

## CHAPTER TEXT:

LAWS OF NEW YORK, 2008

## CHAPTER 575

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

Became a law September 25, 2008, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

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

Section 1. Section 5205 of the civil practice law and rules is amended by adding three new subdivisions (l), (m) and (n) to read as follows:

(l) Exemption of banking institution accounts into which statutorily exempt payments are made electronically or by direct deposit. 1. If direct deposit or electronic payments reasonably identifiable as statutorily exempt payments were made to the judgment debtor's account in any banking institution during the forty-five day period preceding the date a restraining notice was served on the banking institution or an execution was served upon the banking institution by a marshal or sheriff, then two thousand five hundred dollars in the judgment debtor's account is exempt from application to the satisfaction of a money judgment. Nothing in this subdivision shall be construed to limit a creditor's rights under 42 U.S.C. § 659 or 38 U.S.C. § 5301. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, pursuant to this section or under any other provision of state or federal law, or shall affect the right of a judgment debtor to claim such exemption.

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

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

(ii) The superintendent of banks shall determine the amount of the adjustment based on the change in the Consumer Price Index for All Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent three-year period ending on December thirty-first

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

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preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars.

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

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

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

(Amount)

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

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

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

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

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

(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdi-

visions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

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

(d) Notice to judgment debtor or obligor. [~~if~~] Except where the provisions of section fifty-two hundred twenty-two-a of this article are applicable, pursuant to subdivision (a) of such section, if a notice in the form prescribed in subdivision (e) of this section has not been given to the judgment debtor or obligor within a year before service of a restraining notice, a copy of the restraining notice together with the notice to judgment debtor or obligor shall be mailed by first class mail or personally delivered to each judgment debtor or obligor who is a natural person within four days of the service of the restraining notice. Such notice shall be mailed to the defendant at his or her residence address; or in the event such mailing is returned as undeliverable by the post office, or if the residence address of the defendant is unknown, then to the defendant in care of the place of employment of the defendant if known, in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by the return address or otherwise, that the communication is from an attorney or concerns a judgment or order; or if neither the residence address nor the place of employment of the defendant is known then to the defendant at any other known address.

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

NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

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

YOU MAY BE ABLE TO GET YOUR MONEY BACK

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

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);

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4. [~~Alimony~~] Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions; [~~and~~]
9. Veterans benefits[~~r~~];
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Twenty-five hundred dollars of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;
12. Railroad retirement; and
13. Black lung benefits.

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

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

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

(h) Effect of restraint on judgment debtor's banking institution account into which statutorily exempt payments are made electronically or by direct deposit. Notwithstanding the provisions of subdivision (b) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (1) of section fifty-two hundred five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the restraining notice was served on the banking institution, then the banking institution shall not restrain two thousand five hundred dollars in the judgment debtor's account. If the account contains an amount equal to or less than two thousand five hundred dollars, the account shall not be restrained and the restraining notice shall be deemed void. Nothing in this subdivision shall be construed to limit a banking institution's right or obligation to restrain or remove such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(i) Effect of restraint on judgment debtor's banking institution account. A restraining notice issued pursuant to this section shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subdivision shall be construed to limit a banking institution's right or obligation to restrain or remove such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Where a judgment debtor's account contains an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor), the account shall not be restrained and the restraining notice shall be deemed void, except as to those funds that a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Nothing in this subdivision shall alter the exempt status of funds which are exempt from execution, levy, attachment or garnishment, under section fifty-two hundred five of this article or under any other provision of state or federal law, or the right of a judgment debtor to claim such exemption.

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

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

§ 5222-a. Service of notices and forms and procedure for claim of exemption. (a) Applicability. Any person authorized under subdivision (a) of section fifty-two hundred twenty-two of this article issuing a restraining notice affecting a natural person's account at a banking institution pursuant to such subdivision must comply with this section, in addition to the general provisions set forth in such section. Any sheriff or support collection unit levying against a natural person's account at a banking institution pursuant to section fifty-two hundred thirty-two of this article must comply with this section, in addition to the general provisions set forth in section fifty-two hundred thirty-two of this article. The procedures set forth in subdivisions (b), (c), (d), (e), (f) and (g) of this section shall not apply where pursuant to subdivision (h) and/or (i) of section fifty-two hundred twenty-two or

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subdivision (e) of section fifty-two hundred thirty-two of this article, no funds in the account are restrained or levied upon.

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

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

3. Service upon judgment debtor. Within two business days after receipt of the restraining notice or execution, exemption notice and exemption claim forms, the banking institution shall serve upon the judgment debtor the copy of the restraining notice, the exemption notice and two exemption claim forms. The banking institution shall serve the notice and forms by first class mail to the last known address of the judgment debtor. The inadvertent failure by a depository institution to provide the notice required by this subdivision shall not give rise to liability on the part of the depository institution.

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

"EXEMPTION NOTICE  
as required by New York Law

YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

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

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

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

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

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

If YES, you can claim that your money is exempt and cannot be taken. To make the claim, you must

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

You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send to the creditor or its attorney written proof that your money is exempt. Proof can include an award letter from the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form."

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

NAME OF COURT, NAME OF COUNTY

-----X

PLAINTIFF/PETITIONER/CLAIMANT  
V.  
DEFENDANT/RESPONDENT

INDEX NO.  
  
EXEMPTION CLAIM FORM

-----X

NAME AND ADDRESS OF JUDGMENT  
CREDITOR OR ATTORNEY  
(To be completed by judgment  
creditor or attorney)  
ADDRESS  
A \_\_\_\_\_

NAME AND ADDRESS OF FINANCIAL  
INSTITUTION  
(To be completed by judgment  
creditor or attorney)  
ADDRESS  
B \_\_\_\_\_

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Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice. \*\*If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.

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

\_\_\_\_\_ Social security  
\_\_\_\_\_ Social security disability (SSD)  
\_\_\_\_\_ Supplemental security income (SSI)  
\_\_\_\_\_ Public assistance  
\_\_\_\_\_ Wages while receiving SSI or public assistance  
\_\_\_\_\_ Veterans benefits  
\_\_\_\_\_ Unemployment insurance  
\_\_\_\_\_ Payments from pensions and retirement accounts  
\_\_\_\_\_ Income earned in the last 60 days (90% of which is exempt)  
\_\_\_\_\_ Child support  
\_\_\_\_\_ Spousal support or maintenance (alimony)  
\_\_\_\_\_ Workers' compensation  
\_\_\_\_\_ Railroad retirement or black lung benefits  
\_\_\_\_\_ Other (describe exemption): \_\_\_\_\_

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

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

(d) Objection to exemption claim and request for hearing. A judgment creditor may object to the claim of exemption by moving for an order pursuant to section fifty-two hundred forty of this article. The judgment creditor must serve the banking institution and the judgment debtor with its motion papers within eight days after the date postmarked on the envelope containing the executed exemption claim form or the date of personal delivery of the executed exemption claim form to the banking institution, and the provisions of paragraph one 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. The judgment debtor shall be served at the address provided on the exemption claim form. The affirmation or affidavit in support of the motion shall demonstrate a reasonable belief that such judgment debtor's account contains funds that are not exempt from execution and the amount of such nonexempt funds. The executed exemption claim form shall be attached to the affirmation or affidavit. The affirmation or affidavit shall not be conclusory, but is required to show the factual basis upon which the reasonable belief is based. The hearing to decide the motion shall be noticed for seven days after service of the moving papers. The executed

exemption claim form shall be prima facie evidence at such hearing that the funds in the account are exempt funds. The burden of proof shall be upon the judgment creditor to establish the amount of funds that are not exempt. The court shall, within five days of the hearing, issue an order stating whether or not funds in the account are exempt and ordering the appropriate relief. The judgment creditor or its attorney must serve the order on the banking institution and the judgment debtor no later than two business days after the court issues the order.

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

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

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

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

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

(a) Form. An execution shall specify the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount due thereon and it shall specify the names of the parties in whose favor and against whom the judgment or order was entered. An execution shall direct that only the property in which a named judgment debtor or obligor who is not deceased has an interest, or the debts owed to the named judgment debtor or obligor, be levied upon or sold thereunder and shall specify the last known address of that judgment debtor or obligor. An execution notice shall state that, pursuant to subdivision (1) of section fifty-two hundred five of this article, two thousand five hundred dollars of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in paragraph two of subdivision (1) of section fifty-two hundred five of this article, is exempt from execution and that the garnishee cannot levy upon or restrain two thousand five hundred dollars in such an account. An execution notice shall likewise state that pursuant to subdivision (i) of section fifty-two hundred twenty-two of this article, an execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the

Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Where the judgment or order was entered in a court other than the supreme, county or a family court, the execution shall also specify the date on which a transcript of the judgment or order was filed with the clerk of the county in which the judgment was entered. Where jurisdiction in the action was based upon a levy upon property or debt pursuant to an order of attachment, the execution shall also state that fact, describe all property and debts levied upon, and direct that only such property and debts be sold thereunder. Where the judgment or order was recovered for all or part of a mortgage debt, the execution shall also describe the mortgaged property, specify the book and page where the mortgage is recorded, and direct that no part of the mortgaged property be levied upon or sold thereunder.

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

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.

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

(e) Notwithstanding the provisions of subdivision (a) of this section, if direct deposit or electronic payments reasonably identifiable as

statutorily exempt payments as defined in paragraph two of subdivision (1) of section fifty-two hundred five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the execution notice was served on the garnishee banking institution, then a garnishee banking institution shall not execute, levy, attach, garnish or otherwise restrain or encumber two thousand five hundred dollars in the judgment debtor's account. Notwithstanding the provisions of subdivision (a) of this section, an execution shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subsection shall be construed to limit a banking institution's right or obligation to restrain, remove or execute upon such funds from the judgment debtor's account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment, or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(f) Fee for banking institution's costs in processing a levy by service of execution when account contains only exempt, direct deposit or electronic payments. In the event that a banking institution cannot lawfully garnish or execute upon on a judgment debtor's banking institution account or funds are garnished or executed upon in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.

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

§ 8. Severability. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the

remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A8527A

Rev. 6/11/08

**SPONSOR:** Weinstein (MS)

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to restraint, execution, income execution and levy procedures

**PURPOSE OR GENERAL IDEA OF BILL:** To create a procedure for the execution of money judgments on bank accounts.

**SUMMARY OF SPECIFIC PROVISIONS:** Section 1 of the bill would amend CPLR 5205 which delineates the personal property which is exempt from the execution, of a money judgment. It would include within the list of exempt personal property the first \$2,500 in a bank account when the account contains exempt funds which have been directly or electronically deposited within the last 45 days. This amount will be subject to an annual adjustment for inflation which will be published by the New York State Banking Superintendent on its state website.

Section 2 of the bill would amend CPLR 5222 (b), (d), and (e) which govern the restraining notice form used for the enforcement of money judgments. It will amend the form to make clear that certain funds are exempt.

Section 3 of the bill would amend CPLR 5222 by adding a new subdivisions (h), (i), and 0). New subdivision (h) would make clear that the first \$2,500 in a bank account cannot be restrained when the account contains exempt funds which have been directly or electronically deposited within the last 45 days.

New subdivision (i) would make clear that an amount equal to two-hundred and forty times the minimum wage and cannot be restrained except such part that a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependants. This exemption from money judgments reflects current law since 60 days wages are currently exempt from the execution of a money judgment see CPLR 5205 (d)(2). Case law provides that the debtor does not lose such exemption when such wages are deposited into a bank account.

New subdivision (j) would make clear that a banking institution cannot assess a fee if it is served with a restraining notice and the bank account cannot be lawfully restrained or it is restrained in violation of the CPLR.

Section 4 of the bill adds a new CPLR 5222-a to create a procedure in regards to exempt funds.

New subdivision (a) sets the applicability and requires all persons to comply with the new procedure.

New subdivision (b)(1) requires persons to serve the banking institution with two copies of the restraining notice, an exemption notice and two copies of the exemption claim form. Subdivision (b)(2) requires persons seeking an execution by levy to serve the banking institution with two copies of the restraining notice, an exemption notice and two copies of the exemption claim form.

New subdivision (b)(3) requires the banking institution to serve the judgment debtor within two days of receipt of the restraining notice with the copies of the exemption notice and exemption claim forms provided to the banking institution by person seeking restraint or levy. It shall be sent by first-class mail to the last known address of the debtor.

New subdivision (b)(4) creates the exemption notice and exemption claim forms.

New subdivision (c)(1) requires the judgment debtor who is claiming an exemption to complete the exemption claim forms and return them to the banking institution and judgment creditor within 20 days.

New subdivision (c)(2) requires a banking institution served by a judgment debtor with an exemption claim form to notify the judgment creditor forthwith. New subdivision (c)(3) requires a banking institution to release funds to a judgment debtor eight days after being served with a completed exemption form unless the judgment creditor has interposed an objection.

New subdivision (c)(4) sets forth the options open to a judgment creditor who is served with an exemption claim form by the judgment debtor and how to proceed.

New subdivision (c)(5) provides that the banking institution may subject the funds to restraint or execution after 25 days if the judgment debtor does not respond to the service of the exemption notice and exemption claim forms.

New subdivision (d) creates a procedure for a judgment creditor who objects to a judgment debtor's claim of exemption and wishes to contest the judgment debtor's claim of exempt funds. It creates an expedited court procedure to determine whether or not the funds are exempt.

New subdivision (e) sets forth the duties of the banking institution where a judgment creditor has interposed an objection to a judgment debtor's claim of exemption.

New subdivision (f) provides that during the procedure to determine whether or not the funds are exempt, either the judgment creditor or the judgment debtor may send a written directive to the banking institution to release the funds to the other party.

New subdivision (g) permits a judgment debtor to counterclaim against a judgment creditor who disputes a judgment debtor's claim of exempt funds in bad faith or who has actual knowledge that the funds are exempt.

Section 5 of the bill amends CPLR 5230 (a) which sets forth the contents of the form of the execution for the enforcement of a money judgment. Conforming amendments are made to the form to reflect the changes made by this act regarding exempt funds.

Section 6 of the bill amends CPLR 5231 (b) which governs the issuance of the income execution for the enforcement of a money judgment. It amends it to make clear that the New York State minimum wage is applicable to the exemption contained therein.

Section 7 of the bill amends CPLR 5232 which governs a levy upon personal property. It adds three new subdivisions (e), (f)" and (g).

New subdivision (e) reflects conforming amendments to reflect the changes made by this act regarding exempt funds.

New subdivision (f) would make clear that a banking institution cannot access a fee if it is served with a levy by service of execution on a bank account and the bank cannot be lawfully garnish or execute against the account or it is garnished or executed against in violation of the CPLR.

New subdivision (g) would require that the person serving the levy by execution include an exemption notice and two copies of the exemption claim form along with the execution.

Section 8 of the bill is a Constitutional severability clause.

Section 9 of the bill is the effective date and provides that the bill will take effect on January 1 after becoming law.

**JUSTIFICATION:** New York and Federal laws exempt certain income from debt collection. Creditors cannot seize income such as Social Security, disability, pensions, public assistance, child support, and veteran's benefits. Federal law specifically prohibits the use of the legal system to satisfy debts from veteran's benefits, Social Security (SS), Social Security Disability (SSD), and Supplemental Security Income (SSI). For 750,000 New Yorkers, Social Security is their only source of income. New York law also exempts benefits, such as pensions, public assistance, workers compensation, unemployment insurance, as well as child support, and spousal support or maintenance. To ensure that money judgments do not render working New Yorkers unable to care for their or their families' most basic needs, New York also protects a baseline amount of every person's earnings. It exempts 90 percent of earnings deposited into a bank account within 60 days prior to the date the bank receives the restraining notice. New York law also protects from garnishment a set amount of wages which is equivalent to thirty hours per week of employment at minimum wage.

The exemption laws were enacted to ensure that safety-net income is not diverted from its intended purpose: helping the: elderly, disabled, and poor to maintain the resources needed for food, rent, medicine and other basic necessities. Despite existing law, bank accounts containing legally exempt income are frozen with "restraining notices" issued pursuant to CPLR 5222, and hundreds of vulnerable New Yorkers lose access to the funds required for basic needs. The impact on low-income New Yorkers is devastating and puts families in peril of hunger, illness, loss of utilities, eviction and further loss of their limited income to bank fees. CPLR 5222 enables creditors to ignore exemption laws by empowering them to freeze an account regardless of its contents. CPLR 5222 permits a judgment creditor's attorney to send a restraining notice to a bank holding a judgment debtor's account. Direct deposit of benefits has become nearly universal. Currently, over three million or 80 percent of all SS, SSD and SSI beneficiaries in New York receive their benefits through direct deposit, consistent with federal policy. Banks can easily identify accounts holding directly-deposited exempt income because each

electronic deposit clearly states its source.

However, under current law, CPLR 5222 makes no allowance for direct deposit of exempt funds and, instead, requires the bank to freeze the account or to risk being held in contempt of court. Only after the account is frozen, does a debtor receive notice of the restraint. Working New Yorkers are even further disadvantaged because they are given no notice that 900 of their wages from the 60 days prior to the restraint is exempt. The burden is on the account holder to show that the account contains exempt income.

In the interim, the debtor is left without any financial resources. To make matters worse, currently the CPLR provides no specific procedure for a claim of exemption, and debtors are left guessing as to how to enforce their exemption rights. This system conflicts with federal and state policy and has reached epidemic proportions in New York. Debtors often have difficulty getting an account released even though the creditor has no legal right to its contents. Banks can provide little help, as only the creditor or a judge can release the account. All too often, however, creditors ignore calls from debtors, demand a debt payment as a condition of releasing the account, or insist on proof of the exemption that an elderly, disabled or poorly-educated person may be unable to produce, even when the bank possesses the necessary proof. Moreover, using the courts to claim an exemption is complicated and extremely difficult without the aid of a lawyer. Seeking relief in court takes at least two weeks and usually longer. While the courts have pro se forms to help litigants with a range of, legal problems, there are no forms for exemption claims. In the worst cases, account holders do not understand their rights, while others give up trying to overcome the obstacles to releasing their accounts. The result is that creditors often take safety-net income from New Yorkers living on the margins. Those affected are unable to provide basic necessities for themselves and their families.

Those who regain access to their accounts discover that the bank has debited their accounts for legal processing, overdraft and bounced check fees, often totaling hundreds of dollars. For low-income debtors, such a loss often means skipping meals or forgoing medical treatment in order to pay the rent. The experience is so costly that many give up their bank accounts and revert to using expensive nontraditional financial services, including check cashing services. Numerous stories have been featured in the press regarding the seizure of exempt funds. Both the Wall Street Journal and the Christian Science Monitor have published articles which called attention to the problem.

It has become clear that a legislative solution is required. This bill would create a legal procedure by which judgment debtors are informed of which funds are exempt and provided an opportunity to assert that the funds in their account are exempt from seizure before the account is completely restrained or executed against. However, creditors will be able to restrain funds above the threshold levels and access nonexempt funds after the procedure has run its course. Connecticut and California have recently enacted similar laws to protect their most vulnerable citizens. The Assembly Judiciary and Consumer's Committees held hearings on debt collection which brought to light the serious harm caused by the inability of the system to prevent the seizure of exempt funds. This bill will resolve the problem of seizing exempt funds and allow both judgment debtors and judgment creditors to protect their rights under the law.

**PRIOR LEGISLATIVE HISTORY:** 2008: A8527A - Passed Assembly/Passed Senate. 2007: A8527/56203 - Passed Assembly/S.Rules committee

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:** None.

**EFFECTIVE DATE:** The bill will take effect January 1 after becoming law.

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