S T A T E O F N E W Y O R K

1755--A

Cal. No. 25

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sens. SCHNEIDERMAN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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:

Section 1. Section 5205 of the civil practice law and rules is amended by adding a new subdivision (o) to read as follows:

(O) THE PROVISIONS OF SUBDIVISIONS (L), (M) AND (N) OF THIS SECTION DO NOT APPLY WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY, PROVIDED THAT THE RESTRAINING NOTICE OR EXECUTION CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.".

S 2. Subdivision (l) of section 5205 of the civil practice law and rules, as added by chapter 575 of the laws of 2008, is amended 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

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

LBD07433-03-9

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. S 659 or 38 U.S.C. S 5301 OR TO ENFORCE A CHILD SUPPORT, SPOUSAL SUPPORT, ALIMONY OR MAINTENANCE OBLIGATION. 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 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(l), 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(l), 5222(e), 5222(h), 5230(a), and 5232(e), as required by CPLR section 5205(l)(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.

S 3. Section 5222 of the civil practice law and rules is amended by adding a new subdivision (k) to read as follows:

(K) THE PROVISIONS OF SUBDIVISIONS (H), (I) AND (J) OF THIS SECTION DO NOT APPLY WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY, PROVIDED THAT THE RESTRAINING NOTICE CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.".

S 4. Subdivision (a) of section 5222-a of the civil practice law and rules, as added by chapter 575 of the laws of 2008, is amended to read as follows:

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

S 5. Paragraphs 1 and 2 of subdivision (b) of section 5222-a of the civil practice law and rules, as added by chapter 575 of the laws of 2008, are amended to read as follows:

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.

S 6. Paragraphs 1 and 4 of subdivision (c) of section 5222-a of the civil practice law and rules, as added by chapter 575 of the laws of 2008, are amended to read as follows:

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.

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.

S 7. Section 5222-a of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(I) THE PROVISIONS OF THIS SECTION DO NOT APPLY WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY, PROVIDED THAT THE RESTRAINING NOTICE CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.".

S 8. Subdivision (a) of section 5230 of the civil practice law and rules, as amended by chapter 575 of the laws of 2008, 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] EXCEPT IN CASES WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY, PROVIDED THAT IN THOSE INSTANCES THE EXECUTION CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.", AN execution notice shall state that, pursuant to subdivision (l) 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 (l) 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] EXCEPT IN CASES WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY, PROVIDED THAT IN THOSE INSTANCES THE EXECUTION CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY.", 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.

S 9. Subdivision (e) of section 5232 of the civil practice law and rules, as added by chapter 575 of the laws of 2008, is amended 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 (l) 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. S 659 or 38 U.S.C. S 5301 OR TO ENFORCE A CHILD SUPPORT, SPOUSAL SUPPORT, ALIMONY OR MAINTENANCE OBLIGATION 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.

S 10. Section 5232 of the civil practice law and rules is amended by adding a new subdivision (h) to read as follows:

(H) THE PROVISIONS OF SUBDIVISIONS (E), (F) AND (G) OF THIS SECTION DO NOT APPLY WHEN THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS IS THE JUDGMENT CREDITOR, OR IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY PROVIDED THAT IN THOSE INSTANCES THE EXECUTION CONTAINS A LEGEND AT THE TOP THEREOF, ABOVE THE CAPTION, IN SIXTEEN POINT BOLD TYPE WITH THE FOLLOWING LANGUAGE: "THE JUDGMENT CREDITOR IS THE STATE OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS, AND/OR THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY."

S 11. This act shall take effect immediately.