



General Assembly

January Session, 2013

***Raised Bill No. 979***

LCO No. 3544



Referred to Committee on BANKS

Introduced by:  
(BA)

***AN ACT CONCERNING PROTECTION OF EXEMPT FUNDS IN BANK ACCOUNTS.***

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 Section 52-367b of the general statutes is repealed and the  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, 2013*):

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 one hundred

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 a financial  
40 institution, the serving officer shall not subsequently serve the same  
41 execution or a copy thereof upon such financial institution. After  
42 service of an execution on one financial institution, the serving officer  
43 shall not serve the same execution or a copy thereof upon another  
44 financial institution until receiving confirmation from the preceding  
45 financial institution that the judgment debtor had insufficient funds at  
46 the preceding financial institution available for collection to satisfy the  
47 execution, provided any such additional service is made not later than  
48 forty-five days from the receipt by the serving officer of such

49 execution.

50 (c) If any such financial institution upon which such execution is  
51 served and upon which such demand is made is indebted to the  
52 judgment debtor, the financial institution shall remove from the  
53 judgment debtor's account the amount of such indebtedness not  
54 exceeding the amount due on such execution before its midnight  
55 deadline, as defined in section 42a-4-104. Notwithstanding the  
56 provisions of this subsection, if electronic direct deposits that are  
57 readily identifiable as exempt federal veterans' benefits, Social Security  
58 benefits, including, but not limited to, retirement, survivors' and  
59 disability benefits, supplemental security income benefits, exempt  
60 benefits paid by the federal Railroad Retirement Board or the federal  
61 Office of Personnel Management, unemployment compensation  
62 benefits exempt under section 52-325b, or child support payments  
63 processed and received pursuant to Title IV-D of the Social Security  
64 Act were made to the judgment debtor's account during the [thirty-  
65 day] sixty-day period preceding the date that the execution was served  
66 on the financial institution, or, with regard to federal benefits, such  
67 greater period of time as is required by federal law, then the financial  
68 institution shall leave the lesser of the account balance or one thousand  
69 dollars in the judgment debtor's account, provided nothing in this  
70 subsection shall be construed to limit a financial institution's right or  
71 obligation to remove such funds from the judgment debtor's account if  
72 required by any other provision of law or by a court order. The  
73 judgment debtor shall have full and customary access to such funds  
74 left in the judgment debtor's account pursuant to this subsection. The  
75 financial institution may notify the judgment creditor that funds have  
76 been left in the judgment debtor's account pursuant to this subsection.  
77 Nothing in this subsection shall alter the exempt status of funds which  
78 are exempt from execution under subsection (a) of this section or  
79 under any other provision of state or federal law, or the right of a  
80 judgment debtor to claim such exemption. Nothing in this subsection  
81 shall be construed to affect any other rights or obligations of the

82 financial institution with regard to the funds in the judgment debtor's  
83 account.

84 (d) If any funds are removed from the judgment debtor's account  
85 pursuant to subsection (c) of this section, upon receipt of the execution  
86 and exemption claim form from the serving officer, the financial  
87 institution shall (1) forthwith mail copies thereof, postage prepaid, to  
88 the judgment debtor and to any secured party that is party to a control  
89 agreement between the financial institution and such secured party  
90 under article 9 of title 42a at the last known address of the judgment  
91 debtor and of any such secured party with respect to the affected  
92 accounts on the records of the financial institution, and (2) mail notice  
93 to the judgement debtor as required by 31 CFR 212.6 and 212.7. The  
94 financial institution shall hold the amount removed from the judgment  
95 debtor's account pursuant to subsection (c) of this section for fifteen  
96 days from the date of the mailing to the judgment debtor and any such  
97 secured party, and during such period shall not pay the 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.

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

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

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

147 notice to the judgment creditor pursuant to subsection (c) of this  
148 section shall be prima facie evidence at such hearing that the funds in  
149 the account are exempt funds. The burden of proof shall be upon the  
150 judgment creditor to establish the amount of funds which are not  
151 exempt.

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

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

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

179 (j) [If] Except as otherwise provided in subsection (c) of this section,  
180 if both exempt and nonexempt moneys have been deposited into an  
181 account, for the purposes of determining which moneys are exempt  
182 under this section, the moneys most recently deposited as of the time  
183 the execution is served shall be deemed to be the moneys remaining in  
184 the account.

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

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

208 (m) If there are moneys to be removed from the judgment debtor's  
209 account, prior to the removal of such moneys pursuant to subsection  
210 (c) of this section, the financial institution shall receive from the

211 serving officer as representative of the judgment creditor a fee of eight  
212 dollars for the financial institution's costs in complying with the  
213 provisions of this section which fee may be recoverable by the  
214 judgment creditor as a taxable cost of the action.

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

237 (o) Except as provided in subsection (n) of this section, no financial  
238 institution or any officer, director or employee of such financial  
239 institution shall be liable to any person with respect to any act done or  
240 omitted in good faith or through the commission of a bona fide error  
241 that occurred despite reasonable procedures maintained by the  
242 financial institution to prevent such errors in complying with the  
243 provisions of this section.

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

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

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

257 Sec. 2. Subsection (b) of section 52-367b of the general statutes, as  
258 amended by section 14 of public act 12-89, is repealed and the  
259 following is substituted in lieu thereof (*Effective July 1, 2015*):

260 (b) If execution is desired against any such debt, the plaintiff  
261 requesting the execution shall make application to the clerk of the  
262 court. The application shall be accompanied by a fee of seventy-five  
263 dollars payable to the clerk of the court for the administrative costs of  
264 complying with the provisions of this section which fee may be  
265 recoverable by the judgment creditor as a taxable cost of the action. In  
266 a IV-D case, the request for execution shall be accompanied by an  
267 affidavit signed by the serving officer attesting to an overdue support  
268 amount of five hundred dollars or more which accrued after the entry  
269 of an initial family support judgment. If the papers are in order, the  
270 clerk shall issue such execution containing a direction that the officer  
271 serving such execution shall, within seven days from the receipt by the  
272 serving officer of such execution, make demand (1) upon the main  
273 office of any financial institution having its main office within the  
274 county of the serving officer, or (2) if such main office is not within the

275 serving officer's county and such financial institution has one or more  
276 branch offices within such county, upon an employee of such a branch  
277 office, such employee and branch office having been designated by the  
278 financial institution in accordance with regulations adopted by the  
279 Banking Commissioner, in accordance with chapter 54, for payment of  
280 any such nonexempt debt due to the judgment debtor and, after  
281 having made such demand, shall serve a true and attested copy of the  
282 execution, together with the affidavit and exemption claim form  
283 prescribed by subsection (k) of this section, with the serving officer's  
284 actions endorsed thereon, with the financial institution officer upon  
285 whom such demand is made. The serving officer shall not serve more  
286 than one financial institution execution per judgment debtor at a time,  
287 including copies thereof. After service of an execution on a financial  
288 institution, the serving officer shall not subsequently serve the same  
289 execution or a copy thereof upon such financial institution. After  
290 service of an execution on one financial institution, the serving officer  
291 shall not serve the same execution or a copy thereof upon another  
292 financial institution until receiving confirmation from the preceding  
293 financial institution that the judgment debtor had insufficient funds at  
294 the preceding financial institution available for collection to satisfy the  
295 execution, provided any such additional service is made not later than  
296 forty-five days from the receipt by the serving officer of such  
297 execution.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	52-367b
Sec. 2	<i>July 1, 2015</i>	52-367b(b)

**Statement of Purpose:**

To conform state law protection of moneys exempt from execution in bank accounts 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.]*