

# 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.

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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.

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