



General Assembly

Substitute Bill No. 6994

January Session, 2019



AN ACT CONCERNING THE AMOUNT OF MONEY FINANCIAL INSTITUTIONS SHALL LEAVE IN A JUDGMENT DEBTOR'S ACCOUNT AFTER A BANK ACCOUNT EXECUTION.

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 Section 52-367b of the general statutes is repealed and the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, 2019*):

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 five dollars payable to the clerk of the court for the administrative costs
16 of 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. After service of an
47 execution on a financial institution, the serving officer shall not
48 subsequently serve the same execution or a copy thereof upon such
49 financial institution if an electronic direct deposit from a readily
50 identifiable source described in subsection (c) of this section was made
51 to the judgment debtor's account during the look-back period, as
52 described in subsection (c) of this section. If no such deposit was made,
53 the serving officer may subsequently serve the same execution or a

54 copy thereof upon such institution, provided such execution has not
55 expired or otherwise become unenforceable.

56 (c) If any such financial institution upon which such execution is
57 served and upon which such demand is made is indebted to the
58 judgment debtor, the financial institution shall remove from the
59 judgment debtor's account the amount of such indebtedness not
60 exceeding the amount due on such execution before its midnight
61 deadline, as defined in section 42a-4-104. Notwithstanding the
62 provisions of this subsection, if electronic direct deposits that are
63 readily identifiable as (1) exempt federal veterans' benefits, Social
64 Security benefits, including, but not limited to, retirement, survivors'
65 and disability benefits, supplemental security income benefits, exempt
66 benefits paid by the federal Railroad Retirement Board or the federal
67 Office of Personnel Management, unemployment compensation
68 benefits exempt under section 52-352b, or child support payments
69 processed and received pursuant to Title IV-D of the Social Security
70 Act, or (2) wages were made to the judgment debtor's account during
71 the look-back period of either the sixty-day period preceding the date
72 that the execution was served on the financial institution, or, with
73 regard to federal benefits, such greater period as required by federal
74 law, then the financial institution shall leave the lesser of the account
75 balance or one thousand dollars in the judgment debtor's account,
76 provided nothing in this subsection shall be construed to limit a
77 financial institution's right or obligation to remove such funds from the
78 judgment debtor's account if required by any other provision of law or
79 by a court order. The judgment debtor shall have full and customary
80 access to such funds left in the judgment debtor's account pursuant to
81 this subsection. The financial institution may notify the judgment
82 creditor that funds have been left in the judgment debtor's account
83 pursuant to this subsection. Nothing in this subsection shall alter the
84 exempt status of funds which are exempt from execution under
85 subsection (a) of this section or under any other provision of state or
86 federal law, or the right of a judgment debtor to claim such exemption.
87 Nothing in this subsection shall be construed to affect any other rights

88 or obligations of the financial institution with regard to the funds in
89 the judgment debtor's account.

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

104 (e) To prevent the financial institution from paying the serving
105 officer, as provided in subsection (h) of this section, the judgment
106 debtor shall give notice of a claim of exemption by delivering to the
107 financial institution, by mail or other means, the exemption claim form
108 or other written notice that an exemption is being claimed and any
109 such secured party shall give notice of its claim of a prior perfected
110 security interest in such deposit account by delivering to the financial
111 institution, by mail or other means, written notice thereof. The
112 financial institution may designate an address to which the notice of a
113 claim of exemption, or a secured party claim notice, shall be delivered.
114 [Upon] Except as otherwise provided in this subsection, upon receipt
115 of such notice, the financial institution shall, within two business days,
116 send a copy of such notice to the clerk of the court which issued the
117 execution. If in such notice the judgment debtor claims an exemption
118 of funds in an amount not to exceed one thousand dollars pursuant to
119 subsection (r) of section 52-352b, and if no readily identifiable
120 electronic direct deposits were made to the judgment debtor's account

121 as described in subsection (c) of this section, the financial institution
122 shall leave in or restore to the judgment debtor's account the lesser of
123 the account balance or one thousand dollars. The financial institution
124 shall not assess any fee to the judgment debtor in connection with the
125 temporary removal of such funds. The financial institution shall not
126 send such notice to the clerk of the court and no hearing shall be
127 scheduled pursuant to subdivision (1) of subsection (f) of this section if
128 the balance of the judgment debtor's account does not exceed one
129 thousand dollars after funds are left in or restored to such account in
130 accordance with this subsection.

131 (f) (1) Upon receipt of an exemption claim form or a secured party
132 claim notice, the clerk of the court shall enter the appearance of the
133 judgment debtor or such secured party with the address set forth in
134 the exemption claim form or secured party claim notice. The clerk shall
135 forthwith send file-stamped copies of the exemption claim form or
136 secured party claim notice to the judgment creditor and judgment
137 debtor with a notice stating that the disputed funds are being held for
138 forty-five days from the date the exemption claim form or secured
139 party claim notice was received by the financial institution or until a
140 court order is entered regarding the disposition of the funds,
141 whichever occurs earlier, and the clerk shall automatically schedule
142 the matter for a short calendar hearing not later than five business
143 days after receipt of such form or notice. The claim of exemption filed
144 by such judgment debtor shall be prima facie evidence at such hearing
145 of the existence of the exemption. If prior to such hearing the judgment
146 debtor and judgment creditor reach an agreement to resolve the
147 judgment debtor's exemption claim, the parties may file the agreement
148 with the court. Not later than two business days after receiving such
149 agreement, the court shall order the financial institution to comply
150 with the terms of the agreement without the necessity of a hearing.

151 (2) Upon receipt of notice from the financial institution pursuant to
152 subsection (c) of this section, a judgment creditor may, on an ex parte
153 basis, present to a judge of the Superior Court an affidavit sworn

154 under oath by a competent party demonstrating a reasonable belief
155 that such judgment debtor's account contains funds which are not
156 exempt from execution and the amount of such nonexempt funds.
157 Such affidavit shall not be conclusory but is required to show the
158 factual basis upon which the reasonable belief is based. If such judge
159 finds that the judgment creditor has demonstrated a reasonable belief
160 that such judgment debtor's account contains funds which are not
161 exempt from execution, such judge shall authorize the judgment
162 creditor to submit a written application to the clerk of the court for a
163 hearing on the exempt status of funds left in the judgment debtor's
164 account pursuant to subsection (c) of this section. The judgment
165 creditor shall promptly send a copy of the application and the
166 supporting affidavit to the judgment debtor and to any secured party
167 shown on a secured party claim notice sent to the judgment creditor
168 pursuant to subdivision (1) of this subsection. Upon receipt of such
169 application, the clerk of the court shall automatically schedule the
170 matter for a short calendar hearing and shall give written notice to the
171 judgment creditor, the judgment debtor and any secured party shown
172 on a secured party claim notice received by the clerk of the court. The
173 notice to the judgment creditor pursuant to subsection (c) of this
174 section shall be prima facie evidence at such hearing that the funds in
175 the account are exempt funds. The burden of proof shall be upon the
176 judgment creditor to establish the amount of funds which are not
177 exempt.

178 (g) If an exemption claim is made or a secured party claim notice is
179 given pursuant to subsection (e) of this section, the financial institution
180 shall continue to hold the amount removed from the judgment debtor's
181 account for forty-five days or until a court order is received regarding
182 disposition of the funds, whichever occurs earlier. If no such order is
183 received within forty-five days of the date the financial institution
184 sends a copy of the exemption claim form or notice of exemption or a
185 secured party claim notice to the clerk of the court, the financial
186 institution shall return the funds to the judgment debtor's account.

187 (h) If no claim of exemption or secured party claim notice is
188 received by the financial institution within fifteen days of the mailing
189 to the judgment debtor and any secured party of the execution and
190 exemption claim form pursuant to subsection (d) of this section, the
191 financial institution shall, upon demand, forthwith pay the serving
192 officer the amount removed from the judgment debtor's account, and
193 the serving officer shall thereupon pay such sum, less such serving
194 officer's fees, to the judgment creditor, except to the extent otherwise
195 ordered by a court.

196 (i) The court, after a hearing conducted pursuant to subsection (f) of
197 this section, shall enter an order determining the issues raised by the
198 claim of exemption and claim by a secured party of a prior perfected
199 security interest in such deposit account. The clerk of the court shall
200 forthwith send a copy of such order to the financial institution. Such
201 order shall be deemed to be a final judgment for the purposes of
202 appeal. No appeal shall be taken except within seven days of the
203 rendering of the order. The order of the court may be implemented
204 during such seven-day period, unless stayed by the court.

205 (j) Except as otherwise provided in subsection (c) of this section, if
206 both exempt and nonexempt moneys have been deposited into an
207 account, for the purposes of determining which moneys are exempt
208 under this section, the moneys most recently deposited as of the time
209 the execution is served shall be deemed to be the moneys remaining in
210 the account.

211 (k) The execution, exemption claim form and clerk's notice
212 regarding the filing of a claim of exemption shall be in such form as
213 prescribed by the judges of the Superior Court or their designee. The
214 exemption claim form shall be dated and shall include (1) a checklist
215 and description of the most common exemptions, (2) instructions on
216 the manner of claiming the exemptions and a space for the judgment
217 debtor to certify those exemptions claimed under penalty of false
218 statement, (3) the name and telephone number of the judgment
219 creditor or the judgment creditor's attorney, (4) the telephone and

220 facsimile number of the clerk of the court, and (5) a statement
221 indicating that the judgment debtor may contact the judgment creditor
222 or the judgment creditor's attorney to attempt to resolve the exemption
223 claim.

224 (l) If records or testimony are subpoenaed from a financial
225 institution in connection with a hearing conducted pursuant to
226 subsection (f) of this section, the reasonable costs and expenses of the
227 financial institution in complying with the subpoena shall be
228 recoverable by the financial institution from the party requiring such
229 records or testimony, provided, the financial institution shall be under
230 no obligation to attempt to obtain records or documentation relating to
231 the account executed against which are held by any other financial
232 institution. The records of a financial institution as to the dates and
233 amounts of deposits into an account in the financial institution shall, if
234 certified as true and accurate by an officer of the financial institution,
235 be admissible as evidence without the presence of the officer in any
236 hearing conducted pursuant to subsection (f) of this section to
237 determine the legitimacy of a claim of exemption made under this
238 section.

239 (m) If there are moneys to be removed from the judgment debtor's
240 account, prior to the removal of such moneys pursuant to subsection
241 (c) of this section, the financial institution shall receive from the
242 serving officer as representative of the judgment creditor a fee of eight
243 dollars for the financial institution's costs in complying with the
244 provisions of this section which fee may be recoverable by the
245 judgment creditor as a taxable cost of the action.

246 (n) If the financial institution fails or refuses to pay over to the
247 serving officer the amount of such debt, not exceeding the amount due
248 on such execution, such financial institution shall be liable in an action
249 therefor to the judgment creditor named in such execution for the
250 amount of nonexempt moneys which the financial institution failed or
251 refused to pay over, excluding funds of up to one thousand dollars
252 which the financial institution in good faith allowed the judgment

253 debtor to access pursuant to subsection (c) of this section. The amount
254 so recovered by such judgment creditor shall be applied toward the
255 payment of the amount due on such execution. Thereupon, the rights
256 of the financial institution shall be subrogated to the rights of the
257 judgment creditor. If such financial institution pays exempt moneys
258 from the account of the judgment debtor over to the serving officer
259 contrary to the provisions of this section, such financial institution
260 shall be liable in an action therefor to the judgment debtor for any
261 exempt moneys so paid and such financial institution shall refund or
262 waive any charges or fees by the financial institution, including, but
263 not limited to, dishonored check fees, overdraft fees or minimum
264 balance service charges and legal process fees, which were assessed as
265 a result of such payment of exempt moneys. Thereupon, the rights of
266 the financial institution shall be subrogated to the rights of the
267 judgment debtor.

268 (o) Except as provided in subsection (n) of this section, no financial
269 institution or any officer, director or employee of such financial
270 institution shall be liable to any person with respect to any act done or
271 omitted in good faith or through the commission of a bona fide error
272 that occurred despite reasonable procedures maintained by the
273 financial institution to prevent such errors in complying with the
274 provisions of this section.

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

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

282 (r) For the purposes of this subsection, "exempt" has the same
283 meaning as provided in subsection (c) of section 52-352a. Funds
284 deposited in an account that has been established for the express

285 purpose of receiving electronic direct deposits of public assistance or
286 of Title IV-D child support payments from the Department of Social
287 Services shall be exempt.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	52-367b

Statement of Legislative Commissioners:

In Section 1(e), "or restore to" was inserted before "the judgment debtor's account" for internal consistency and "subdivision (1) of" was inserted before "subsection (f) of this section" for accuracy and clarity.

BA *Joint Favorable Subst.*