

STATE OF NEW YORK

8527--A

Cal. No. 588

2007-2008 Regular Sessions

IN ASSEMBLY

May 17, 2007

Introduced by M. of A. WEINSTEIN, PHEFFER, BOYLAND, CLARK, COLTON, EDDINGTON, O'DONNELL, HOOPER, P. RIVERA, LANCMAN -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, BENEDETTO, CAHILL, CHRISTENSEN, CYMBROWITZ, DelMONTE, DESTITO, L. DIAZ, R. DIAZ, FARRELL, FIELDS, GALEF, GANTT, GLICK, GOTTFRIED, GUNTHER, HIKIND, HOYT, JACOBS, JAFFEE, KELLNER, KOON, LAFAYETTE, LAVINE, V. LOPEZ, MAISEL, MARKEY, MAYERSOHN, McENENY, MILLMAN, NOLAN, PEOPLES, REILLY, J. RIVERA, ROBINSON, ROSENTHAL, SEMINERIO, SPANO, SWEENEY, TITUS, TOWNS, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to restraint, execution, income execution and levy procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 5205 of the civil practice law and rules is amended
2 by adding three new subdivisions (l), (m) and (n) to read as follows:
3 (l) Exemption of banking institution accounts into which statutorily
4 exempt payments are made electronically or by direct deposit. 1. If
5 direct deposit or electronic payments reasonably identifiable as statu-
6 torily exempt payments were made to the judgment debtor's account in any
7 banking institution during the forty-five day period preceding the date
8 a restraining notice was served on the banking institution or an
9 execution was served upon the banking institution by a marshal or sher-
10 iff, then two thousand five hundred dollars in the judgment debtor's
11 account is exempt from application to the satisfaction of a money judg-
12 ment. Nothing in this subdivision shall be construed to limit a credi-
13 tor's rights under 42 U.S.C. § 659 or 38 U.S.C. § 5301. Nothing in this
14 subdivision shall alter the exempt status of funds that are protected
15 from execution, levy, attachment, garnishment or other legal process,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 pursuant to this section or under any other provision of state or feder-
2 al law, or shall affect the right of a judgment debtor to claim such
3 exemption.

4 2. For purposes of this article, "statutorily exempt payments" means
5 any personal property exempt from application to the satisfaction of a
6 money judgment under any provision of state or federal law. Such term
7 shall include, but not be limited to, payments from any of the following
8 sources: social security, including retirement, survivors' and disabil-
9 ity benefits, supplemental security income or child support payments
10 processed and received pursuant to title IV-D of the Social Security
11 Act; veterans administration benefits; public assistance; workers'
12 compensation; unemployment insurance; public or private pensions; rail-
13 road retirement; and black lung benefits.

14 3.(i) Beginning on April first, two thousand twelve, and at each
15 three-year interval ending on April first thereafter, the dollar amount
16 of the exemption provided in this section, subdivisions (e) and (h) of
17 section fifty-two hundred twenty-two, subdivision (a) of section fifty-
18 two hundred thirty and subdivision (e) of section fifty-two hundred
19 thirty-two of this article in effect immediately before that date shall
20 be adjusted as provided in subparagraph (ii) of this paragraph.

21 (ii) The superintendent of banks shall determine the amount of the
22 adjustment based on the change in the Consumer Price Index for All Urban
23 Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA,
24 published by the U.S. Department of Labor, Bureau of Labor Statistics,
25 for the most recent three-year period ending on December thirty-first
26 preceding the adjustment, with each adjusted amount rounded to the near-
27 est twenty-five dollars.

28 (iii) Beginning on April first, two thousand twelve, and at each
29 three-year interval ending on April first thereafter, the superintendent
30 of banks shall publish the current dollar amount of the exemption
31 provided in this section, subdivisions (e) and (h) of section fifty-two
32 hundred twenty-two, subdivision (a) of section fifty-two hundred thirty
33 and subdivision (e) of section fifty-two hundred thirty-two of this
34 chapter, together with the date of the next scheduled adjustment. The
35 publication shall be substantially in the form set below:

36 CURRENT DOLLAR AMOUNT OF EXEMPTION FROM ENFORCEMENT OF JUDGMENT UNDER
37 NEW YORK CIVIL PRACTICE LAW AND RULES Sections 5205(1), 5222(e),
38 5222(h), 5230(a), and 5232(e)

39 The following is the current dollar amount of exemption from enforce-
40 ment of money judgments under CPLR sections 5205(1), 5222(e), 5222(h),
41 5230(a), and 5232(e), as required by CPLR section 5205(1)(3):

42 (Amount)

43 This amount is effective on April 1, (year) and shall not apply to
44 cases commenced before April 1, (year). The next adjustment is scheduled
45 for April 1, (year).

46 (iv) Adjustments made under subparagraph (i) of this paragraph shall
47 not apply with respect to restraining notices served or executions
48 effected before the date of the adjustment.

49 (m) Nothing in subdivision (l) of this section limits the judgment
50 debtor's exemption rights in this section or under any other law.

51 (n) Notwithstanding any other provision of law to the contrary, the
52 term "banking institution" when used in this article shall mean and
53 include all banks, trust companies, savings banks, savings and loan
54 associations, credit unions, foreign banking corporations incorporated,
55 chartered, organized or licensed under the laws of this state, foreign

1 banking corporations maintaining a branch in this state, and nationally
2 chartered banks.

3 § 2. Subdivisions (b), (c), (d) and (e) of section 5222 of the civil
4 practice law and rules, as amended by chapter 59 of the laws of 1993,
5 are amended to read as follows:

6 (b) Effect of restraint; prohibition of transfer; duration. A judgment
7 debtor or obligor served with a restraining notice is forbidden to make
8 or suffer any sale, assignment, transfer or interference with any prop-
9 erty in which he or she has an interest, except as set forth in subdivi-
10 sions (h) and (i) of this section, and except upon direction of the
11 sheriff or pursuant to an order of the court, until the judgment or
12 order is satisfied or vacated. A restraining notice served upon a person
13 other than the judgment debtor or obligor is effective only if, at the
14 time of service, he or she owes a debt to the judgment debtor or obligor
15 or he or she is in the possession or custody of property in which he or
16 she knows or has reason to believe the judgment debtor or obligor has an
17 interest, or if the judgment creditor or support collection unit has
18 stated in the notice that a specified debt is owed by the person served
19 to the judgment debtor or obligor or that the judgment debtor or obligor
20 has an interest in specified property in the possession or custody of
21 the person served. All property in which the judgment debtor or obligor
22 is known or believed to have an interest then in and thereafter coming
23 into the possession or custody of such a person, including any specified
24 in the notice, and all debts of such a person, including any specified
25 in the notice, then due and thereafter coming due to the judgment debtor
26 or obligor, shall be subject to the notice except as set forth in subdivi-
27 visions (h) and (i) of this section. Such a person is forbidden to make
28 or suffer any sale, assignment or transfer of, or any interference with,
29 any such property, or pay over or otherwise dispose of any such debt, to
30 any person other than the sheriff or the support collection unit, except
31 as set forth in subdivisions (h) and (i) of this section, and except
32 upon direction of the sheriff or pursuant to an order of the court,
33 until the expiration of one year after the notice is served upon him or
34 her, or until the judgment or order is satisfied or vacated, whichever
35 event first occurs. A judgment creditor or support collection unit which
36 has specified personal property or debt in a restraining notice shall be
37 liable to the owner of the property or the person to whom the debt is
38 owed, if other than the judgment debtor or obligor, for any damages
39 sustained by reason of the restraint. If a garnishee served with a
40 restraining notice withholds the payment of money belonging or owed to
41 the judgment debtor or obligor in an amount equal to twice the amount
42 due on the judgment or order, the restraining notice is not effective as
43 to other property or money.

44 (c) Subsequent notice. Leave of court is required to serve more than
45 one restraining notice upon the same person with respect to the same
46 judgment or order. A judgment creditor shall not serve more than two
47 restraining notices per year upon a natural person's banking institution
48 account.

49 (d) Notice to judgment debtor or obligor. [~~if~~] Except where the
50 provisions of section fifty-two hundred twenty-two-a of this article are
51 applicable, pursuant to subdivision (a) of such section, if a notice in
52 the form prescribed in subdivision (e) of this section has not been
53 given to the judgment debtor or obligor within a year before service of
54 a restraining notice, a copy of the restraining notice together with the
55 notice to judgment debtor or obligor shall be mailed by first class mail
56 or personally delivered to each judgment debtor or obligor who is a

1 natural person within four days of the service of the restraining
2 notice. Such notice shall be mailed to the defendant at his or her resi-
3 dence address; or in the event such mailing is returned as undeliverable
4 by the post office, or if the residence address of the defendant is
5 unknown, then to the defendant in care of the place of employment of the
6 defendant if known, in an envelope bearing the legend "personal and
7 confidential" and not indicating on the outside thereof, by the return
8 address or otherwise, that the communication is from an attorney or
9 concerns a judgment or order; or if neither the residence address nor
10 the place of employment of the defendant is known then to the defendant
11 at any other known address.

12 (e) Content of notice. The notice required by subdivision (d) of this
13 section shall be in substantially the following form and may be included
14 in the restraining notice:

15 NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

16 Money or property belonging to you may have been taken or held in
17 order to satisfy a judgment or order which has been entered against you.
18 Read this carefully.

19 YOU MAY BE ABLE TO GET YOUR MONEY BACK

20 State and federal laws prevent certain money or property from being
21 taken to satisfy judgments or orders. Such money or property is said to
22 be "exempt". The following is a partial list of money which may be
23 exempt:

- 24 1. Supplemental security income, (SSI);
- 25 2. Social security;
- 26 3. Public assistance (welfare);
- 27 4. [~~Alimony~~] Spousal support, maintenance (alimony) or child support;
- 28 5. Unemployment benefits;
- 29 6. Disability benefits;
- 30 7. Workers' compensation benefits;
- 31 8. Public or private pensions; [~~and~~]
- 32 9. Veterans benefits[~~-~~];
- 33 10. Ninety percent of your wages or salary earned in the last sixty
34 days;
- 35 11. Twenty-five hundred dollars of any bank account containing statu-
36 torily exempt payments that were deposited electronically or by direct
37 deposit within the last forty-five days, including, but not limited to,
38 your social security, supplemental security income, veterans benefits,
39 public assistance, workers' compensation, unemployment insurance, public
40 or private pensions, railroad retirement benefits, black lung benefits,
41 or child support payments;
- 42 12. Railroad retirement; and
- 43 13. Black lung benefits.

44 If you think that any of your money that has been taken or held is
45 exempt, you must act promptly because the money may be applied to the
46 judgment or order. If you claim that any of your money that has been
47 taken or held is exempt, you may contact the person sending this notice.

48 Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING [~~LEGAL AID~~] ANY FREE
49 LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court
50 without an attorney to get your money back. Bring this notice with you
51 when you go. You are allowed to try to prove to a judge that your money
52 is exempt from collection under New York civil practice law and rules,
53 sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine
54 and fifty-two hundred forty. If you do not have a lawyer, the clerk of
55 the court may give you forms to help you prove your account contains
56 exempt money that the creditor cannot collect. The law (New York civil

1 practice law and rules, article four and sections fifty-two hundred
2 thirty-nine and fifty-two hundred forty) provides a procedure for deter-
3 mination of a claim to an exemption.

4 § 3. Section 5222 of the civil practice law and rules is amended by
5 adding three new subdivisions (h), (i) and (j) to read as follows:

6 (h) Effect of restraint on judgment debtor's banking institution
7 account into which statutorily exempt payments are made electronically
8 or by direct deposit. Notwithstanding the provisions of subdivision (b)
9 of this section, if direct deposit or electronic payments reasonably
10 identifiable as statutorily exempt payments as defined in paragraph two
11 of subdivision (l) of section fifty-two hundred five of this article
12 were made to the judgment debtor's account during the forty-five day
13 period preceding the date that the restraining notice was served on the
14 banking institution, then the banking institution shall not restrain two
15 thousand five hundred dollars in the judgment debtor's account. If the
16 account contains an amount equal to or less than two thousand five
17 hundred dollars, the account shall not be restrained and the restraining
18 notice shall be deemed void. Nothing in this subdivision shall be
19 construed to limit a banking institution's right or obligation to
20 restrain or remove such funds from the judgment debtor's account if
21 required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order.
22 Nothing in this subdivision shall alter the exempt status of funds that
23 are protected from execution, levy, attachment, garnishment or other
24 legal process, under section fifty-two hundred five of this article or
25 under any other provision of state or federal law, or affect the right
26 of a judgment debtor to claim such exemption.

27 (i) Effect of restraint on judgment debtor's banking institution
28 account. A restraining notice issued pursuant to this section shall not
29 apply to an amount equal to or less than the greater of two hundred
30 forty times the federal minimum hourly wage prescribed in the Fair Labor
31 Standards Act of 1938 or two hundred forty times the state minimum hour-
32 ly wage prescribed in section six hundred fifty-two of the labor law as
33 in effect at the time the earnings are payable (as published on the
34 websites of the United States department of labor and the state depart-
35 ment of labor) except such part thereof as a court determines to be
36 unnecessary for the reasonable requirements of the judgment debtor and
37 his or her dependents. This amount shall be equal to seventeen hundred
38 sixteen dollars on the effective date of this subdivision, and shall
39 rise to seventeen hundred forty dollars on July twenty-fourth, two thou-
40 sand nine, and shall rise thereafter in tandem with the minimum wage.
41 Nothing in this subdivision shall be construed to limit a banking insti-
42 tution's right or obligation to restrain or remove such funds from the
43 judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. §
44 5301 or by a court order. Where a judgment debtor's account contains an
45 amount equal to or less than ninety percent of the greater of two
46 hundred forty times the federal minimum hourly wage prescribed in the
47 Fair Labor Standards Act of 1938 or two hundred forty times the state
48 minimum hourly wage prescribed in section six hundred fifty-two of the
49 labor law as in effect at the time the earnings are payable (as
50 published on the websites of the United States department of labor and
51 the state department of labor), the account shall not be restrained and
52 the restraining notice shall be deemed void, except as to those funds
53 that a court determines to be unnecessary for the reasonable require-
54 ments of the judgment debtor and his or her dependents. Nothing in this
55 subdivision shall alter the exempt status of funds which are exempt from
56 execution, levy, attachment or garnishment, under section fifty-two

1 hundred five of this article or under any other provision of state or
2 federal law, or the right of a judgment debtor to claim such exemption.

3 (j) Fee for banking institution's costs in processing a restraining
4 notice for an account. In the event that a banking institution served
5 with a restraining notice cannot lawfully restrain a judgment debtor's
6 banking institution account, or a restraint is placed on the judgment
7 debtor's account in violation of any section of this chapter, the bank-
8 ing institution shall charge no fee to the judgment debtor regardless of
9 any terms of agreement, or schedule of fees, or other contract between
10 the judgment debtor and the banking institution.

11 § 4. The civil practice law and rules is amended by adding a new
12 section 5222-a to read as follows:

13 § 5222-a. Service of notices and forms and procedure for claim of
14 exemption. (a) Applicability. Any person authorized under subdivision
15 (a) of section fifty-two hundred twenty-two of this article issuing a
16 restraining notice affecting a natural person's account at a banking
17 institution pursuant to such subdivision must comply with this section,
18 in addition to the general provisions set forth in such section. Any
19 sheriff or support collection unit levying against a natural person's
20 account at a banking institution pursuant to section fifty-two hundred
21 thirty-two of this article must comply with this section, in addition to
22 the general provisions set forth in section fifty-two hundred thirty-two
23 of this article. The procedures set forth in subdivisions (b), (c),
24 (d), (e), (f) and (g) of this section shall not apply where pursuant to
25 subdivision (h) and/or (i) of section fifty-two hundred twenty-two or
26 subdivision (e) of section fifty-two hundred thirty-two of this article,
27 no funds in the account are restrained or levied upon.

28 (b) Service of exemption notice and exemption claim form. 1. Service
29 with restraining notice upon banking institution. The person or support
30 collection unit issuing the restraining notice pursuant to subdivision
31 (a) of section fifty-two hundred twenty-two of this article shall
32 provide the banking institution with the restraining notice, a copy of
33 the restraining notice, an exemption notice and two exemption claim
34 forms with sections titled "ADDRESS A" and "ADDRESS B" completed. The
35 exemption notice and exemption claim forms shall be in the forms set
36 forth in paragraph four of this subdivision. The notice and the forms
37 shall be served on the banking institution together with the restraining
38 notice and copy of the restraining notice. Service must be accomplished
39 in accordance with subdivision (a) or (g) of section fifty-two hundred
40 twenty-two of this article. Failure to serve the notice and forms
41 together with the restraining notice renders the restraining notice
42 void, and the banking institution shall not restrain the account.

43 2. Service of execution by levy upon a garnishee banking institution.
44 When serving an execution pursuant to subdivision (a) of section fifty-
45 two hundred thirty-two of this article, the sheriff or support
46 collection unit shall provide the banking institution with an exemption
47 notice and two exemption claim forms, which shall be in the forms set
48 forth in paragraph four of this subdivision. The sheriff or support
49 collection unit shall serve both the exemption notice and the exemption
50 claim forms on the banking institution together with the execution
51 notice. Service must be accomplished in accordance with subdivision (a)
52 of section fifty-two hundred thirty-two of this article. Failure to
53 serve the notice and forms renders the execution void, and the banking
54 institution shall not levy upon the account.

55 3. Service upon judgment debtor. Within two business days after
56 receipt of the restraining notice or execution, exemption notice and

1 exemption claim forms, the banking institution shall serve upon the
2 judgment debtor the copy of the restraining notice, the exemption notice
3 and two exemption claim forms. The banking institution shall serve the
4 notice and forms by first class mail to the last known address of the
5 judgment debtor. The inadvertent failure by a depository institution to
6 provide the notice required by this subdivision shall not give rise to
7 liability on the part of the depository institution.

8 4. Content of exemption notice and exemption claim form. a. The
9 exemption notice shall be in the following form:

10 "EXEMPTION NOTICE
11 as required by New York Law

12 YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

13 The attached Restraining Notice or notice of Levy by Execution has
14 been issued against your bank account. You are receiving this notice
15 because a creditor has obtained a money judgment against you, and one or
16 more of your bank accounts has been restrained to pay the judgment. A
17 money judgment is a court's decision that you owe money to a creditor.
18 You should be aware that FUTURE DEPOSITS into your account(s) might also
19 be restrained if you do not respond to this notice.

20 You may be able to "vacate" (remove) the judgment. If the judgment is
21 vacated, your bank account will be released. Consult an attorney
22 (including free legal services) or visit the court clerk for more infor-
23 mation about how to do this.

24 Under state and federal law, certain types of funds cannot be taken
25 from your bank account to pay a judgment. Such money is said to be
26 "exempt."

27 DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

- 28 1. Social security;
- 29 2. Social security disability (SSD);
- 30 3. Supplemental security income (SSI);
- 31 4. Public assistance (welfare);
- 32 5. Income earned while receiving SSI or public assistance;
- 33 6. Veterans benefits;
- 34 7. Unemployment insurance;
- 35 8. Payments from pensions and retirement accounts;
- 36 9. Disability benefits;
- 37 10. Income earned in the last 60 days (90% of which is exempt);
- 38 11. Workers' compensation benefits;
- 39 12. Child support;
- 40 13. Spousal support or maintenance (alimony);
- 41 14. Railroad retirement; and/or
- 42 15. Black lung benefits.

43 If YES, you can claim that your money is exempt and cannot be taken.

44 To make the claim, you must

- 45 (a) complete the EXEMPTION CLAIM FORM attached;
- 46 (b) deliver or mail the form to the bank with the restrained or
47 "frozen" account; and
- 48 (c) deliver or mail the form to the creditor or its attorney at the
49 address listed on the form.

50 You must send the forms within 20 DAYS of the postmarked date on the
51 envelope holding this notice. You may be able to get your account
52 released faster if you send to the creditor or its attorney written
53 proof that your money is exempt. Proof can include an award letter from
54 the government, an annual statement from your pension, pay stubs, copies
55 of checks, bank records showing the last two months of account activity,

1 or other papers showing that the money in your bank account is exempt.
2 If you send the creditor's attorney proof that the money in your account
3 is exempt, the attorney must release that money within seven days. You
4 do not need an attorney to make an exemption claim using the form."

5 b. The exemption claim form shall be in the following form:

6 NAME OF COURT, NAME OF COUNTY

7 -----x

8 PLAINTIFF/PETITIONER/CLAIMANT

INDEX NO.

9 V.

10 DEFENDANT/RESPONDENT

EXEMPTION CLAIM FORM

11 -----x

12 NAME AND ADDRESS OF JUDGMENT

NAME AND ADDRESS OF FINANCIAL

13 CREDITOR OR ATTORNEY

INSTITUTION

14 (To be completed by judgment
15 creditor or attorney)

(To be completed by judgment
creditor or attorney)

16 ADDRESS

ADDRESS

17 A _____

B _____

18 _____
19 Directions: To claim that some or all of the funds in your account are
20 exempt, complete both copies of this form, and make one copy for your-
21 self. Mail or deliver one form to ADDRESS A and one form to ADDRESS B
22 within twenty days of the date on the envelope holding this notice.
23 **If you have any documents, such as an award letter, an annual state-
24 ment from your pension, paystubs, copies of checks or bank records show-
25 ing the last two months of account activity, include copies of the docu-
26 ments with this form. Your account may be released more quickly.

27 _____

28 I state that my account contains the following type(s) of funds (check
29 all that apply):

30 _____ Social security

31 _____ Social security disability (SSD)

32 _____ Supplemental security income (SSI)

33 _____ Public assistance

34 _____ Wages while receiving SSI or public assistance

35 _____ Veterans benefits

36 _____ Unemployment insurance

37 _____ Payments from pensions and retirement accounts

38 _____ Income earned in the last 60 days (90% of which is exempt)

39 _____ Child support

40 _____ Spousal support or maintenance (alimony)

41 _____ Workers' compensation

42 _____ Railroad retirement or black lung benefits

43 _____ Other (describe exemption): _____

44 I request that any correspondence to me regarding my claim be sent to
45 the following address:

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(FILL IN YOUR COMPLETE ADDRESS)

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.

DATE SIGNATURE OF JUDGMENT DEBTOR

(c) Claim of exemption. 1. To claim an exemption pursuant to the procedures in this section, the judgment debtor shall complete the exemption claim forms, sign them under penalty of perjury, and serve them within twenty days of the date postmarked on the correspondence containing the notice and forms. The judgment debtor shall serve one completed exemption claim form on the banking institution and the other on the attorney for the judgment creditor. In the event that there is no attorney for the judgment creditor or support collection unit, then the exemption claim form must be served directly on the judgment creditor or support collection unit. The judgment debtor may serve the exemption claim forms in person or by first-class mail.

2. Where the banking institution receives an exemption claim form, it shall notify the judgment creditor forthwith of the date on which the funds will be released pursuant to paragraph three of this subdivision.

3. The banking institution shall release all funds in the judgment debtor's account eight days after the date postmarked on the envelope containing the executed exemption claim form mailed to the banking institution or the date of personal delivery of the executed exemption claim form to the banking institution, and the restraint shall be deemed void, except where the judgment creditor interposes an objection to the exemption within that time.

4. Where the executed exemption claim form sent to the judgment creditor or support collection unit is accompanied by information demonstrating that all funds in the account are exempt, the judgment creditor or support collection unit shall, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, instruct the banking institution to release the account, and the restraint shall be deemed void. Where the account contains some funds from exempt sources, and other funds from unknown sources, the judgment creditor or support collection unit shall apply the lowest intermediate balance principle of accounting and, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, shall instruct the banking institution to release the exempt money in the account. The provisions of paragraph two of subdivision (b) of rule twenty-one hundred three of this chapter shall not enlarge the judgment creditor's time to move pursuant to this section. Information demonstrating that funds are exempt includes, but is not limited to, originals or copies of benefit award letters, checks, check stubs or any other document that discloses the source of the judgment debtor's income, and bank records showing the last two months of account activity. If the judgment creditor or support collection unit fails to act in accordance with this subdivision, the judgment creditor or support collection unit shall be deemed to have acted in bad faith and the judgment debtor may seek a court award of the damages, costs, fees and penalties provided for in subdivision (g) of this section.

5. If no claim of exemption is received by the banking institution within twenty-five days after the notice and forms are mailed to the judgment debtor, the funds remain subject to the restraining notice or

1 execution. Failure of the judgment debtor to deliver the executed
2 exemption claim form does not constitute a waiver of any right to an
3 exemption.

4 (d) Objection to exemption claim and request for hearing. A judgment
5 creditor may object to the claim of exemption by moving for an order
6 pursuant to section fifty-two hundred forty of this article. The judg-
7 ment creditor must serve the banking institution and the judgment debtor
8 with its motion papers within eight days after the date postmarked on
9 the envelope containing the executed exemption claim form or the date of
10 personal delivery of the executed exemption claim form to the banking
11 institution, and the provisions of paragraph one of subdivision (b) of
12 rule twenty-one hundred three of this chapter shall not enlarge the
13 judgment creditor's time to move pursuant to this section. The judgment
14 debtor shall be served at the address provided on the exemption claim
15 form. The affirmation or affidavit in support of the motion shall demon-
16 strate a reasonable belief that such judgment debtor's account contains
17 funds that are not exempt from execution and the amount of such nonex-
18 empt funds. The executed exemption claim form shall be attached to the
19 affirmation or affidavit. The affirmation or affidavit shall not be
20 conclusory, but is required to show the factual basis upon which the
21 reasonable belief is based. The hearing to decide the motion shall be
22 noticed for seven days after service of the moving papers. The executed
23 exemption claim form shall be prima facie evidence at such hearing that
24 the funds in the account are exempt funds. The burden of proof shall be
25 upon the judgment creditor to establish the amount of funds that are not
26 exempt. The court shall, within five days of the hearing, issue an order
27 stating whether or not funds in the account are exempt and ordering the
28 appropriate relief. The judgment creditor or its attorney must serve the
29 order on the banking institution and the judgment debtor no later than
30 two business days after the court issues the order.

31 (e) Duties of banking institution if objection is made to exemption
32 claim. Upon receipt of a written objection pursuant to subdivision (d)
33 of this section from the judgment creditor or its attorney within the
34 specified eight-day period, the banking institution shall retain the
35 funds claimed to be exempt for twenty-one days unless otherwise ordered
36 by the court. If the period of twenty-one days expires and the banking
37 institution has not been otherwise ordered by the court, the banking
38 institution shall release the funds to the judgment debtor.

39 (f) Release of funds. At any time during the procedure specified in
40 this section, the judgment debtor or the judgment creditor may, by a
41 writing dated after the service of the restraining notice, direct the
42 banking institution to release the funds in question to the other party.
43 Upon receipt of a release, the banking institution shall release the
44 funds as directed.

45 (g) Proceedings; bad faith claims. Where the judgment creditor objects
46 to a claim of exemption pursuant to subdivision (d) of this section and
47 the court finds that the judgment creditor disputed the claim of
48 exemption in bad faith, as provided in paragraph four of subdivision (c)
49 of this section, the judgment debtor shall be awarded costs, reasonable
50 attorney fees, actual damages and an amount not to exceed one thousand
51 dollars.

52 (h) Rights of judgment debtor. Nothing in this section shall in any
53 way restrict the rights and remedies otherwise available to a judgment
54 debtor, including but not limited to, rights to property exemptions
55 under federal and state law.

1 § 5. Subdivision (a) of section 5230 of the civil practice law and
2 rules, as amended by chapter 59 of the laws of 1993, is amended to read
3 as follows:

4 (a) Form. An execution shall specify the date that the judgment or
5 order was entered, the court in which it was entered, the amount of the
6 judgment or order and the amount due thereon and it shall specify the
7 names of the parties in whose favor and against whom the judgment or
8 order was entered. An execution shall direct that only the property in
9 which a named judgment debtor or obligor who is not deceased has an
10 interest, or the debts owed to the named judgment debtor or obligor, be
11 levied upon or sold thereunder and shall specify the last known address
12 of that judgment debtor or obligor. An execution notice shall state
13 that, pursuant to subdivision (l) of section fifty-two hundred five of
14 this article, two thousand five hundred dollars of an account containing
15 direct deposit or electronic payments reasonably identifiable as statu-
16 torily exempt payments, as defined in paragraph two of subdivision (l)
17 of section fifty-two hundred five of this article, is exempt from
18 execution and that the garnishee cannot levy upon or restrain two thou-
19 sand five hundred dollars in such an account. An execution notice shall
20 likewise state that pursuant to subdivision (i) of section fifty-two
21 hundred twenty-two of this article, an execution shall not apply to an
22 amount equal to or less than ninety percent of the greater of two
23 hundred forty times the federal minimum hourly wage prescribed in the
24 Fair Labor Standards Act of 1938 or two hundred forty times the state
25 minimum hourly wage prescribed in section six hundred fifty-two of the
26 labor law as in effect at the time the earnings are payable, except such
27 part as a court determines to be unnecessary for the reasonable require-
28 ments of the judgment debtor and his or her dependents. Where the judg-
29 ment or order was entered in a court other than the supreme, county or a
30 family court, the execution shall also specify the date on which a tran-
31 script of the judgment or order was filed with the clerk of the county
32 in which the judgment was entered. Where jurisdiction in the action was
33 based upon a levy upon property or debt pursuant to an order of attach-
34 ment, the execution shall also state that fact, describe all property
35 and debts levied upon, and direct that only such property and debts be
36 sold thereunder. Where the judgment or order was recovered for all or
37 part of a mortgage debt, the execution shall also describe the mortgaged
38 property, specify the book and page where the mortgage is recorded, and
39 direct that no part of the mortgaged property be levied upon or sold
40 thereunder.

41 § 6. Subdivision (b) of section 5231 of the civil practice law and
42 rules, as amended by chapter 178 of the laws of 1990, is amended to read
43 as follows:

44 (b) Issuance. Where a judgment debtor is receiving or will receive
45 money from any source, an income execution for installments therefrom of
46 not more than ten percent thereof may be issued and delivered to the
47 sheriff of the county in which the judgment debtor resides or, where the
48 judgment debtor is a non-resident, the county in which he is employed;
49 provided, however, that (i) no amount shall be withheld from the judg-
50 ment debtor's earnings pursuant to an income execution for any week
51 unless the disposable earnings of the judgment debtor for that week
52 exceed the greater of thirty times the federal minimum hourly wage
53 prescribed in the Fair Labor Standards Act of 1938 or thirty times the
54 state minimum hourly wage prescribed in section six hundred fifty-two of
55 the labor law as in effect at the time the earnings are payable; (ii)
56 the amount withheld from the judgment debtor's earnings pursuant to an

1 income execution for any week shall not exceed twenty-five percent of
2 the disposable earnings of the judgment debtor for that week, or, the
3 amount by which the disposable earnings of the judgment debtor for that
4 week exceed the greater of thirty times the federal minimum hourly wage
5 prescribed by the Fair Labor Standards Act of 1938 or thirty times the
6 state minimum hourly wage prescribed in section six hundred fifty-two of
7 the labor law as in effect at the time the earnings are payable, which-
8 ever is less; (iii) if the earnings of the judgment debtor are also
9 subject to deductions for alimony, support or maintenance for family
10 members or former spouses pursuant to section five thousand two hundred
11 forty-one or section five thousand two hundred forty-two of this arti-
12 cle, the amount withheld from the judgment debtor's earnings pursuant to
13 this section shall not exceed the amount by which twenty-five percent of
14 the disposable earnings of the judgment debtor for that week exceeds the
15 amount deducted from the judgment debtor's earnings in accordance with
16 section five thousand two hundred forty-one or section five thousand two
17 hundred forty-two of this article. Nothing in this section shall be
18 construed to modify, abrogate, impair, or affect any exemption from the
19 satisfaction of a money judgment otherwise granted by law.

20 § 7. Section 5232 of the civil practice law and rules is amended by
21 adding three new subdivisions (e), (f) and (g) to read as follows:

22 (e) Notwithstanding the provisions of subdivision (a) of this section,
23 if direct deposit or electronic payments reasonably identifiable as
24 statutorily exempt payments as defined in paragraph two of subdivision
25 (l) of section fifty-two hundred five of this article were made to the
26 judgment debtor's account during the forty-five day period preceding the
27 date that the execution notice was served on the garnishee banking
28 institution, then a garnishee banking institution shall not execute,
29 levy, attach, garnish or otherwise restrain or encumber two thousand
30 five hundred dollars in the judgment debtor's account. Notwithstanding
31 the provisions of subdivision (a) of this section, an execution shall
32 not apply to an amount equal to or less than the greater of two hundred
33 forty times the federal minimum hourly wage prescribed in the Fair Labor
34 Standards Act of 1938 or two hundred forty times the state minimum hour-
35 ly wage prescribed in section six hundred fifty-two of the labor law as
36 in effect at the time the earnings are payable (as published on the
37 websites of the United States department of labor and the state depart-
38 ment of labor) except such part thereof as a court determines to be
39 unnecessary for the reasonable requirements of the judgment debtor and
40 his or her dependents. This amount shall be equal to seventeen hundred
41 sixteen dollars on the effective date of this subdivision, and shall
42 rise to seventeen hundred forty dollars on July twenty-fourth, two thou-
43 sand nine, and shall rise thereafter in tandem with the minimum wage.
44 Nothing in this subsection shall be construed to limit a banking insti-
45 tution's right or obligation to restrain, remove or execute upon such
46 funds from the judgment debtor's account if required by 42 U.S.C. § 659
47 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision
48 shall alter the exempt status of funds that are protected from
49 execution, levy, attachment, garnishment, or other legal process, under
50 section fifty-two hundred five of this article or under any other
51 provision of state or federal law, or affect the right of a judgment
52 debtor to claim such exemption.

53 (f) Fee for banking institution's costs in processing a levy by
54 service of execution when account contains only exempt, direct deposit
55 or electronic payments. In the event that a banking institution cannot
56 lawfully garnish or execute upon on a judgment debtor's banking institu-

1 tion account or funds are garnished or executed upon in violation of any
2 section of this chapter, the banking institution shall charge no fee to
3 the judgment debtor regardless of any terms of agreement, or schedule of
4 fees, or other contract between the judgment debtor and the banking
5 institution.

6 (g) Where a levy by execution pursuant to this section is made against
7 a natural person's account at a banking institution, the sheriff or
8 support collection unit shall serve the banking institution with the
9 exemption notice and two exemption claim forms prescribed in subdivision
10 (b) of section fifty-two hundred twenty-two-a of this article. The
11 notice and forms must be served upon the banking institution simultane-
12 ously with the execution and section fifty-two hundred twenty-two-a of
13 this article shall apply, and all procedures stated therein must be
14 followed. The banking institution shall not transfer the funds in the
15 account to the sheriff or support collection unit for at least twenty-
16 seven days. If, after thirty days, the banking institution has not
17 received an exemption claim form from the judgment debtor, or a court
18 order directing otherwise, it may thereafter transfer the funds to the
19 sheriff or support collection unit.

20 § 8. Severability. The provisions of this act shall be severable, and
21 if any clause, sentence, paragraph, subdivision, section or part of this
22 act shall be adjudged by any court of competent jurisdiction to be
23 invalid, such judgment shall not affect, impair or invalidate the
24 remainder thereof but shall be confined in its operation to the clause,
25 sentence, paragraph, subdivision, section or part thereof directly
26 involved in the controversy in which such judgment shall have been
27 rendered.

28 § 9. This act shall take effect on the first of January next succeed-
29 ing the date on which it shall have become a law.
