



General Assembly

February Session, 2012

Raised Bill No. 306

LCO No. 1481

01481_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING EXECUTIONS ON JUDGMENTS.

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 Section 52-367b of the general statutes is repealed and the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 (*Effective October 1, 2012*):

3 (a) Execution may be granted pursuant to this section against any
4 debts due from any financial 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 revision of 1958, revised to 1983, 52-354 of the general statutes, revision
8 of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958,
9 revised to 1983 and section 52-361a, as well as by any other laws or
10 regulations of this state or of the United States which exempt such
11 debts from execution.

12 (b) If execution is desired against any such debt, the plaintiff
13 requesting the execution shall make application to the clerk of the
14 court. The application shall be accompanied by a fee of seventy-five
15 dollars payable to the clerk of the court for the administrative costs of
16 complying with the provisions of this section which fee may be

17 recoverable by the judgment creditor as a taxable cost of the action. In
18 a IV-D case, the request for execution shall be accompanied by an
19 affidavit signed by the serving officer attesting to an overdue support
20 amount of five hundred dollars or more which accrued after the entry
21 of an initial family support judgment. If the papers are in order, the
22 clerk shall issue such execution containing a direction that the officer
23 serving such execution shall, within seven days from the receipt by the
24 serving officer of such execution, make demand (1) upon the main
25 office of any financial institution having its main office within the
26 county of the serving officer, or (2) if such main office is not within the
27 serving officer's county and such financial institution has one or more
28 branch offices within such county, upon an employee of such a branch
29 office, such employee and branch office having been designated by the
30 financial institution in accordance with regulations adopted by the
31 Banking Commissioner, in accordance with chapter 54, for payment of
32 any such nonexempt debt due to the judgment debtor and, after
33 having made such demand, shall serve a true and attested copy of the
34 execution, together with the affidavit and exemption claim form
35 prescribed by subsection (k) of this section, with the serving officer's
36 actions endorsed thereon, with the financial institution officer upon
37 whom such demand is made. The serving officer shall not serve more
38 than one financial institution execution per judgment debtor at a time,
39 including copies thereof. After service of an execution on one financial
40 institution, the serving officer shall not serve the same execution or a
41 copy thereof upon another financial institution until receiving
42 confirmation from the preceding financial institution that the judgment
43 debtor had insufficient funds at the preceding financial institution
44 available for collection to satisfy the execution, provided any such
45 additional service is made not later than forty-five days from the
46 receipt by the serving officer of such execution. An execution shall not
47 be served a second time on the same financial institution.

48 (c) If any such financial institution upon which such execution is
49 served and upon which such demand is made is indebted to the
50 judgment debtor, the financial institution shall remove from the

51 judgment debtor's account the amount of such indebtedness not
52 exceeding the amount due on such execution before its midnight
53 deadline, as defined in section 42a-4-104. Notwithstanding the
54 provisions of this subsection, if electronic direct deposits that are
55 readily identifiable as exempt federal veterans' benefits; [] Social
56 Security benefits, including, but not limited to, retirement, survivors'
57 and disability benefits, supplemental security income benefits; exempt
58 benefits paid by the federal Railroad Retirement Board or the federal
59 Office of Personnel Management; unemployment and workers'
60 compensation benefits exempt under section 52-352b or child support
61 payments processed and received pursuant to Title IV-D of the Social
62 Security Act were made to the judgment debtor's account during the
63 [~~thirty-day~~] sixty-day period preceding the date that the execution was
64 served on the financial institution, or such longer period as is required
65 by federal law, then the financial institution shall leave the [~~lesser of~~
66 ~~the account balance~~] greater of the sum of all such exempt benefit
67 payments posted to the account within such period or one thousand
68 dollars, but not to exceed the account balance, in the judgment debtor's
69 account, provided nothing in this subsection shall be construed to limit
70 a financial institution's right or obligation to remove such funds from
71 the judgment debtor's account if required by any other provision of
72 law or by a court order. The judgment debtor shall have full and
73 customary access to such funds left in the judgment debtor's account
74 pursuant to this subsection. The financial institution may notify the
75 judgment creditor that funds have been left in the judgment debtor's
76 account pursuant to this subsection. Nothing in this subsection shall
77 alter the exempt status of funds which are exempt from execution
78 under subsection (a) of this section or under any other provision of
79 state or federal law, or the right of a judgment debtor to claim such
80 exemption. Nothing in this subsection shall be construed to affect any
81 other rights or obligations of the financial institution with regard to the
82 funds in the judgment debtor's account.

83 (d) If any funds are removed from the judgment debtor's account
84 pursuant to subsection (c) of this section, upon receipt of the execution

85 and exemption claim form from the serving officer, the financial
86 institution shall forthwith mail copies thereof, postage prepaid, to the
87 judgment debtor and to any secured party that is party to a control
88 agreement between the financial institution and such secured party
89 under article 9 of title 42a at the last known address of the judgment
90 debtor and of any such secured party with respect to the affected
91 accounts on the records of the financial institution, and shall also mail
92 notice to the judgment debtor as required by 31 CFR 212.6. and 212.7.
93 The financial institution shall hold the amount removed from the
94 judgment debtor's account pursuant to subsection (c) of this section for
95 fifteen days from the date of the mailing to the judgment debtor and
96 any such secured party, and during such period shall not pay the
97 serving officer.

98 (e) To prevent the financial institution from paying the serving
99 officer, as provided in subsection (h) of this section, the judgment
100 debtor shall give notice of a claim of exemption by delivering to the
101 financial institution, by mail or other means, the exemption claim form
102 or other written notice that an exemption is being claimed and any
103 such secured party shall give notice of its claim of a prior perfected
104 security interest in such deposit account by delivering to the financial
105 institution, by mail or other means, written notice thereof. The
106 financial institution may designate an address to which the notice of a
107 claim of exemption, or a secured party claim notice, shall be delivered.
108 Upon receipt of such notice, the financial institution shall, within two
109 business days, send a copy of such notice to the clerk of the court
110 which issued the execution. Nothing in this section shall preclude the
111 judgment debtor from raising a claim of exemption pursuant to
112 subsection (a) of section 52-350d, or any other provision of law, after
113 such funds have been paid to the serving officer or the judgment
114 creditor.

115 (f) (1) Upon receipt of an exemption claim form or a secured party
116 claim notice, the clerk of the court shall enter the appearance of the
117 judgment debtor or such secured party with the address set forth in

118 the exemption claim form or secured party claim notice. The clerk shall
119 forthwith send file-stamped copies of the exemption claim form or
120 secured party claim notice to the judgment creditor and judgment
121 debtor with a notice stating that the disputed funds are being held for
122 forty-five days from the date the exemption claim form or secured
123 party claim notice was received by the financial institution or until a
124 court order is entered regarding the disposition of the funds,
125 whichever occurs earlier, and the clerk shall automatically schedule
126 the matter for a short calendar hearing. The claim of exemption filed
127 by such judgment debtor shall be prima facie evidence at such hearing
128 of the existence of the exemption.

129 (2) Upon receipt of notice from the financial institution pursuant to
130 subsection (c) of this section, a judgment creditor may, on an ex parte
131 basis, present to a judge of the Superior Court an affidavit sworn
132 under oath by a competent party demonstrating a reasonable belief
133 that such judgment debtor's account contains funds which are not
134 exempt from execution and the amount of such nonexempt funds.
135 Such affidavit shall not be conclusory but is required to show the
136 factual basis upon which the reasonable belief is based. If such judge
137 finds that the judgment creditor has demonstrated a reasonable belief
138 that such judgment debtor's account contains funds which are not
139 exempt from execution, such judge shall authorize the judgment
140 creditor to submit a written application to the clerk of the court for a
141 hearing on the exempt status of funds left in the judgment debtor's
142 account pursuant to subsection (c) of this section. The judgment
143 creditor shall promptly send a copy of the application and the
144 supporting affidavit to the judgment debtor and to any secured party
145 shown on a secured party claim notice sent to the judgment creditor
146 pursuant to subdivision (1) of this subsection. Upon receipt of such
147 application, the clerk of the court shall automatically schedule the
148 matter for a short calendar hearing and shall give written notice to the
149 judgment creditor, the judgment debtor and any secured party shown
150 on a secured party claim notice received by the clerk of the court. The
151 notice to the judgment creditor pursuant to subsection (c) of this

152 section shall be prima facie evidence at such hearing that the funds in
153 the account are exempt funds. The burden of proof shall be upon the
154 judgment creditor to establish the amount of funds which are not
155 exempt.

156 (g) If an exemption claim is made or a secured party claim notice is
157 given pursuant to subsection (e) of this section, the financial institution
158 shall continue to hold the amount removed from the judgment debtor's
159 account for forty-five days or until a court order is received regarding
160 disposition of the funds, whichever occurs earlier. If no such order is
161 received within forty-five days of the date the financial institution
162 sends a copy of the exemption claim form or notice of exemption or a
163 secured party claim notice to the clerk of the court, the financial
164 institution shall return the funds to the judgment debtor's account.

165 (h) If no claim of exemption or secured party claim notice is
166 received by the financial institution within fifteen days of the mailing
167 to the judgment debtor and any secured party of the execution and
168 exemption claim form pursuant to subsection (d) of this section, the
169 financial institution shall, upon demand, forthwith pay the serving
170 officer the amount removed from the judgment debtor's account, and
171 the serving officer shall thereupon pay such sum, less such serving
172 officer's fees, to the judgment creditor, except to the extent otherwise
173 ordered by a court.

174 (i) The court, after a hearing conducted pursuant to subsection (f) of
175 this section, shall enter an order determining the issues raised by the
176 claim of exemption and claim by a secured party of a prior perfected
177 security interest in such deposit account. The clerk of the court shall
178 forthwith send a copy of such order to the financial institution. Such
179 order shall be deemed to be a final judgment for the purposes of
180 appeal. No appeal shall be taken except within seven days of the
181 rendering of the order. The order of the court may be implemented
182 during such seven-day period, unless stayed by the court.

183 (j) [If] Except as otherwise provided in subsection (c) of this section,

184 if both exempt and nonexempt moneys have been deposited into an
185 account, for the purposes of determining which moneys are exempt
186 under this section, the moneys most recently deposited as of the time
187 the execution is served shall be deemed to be the moneys remaining in
188 the account.

189 (k) The execution, exemption claim form and clerk's notice
190 regarding the filing of a claim of exemption shall be in such form as
191 prescribed by the judges of the Superior Court or their designee. The
192 exemption claim form shall be dated and include a checklist and
193 description of the most common exemptions, instructions on the
194 manner of claiming the exemptions and a space for the judgment
195 debtor to certify those exemptions claimed under penalty of false
196 statement.

197 (l) If records or testimony are subpoenaed from a financial
198 institution in connection with a hearing conducted pursuant to
199 subsection (f) of this section, the reasonable costs and expenses of the
200 financial institution in complying with the subpoena shall be
201 recoverable by the financial institution from the party requiring such
202 records or testimony, provided, the financial institution shall be under
203 no obligation to attempt to obtain records or documentation relating to
204 the account executed against which are held by any other financial
205 institution. The records of a financial institution as to the dates and
206 amounts of deposits into an account in the financial institution shall, if
207 certified as true and accurate by an officer of the financial institution,
208 be admissible as evidence without the presence of the officer in any
209 hearing conducted pursuant to subsection (f) of this section to
210 determine the legitimacy of a claim of exemption made under this
211 section.

212 (m) If there are moneys to be removed from the judgment debtor's
213 account, prior to the removal of such moneys pursuant to subsection
214 (c) of this section, the financial institution shall receive from the
215 serving officer as representative of the judgment creditor a fee of eight

216 dollars for the financial institution's costs in complying with the
217 provisions of this section which fee may be recoverable by the
218 judgment creditor as a taxable cost of the action. The financial
219 institution may not charge or collect a garnishment fee from a
220 judgment debtor against an exempt amount or after an account review
221 as provided in 31 CFR 212.6.

222 (n) If the financial institution fails or refuses to pay over to the
223 serving officer the amount of such debt, not exceeding the amount due
224 on such execution, such financial institution shall be liable in an action
225 therefor to the judgment creditor named in such execution for the
226 amount of nonexempt moneys which the financial institution failed or
227 refused to pay over, excluding funds of up to one thousand dollars
228 which the financial institution in good faith allowed the judgment
229 debtor to access pursuant to subsection (c) of this section. The amount
230 so recovered by such judgment creditor shall be applied toward the
231 payment of the amount due on such execution. Thereupon, the rights
232 of the financial institution shall be subrogated to the rights of the
233 judgment creditor. If such financial institution pays exempt moneys
234 from the account of the judgment debtor over to the serving officer
235 contrary to the provisions of this section, such financial institution
236 shall be liable in an action therefor to the judgment debtor for any
237 exempt moneys so paid and such financial institution shall refund or
238 waive any charges or fees by the financial institution, including, but
239 not limited to, dishonored check fees, overdraft fees or minimum
240 balance service charges and legal process fees, which were assessed as
241 a result of such payment of exempt moneys. Thereupon, the rights of
242 the financial institution shall be subrogated to the rights of the
243 judgment debtor.

244 (o) Except as provided in subsection (n) of this section, no financial
245 institution or any officer, director or employee of such financial
246 institution shall be liable to any person with respect to any act done or
247 omitted in good faith or through the commission of a bona fide error
248 that occurred despite reasonable procedures maintained by the

249 financial institution to prevent such errors in complying with the
250 provisions of this section.

251 (p) Nothing in this section shall in any way restrict the rights and
252 remedies otherwise available to a judgment debtor or any such secured
253 party at law or in equity.

254 (q) Nothing in this section shall in any way affect any rights of the
255 financial institution with respect to uncollected funds credited to the
256 account of the judgment debtor, which rights shall be superior to those
257 of the judgment creditor.

258 (r) For the purposes of this subsection, "exempt" shall have the same
259 meaning as provided in subsection (c) of section 52-352a. Funds
260 deposited in an account that has been established for the express
261 purpose of receiving electronic direct deposits of public assistance or
262 of Title IV-D child support payments from the Department of Social
263 Services shall be exempt.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	52-367b

Statement of Purpose:

To conform state law protection of moneys exempt from execution to federally-required procedures.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]