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

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2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. RAIA, MONTESANO, FINCH, McLAUGHLIN, ROBERTS -- Multi-Sponsored by -- M. of A. CROUCH, GOODELL, KATZ, M. MILLER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the effect of restraint on judgment debtor's banking institution account

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (i) of section 5222 of the civil practice law and rules, as added by chapter 575 of the laws of 2008, is amended to read as follows:

(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. ALL OR ANY PORTION OF THIS AMOUNT DERIVED FROM THE PAYMENT BY AN INSURER OR HEALTH MAINTENANCE ORGANIZATION TO AN INSURED THAT IS LEGITIMATELY OWED BY SUCH INDIVIDUAL TO A HEALTH CARE PROVIDER FOR SERVICES RENDERED SHALL BE EXCLUDED FROM SUCH CALCULATION. This amount shall be equal to seventeen hundred sixteen dollars on [the effective date of this subdivision] JANUARY FIRST, TWO THOUSAND NINE, 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. S 659 or 38

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

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U.S.C. S 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.

S 2. This act shall take effect immediately.