

Legal Assistance Resource Center

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S.B. 57 -- Protection of exempt wages directly deposited into bank accounts

Labor and Public Employees public hearing -- February 18, 2014

Testimony of Raphael L. Podolsky

Recommended Labor Committee action: JOINT FAVORABLE

This bill requires that wages paid electronically through direct deposit include an electronic "tag" that identifies them so that they will be "readily identifiable" to the bank as wages. The bill is critical to preventing employees from losing their exempt wages entirely or, at best, having them unnecessarily frozen for a month (or more) while being forced to litigate to get their exempt wages released. During that time period, employees without other resources will be unable to buy anything or pay their bills and could be literally penniless. We urge your support for the bill.

Under Connecticut law, the first \$348 per week in wages (i.e., 40 times the state minimum wage) are completely exempt from execution by creditors. 75% of weekly wages above that amount are also exempt. Those funds remain exempt when they are placed in a bank account. Once in the bank, there are two different state-required procedures for protecting exempt funds from execution: (1) a simple self-enforcing procedure that precludes freezing the first \$1,000 of directly-deposited Social Security, veteran's benefits, and most child support (which are classified as "readily identifiable") and (2) a complicated, drawn-out, cumbersome procedure for other exempt funds. By assuring that direct deposits of wages are readily identifiable to the bank, this bill will move directly-deposited wages into the simplified "readily identifiable" category with its automatic \$1,000 procedural protection.

What difference does it make? When an execution is served on a bank, the general procedure is that the bank freezes the account, up to the amount of the execution. The bank then sends a form to the customer on which he or she can claim an exemption. The customer must send the form back to the bank, which sends it to the Superior Court, which schedules a hearing, at which the court will decide if the funds are exempt. Until the court acts, the funds are frozen, the customer cannot draw on them, checks will bounce, and ATM and debit card withdrawals will be rejected. The funds are usually tied up for about 25 to 45 days. Many customers do not understand the process, never file a claim form, and lose the funds in entirety. Customers who live off those funds, even if they follow this procedure, will be unable to buy groceries, pay rent, or meet even the most essential needs while the funds are frozen. The result is devastating, even though the funds are supposed to be exempt.

This bill imposes no significant burden on either employers or banks. In reality, most payroll agencies and employers already electronically identify wages, and banks already know if a direct deposit is a deposit of wages. The established electronic transfer system, known as "ACH," includes a 94-character field known as "Batch Header Record 5" to identify deposits, and employers already commonly use this field to identify wage transfers. This identification is commonly printed right on the customer's monthly bank statements. For any payroll agencies and employers that do not already identify, S.B. 57 merely requires that they insert a few characters in the ACH field to identify the deposit as wages.

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For Social Security, veterans' benefits, and child support, the existing state statute directs that the bank NOT freeze the first \$1,000 in the account, so that the customer can access and spend those funds without interruption. The customer has to go through the court process only if he or she claims that more than \$1,000 in the account is exempt.¹ S.B. 57 would properly place directly-deposited wages into this category.

¹ Social Security and federal veterans' benefits are also governed by federal law, which is more protective of beneficiaries than state law and therefore applies. Under federal law, banks are prohibited from freezing any such benefits directly deposited during the previous 60 days, with no \$1,000 cap, so that the recipient's access to those funds is uninterrupted.