dollars which the banking institution in good faith allowed  
192 the judgment debtor to access pursuant to subsection (c) of this section.  
193 The amount so recovered by such judgment creditor shall be applied  
194 toward the payment of the amount due on such execution. Thereupon,  
195 the rights of the banking institution shall be subrogated to the rights of  
196 the judgment creditor. If such banking institution pays exempt moneys  
197 from the account of the judgment debtor over to the serving officer  
198 contrary to the provisions of this section, such banking institution shall  
199 be liable in an action therefor to the judgment debtor for any exempt  
200 moneys so paid and such banking institution shall refund or waive any  
201 charges or fees by the [bank] banking institution, including, but not  
202 limited to, dishonored check fees, overdraft fees or minimum balance  
203 service charges and legal process fees, which were assessed as a result  
204 of such payment of exempt moneys. Thereupon, the rights of the  
205 banking institution shall be subrogated to the rights of the judgment  
206 debtor.

207 (o) Except as provided in subsection (n) of this section, no banking  
208 institution or any officer, director or employee [thereof] of such  
209 banking institution shall be liable to any person with respect to  
210 [anything] any act done or omitted in good faith or through the  
211 commission of a bona fide error that occurred despite reasonable  
212 procedures maintained by the banking institution to prevent such  
213 errors in complying with the provisions of this section.

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

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

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

This act shall take effect as follows:	
Section 1	<i>January 1, 2003</i>

**JUD**      *Joint Favorable Subst.*