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State Legislature passes bill giving pensioners better shield from creditors

By Jonathan D. Epstein NEWS BUSINESS REPORTER

Consumer advocates are lauding the state Legislature's passage of a bill that automatically protects the first \$2,500 in a consumer's bank account from being frozen by creditors if the consumer gets Social Security benefits by direct deposit.

The advocates say the measure will help guarantee that low-income consumers who depend on government benefits can still afford to live and pay their routine bills, even when creditors come calling on their bank to "restrain" their accounts in preparation for seizure.

"That's going to be of great benefit, particularly for older folks who are on Social Security and so forth," said Kathleen Lynch, senior litigation attorney at the Western New York Law Center in Buffalo. "That's a great source of relief for people who have relied on that income but couldn't pay bills because the money was frozen."

The "Exempt Income Protection Act," sponsored by Sen. Dale Volker, R-Depew, was approved by both the state Senate and Assembly last week in response to repeated complaints that creditors, their law firms and banks were freezing money that was supposed to be exempt from seizure, and not lifting the holds until the consumer could fully document their claim.

Such actions, frequently cited by consumer advocates and reported on by media outlets including The Buffalo News, would leave consumers unable to touch their money for weeks or months, and helpless to pay expenses such as rent or utilities. In some cases, critics said, the creditors stretched out the process, using the freeze as leverage to pressure consumers into making payments.

But creditors' attorneys say such claims of abuse are few and far between, and asserted that the existing system worked well. And they said the bill's proposed new protections are much too generous, while its new forms and process for proving exemptions are too onerous.

"Basically, we feel that it's too complicated," said Eric M. Berman, an attorney from Babylon and president of the Commercial Lawyers Conference of New York. "The debtor, the banks, the creditor and the creditor's attorney really have to jump through hoops, even if the money doesn't have to be touched."

The bill has not yet been signed by Gov. David A. Paterson, who has not indicated his position. Spokesman Morgan Hook said the governor deliberately keeps silent to allow those in support or opposition to express their views.

"We really hope that he's going to sign it and we expect that he will. I don't know of any reason why he wouldn't," said Claudia Wilner, staff attorney at the Neighborhood Economic Development Advocacy Project in New York.

The legislation represents another effort by lawmakers in New York and elsewhere to provide more protection for average Americans in the wake of the national mortgage crisis and other scandals that have revealed abuses of consumers.

Under federal and state law, income cannot be seized to pay creditors if it's from Social Security, Social Security disability, Supplemental Security Income, welfare, veterans benefits, unemployment insurance, pension and retirement payments, disability benefits, workers' compensation, child support, alimony, railroad retirement and Black Lung benefits.

Nearly 3.5 million New Yorkers get Social Security or SSI, while many more get other benefits, advocates note. New York also protects 90 percent of income earned within the prior 60 days.



News file photo
Kathleen Lynch, an attorney at the Western New York Law Center, applauds the state bill that would in many cases prevent the first \$2,500 in pensioners' bank accounts from being frozen in debt

But unless such payments are the only source of income in a bank account, creditors and banks say, it is difficult to determine and prove what money is protected once it is mingled. So rather than figure it out, banks freeze all accounts of a customer when a creditor's attorney presents them with a court order they must comply with.

That puts the burden on the consumer to prove the money is exempt — an arduous process.

To address the problem, the new legislation would protect the first \$2,500 in an account when any exempt money has been deposited electronically within the past 45 days.

If the consumer doesn't have protected money, the bill would still prevent the first \$1,716 from being frozen — equal to 30 hours of minimum wage a week for eight weeks. That reflects the state exemption for wages, and the state's \$7.15 minimum wage. Smaller bank accounts can't be frozen at all.

"The creditors can no longer ignore the exemption laws and just freeze the accounts," said Nicole R. Blackwell, staff paralegal at Legal Services for the Elderly, Disabled and Disadvantaged of Western New York.

The bill calls for the \$2,500 threshold will be adjusted for inflation by the state banking superintendent every three years, beginning April 1, 2012. The lower threshold will rise to \$1,740 on July 24, 2009 — when the federal minimum wage rises to \$7.25 an hour — and will similarly increase with the minimum wage.

The bill also changes state law to allow no more than two restraining notices per year per bank account. The law currently allows more than one notice with court approval and no limit. And it prohibits a bank from charging a fee to customers if it can't freeze the account or a freeze violates the law.

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