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Joint Committee on Banks

Public Hearing

March 7, 2013

Raised SB 979-

AN ACT CONCERNING PROTECTION OF EXEMPT FUNDS IN BANK ACCOUNTS

Testimony of Attorney Renée Cannella of the Cannella Law Firm,
Stamford, CT in Support of Revisions to Raised SB 979

Chairman Leone, Chairman Tong and Members of the Committee:

My name is Renee Cannella. I am a solo practitioner in Stamford. I practice primarily in the area of debt collection. I am also a member of the Connecticut Creditor Bar Association.

- I. Section 1 (b) and Section 2 (b) both provide that, After service of an execution on a financial institution, the serving officer shall not subsequently serve the same execution or a copy thereof upon such financial institution.

It is important to understand from a practical standpoint how parties get to this point.

There is often a period of time involved which stretches out over a period of years. Prior to a bank execution being issued, a defendant has defaulted on a debt. Next, prior to the institution of litigation, collection efforts were made and failed. Then, litigation is commenced and a judgment is entered against the defendant along with a payment order. Next, the defendant defaults on the payment directive ordered by the court- essentially they are in contempt of court. Only then can an application be made to the court for an execution against a financial institution. The court issues the execution which we then give to a Marshal for service. Should we be lucky enough to hit a bank in which the defendant has funds, so long as we are within the 45 day limitation, there is every reason a marshal should be permitted to serve the same financial institution again. The plaintiff creditor is the aggrieved party, not the defendant debtor. The plaintiff should not have to go on even more of a wild goose chase than they have

already to get paid on a valid court judgment. The language should read: *After service of an execution on a financial institution, the serving officer may subsequently serve the same execution or a copy thereof upon such institution and/or upon any other financial institution provided it is within forty-five days from the receipt by the serving officer of such execution.*

II. Sec. 1.(f)(2)*The notice to the judgment creditor pursuant to subsection (c) of this section shall be prima facie evidence at such hearing that the funds in the account are exempt funds. The burden of proof shall be upon the judgment creditor to establish the amount of funds which are not exempt.*

It is contrary to accepted legal principles for the mere assertion by a defendant that funds are exempt to serve as prima facie evidence of their exempt nature and then to place the burden on the plaintiff to prove otherwise.

Once again, I reiterate, the only reason the parties have reached the point of a financial institution execution is because the defendant has defaulted on a court order. Most of the time the payment order of the court is \$35.00 per week regardless of the size of the overall debt. Many times the order of the court is less than \$35.00 per week. If the defendant cannot pay the court ordered amount they have the option of filing a motion to modify the payment order. It is not an option to ignore a court order. If we have reached the point wherein there has been an execution, the defendant has chosen to outright defy a court order. Unless proven otherwise there should be a presumption in the law that funds are not from an exempt source. Funds are only exempt under very restricted circumstances as enumerated by statute. If a defendant fills out an exemption form claiming that all or some of the funds being held by the bank pursuant to an execution are funds legally exempt from collection, they should have the burden of proving the exempt nature of those funds. The defendant is in the superior position to be able to provide the documentary evidence to reveal the source of the funds in the account. The statute should read: *The burden of proof shall be upon the judgment debtor to*

establish the amount of the funds which are claimed to be exempt and the nature of the exemption claimed. Only after the defendant has met this burden of proof should the burden of proof shift to the plaintiff to prove that the funds are in fact not exempt.

Thank you for your consideration.