
OLR Bill Analysis

sHB 6786 (as amended by House "A")*

AN ACT CONCERNING SERVICE OF BANK EXECUTIONS, WAGE EXECUTIONS AND TAX WARRANTS BY STATE MARSHALS AND AUTHORIZED SERVICE OF PROCESS BY INDIFFERENT PERSONS.

SUMMARY

This bill makes various changes in the laws on service of process.

For executions against financial institution accounts, the bill allows officers serving certain accounts by certified mail to collect actual postage costs and requires the institutions to respond to the execution within seven business days. It also adds requirements for institutions and creditors to notify the serving officer about certain information.

Additionally, the bill:

1. expands the instances for which levying officers may mail executions on wages after judgment and allows them to collect actual postage costs incurred,
2. limits when an indifferent person may serve process to specific instances authorized by law,
3. reconciles two differing minimum fees for serving tax warrants, and
4. allows any officer of any precinct to serve process on the comptroller in any action where process is allowed.

The bill also makes technical and conforming changes.

*House Amendment "A" (1) for executions against financial institutions, (a) extends how much time a financial institution has to respond to an execution from five business days, as under the

underlying bill, to seven business days; (b) modifies what an institution must give in response to a serving officer depending on the action it took when responding to the execution; and (c) adds requirements for institutions and creditors to notify the serving officer; (2) for wage executions after judgments, requires creditors to pay the levying officer's fee and actual postage costs in instances where the debt is paid directly; (3) adds the provision allowing any officer of any precinct to serve process on the comptroller; and (4) makes various minor and conforming changes.

EFFECTIVE DATE: October 1, 2023

§§ 1 & 2 — EXECUTION AGAINST FINANCIAL INSTITUTION ACCOUNTS

By law, a person who has a court judgment against someone may apply to the court clerk to have an execution served on a financial institution (e.g., a state or federal bank or credit union) for payment of the debt from the debtor's deposit account (see BACKGROUND).

Actual Costs and Fees

For executions at out-of-state financial institutions that lack a main or branch office in Connecticut, but conduct transactions online or by other electronic means, the law allows serving officers to serve the execution by certified mail, return receipt requested. The bill allows the serving officer to collect the actual postage costs incurred, in addition to the serving officer's fee, from the amount removed from the judgment debtor's account, if any.

For executions where the judgment debtor is a natural person (i.e., an individual), current law requires financial institutions to receive an \$8 fee from the serving officer as representative of the judgment creditor. The bill instead requires the financial institution to deduct the fee from the amount that is paid to the serving officer. The bill specifies that this fee is not a deposit account charge. As under existing law, the fee may be recoverable by the judgment creditor as a taxable cost of the action.

Financial Institution Duty to Respond

Under existing law, the serving officer must only serve one financial institution for each debtor at a time and not serve the same execution on another financial institution until receiving confirmation from the original institution that the judgment debtor had insufficient funds to satisfy the execution.

The bill requires financial institutions to respond to the serving officer about the execution by the seventh business day after the execution is served. Specifically, an institution must send the serving officer by first class mail, postage prepaid, notice on whether the institution removed funds from the judgment debtor's account under the execution with the amount of funds removed and referencing the docket number, if it was on the execution.

If the judgment debtor is not indebted to the financial institution or if the institution has not removed funds from the debtor's account under the execution, the institution must return to the serving officer by first class mail, postage prepaid, a complete set of all the documents the serving officer served including the cover page, with endorsements from other financial institutions, as the case may be, and the original true and attested copy of the execution. For executions where the judgment debtor is a natural person, it must also include the affidavit and exemption claim form. The institution's response must note on the serving officer's cover page, or if it chooses, on a separate document it prepares, that the debtor has no account with the institution or that no funds were removed from the account. The separate document must be affixed to or enclosed with the institution's return of the required material. The bill requires the institution to maintain reasonable procedures to prevent the resubmission of a response to the serving officer.

The bill also makes a conforming change by eliminating a provision for executions where the judgment debtor is not a natural person, that allows a serving officer to assume that sufficient funds are unavailable for collection and proceed to serve another institution if the institution does not respond within 25 days after being served the demand.

Natural Person Judgment Debtor

For executions where the natural person is the judgment debtor, existing law requires the financial institution to notify judgment debtors and any secured party that is party to the control agreement between the financial institution and the secured party if any funds are removed from the judgment debtor's account. The bill also allows institutions to note that funds were removed from a debtor's account on any account records available to debtor, including electronic ones. But it prohibits institutions from displaying or giving the debtor the serving officer's name or contact information.

Under the bill, if the debtor asks the institution about the execution, the institution may direct the debtor to the creditor or the creditor's attorney at the telephone number on the execution or to the applicable court clerk also identified on the execution form.

Existing law requires a judgment debtor to give notice of an exemption claim to the financial institution to prevent the institution from paying the serving officer. Upon receiving this notice, the institution must, within two business days, send a copy of it to the court clerk who issued the execution. The bill also requires the institution to send a copy of the notice, or a separate one the institution prepares, to the serving officer stating that the debtor submitted an exemption claim.

Non-natural Person Judgment Debtor

For executions where the judgment debtor is not a natural person, if the court clerk receives a written claim for determining property interests from another secured party, existing law requires the clerk to (1) enter the appearance of the secured party and (2) send copies of the written claim to the creditor, debtor, and financial institution where the execution was served with a notice that the disputed funds are being held until there is a court order for fund disposition. The bill requires the creditor to send a copy of the written claim to the serving officer.

§ 3 — EXECUTION ON WAGES AFTER JUDGMENT

Under current law, an officer empowered to serve process must levy on all earnings that are due or become due to the judgment debtor, to

the extent specified in the wage execution plus the officer's fees and costs. The bill specifies that the levy for costs is for actual postage costs incurred.

Under the bill, if the levying officer served the judgment debtor's employer and the debt is later satisfied in whole or in part by payment directly to the creditor or his or her agent instead of the levying officer, the creditor or agent must pay the levying officer's fee or portion of it, and the actual postage costs.

Generally, the law allows state marshals and other proper officers to serve process in their precincts (a state marshal's precinct is the county for which he or she is appointed). But they may serve process outside their precincts in certain circumstances. The bill expands the instances a levying officer may mail executions by allowing him or her to mail service to an address within the officer's precinct or extension of precinct if done following the laws on serving process outside an officer's precinct, instead of just in the officer's appointed precinct.

Current law also allows these officers to serve process by mail in cases involving an employer whose address is not within the officer's appointed jurisdiction to the address the employer designates. The bill specifies that the address must be outside Connecticut with an out-of-state payroll address.

In these instances, the bill requires service to be made by certified mail, return receipt requested, and the officer may first collect the actual postage costs incurred under the levy.

§ 4 — INDIFFERENT PERSON

The bill limits when an indifferent person may serve process to specific instances authorized by law. It does this by eliminating the authority for them to do so (1) if multiple defendants living in different counties in the state are named in the process or (2) in the case of a writ of attachment (an order to seize or attach property), when a plaintiff, or his or her agent or attorney, makes an oath before the authority signing the order that he or she is in danger of losing the debt or demand unless

an indifferent person is authorized to serve process immediately.

By law, an indifferent person is someone who is not a proper officer and is not involved in the case. The law authorizes an indifferent person to serve process in various instances, like delivering notice of special and convened sessions to legislators, serving notice to quit possession or occupancy of premises, and carrying out a bench warrant of arrest (CGS §§ 2-7, 47a-23 & 54-64b).

§ 5 — TAX WARRANT MINIMUM AMOUNT

The bill reconciles two differing minimum fees for serving tax warrants. In the tax warrant statute, the minimum amount a serving officer must receive is \$30 while the service officer fees and expenses law has a minimum of \$50. The bill eliminates the \$30 minimum fee.

Under existing law, a state marshal or constable who executes a warrant and collects delinquent municipal taxes receives, in addition to expenses otherwise allowed, 15% of the taxes collected under the warrant (CGS § 52-261).

§ 6 —SERVING THE COMPTROLLER

Current law allows any officer of any precinct to serve process, in any action where process is allowed, on the Secretary of the State, motor vehicles or insurance commissioners, or the attorney general. The bill also allows any officer to serve process on the comptroller. By law, this service is considered to be within the officer's precinct.

BACKGROUND

Law on Execution Against Financial Institution Accounts

Under this law, the procedures differ in some respects depending on whether the debtor is a natural person (i.e., an individual) or an entity. Among other things, the law generally provides that:

1. when a judgment debtor is a natural person, he or she has certain protections and exemptions from execution;
2. serving officers may not serve the same execution on a second institution until they get confirmation from the first institution

- that there are insufficient funds to satisfy the judgment;
3. if another party has a security interest in an account that is also subject to an execution, the financial institution must notify the secured party, who can submit to the court a claim for a hearing to determine the relative interests;
 4. a similar hearing procedure applies if the debtor is a natural person who claims an exemption;
 5. if no claim for interest determination or exemption is made, the financial institution pays the serving officer, and the officer pays the sum, minus his or her fees, to the judgment creditor unless a court orders otherwise; and
 6. a financial institution that fails or refuses to pay the execution amount to the serving officer is liable in an action to the judgment creditor and the amount is applied to the amount due on the execution.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 (03/28/2023)