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S.B. 306 -- Execution on judgments Judiciary Committee public hearing -- March 14, 2012 Testimony of Raphael L. Podolsky

Recommended Committee action: APPROVAL OF THE BILL

S.B. 306 conforms the Connecticut statute concerning the execution upon exempt funds in bank accounts (C.G.S. 52-367b) to new federal protections for such funds. The protections, which took effect on May 11, 2011, have already preempted the parts of the Connecticut statute that are less protective. The failure to adjust state law to those changes invites confusion and misunderstanding. The proposed bill will bring the Connecticut standard up to the federal standard and will minimize the conflict between the two requirements.

State law, federal law, or both fully exempt certain types of funds from execution by creditors, e.g., Social Security, veterans' benefits, child support payments, unemployment compensation, workers' compensation, and others. There is a long-standing problem with providing full protection of those benefits after they have been deposited into a bank account. Before 1981, the bank simply gave the funds to the marshal for delivery to the creditor. Since 1981, Connecticut has had a procedure by which the bank freezes the funds to allow the debtor to file a claim with the Superior Court, which can order the funds to be protected. This means, however, that the debtor cannot access the funds for a month or more, leaving those dependent on exempt funds unable to pay their bills. In addition, those who are elderly, home-bound, disabled, uneducated, transportationless, or otherwise unable to negotiate the court system commonly fail to use the exemption procedure and therefore lose the exempt funds altogether. Since 2001, Connecticut has partially excluded from this procedure (and thus left in the debtor's bank account) up to \$1,000 of certain easily-identifiable exempt funds that have been directly deposited into the account during the previous 30 days — Social Security, veterans' benefits, and child support paid through the Title IV-D system. They are protected automatically by the bank without need for the debtor to file a claim.

The new federal rules go beyond the existing Connecticut statute in a number of ways, the most important of which are to expand the lookback period to 60 days (rather than 30 days) and to exclude from the freeze the full amount of federally exempt benefits directly deposited in that time period (rather than only the first \$1,000 of those benefits). S.B. 306 makes those two changes. In addition, it includes directly-deposited state-exempt unemployment and workers' compensation and makes several smaller changes that reflect new federal requirements. More specifically:

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Changes that conform state to federal law :

- It increases the lookback period to 60 days.
- It eliminates the \$1,000 maximum on benefits protected from the freeze.
- It adds federal Railroad Retirement and federal Office of Personnel Management retirement benefits.
- It prohibits banks from charging garnishment fees.
- It requires an informational notice to be sent to the debtor.
- It prohibits a marshal from submitting the same execution twice to the same bank. It does not preclude submitting the same execution seriatim to different banks, nor does it prohibit a service of a new execution on a bank that has been previously served.

Related changes:

- It adds unemployment compensation and workers' compensation to the list of readily identifiable directly-deposited state-exempt benefits.

Clarifying changes:

- It makes clear that, although the failure to file a claim of exemption during the 15 days after notice is sent to the debtor permits the bank to release the frozen funds to the marshal (and thus to the creditor), it does not waive their status as exempt funds if the debtor subsequently makes a claim. That is already the law under C.G.S. 52-567b(e) and 52-350d, but there is reason to believe it is not always being followed.