



# **NEW YORKERS FOR RESPONSIBLE LENDING**

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## **Exempt Income Protection Act**

### **Model Bill Summary:**

- **Protects Social Security and other exempt funds from seizure by creditors when deposited into a bank account.**

*Explanation:* To ensure that the basic needs of senior citizens, people with disabilities, and families are met, the bill protects New Yorkers from losing complete access to their banked funds up to \$2,500, when their bank accounts contain directly deposited funds from sources that creditors are not permitted to take under federal and state law, such as Social Security, disability, pensions, and Public Assistance, and up to \$1,716, when their bank accounts contain earned income.

- **Simplifies procedures for the release of restraints on bank accounts with exempt funds.**

*Explanation:* Creditors can more efficiently release accounts containing exempt funds, and low-income persons can access more quickly their needed funds.

- **Significantly reduces litigation for minor debts, which is flooding the overburdened NYS court system.**

*Explanation:* Courts will not have to act as adjudicators of exemption claims when creditors seek to freeze bank accounts containing minimum and statutorily exempt funds.

- **Promotes banking among low-income persons by safeguarding exempt funds.**

*Explanation:* By decreasing the risk that money exempt from execution will be wrongfully restrained, the bill allows senior citizens, disabled people, and the working poor to use banks without fear that they will lose access to funds that are lawfully theirs.

## **Exempt Income Protection Act Memo:**

**Title of the Bill:** "Exempt Income Protection Act"

**Purpose of the Bill:** To ensure that low-income persons can enforce their statutory exemption rights under existing New York and federal law.

**Justification:**

### ***A Surge in Seizures of Exempt Funds Has Taken a Toll on Elderly, Disabled and Low-Income New Yorkers***

New York and Federal laws exempt certain subsistence income from debt collection. Creditors cannot seize income such as Social Security, disability, pensions, public assistance, child support, and Veterans benefits. Current law also exempts 90% of earned income from debt collection. 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, each day, 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. Here is how four New Yorkers were harmed under the current system:

- Ms. S and her child borrowed food and money for six weeks when Ms. S's bank account was restrained. It contained only a few hundred dollars of exempt direct deposit Social Security, which the bank acknowledged. Ms. S was unable to pay rent because of the restraint, the landlord sued her, and she had to pay the landlord's attorney \$900 to settle the case. She eventually retained a legal services attorney to lift the restraint, but the bank had already taken \$380 from her \$875 Social Security check for bounced check and other fees triggered by the restraint.
- Ms. F is 60 years old, disabled, and subsists on a total monthly income of \$700 in Social Security. Her account containing only direct deposit Social Security was frozen. Following the instructions on the notice of debtor's rights that she received with the restraint, she contacted the creditor's attorney. The attorney's staff was rude, demanding, and unwilling to lift the restraint without proof that the funds were exempt. The process for proving the exemption was too complicated for Ms. F to understand. The stress was so great that Ms. F was hospitalized for three days. Eventually, a legal services lawyer got the restraint lifted, but only after Ms. F had lost about a sixth of her monthly check in bank fees.

- Ms. M, a single mother with a full-time job, earns \$1600 a month. As a result of identify theft, an \$800 judgment she'd had no notice of was entered against her and her bank account was restrained. The account consisted of exempt wages from the last sixty days. The restraint lasted for six weeks, causing her to be late on a number of bills: rent, credit card, life insurance, and phone. The bank assessed fees because of the restraint. Unable to resolve the matter with the bank and the creditor's lawyer, she retained a legal services lawyer who got the account released. All in all, Ms. M lost a week's income -- \$400 -- in lost wages and fees.
- Mr. L is 62 years old and disabled due to a heart attack. He is largely homebound, and lives on less than \$700 a month in Social Security and pension benefits. When Mr. L began receiving letters from debt collectors, he worried that his creditors would seize his exempt income, leaving him unable to pay his rent and medical expenses. Mr. L asked his bank whether it could protect his exempt income from creditors. A bank employee stated that if the bank received a restraining notice, it would have no choice but to freeze Mr. L's exempt funds, and that it would most likely take Mr. L three to six months to obtain their release. Mr. L cancelled his direct deposit and closed his bank account. He now spends \$57 each month to cash his check -- \$27 on check cashing fees and \$30 on a car service. (Mr. L is unable to walk the three blocks to the closest check casher).

The Exempt Income Protection Act would prevent these New Yorkers and others like them from facing eviction, hunger, and illness because of a wrongful bank account restraint.

### ***Federal and New York Law Exempts Safety-Net Income from Creditors***

Federal law specifically prohibits the use of the legal system to satisfy debts from Veterans 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 equivalent to thirty hours per week of employment at minimum wage.

## ***How Exempt Funds In Bank Accounts Are Wrongfully Restrained***

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. (Most other states require the creditor to obtain a court order before seizing a bank 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. Nevertheless, 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 90% 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. Debtors are left guessing as to how to assert their rights, as the CPLR provisions for lifting a freeze are difficult to utilize without legal assistance.

The system conflicts with federal and New York State's policies of protecting certain funds from forcible collection to satisfy a judgment. As the stories above illustrate, these legal and public policy failures take a human toll.

The problem has reached epidemic proportions in New York. Rising consumer debt coupled with increasingly aggressive debt collection practices mean more New Yorkers have judgments entered against them – often without their knowledge. In addition, in 2000, the CPLR was amended giving judgment creditors a uniquely powerful tool, allowing them to more easily track down bank accounts through electronic discovery and service of restraining notices. Today, a typical bank in New York processes about 500,000 restraining notices annually, a third more than in 2001. Consequently, any New Yorker with an unpaid debt of even a few hundred dollars is likely to have her bank account frozen even if her account contains exempt funds.

## ***The Current System Unnecessarily Burdens New Yorkers Living on the Margins***

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.

### **Summary of Bill Provisions:**

This bill is intended to fill these gaps in the following ways. First, the proposed amendments to the CPLR will ensure that New York's restraint and levy process does not reach funds that government provides to fulfill the basic needs of our most vulnerable neighbors. Following procedures enacted in Connecticut and California, the amendments create a process by which up to \$2450 in any bank account with an electronic deposit of exempt benefits in the last 45 days will remain available to the beneficiary to provide for basic needs. These changes will protect the millions of New Yorkers who receive direct deposit federal payments, many of whom live from check to check without any other income or assets, in addition to recipients of Public Assistance, Workers Compensation, Unemployment Insurance, Child Support, and Spousal Support or Maintenance.

Second, the proposed amendments simplify the process of claiming non-direct deposit exemptions. The proposed procedure is modeled after exemption procedures used in other states, including Connecticut, California, Virginia and Minnesota. These procedures protect the neediest populations in those states. The procedures will apply when an individual's account is attached by a restraining notice under CPLR 5222 or a marshal's execution under CPLR 5232.

Third, the proposed amendment enforces New York's wage exemptions by automatically exempting an amount held in bank accounts equal to the existing exemption for wages deposited into bank accounts at the lowest wage amount possible – assuming a person earns New York's minimum hourly wage. Finally, the proposed amendments will bring the base dollar value of earnings exempt from garnishment into modern times by updating the law to increase the limit to thirty times New York's minimum hourly wage, not just the federal minimum wage, so that consumers are given the full benefit of New York's minimum wage laws where New York's minimum wage exceeds that imposed by federal law.

**Conclusion:**

With the surge in consumer debt in recent years and the uniquely powerful debt collection tools in New York, the legally protected, safety net income of many New Yorkers is threatened more than ever. Already living on the margins, the people affected are among the least able to assert their rights against creditors' attorneys and banks. The proposed legislation addresses the problems of lack of oversight in the current restraint and levy process, and ensures that New Yorkers are not unfairly or improperly denied access to needed income that is already supposed to be protected by state and federal law.

**Prior Legislative History:** None.

**Fiscal Implications:** The proposed legislation will require training of court personnel on how to assist with and process exemption claims, but will reduce filings by debtors in cases with a minimum amount at stake or where funds are clearly exempt.

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New Yorkers for Responsible Lending (NYRL) is a state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL is committed to fighting predatory practices in the financial services industry through policy reform, education and outreach, research and direct services. NYRL's 138 members represent community financial institutions, community-based organizations, affordable housing and first-time homebuyer groups, advocates for seniors, legal services organizations, and community reinvestment, fair lending, and consumer advocacy groups.