

Legislative History for Connecticut Act

SB 1274 PA 352 1981

House 1092, 6323-6333 (12p)

Senate 609, 2548-2549, 2579-2580,
4758-4759, 4783-4784 (9p)

Banks 522-523, 529-530, 536-537,
539-561, 563-573 (38p)

LAW/LEGISLATIVE REFERENCE
DO NOT REMOVE FROM LIBRARY

total 59 p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

Connecticut State Library
Compiled 2012

H-279

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1981

VOL. 24
PART 4
1075-1417

House of Representatives

Thursday, March 19, 1981 9

kbb

CLERK:

Senate Bill No. 1174, AN ACT CONCERNING AGREEMENTS BETWEEN THE CONNECTICUT ALCOHOL AND DRUG ABUSE COMMISSION AND OTHER STATE AGENCIES. The Committee recommends a change of reference to Committee on Government Administration and Elections.

ACTING SPEAKER MARKHAM:

So ordered.

CLERK:

Substitute Senate Bill No. 1244, AN ACT ESTABLISHING A COMMISSION TO STUDY STERILIZATION IN CONNECTICUT. The Committee recommends a change of reference to the Committee on Public Health.

ACTING SPEAKER MARKHAM:

So ordered.

CLERK:

Senate Bill No. 1274, AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION. The Committee recommends a change of reference to the Committee on Judiciary.

ACTING SPEAKER MARKHAM:

So ordered.

CLERK:

Business from the Senate for purposes of straight change of reference.

H-294

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1981

VOL. 24
PART 19
6296-6582

The person seated in our gallery or entering our gallery are quite a few constituents of mine from Wesley School in Middletown, we have a number of people here today to observe for a while the proceedings of the state legislature and I'm sure if those of them who are seated will rise, the House will give them all our usual warm welcome.

DEPUTY SPEAKER FRANKEL:

Will the Clerk please return to the call of the Calendar.

CLERK:

Calendar No. 597. Substitute for Senate Bill No. 1274.

AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION.

Favorable Report of the Committee on Judiciary.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance of the Joint Committee's favorable report and passage of this bill. Will you remark, sir?

REP. TULISANO: (29th)

Mr. Speaker, the Clerk has an amendment, LCO 7036. I would ask that he please call and I be allowed to summarize.

DEPUTY SPEAKER FRANKEL:

The Clerk has an amendment LCO No. 7036, designated House Amendment Schedule "A". Will the Clerk please call the amendment.

CLERK:

LCO No. 7036, designated House Amendment Schedule "A", offered by Rep. Gilligan of the 28th District.

REP. TULISANO: (29th)

Mr. Sepaker, permission to summarize.

DEPUTY SPEAKER FRANKEL:

The gentleman seeks leave of the Chamber to summarize the amendment in lieu of Clerk's reading. Is there objection? Hearing none, you may proceed.

REP. TULISANO: (29th)

Mr. Speaker, the amendment clarifies a couple of matters in the file copy before a bank might be liable. It clarifies as liable only to those monies that were paid out which were not subject to -- that were not exempt monies. In other words, if they paid out exempt monies, they would be liable for that but for no other monies under the file copy, which clarifies that language.

It also gives banks \$8 on a process of papers which are

required under the file copy rather than \$5, and it also limits their liability as I had already indicated, and other technical changes to clarify the language in the file copy and a few other items that are substantive, although technical, for clarification, and I move adoption of the amendment.

DEPUTY SPEAKER FRANKEL:

The question is on adoption of House Amendment Schedule "A". Will you remark on its adoption?

REP. HANLON: (70th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Neil Hanlon.

REP. HANLON: (70th)

Mr. Speaker, just one question, through you, to Rep. Tulisano.

DEPUTY SPEAKER FRANKEL:

Please state your question, sir.

REP. HANLON: (70th)

Through you, Mr. Speaker. The amendment indicates the order --

(Tape becomes inaudible)

DEPUTY This is not an appeal as to whether or not a debt is due. The appeal is only asking whether there were certain executions whether those monies that were not subject to execution could be paid out. It is an actual finding. It is not an appeal on law. It is a matter of just the pure facts. I think that that risk is willing to be taken by anybody at that point in time.

DEPUTY SPEAKER FRANKEL:

you? Rep. Hanlon.

REP. HANLON: (70th)

Mr. Speaker, just one follow up through you. Then if the bank pays out during that seven day period then if, through you, then if the bank pays out during that seven day period it does so at its own risk and may not be reimbursed.

DEPUTY SPEAKER FRANKEL:

with Rep. Tulisano.

REP. TULISANO: (29th)

tho Through you, Mr. Speaker. That's correct. The file copy says, however, the defendent also makes it clear, however, they would not be liable for any consequential damages for that amount of money.

REP. HANLON: (70th)

Thank you, Mr. Speaker.

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

One question relates to the amendment. It goes back to the file copy also although I noticed on line 183 to line 29 of the amendment there is a fee which is being increased in the amendment from \$5 to \$8. What is the reason for that, through you?

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. It is the process of working out this bill so when it came out of Committee, the \$5 fee as in the file copy was something sent arbitrarily. The discussion with banks, they felt that they might be losing some, in fact, losing some money during that period of time and initially I thought \$8 or \$10 might be okay.

We put in \$5 for the file copy and some of the banking representatives indicated that with the work being done, \$8 would be proper and that's the reason why.

REP. VAN NORSTRAND: (141st)

Through you, the entire Section 2 if I understand it of the bill is new including M which is being amended by that section. What is the fee charge now?

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano, will you respond?

REP. TULISANO: (29th)

REP. Through you, Mr. Speaker. This whole system doesn't exist now. They just pay out money. If an execution is served, under the system set up now because of the constitutionality of the issue of constitutionality of their existing statute being raised, this sets out a system by which the banks will have to start notifying parties, filing with the courts certain documents of party's response and notice.

And this sets up giving the banks certain obligations when executions are served on them. Right now, they just pay out the money and they don't get paid for that and they don't raise any questions. That practice has been questioned in our courts.

Now this will require them to notify the person for whom funds are being executed on that an execution is pending and notify them where they can make a claim if they have exempt funds and if they don't have exempt funds, then they notify the person with the execution they can get the money. If they do, they file something with the court. So the process can continue. So right now they get nothing and this is for compensating for the new work they are doing.

REP. VAN NORSTRAND: (141st)

Through you, because the Section 2 imposes substantially different burdens?

REP. TULISANO: (29th)

Through you, Mr. Speaker, that is absolutely correct. And one of the issues raised in the development of the bill was whether it would put the burden, frankly, on the court system which we may not be able to do or which level was going to be imposed on. Through negotiations and discussions, this was a level that seemed to be most easily dealt with and that's why it's at that bank level.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Through you, as I understand it, then, not just because of the amendment but other than it changes the dollar amount, this is recoverable by the creditor against the debtor who ends up paying.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. That's absolutely correct. It's taxable cost.

REP. VAN NORSTRAND: (141st)

Thank you.

DEPUTY SPEAKER FRANKEL:

Will you remark further on House Amendment Schedule "A"?
If not, all those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed nay.

The ayes have it. The amendment is adopted and it is ruled technical.

House Amendment Schedule "A":

In line 125, delete the word "the" before "twenty", and after the word "days" and before the comma insert the words: "of the date the banking institution sends a copy of the exemption claim form or notice of exemption to the clerk of the court"

In line 144, after the period insert "The order of the court may be implemented during such seven day period, unless stayed by the court."

In line 182, delete the word "Each" and insert the words: "If there are monies to be removed from the debtor's account, prior to the removal of such monies pursuant to subsection (c) of this section the"

In line 183, after the word "the" insert the words "serving officer as representative of the" and delete the word "five" and substitute in lieu thereof the word "eight"

In line 192, before the comma insert the words "for the amount of nonexempt monies which it failed or refused to pay over"

In line 198, after the word "pays" insert the word "exempt"

In line 202, before the period insert the words "for any exempt monies so paid"

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill as amended by House Amendment Schedule "A"?

REP. TULISANO: (29th)

REP. Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

I think in the discussion of the amendment we would like to clarify that the reason for this bill is because of our existing statute is being questioned, that everybody believes that there is a need for it. Everybody in the industry, creditors and debtors and I move for passage of the bill as amended.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill? If not, would the staff and guests please come to the well of the House. Would the members please take their seats. The machine will be opened.

The House of Representatives is now voting by roll. Would the members please return to the Chamber. There is a roll call vote in progress in the hall of the House. Would the members return to the Chamber immediately.

REP. Have all the members voted? If so, the machine will be locked. The Clerk will take a tally.

DEPUTY Would the Clerk please announce the tally.

REP. BUCKLEY: (41st)

vote Sorry.

DEPUTY SPEAKER FRANKEL:

Rep. Buckley.

REP. BUCKLEY: (41st)

Excuse me. Could I please cast my vote in the affirmative. Sorry, Mr. Speaker. May I please cast my vote in the affirmative.

DEPUTY SPEAKER FRANKEL:

DEP Would the Clerk please note.

REP. MURPHY: (131st)

and Mr. Speaker, in the affirmative please.

DEPUTY SPEAKER FRANKEL:

Rep. Murphy, what purpose do you rise, sir?

REP. MURPHY: (131st)

In the affirmative, please.

DEPUTY SPEAKER FRANKEL:

The Journal will so note, sir.

REP. WRIGHT: (77th)

D Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Gardner Wright.

REP. WRIGHT: (77th)

In the affirmative, please.

DEPUTY SPEAKER FRANKEL:

Would the Clerk please note that Rep. Wright casts his vote in the affirmative.

REP. GELSI: (58th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Frederick Gelsi.

REP. GELSI: (58th)

In the affirmative, please.

DEPUTY SPEAKER FRANKEL:

Would the Clerk please note. Would the Clerk please announce the tally.

CLERK:

Senate Bill 1274 as amended by House Amendment Schedule "A".

Total number voting 141

Necessary for adoption 71

Those voting yea 137

Those voting nay 4

Those absent and not voting 10

DEPUTY SPEAKER FRANKEL:

The bill as amended is passed.

S-171

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1981

VOL. 24
PART 3
605-964

Thursday, March 19, 1981

2.

roc

porated into the Senate Journal and the Senate Transcript by reference.

THE CHAIR:

If there is no objection, so ordered.

- - - - -

SENATE FAVORABLE REPORTS - Tabled for the Calendar and Printing

Insurance and Real Estate. Senate Bill 1189.
AN ACT CONCERNING INCORPORATION OF THE CML PENSION AND LIFE INSURANCE COMPANY.

Insurance and Real Estate. Substitute for Senate Bill 648. AN ACT CONCERNING INCORPORATION OF AE CASUALTY AND SURETY COMPANY,

Judiciary. Senate Bill 243. AN ACT CONCERNING POSSESSION OF FIREARMS BY LAW ENFORCEMENT OFFICIALS.

Judiciary. Substitute for Senate Bill 349. AN ACT CONCERNING EXEMPTION FROM THE USURY LAWS FOR OBLIGATIONS AND LOANS OF THE STATE AND ITS POLITICAL SUBDIVISIONS.

SENATE FAVORABLE CHANGES OF REFERENCE

Banks. Senate Bill 1274. AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION.
Referred to Committee on Judiciary.

S-176

CONNECTICUT
GEN ASSEMBLY
SENATE

PROCEEDINGS
1981

VOL. 24
PART 8
2460-2761

Tuesday, May 5, 1981

80
jgt

fine is up to a thousand dollars. It would remain the same but the possible imprisonment (?) would be raised from a maximum of six months to a maximum of one year. It also creates a new crime of falsely reporting an incident that results in serious physical injury or death. This would be a Class D felony punishable by a maximum fine of five thousand dollars and/or five years imprisonment. I'd ask, if there's no objection, that it be placed on consent.

THE CHAIR:

Hearing none, it is so ordered.

THE CLERK:

Calendar 423, File 647, Substitute for Senate Bill No. 1274. AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION with a Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Would you comment?

SENATOR OWENS:

Yes. This bill - current law requires a banking institution which owes money to pay the amount required by execution of a court judgement to the presenting officer on the same banking day. This bill would apply, the above procedure, only to the bank deposits of judgement debtors which

Tuesday, May 5, 1981

81
jgt

are not natural persons, such as corporations, etc. For the executions against the deposit of judgement debtors who are, in fact, natural persons, the bill would establish a different procedure which would, one, give the opportunity to have a hearing; two, facilitate the depositor's debt claims to certain exemptions from execution already allowed by law and, three, to require that the banks hold a natural person's money for a specified period of time rather than paying it immediately to the officer. What's happened is that sheriff would just come in, up until this time, file an execution and levy on it without notice to the depositor and without notice and this certainly amounts to due process, we haven't had due process in this area, and this amounts to due process. It's a fine piece of legislation and I would ask if there's no objection, that it be placed on consent.

THE CHAIR:

Hearing no objection, it is so ordered.

THE CLERK:

Moving to page 14 of the calendar, page 14, calendar No. 424, File 656, Substitute for Senate Bill No. 1301. AN ACT CONCERNING PROSECUTION OF VIOLATIONS OF WATER POLLUTION CONTROL LAWS with a Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I'd ask that that - I discussed that matter with Senator Skowronski and I would ask that that bill be passed retained. Is that correct? I'm sure that there's no objection to that.

Tuesday, May 5, 1981

2579

109
Jst

that have been placed on the consent calendar.

THE CLERK:

Today's consent calendar is as follows: On page 2, calendar No. 167. On page 3, calendar 239, Page 4, calendar 298 and 314. Page 5, SB518, 591, 1195, calendar 336 and 340. Page 6, calendar 342, 351. Page 7, calendar 371, 6981, SB1439, 175, 1156, 1335, HR6330, Page 8, calendar 386, 388 and 392. Page 9, calendar 396, 397, 398. Page 10, calendar 401 and 405. Page 11, calendar 407. Page 13, calendar 420, 1269, 1391, 56 SB1392, 1125, 1140, 1150, 345, 422 and 423. To page 30, calendar No. 110. Page 31, calendar 170, 171, 684, 1274, 689, 651, 1222, and 210. Page 32, calendar 219, 245. That concludes the call of today's consent calendar. 1347, 1232, 1336

THE CHAIR:

Are there any corrections? Omissions? Clerk please make an announcement for roll call.

THE CLERK:

An immediate roll call has been called for in the Senate. Will all Senators please take their seats. An immediate roll call has been called for in the Senate. Will all Senators please be seated.

THE CHAIR:

The matter before us is the consent calendar. The machine is open. Please record your vote. Senator Casey. Is Senator Casey here? He's coming.

THE CLERK:

Roll call is in progress in the Senate. Roll call is in progress in the Senate.

THE CHAIR:

Machine is closed. Clerk please tally the vote. Result of the vote.

Tuesday, May 5, 1981

110
jst

36 yea, zero nay, the consent calendar is adopted.

THE CLERK:

The Clerk has no further business.

THE CHAIR:

Senator Schnellier.

SENATOR SCHNELLER:

Mr. President, if there is no further business to come before this Chamber, I would move for adjournment at the Call of the Chair.

THE CHAIR:

The Senate will adjourn at the Call of the Chair.

SENATOR SCHNELLER:

Mr. President, as previously announced our session will begin at one o'clock tomorrow. There'll be a Democratic caucus at noon.

THE CHAIR:

Thank you.

THE SENATE WAS ADJOURNED AT 4:40 P.M.

S-183

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1981

VOL. 24

PART 15

4703-5074

Wednesday, May 27, 1981

56.

roc

I would ask if there is no objection that it be placed on the CONSENT CALENDAR.

THE PRESIDENT:

Is there any objection to Consent? Hearing none, so ordered.

THE CLERK:

Cal. 423, File 647,887. Substitute for Senate Bill 1274. AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION, as amended by House Amendment Schedule A.

Favorable report of the Committee on Judiciary. Senate passed the bill on May 5.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS: (22nd)

Yes, Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill as amended by House Amendment A.

THE PRESIDENT:

Will you remark?

SENATOR OWENS:

Yes, Mr. President. House Amendment A is technical in nature. It uses the word pays instead of

Wednesday, May 27, 1981

57.

roc

the word exempts, and it just cleans up a bill that initially that had been drafted.

I would ask that if there is no objection it be placed on the CONSENT CALENDAR.

THE PRESIDENT:

Any objection to Consent? Hearing none, it is so ordered.

THE CLERK:

Cal. 508, File 487,884. House Bill 7360. AN ACT INCORPORATING COLONIAL TITLE & GUARANTEE, INC., as amended by House Amendment Schedule A and Senate Amendment Schedule A.

Favorable report of the Committee on Judiciary. Passed the Senate on May 13.

THE PRESIDENT:

Senator Owens.

SENATOR OWENS: (22nd)

Yes, Mr. President. I move acceptance of the joint committee's favorable report and passage of the bill as amended by Senate A and House A.

THE PRESIDENT:

Will you remark?

Wednesday, May 27, 1981

81.

roc

SENATOR ZINSSER:

Mr. President, I did but the people who were here visiting had so much excitement for one day that they just couldn't take it any longer and they have left. However, I will say that the people who were here were my campaign manager, Attorney Glendaniel and some friends visiting them from West Germany who are in this country for a short period of time. Thank you, sir.

SENATOR SCHNELLER:

Will the Clerk call the Consent Calendar up to this point?

THE CLERK:

Under the heading of Disagreeing Actions,
 starting on page nine - Cal. 45, Cal. 140. Page ten - SB1152,SB970
SB518,SB872
 Cal. 167 Cal. 206. Page eleven - Cal. 289, Cal. 336, SB1110,HB6881
SB376,SB1342
 Cal. 346, Cal. 354. Page twelve - Cal. 376, Cal. 379, SB587,SB1453
SB1393,SB1318
 Cal. 392, Cal. 403. Page thirteen - Cal. 405, Cal. 414, SB1391,SB534
SB684,SB1274
 Cal. 422 and Cal. 423. Page fourteen - Cal. 508, Cal. 577. HB7360
HB6681

That concludes the CONSENT CALENDAR under the heading of Disagreeing Actions to this point.

THE PRESIDENT:

Are there any errors or omissions? The Clerk please make an announcement for an immediate roll call.

Wednesday, May 27, 1981

478A

82.

roc

THE CLERK:

An immediate roll call has been called for in the Senate. Will all senators please take their seats. An immediate roll call in the Senate. Will all senators please be seated.

THE PRESIDENT:

We are now voting on the Consent Calendar. The machine is open. Please record your vote. The machine is closed. The Clerk please tally the vote.

RESULT OF THE VOTE: 36 Yea - 0 Nay. THE CONSENT CALENDAR IS ADOPTED.

SENATOR SCHNELLER:

Mr. President, I would move for immediate trans, ah, suspension of the rules for immediate transmittal of these items that have been adopted on the Consent Calendar as some will be going down to the House and others will be going directly to the Governor.

THE PRESIDENT:

Without objection, so ordered.

Senator Schneller, is it your desire now to move on to the Unfavorable Reports on page fifteen. Is that the order?

JOINT
STANDING
COMMITTEE
HEARINGS

BANKS
PART 2
267-585

1981

1
khf

BANKS

State Capitol
Room 418
March 3, 1981
10:00 A.M.

PRESIDING CHAIRMAN: Representative Gilligan

COMMITTEE MEMBERS PRESENT:

SENATORS: Sullivan, Ballen, Morton

REPRESENTATIVES: Gilligan, Joyce, Chase,
DeMerell, Hofmeister, Onorato,
Roberti, Patton, Tripp

Cas. 1 REP. JOYCE: We'll call the hearing to order. My name is Ray Joyce, Representative from the Twenty-Fifth District, Vice Chairman of the Banks Committee. To my right here is Senator Ballen, behind me are Representatives Chase and Tripp. The first speaker this morning will be Marsha Goodman from the bank, the banking commission.

COMMISSIONER MARSHA GOODMAN: Thank you, Rep. Joyce, for the offering, for offering to let me go first. I do have a meeting back in the office. I appreciate that. There's several bills that, ah, the Commissioner has an interest in that are on this morning. All but one I can go through very quickly. I'll take them in bill order.

The first one is Bill No. 1260, An Act Concerning An Exemption From The Usury Laws for Loans By Bank Subsidiaries. Ah, the Commissioner's view is that unrealistic usury limits restrict credit and that they, they are therefore unwise. However, in this case, there doesn't seem to be any basis for offering the relief from usury only to subsidiaries from banks. Really the usury problem affects not only the lender but the borrower, particularly in the area of the bank subsidiary area, particularly in commercial loans; and it would seem wiser, in our view, to exempt all commercial loans from the usury limits, rather than exempting a lender, a bank subsidiary.

Next bill is 1274, An Act Concerning Execution Against Debts Due From a Banking Institution. What I'd like to do on this bill is not so much to even talk about the bill as

2
khf

BANKS

March 3, 1981

COMM. GOODMAN: (continued)

the circumstances of the bill existing, and, and our recommendation. Ah, there's now a case in federal court which other people here are probably more qualified to, to discuss this morning than I am, challenging the constitutionality of the present statute on the execution of deposit accounts. Our office was asked by the attorney representing the plaintiff in that case, to take a roll to try and bring the divergent interest together and lead to consensus on how to make the present act constitutional.

There is a case in another state where similar statute apparently, I, I haven't seen the statute, I've just seen the case, was held unconstitutional. Our office without having any interest in the substance of the bill, although we do have an interest in banking, took on that function and asked the committee to raise that bill. We brought the divergent interest, that is consumer lawyers, banking lawyers, the lawyer for sheriffs, lawyers in the court system together to try and work out a consensus. We didn't even participate in those meetings. Ah, the last meeting that was held, I was advised that a consensus could not be reached. When we asked the committee to raise the bill, we also indicated we would ask that the bill be boxed if a consensus could not be reached. And, ah, this morning that's what I'm asking, that the bill be boxed.

It just may be, without being critical of anyone, it just may be that in this type of legislation, a crisis is actually necessary. That is, a finding of unconstitutionality has to come before different interests can reach a consensus position. There are other people here who will be testifying on the merits of a particular draft of the bill. We're taking no position on the merits or the contents of any, of any draft.

The third bill, which is the one that I would like to testify on in a little more detail is 1288, An Act Concerning Money Order and Travelers Check Licensees. Attached to the Memorandum which was distributed from our office, which was distributed this morning is a proposed substitute bill. The original bill was raised at our request and the proposed substitute, which is more akin to what the statement of purpose says, is attached to our memo. The reason for this

March 3, 1981

MS. GAIL BOGOSSIAN-ROY: Good morning. My name is Gail Bogossian-Roy. I'm here on behalf of the Consumer Law Section of the Connecticut Bar Association. I'm speaking on 1274, An Act Concerning Execution Against Debts Due From a Banking Institution. As Marsha Goodman mentioned, the bill is, was devised in order to make, ah, Section 52357A of the General Statutes meet constitutionally requirements. Um, both Connecticut law and federal statute make certain money exempt from execution. For example, to vatter social security, veteran's benefits, alimony, and child support.

Um, 1274 is a way of making pro-, a procedure for judgment debtor to have no different hearing that his bank account, which may contain exempt funds, is being executed upon. The Consumer Law Section is interested in good law, and we're very concerned that this statute I mentioned would be unconstitutional because it doesn't provide for a notice or hearing. There are other cases in other states which have ruled similar statutes unconstitutional for those reasons. Um, in the Third, Third Circuit Court of Appeals in Pennsylvania in Thinberg vs. Sullivan, the Court ruled that Pennsylvania's Post Judgment Garnishment procedures was unconstitutional because no notice and no hearing were provided judgment debtor.

Ah, New York Supreme Court, in a case called Cole vs. Goldberger, Peterson and Hoffran, ah, the Court ruled the procedure was unconstitutional because no notice was provided. And, as Marsha mentioned, presently in Connecticut there is a case in the Federal District Court in New Haven, Moraley v. Lucas, where Alla is being, um, examined for its constitutionality. Ah, as Marsha mentioned, I, well she didn't mention that I participated, but I participated in these two meetings in which we tried to get all interested parties to reach a consensus on this bill.

No consensus was reached and it is our position now that was mainly because the banking institution were given, were made to shoulder the full responsibility, and in their view, liability for the procedures in the bill. So the Consumer Law Section, while we support 1274 in the way that it's written now, has written a substitute, hoping that all parties would be satisfied with it so we can avoid the crisis

9
khf

BANKS

March 3, 1981

MS. BOGOSSIAN-ROY: (continued)

of unconstitutionality. And this substitute takes away the responsibility from the banks. I'll tell you how, I, I handed 25 copies to, um, staff member of the substitute, I hope you'll consider it. This is how it will work. Notice would be sent from the sheriff instead of the bank to the judgment debtor. Um, the claim an exemption, the judgment debtor would return the notice, the claim exemption form, to the clerk and not to the bank, which is the way the 1274 would have it. The clerk would notify the judgment creditor of the claim, and if the judgment creditor disputed the claim, he would file Claim for Execution on the short calendar.

Um, the bank would only be responsible for removing and holding the money for thirty days, or until they received, the bank received a notice from the clerk stating that no exemption had been filed, or until a court order, as a result of a hearing, um, would tell, tell the bank what to do with the money. If no exemption is claimed, the sheriff would return to the bank, and the bank would give him the money. And if an exemption is claimed and the judgment creditor doesn't dispute it, the money would go back into the account and would be at the judgment debtor's disposal.

Now you might be inclined to box the bill because no consensus appears to be reached but, we really urged you not to do that and wait for the crisis. I know you are interested in good law, and by all accounts, this law appears to be unconstitutional. We really believe that our substitute is ratically different from the one which you have, the 1274. I hope you'll take it from there and try and reach a consensus after that. Thank you.

REP. JOYCE: Are there any questions? Thank you.

REP. GILLIGAN: Next speaker is Mr. John Shortell.

MR. JOHN SHORTELL: My name is John Shortell. I am an Assistant Vice President of The Dime Savings Bank of Wallingford, and I am here to speak in support of bill 7271, An Act to Amend the Charter of The Dime Savings Bank of Wallingford. The purpose of the Act is to modernize and streamline the Bank's Charter, originally granted in 1871, and previously amended

15
khf

BANKS

March 3, 1981

REP. JOYCE: Whereas your competitors of the subsidiary can't, can't do it. I, I'm just repeating what Rep. Patton said anyway.

MR. GLASSMAN: Right and, and many of our competitors who we work very closely with have come into Connecticut right now and have said, we can't make loans in Connecticut. Ah, because usury rates are the way they are.

REP. JOYCE: Thank you.

MR. GLASSMAN: Thank you

REP. GILLIGAN: Thank you, Mr. Glassman. Next speaker is Mary Ann McCarty.

MS. MARY ANN McCARTY: Thank you, Chairman Gilligan, Senator Sullivan. Ah, having worked on that side, I remember the importance of brevity so I will try to adhere to it. I'd like to speak briefly on three bills. The first one, I'm Mary Ann McCarty, representing the Connecticut Bankers' Association.

The first bill which I would like to address is An Act Concerning Exemption from Usury Laws for Loans by Bank Subsidiaries, 1260. Ah, I would just like the Connecticut Bankers' Association to go on record in supporting that bill, I think Mr. Glassman has covered that bill prior to my testimony.

The second bill on which I'd like to make some comments is 1274, An Act Concerning Execution Against Debts Due from a Banking Institution. I know that a lot of people have spent a lot of time on this bill. I myself have spent three hours in a meeting last Wednesday trying to reach a consensus. The banks are extremely reluctant to any administrative burden, which the bill before you and a bill that Mr. Bodowski has amended, a substitute bill, it would place a tremendous administrative burden on the banks. Whereas the banks are just, they just have the money. They are not a party to any of the action. At one point that I think should be brought out in this whole thing, as far the funds that are exempt from execution, except for direct deposit of welfare, of social security checks, of which 30% of all

16
khf

BANKS

March 3, 1981

MS. McCARTY: (continued)

the social security checks in Connecticut are handled in this manner. The bank absolutely no idea what funds are in that account because they don't know. When I get my alimony check and go and deposit it, I really don't care if it comes by check, dimes, or whatever, as long as it's negotiable and it can go into the bank. Now the bank has no idea whether that's alimony funds, a pay check, or I hit a good night at the dog tracks, or what; they don't know. So to place the administrative burden on the banks as far as sending out the notice of exemption, getting the notice back, we are firmly against.

Now Gail, who testified prior, has given me a bill this morning which does eliminate this burden to the bank in places that were the sheriff's, where we feel it logically belongs. However, I just glanced at the bill, and Gail told me that this would mean that the banks would hold the money for thirty days. Again, a road block. I don't see why the banks should have to hold the money because right now when an execution is served, that money is out of the bank within twenty-four hours at the most, by midnight the following deadline. Money is out, the customer comes in, the bank can say, I'm sorry, Sir, there was a court order, execution was served, the money is out.

If the bank has to hold that money for thirty days, we're going to have customers coming in and out of the bank wondering what's going on, wondering why they can't have their money, making deposits and withdrawals; clearly muddying the whole water. I think a compromise and a solution to that might be if upon the execution the court were in power to execute the money from the bank and the court was, therefore, mandated to set up a trustee fund into which these funds would be put until the exemption slip came back and it could determine if there were, in fact, any exempt monies in that account.

As I say, the bank can't tell if there are any, except for direct delivery, direct deposit of welfare check, the bank has no control, no idea. So, I would be, I think this bill might need a lot of study, more study than our time right now can allow for passage of a good legislation in this legislature this year.

18
khf

BANKS

March 3, 1981

- MS. McCARTY: (continued)
customers to the banks. I think any infringement on the confidentiality is a slow chipping away and, ah, we should really try to avoid that if we can. Thank you and I'll answer any questions.
- REP. GILLIGAN: Any questions of Mrs., Miss McCarty? Thank you.
- MS. McCARTY: Your welcome. Thank you.
- REP. GILLIGAN: Next speaker is Mr. Ed Mattison.
- MR. EDWARD MATTISON: My name is Edward Mattison. I'm a legal aid lawyer from New Haven, and I am the attorney for the plaintiff in the case of Moralis vs. Lucas, a case which you heard mentioned several times already. This is an action to declare the bank execution statute of Connecticut unconstitutional on the grounds that there is no way under the present act for a person who claims that their bank account is exempt from attachment or execution to make that claim. We do not have any, there is no clear mechanism under Connecticut law, whatever, for making that claim. This applies to, in most cases, we're talking about social security, people who have social security benefits, many of them received, as several of the witnesses testified, received by direct deposit.

The banks widely advertise the safety of the system, encourage people strongly, I think correctly, to deposit their money in the bank using this system of having the federal government deposit the money directly into the bank. They do not inform people that there is a possibility that that money may be taken by creditors, even though under federal and state law, it is absolutely protected from any form of legal process.

So you have a situation where, on the one hand, we have an exemption law which absolutely forbids any form of legal process to take monies out of a bank account; on the other hand, we have no mechanism whatever for that legal right to be carried out. My client was a man who worked for the city of New Haven for all of his life, he developed a rare hip disease which had the effect of rendering his hips essentially unusable. He had years of surgery, is finally

19
khf

BANKS

March 3, 1981

MR. MATTISON: (continued)

beginning to come out of it, received a lump sum social security disability check which he deposited in his bank account and, low and behold, one day wrote a check and it bounced. That was the first knowledge he had, even, that the creditor had taken the money. I tried to get his money back for him by contacting the creditor and the creditor's attorney, who told me to go to blazes, that there was no requirement on their part that they return the money and they were not about to. So I filed an action on behalf of Mr. Moralis in the federal court asking that the statute be declared unconstitutional. Now that law suit has already survived the motions of dismiss, and Mr. Moralis has one summary judgment on his claim to have his money returned.

We are presently, have pending in the court a motion for summary judgment to declare the entire Connecticut scheme unconstitutional. I don't think anybody will come up here and tell you that the defendant is going to win that motion. I mean, every case throughout the country in the last five years, which has rai-, in which this question has been raised, the statute has been declared unconstitutional. Connecticut's is worst than most. In most states there was some mechanism. The alligation was that it was inadequate, but there was some mechanism to get the money back. Connecticut has no mechanism at all. It was just, I mean, it was not ill will, it was simply overlooked when the exemption statute was passed.

Now, ah, the Third Circuit Court of Appeals, the United States Court of Appeals, confronted with a Pennsylvania statute very similar to this, declared the Pennsylvania scheme unconstitutional and forbade the, any creditor from executing on any bank account until the statute was made constitutional. If the court issues a judgment in our case, that is probably what will happen. That is, the creditors, carrying out legitimate business activities will be forbidden to use the method of bank execution until a constitutional statute is passed.

Now this kind of crisis in our view is wholly unnecessary. We do not favor, we have no particular interest in, in favoring the class of debtors over the legitimate rights of

20
khf

BANKS

March 3, 1981

MR. MATTISON: (continued)

creditors, but the effect of just letting the thing go to judgment will be to damage creditors enormously until this legislature is able to pass a bill that means constitutional standards. So, what we tried to do, as has Marsha Goodman told you, to encourage the Banking Department to try and assist all parties in coming up with a solution to this problem. The problem was, although we had many meetings, everybody, every interest group agreed that this was a serious problem, that it was very likely the court was going to ask, and that something should be done immediately. The only thing is, each interest group, as you heard already this morning, wanted the other group to handle it.

So the banks object to the administrative burden, you will hear the sheriffs, I'm sure, objecting to the administrative burden, you may hear the clerks, if they're here, objecting to the administrative burden, everyone is in favor of doing something, but opposed to taking any role themselves in solving this problem. I think this is the classic role of the legislature is in deciding, is in looking over the situation and deciding how it is going to be solved.

Now, I handed in a bill which was as close to a consensus we were able to get when we met with all the groups. We tried, for example, to deal with a problem with what would happen at the hearing when somebody made a claim of exemption. And we said, we will have, for example, last in last out. That is, we will say, we will have a rule of substantive law that, in order to determine whether monies are exempt, you just look at the bank balance at the time of the taking, and you look at the last deposits that made up that bank balance, and if that's exempt money, than we declare the money is exempt.

If those deposits weren't exempt money, than we declare that the money was not exempt. Where that's the simplest possible mechanism for dealing with that. And it's to everybody's benefit, I think, creditors and debtors alike have a clear rule, but it's only by action of this legislature that we're going to get such a clear rule. We have no objections to the bar association's proposal, although,

21
khf

BANKS

March 3, 1981

MR. MATTISON: (continued)

I doubt the sheriffs will object, um, or any other scheme. I mean, what the Court of Appeals said in Philadelphia was that there had to be three things in the constitutional law. One was, you had to give people notice that they might have a claim of exemption. You have to tell them what the mechanism is to claim the exemption and what the common exemptions are, like welfare, social security, disability payments, etc.

Second, you have to have a system which is simple enough that a person can get through it without a lawyer. That is, you have to say to the person sign here, say what it is you have to say, file it with a certain person, and that's all you have to do. It's got to be simple enough.

The third thing, it's got to be rapid. The, in Pennsylvania, the person had waited five months, waited five months before he got his money back. Um, and this, the Court of Appeals said, five months is too long, especially when you're talking about monies which, almost by definition are monies that a person needs just to live on, this is social security, welfare, disability payments, I mean, the things, these people ordinarily have no savings. This is their day-to-day monies we're talking about. Mr. Moralis, when his money was taken, went without dental care that he needed, because he could not afford to pay for it and no dentist would treat him for free.

And he was not able to get his dental care until I was able to get a court order returning that money. We certainly are willing, in closing, to meet with anybody, to discuss it with anybody, and to make any changes necessary to make this bill go in conformity with these principles that the Court of Appeals has set out. But we ask, we ask for the sake of the state, and the creditors of this state, your committee not to simply drop it and wait as Marsha Goodman said, until the crisis. Because the crisis will come before this legislature is back in session.

We have a motion for summary judgment pending now. We're having a status conference on the case on the 16th of March and we're moving right to a decision. We can't wait until next year. Thank you.

22
khf

BANKS

March 3, 1981

REP. GILLIGAN: Any questions of Mr. Mattison? I just wanted to ask. Ah, what was the, uh, rationale for requiring notice to the defendant that he was, that there are certain exemptions? What was that based on in the Philadelphia case that you referred to?

MR. MATTISON: It was based on due process. The idea that the constitution requires that people who have rights be informed of them. And that, Pennsylvania, as Connecticut does, has this elaborate list of exemptions. We have 27 in the Connecticut statute, which a person could not know about, and the court recognized that we were dealing with, mostly with poor people who don't have access to lawyers, people who don't have a lot of education, I mean, all of the plaintiffs in these cases were welfare recipients, social security recipients, SSI recipients. People who could not be expected to know what their legal rights were unless somebody told them. And that's what the courts said.

REP. GILLIGAN: Could you furnish us with a copy of that Philadelphia decision?

MR. MATTISON: Yes, I will be happy to,

REP. GILLIGAN: I would appreciate it. Thank you.
Katherine Callery.

MS. KATHERINE CALLERY: Good morning. My name is Kate Callery. I'm an attorney with the Legal Aid Society and I work in our Enfield office. I'm here to speak in favor of Bill 1274, which Mr. Mattison has just spoken about. Um, to demonstrate our support and our feelings of why we feel the bill is necessary, I'd just like to relate for you a story of a client that our office has served who is sitting with me here today.

Mr. and Mrs. Natale came into our office almost a year ago because they had had money ceased from their checking account. Mr. Natale is on, presently on social security retirement and his wife is disabled and collecting disability payments from the state. And the money they received from the government are literally their only means of subsistence. They found out that money had been taken from their account when, again, a check of theirs bounced.

23
khf

BANKS

March 3, 1981

MS. CALLERY: (continued)

Mr. Natale did have direct deposit payments from the federal government and thought his money would be protected, this exempt money. However, it wasn't. Despite the fact that he had, no one knew what the judgment against him and had repeatedly tried to contact the judgment creditors through his attorney to notify him that all he had was social security money. Nonetheless, the money was executed on pursuant to the statutes, as the statute presently reads, the banks had to turn the money over to the judgment creditor, regardless whether or not that they knew it was exempt, even if it was a direct deposit.

When Mr. Natale came to our office, we discovered, like Attorney Mattison had discovered, that there was absolutely no means in state court to seek the return of these funds. There was no mechanism that we could go through to get the money back, when the creditor's attorney refused to return it; which in this didn't do. He refused to return the \$60 that was involved. Um, we finally had to go through an attempt to intervene in the morality suit in New Haven, and begin the possibility of filing an entire separate federal law suit before we finally obtained the return of this money from the judgment creditor.

In all, it took almost nine months to get Mr. Natale's \$60 back. Although that seems like not a lot of money to many of us, to the Natale's this literally was the very means of their subsistence. They have no savings, and this was the money that they received from his retirement checks and from her disability checks, so it's very important to them to get this back, and it took an inordinately long time before the creditor finally decided to return it. The only reason the creditor did return it is because of the ongoing law suit, not because of any means that exist in the present Connecticut law.

Therefore, as Mr. Mattison said, I would urge you to pass a bill, some version of 1274, before the statute's declared unconstitutional. And people like Mr. Natale and the judgment creditor in this case were left in even more straits than they presently are. Thank you.

REP. GILLIGAN: Thank you. Any questions for Miss Callery? Mr., Rep. Patton?

24
khf

BANKS

March 3, 1981

REP. PATTON: Yes. Just so I could understand. The, the exempted funds go into a normal checking account and anybody who wishes to file for judgment process, there must be some notices involved in the judgment process itself, though, aren't there?

MS. CALLERY: At the time that the judgment is rendered, if the party was an appearing party to the court action, which is often not the case, so for our clients, for example, a notice of the judgment is sent out. But, even in that notice of judgment, there's no time or mechanism to claim any exemption. Even though the party know, even if the party knew that there was a judgment against him, there's still not a mechanism to protect what might be exempt funds that subject to execution; even at that time.

REP. PATTON: How about during the process of the, the judgment itself? In those hearings, is there any mechanism for

MS. CALLERY: Again, there's no mechanism. It might come to the judgment creditor's attention, which in fact it did in this case, in Mr. Natale's own personal negotiations. But there's no means by which, even during a hearing, a trial on the merit, the defendant can go to the judge or to the attorneys, or whatever, and say, my money is exempt, and be assured that it will be protected. There's absolutely no mechanism for that.

REP. PATTON: Thank you.

REP. GILLIGAN: Mr. Natale?

MR. NATALE: Well, I would just like to say that I hope this bill would go through to help other senior citizens because it really put me in an awful predicament there, for a few months. With my wife and I disabled for a couple of years, in and out of the hospital, it really put us down in the dumps. And when something like that come up, we just couldn't cope with it.

REP. GILLIGAN: All right, thank you. Rep. Joyce has one additional question.

REP. JOYCE: Miss Callery?

25
khf

BANKS

March 3, 1981

MS. CALLERY: Yes, Sir.

REP. JOYCE: Um, I, I really, uh, what do they have to do to claim an exemption? Isn't the money automatically exempt on the

MS. CALLERY: The problem is, I believe that there are two statutes in Connecticut at this time, this legislature saw fit many years ago to lay out an exemption statute after the federal government in terms of social security funds which is also supposed to be automatically exempt. However under the present form of the Connecticut Post Judgment Execution Statute, the banks are ordered to turn over any money that is claimed by a judgment creditor within 24 hours. So the banks either don't know the money is exempt, or even if they do know, would be violating that statute if they held the exempt money, so what there is is a conflict between the two statutes for which there is no

REP. JOYCE: Even though the money is exempt

MS. CALLERY: Even though the money is clearly exempt, and as the judge, the money is clearly exempt under both federal and state statutes and in the Moralis' case, is presently pending in federal court, the judge agreed and indeed ruled on Mr. Moralis' summary judgment that that money was exempt and had to be turned over. So I don't think there's any question or issue about the basic exemption, it's just a matter of how to claim them because these exemptions right now are going unprotected.

REP. JOYCE: And also, what would happen if this law, the present law unconstitutional, how would that, um, it still would be exempt under federal law wouldn't it? How would that affect Mr. Natale?

MS. CALLERY: Well, neither of the exemption laws are involved here. I don't think either of them would be declared unconstitutional. The one that would be declared unconstitutional is the post judgment exemption statute alone, because it doesn't protect, provide for these other exemptions.

REP. JOYCE: So, ah

MS. CALLERY: But I believe it

26
khf

BANKS

March 3, 1981

REP. JOYCE: Wouldn't that be good for you, though, I mean, how would that, ah

MS. CALLERY: Well, I believe that in the long run it probably would help none of the parties, because Mr. Mattison pointed out, it would leave things in a total state of confusion at this point. Possibly the judge would rule that no post judgment executions could be executed on, which would certainly hurt all the judgment creditors in the state.

REP. JOYCE: Other types of judgments

MS. CALLERY: Also, um, what often happens, however, in terms of judgments like that, from the federal court or whatever, the effects doesn't always trickle down to the individual parties, and I think what might happen is that some executions might still continue against exempt funds without any of the parties ever realizing it, and people might not be, um, so well informed as Mr. Natale to know to go to a lawyer about this, and they would still remain, even if everything was brought up constitutional, they would still remain unprotected, and this is one thing that we fear if the law is not changed to provide for proper notices.

REP. JOYCE: And, ah, so you would, you would accept 1274 as it is, without even revision or

MS. CALLERY: I have not had an opportunity to look at some of the new revisions that have been prepared this morning, but I strongly support some version of it that provides some sort of notice before its seizure.

REP. JOYCE: Thank you.

MS. CALLERY: Thank you.

REP. GILLIGAN: Ah, excuse me, there's one more question. Rep. Roberti?

REP. ROBERTI: One, one very quick question and you don't have to tell if you don't like it. I'd be interested to know, what was the nature of the judgment, ah, in other words, who was the creditor, was it a utility bill, was it a personal

27
khf

BANKS

March 3, 1981

MS. CALLERY: In fact, it was a medical bill because of the disability suffered by Mrs., Mrs. Natale suffers from angina incurred many medical expenses which, I think, all of you are well aware of people without good medical insurance are very often unable to pay and this is how this came about.

REP. GILLIGAN: Thank you, Miss, Miss Callery. Next speaker is Mr. James Irving.

MR. JAMES IRVING: Thank you, Mr. Chairman. My name is James Irving, I'm an attorney here in Hartford and here this morning on behalf of American Express Company to register our support, ah, subject to 1288, 1288, dealing with money forwarders travelers' checks.

American Express is the largest issuer of travelers checks and it understands the problems that Commissioners' Councils so well outlined for you and the need to assure the purchasers of money orders and travelers checks in Connecticut that they'll have some adequate protection for those funds. Some people in our office who are more familiar with these statutes than I am, they review the proposal contained in the substitute 1288, and I am here today, briefly, just to indicate the American Express supports which the bank commissioner is attempting to deal with these problems. Thank you.

REP. GILLIGAN: Thank you, Mr. Irving. Any questions? It's refreshing to hear some comments of support for a change. Mr. Larry Green.

MR. LAWRENCE GREEN: Good morning, Mr. Chairman. My name is Lawrence Green. I'm President of the Savings and Loan we have, but just briefly, um, I'd like a suggestion with respect to proposed bill number 1260, An Act Concerning Exemption From Usury Laws. Ah, the way the bill is drafted, it would exempt subsidiaries of commercial banks who use the laws, and I'd like to suggest that it, ah, the exception be extended to the subsidiaries of all financial institutions which could be accomplished merely by improving the language, ah, the new language down to line 26, it starts on line 23½.

28
khf

BANKS

March 3, 1981

MR. GILLIGAN: What line is that, Mr. Green?

MR. GREEN: Ah, starting on line 23½. New language is wholly owned subsidiary thereof, it's, I believe if you plurize subsidiary and move it to line 26, after the word federal credit union, you would include subsidiaries than of, not only commercial banks but savings and loan associations, savings banks, and ah, credit unions.

REP. GILLIGAN: Any questions of Mr. Green?

REP. PATTON: No, ah, just one. If, if we exempt the banks and all of the savings and loans, is there any reason not to exempt everybody?

MR. GREEN: No. You should, in fact, I would add support to what Marsha Goodman, I believe, suggested earlier this morning that, that you might just make a blanket exemption to everybody. Um, to, in these, this day and age, ah, any kind of usury assuming is tough to deal with.

REP. PATTON: Thank you.

REP. GILLIGAN: Thank you, Mr. Green. Next speaker is Mr. Joseph Flynn.

MR. JOSEPH FLYNN: Rep. Gilligna and Senator Sullivan, my name is Joseph Flynn. I maintain law offices at 303 Blakeley Avenue in Ansonia and I appear this morning representing the Connecticut State Sheriff's Association. I wish to address myself to the general area of discussion which is embraced in Senate Bill 1274.

With respect to this bill, it arises out of the federal court case in which I have been defending one of the defendants in which the state's execution statute is under attack. There are two types of execution. First of all, I think we ought to define it, it is a piece of paper which the clerk of the court gives to a sheriff ordering that that sheriff execute on certain goods or property or money that may be in a bank account of some person who is adjudged by the court to owe the money. There is under Connecticut law, and under common law, two different types of execution,

29
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

one is, ah, called _____ and the other is _____
If you look at the existing law, Section 52-367A of the
statute, you'll find that, while what's happening partakes
more or less of the _____, that is a direct levy
on some other property held by a third party owed to the
defendant, that if it permits a direct levy without going
through the clerk of the court for a second law suit on the
judgment, the bill as we understand it would permit a gap
in time between the time the sheriff actually brings this
piece of paper, this execution to the bank and the time the
bank releases it back to the sheriff, ah, to satisfy the
judgment.

And, on behalf of the shariffs' association, we have no
objection to that procedure. The, there are different kinds
of exemptions, as I understand the case of United States
Supreme Court case of Philpot, any kind of social security
funds, once they're deposited in the bank account, so long
as their exempt character can be traced, remain in, retain
their exempt character. So, on behalf of the sherrifs'
association, we certainly have no objection to something
which insures that happening.

We would, however, object strenuously to any proposals to
put this on the shoulders of the sheriffs, as master of
these papers. There's a practical matter, if the committee
cares to, can consult the existing sections of the statute
which deals with service of process. Those statutory sec-
tions provide that the sheriff is paid only 3% of whatever
he collects. That's his fee for making this kind of an
execution. There's a practical matter on most debts now,
it is difficult to encourage sheriffs to bother with these
executions at all. They may have to go to many banks before
they find one in which the defendant has assets, when they
get to the bank, very often, they're made to cool their
heels intormentably because noone is particularly happy to
see their arrival, it's an extra job an chore for whatever
bank officer has to handle it.

And, under the present statute, it's difficult enough, so
that the high sheriff's is a practical matter on these types
of execution, have to parcel them out among the sheriffs to
spread what, in effect, is the bad business all around equally

30
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

among those who have to serve these kinds of papers. There is under the existant statute, a requirement that the bank hold this money now for a 24 hour period. As a practical matter, that period is usually lengthened to four or five days. And the sheriff cannot go back 24 hours and get the money, in almost every case the bank mails it to him. That may be four or five or six days later. With respect to the general language that is now in 1274 certainly our association could live with that.

With me this morning are the high sheriffs of the two largest counties, New Haven County and Hartford County in terms of service of process and execution. With the committee's indulgence, I would ask that, if it is agreeable to the chairman that, ah, one of the sheriffs be available to answer any questions that the committee might have with respect to this. And I would be happy, also, to answer any questions addressed to me.

REP. GILLIGAN: Rep. Joyce.

REP. JOYCE: Mr. Flynn, I wonder, what do other states do to solve this problem? Are we unique in

MR. FLYNN: Ah, in other states there is the procedure whereby, after the judgment, if someone claims an exemption, the money is either held by the court clerk or it is held by the bank which is involved before the levy is perfected.

REP. JOYCE: So, in other words, how would this person who might not be aware of the law, how would he know about the exemption to give notice, ah, to give the notice of exemption?

MR. FLYNN: In a, in some of the statutes that I have seen, there is no requirement that the person be given notice. What the nature of his exemptions are. Certainly, from our point of view, we would have no objection to the committee incorporating that in a bill. As I understand, the real rub of some of the federal court cases that I have reseached in defending this Moralis vs. Lucas case, the real issue there is whether or not the person has the opportunity to be heard. Not whether he has to be told whether he has certain, 26 certain exemptions or not. Uh, under the present statute

31
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

there is no procedure for insuring that the exemption is left inviolate prior to his bringing any court action, because when the clerk in the court gives this piece of paper called an execution to the sheriff, there's no other notice to the defendant after that. Now, there may be several notices beforehand.

In the federal court case in which Mr. Mattison was talking about, the defendant in that case was served with the original writ, he was served with a notion, a motion for default for failure to appear, and when the plaintiff, a credit union in New Haven got judgment, he was served with a notice of that judgment. However, he was not served after the judgment with a notice that indicated that his bank account might be levied on. We have no objection if he is. The only thing we say is that it's certainly not fair to put that burden on the sheriff, because it's difficult enough to, now, to get sheriffs to go out and make these executions.

And the state, it would seem to me has some societal interest in seeing, in addition to the protection of anybody's individual rights, that there is some logical way to enforce a judgment.

REP. JOYCE: You said that the sheriff's fee is 3%?

MR. FLYNN: It's 3% of the amount collected.

REP. JOYCE: So, in the case of Mr. Natale, it's 3% of \$60, or \$1.80.

MR. FLYNN: That's correct.

REP. JOYCE: Would be what your fee

MR. FLYNN: That's correct. There are occasions when the sheriff can, by agreement with the attorney, get some more money for doing it, but the statute doesn't provide any more. And as a practical matter where you got gas at a \$1.50 or \$1.60 a gallon and you have to drive around to hold a dozen banks, it's, it's just difficult. A sheriff who was serving something, for example, on the Hartford National Bank, if he's

32
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

a sheriff from, let's say, East Windsor, which I think is in Hartford County, is it not? He would have to drive from his home, or wherever he picks up this process to the main office of the Hartford National Bank. If, when he gets there, they say there's no money, he then has to go to another one. He might have to repeat that process ten times. So, it really seems unfair to put any more on the sheriff.

REP. GILLIGAN: Ah, Mr. Flynn, ah, following up the question of notice of exempt property, where would you suggest that notice, uh, the burden of providing that notice be laid? With the court, I assume that Mr. Moralis received a notice of judgment against him. Would it be, um, proper or convenient to place a notice, ah, together with the judgment that certain, he may have certain exempt property that may be subject to execution?

MR. FLYNN: I would suggest that it should be either with the clerks of the court or the banks. Uh, either one of those two groups, because it seems to me they're best equipped to handle that situation. In the case that is been litigated so extensively in the federal court on this issue, a credit union was involved, ah, which was attempting to levy on a debt which it was owed. The money involved, however, was held in a savings bank. The existing statute requires, right now, that the bank hold the money for 24 hours. So, in terms of whether it's held for another nine days or not is a practical manner I don't think it makes any difference, because from what the sheriffs who are involved told me, they never can get the money in 24 hours as a practical manner now anyways. So that extension of time, if it's to be ten days, it would seem to me it should be with one of those two particular groups. But, uh, my, uh, other comment that I'd like to make with respect to that issue is that, no one, I think, quarrels with the right of people, some of whom may be poor, to keep their exempt funds.

And, uh, I would also urge that the committee give the bill some serious consideration, because, whatever happens in the federal court case, it seems that legislatively the existing process could be improved. There is a procedure which is not

33
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

found in any statute or court rule, which permits a person to go back into court and make a motion for the return of those funds. That was done in the Moralis Ford case and then subsequently withdrawn because the federal court action had been brought. However, there is no actual procedure in the statutes which spells it out, and ah, that's ah, certainly something the committee ought to give some consideration to, because it may well be if the statute is thrown out, no creditor in the entire State of Connecticut will be able to use that statute at all until the next session of the General Assembly.

REP. GILLIGAN: Senator Ballen.

SEN. BALLEEN: All right. Mr. Flynn, just getting back to the notice part again. I, I think you said somewhere along the line, ah, that the defendant usually does not get notice that a judgment has been entered but, in the small claims court anyway, don't they get an actual notice that a judgment has been entered telling them that, if they don't make payment within so many days that their assets, their goods and possessions, including their bank accounts

MR. FLYNN: They do, uh

SEN BALLEEN: might, in fact, be subject to, ah, execution.

MR. FLYNN: Sen. Ballen, that is correct, right on the small claims writ, uh, that is said. If I left the impression earlier that the person who is the debtor does not now get notice of the judgment, I want to correct that. In all cases, as I indicated in the Moralis vs. Lucas case, that defendant got notice of the initial law suit, he got notice by mail of the motion for default, unless he pleaded or appeared, and he also got notice of the judgment that had been entered; even though that was not a small claim's case. Uh, however, on most writs, unlike the small claim's writ, ah, when the notice of judgment comes in the small claim's case, that comes directly from the court. In the other cases, the attorney himself must mail it to the debtor. In the small claim's form, the debtor is told already that he, without further notice, may find that either his bank account or his property may be levied by execution with further notice

34
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

to him. I still don't think that if, if the court throws the execution statute out, I don't think that will be enough. I think the committee will have to give some consideration to a process where between the time of the levy and the time of the disbursement of the funds, there is some statutory procedure by which he can redeem his money that has been

SEN. BALLEEN: Well, do you think it might cure the defect if, in that notice, it also included a statement to the effect that certain of the defendant's funds might be exempt, not necessarily listing all 26 or 27 categories, which I myself don't know, but uh, listing in broad general terms that the defendant does have certain rights to certain of his funds

MR. FLYNN: I think that what the banks were concerned about, and I serve on the Banking Committee of the Connecticut Bar Association, what they were concerned about was they would assume some liability as to proper or improper legal advice if they made an attempt to summarize. My own feeling is that there, I don't really think that the due process clause of our constitution requires that the individual be detailed all of the possible exemptions he may qualify for, but certainly, whether or not the court case has decided for or against my particular client, I think there ought to be some form of procedure, statutorily, where somebody who knows he has an exemption, uh, has a procedure where he can get his money back and prove his exemption. And that kind of written procedure, either in our practice book or in our statute is now lacking.

SEN. BALLEEN: Thank you.

REP. GILLIGAN: Any questions?

SEN. SULLIVAN: Um, just let me get this straight. You don't think that the notice requirement is the crux of it until after the judgment. That's when the notice and hearing requirement, you think, would be -- in other words, what I'm trying to say is, we have to have some procedure after judgment? No, what I'm trying to get at is, supposing in the complaint, that we amended the law, as was indicated in small claim's that your bank account maybe, but supposing

35
khf

BANKS

March 3, 1981

SEN. SULLIVAN: (continued)
in the complaint we amended the law to say that, um, if a judgment is found against you for the above claim, whatever the, whatever it happens to be, your bank accounts or savings deposits or such may be executed upon unless they are exempt under state law or federal law, notice there.

Second notice, in the judgment itself. Exactly the same language. Do you think that would get beyond the crux of the unconstitutionality of our execution statute?

MR. FLYNN: No, I do not, Sir

SEN. SULLIVAN: Or do we, is there going to have to be a hearing for this man?

MR. FLYNN: I think that if the individual involved, uh, if the court rules against the existing statute, than I think the Connecticut Legislature, if it's still going to have this execution statute, uh, be viable, will have to provide for statutory procedure where the person who owed the money and had his bank account levied has the opportunity to come into court and have a hearing about whether his funds are exempt, and whether he should get them back or not. And to have that hearing, he's really got to have some notice, and this is what I think the crux is. He has to have some notice that an execution has now been levied against him.

SEN. SULLIVAN: Than where else could that notice come from besides a bank or a sheriff, in the case you're taling about.

MR. FLYNN: Well, it could come from the clerk of the court because the clerk of the court is the one who issues the actual execution to the creditor.

SEN. SULLIVAN: So then, you think that in the, the court's execution, it should be spelled out that if your bank account is executed against, you are entitled to a hearing to determine whether or not that is exempt funds?

MR. FLYNN: That's correct. That's a possible way of doing it, Senator. Yes, I think the clerk of the court could issue,

36
khf

BANKS

March 3, 1981

MR. FLYNN: (continued)

at the time of execution, he could issue to the address of the debtor a notice that two days hence, one day hence, the problem, if it's done that way, is that the creditor can go to the bank and withdraw all his money.

SEN. SULLIVAN: The, the debtor you mean.

MR. FLYNN: That's, uh, that's correct.

SEN. SULLIVAN: The debtor, and also, the problem in that case could be, also, that the sheriff then could go to the bank directly and execute and get the money within that 24 hour period.

MR. FLYNN: That's correct.

SEN. SULLIVAN: So then

MR. FLYNN: There's a practical matter

SEN. SULLIVAN: You're saying the practical matter is there has to be a hiatus between the judgment, the exe-, or the execution on the judgment and the deliver of the

MR. FLYNN: Yes, and that adds nothing to the statute now, in terms of a hiatus, there already is a hiatus, this would merely lengthen the hiatus. The reason there's a hiatus now is that you can have orders against that account. You can have outstanding checks that are in transit, that would be chargeable to that account, and that's why, I think, the existing statute has the 24 hour hiatus. Or the 24 hour deadline period. So I think there's a practical matter, if the statute is going to be changed, the way to do it is to have a notice to the debtor, from whatever bank is levied upon, indicating that this money is being held for a period of ten days, or whatever it's going to be, and that if he has any claim that the money is exempt, uh, he should file whatever process is required with the clerk of the court to get his money back.

SEN. BALLEEN: I have one more, if I may.

REP. GILLIGAN: Go ahead, Senator Ballen.

SEN. BALLEEN: Yeh, I see what you're driving at Mr. Flynn, you'd like to see the clerk of the court issue the notice to the debtor, but when the clerk of the court issues the execution, he really doesn't know what the sheriff is going to do with it, what account he's going to attach, etc. I think, really as the practical matter, it will only be the sheriff and the bank that would know which account has been attached of the debtor and they would, either the bank or the sheriff would be the only two people that would be in the position that issue a notice to the debtor, with any certainty as to just what happened.

MR. FLYNN: Well, Senator, that's possible. It's still possible to have the clerk do it, if after the money is received, after the money is executed, that money were to be deposited with the clerk. In other words, as I understand it, the principal problem here is not to see the money go south if, in fact, it is exempt.

SEN. BALLEEN: Right, except that then you're making a very complex operation out of this matter. The money has to come back to the court each time.

MR. FLYNN: That's correct. And there's another practical problem, uh, in having the sheriff do it, which I did not mention; but, very often, when the actual execution is levied on the bank account, the sheriff is not told by the bank whether or not there is money in that account at the time he levies it or not. The bank will tell him to come back a few days later, or that if there is, they will send a check. So, very often at the time the sheriff lodges that execution paper with the appropriate bank officer, he doesn't know whether, in fact, there is money there. There may be money there but it may not be subject to execution. Ah, and the reason, again, is, there may be outstanding checks against that account, and if so, those will take precedence over that levy, depending upon what stage they were in transit. So, logically speaking, with those kinds of procedural problems, it would appear that probably, unless you want to bifurcate it by having the bank mail the money or, or transmit it to the clerk of the court, that it would be the bank. Because, very often, the sheriff isn't going to know whether he's actually garnered funds or not.

38
kpp

BANKS

March 3, 1981

SEN. BALLEEN: Certainly the clerk of the court would know; probably the sheriff might not know, so really the only people that would definitely know with any certainty would be the banks.

MR. FLYNN: That is correct.

REP. PATTEN: Mr. Chairman?

REP. GILLIGAN: Rep. Patton.

REP. PATTON: Couldn't the determination of whether they're exempt funds be done all up front at the initial hearing so that you never get to the point of the execution and the delivery to the banks --

MR. FLYNN: You could do that, Rep., but what would happen -- you could do that in some cases. However, you can have a judgment that's maybe ten years old, and that still can be levied ten years later. They may have tried to get execution on that judgment for ten years. So, in the ten years that have elapsed, maybe the person who owed the money is now on social security where he wasn't ten years previously when the original court case was brought. So, the answer to your question is, yes, that could be done if you have the situation where the judgment's issued and a few days, twenty days later when the appeal period passes, they get the execution and two days later they levy. That kind of procedure might make sense. If there's a long gap of six months or a year or ten years between the time that original judgment's issued and the time it's actually levied on by execution, then it wouldn't work. You can only have one judgment in these cases, but you can have many executions issued.

If they're not satisfied within a certain time, they returned to the clerk of court. And you apply for another one.

REP. GILLIGAN: Any other questions? Thank you.

MR. FLYNN: Does anyone have any other questions? Thank you.

REP. GILLIGAN: The next speaker is Ray Pohdolsky.

39
kpp

BANKS

March 3, 1981

RAY POHDOLSKY: My name is Ray Pohdolsky. I'm a lawyer with the Legal Services Training and Advocacy Project. I will not burden you with on Bill No. 1274 much longer. It seems to me that the committee really has to decide whether it wants a bill this year or not. The concensus process broke down as has been described to you. It is not that difficult to take the basic format of a bill that we now have and choose as to whether certain peices of work in that bill go with the banks or the sheriffs or the clerks.

If the committee makes it's decision as to which way it wants those decisions to go, the drafting problems are, relatively speaking, not that difficult because the framework has already been worked out. The -- I think that if the committee wants to go with the bill, then I really urge you to knock some heads together and get people to agree on something. My own view is that administratively and rationally, the most logically system involves the banks and that is because they best have the capacity to move the paperwork. They know the current address of the debtor. They're the only ones that know the debtors current address because the execution may be based on a judgment from many years before. They have the administrative apparatus that makes it very easy to send out a -- to stick a stamp on something and send it out in the mail.

Probably, it is a toss-up if the banks are not going to be that administrative agent. Probably it's a toss-up between the clerks and the sheriffs. I think both the clerks and the sheriffs have a lesser degree of cabability-- of capacity for doing it. The sheriffs in a sense are burdened by the fact that they receive very, very low fees and so in a sense you're asking a lot for them to take on more work without really paying them more but, nevertheless, it is possible. So, I guess that my suggestion to you would be that I would say the banks -- the bank approach is the first choice, which is really the approach that Mr. Madison gave you in his bill. But, the other approaches are possible. It also seems to me that this bill is necessarily going to have to go through the Judiciary Committee because it deals with executions. And so that whatever you come out with, even if you have what is really only a tentative decision on the part of this committee, is to that extent only tentative because Judiciary is going to take a second look at it no matter what. If this committee decides that

40
kpp

BANKS

March 3, 1981

MR. POHDOLSKY: (continued)

a bill is desirable and necessary and you're not 100% sure of what the best way to do it is, then my suggestion would be go ahead, do it one way or the other, and move it on to Judiciary and let them take a second shot at it. I'm certainly willing to help with working out those problems if anyone wants me to help with that. If there are any questions, I would be happy to answer them.

REP. GILLIGAN: Any questions?

MR. POHDOLSKY: Thank you.

REP. GILLIGAN: The next speaker is Walter Gaffney.

WALTER GAFFNEY: Mr. Gilligan, Mr. Sullivan, other members of the committee, my name is Walter Gaffney. I'm Executive Assistant to the Commissioner of Human Resources, Ronald D. Manning. I'm here this morning on behalf of the Department of Human Resources in support of Bill No. 7270, An Act Concerning the Disclosure of Financial Records. The statutes of concern are 36-9k, 36-71, and in order to put the request in perspective, let me say something about our child support and enforcement program which we believe is one of the more successful programs in the state.

As of December 31, 1980, the Child Support Division had support established for over 33,000 absent parents whos families are receiving AFDC in approximately 12,000 parents of non-absent AFDC families. For the quarter ended 12/31/80, over \$3.5 million was collected for AFDC cases and approximately \$3 million for families not receiving public assistance. Collections for the past fiscal year for AFDC cases total \$13 million, for non-AFDC cases, \$12 million.

One of the key elements in this Child Support Enforcement Program is the determination of the ability to pay. Under Section 17-303 of the Connecticut General Statutes, the Department of Human Resources has in the past obtained financial disclosure from banking institutions relative to a person or persons who have applied for or are receiving aid or care from the state or are liable for the support of such applicants or recipients. However, the passage of Public Act 77-294 and 79-361 has hampered out ability to

AN ACT CONCERNING EXECUTION AGAINST DEBTS DUE FROM A BANKING INSTITUTION

Substitute for S.B. 1274, revised draft, 3/2/81

563

Section 1. Section 52-367a of the general statutes is repealed and the following is substituted in lieu thereof:

As used in this section AND SECTION 2 OF THIS ACT, the term "banking institution" means a state bank and trust company, national banking association, savings bank, industrial bank, credit union, FEDERAL CREDIT UNION, savings and loan association and federal savings and loan association. Execution may be granted PURSUANT TO THIS SECTION against any debts due from any banking institution to a judgment debtor WHICH IS NOT A NATURAL PERSON. If execution is desired against any such debt, the plaintiff requesting the execution shall so notify the clerk, and the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precincts of such officer for the payment of any debt due to the judgment debtor, and, after having made such demand, shall leave a true and attested copy thereof, with his doings thereon endorsed, with the banking institution officer upon whom such demand is made. If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall pay to such officer, in the manner and at the time hereinafter described, the amount of such indebtedness not exceeding the amount due on such execution, to be received and applied on such execution by such officer. Such banking institution shall act upon such execution according to section 42a-4-303 before its midnight deadline, as defined in section 42a-4-104. If such banking institution fails or refuses to pay over to such officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action

therefor to the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution.

Section 2. (NEW) (a) Execution may be granted pursuant to this section against any debts due from any banking institution to a judgment debtor who is a natural person except to the extent such debts are protected from execution by sections 52-352a, 52-352b, 52-352c, 52-354, and 52-361 of the general statutes, as well as any other laws or regulations of this state or of the United States which exempt such debts from execution.

(b) If execution is desired against any such debt, the plaintiff requesting the execution shall so notify the clerk, and the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precincts of such officer for the payment of any such non-exempt debt due to the judgment debtor, and, after having made such demand, shall leave a true and attested copy thereof, with his doings thereon endorsed, with the banking institution officer upon whom such demand is made. ~~The clerk shall~~ Such execution shall contain a direction that the officer serving the same shall obtain the judgment debtor's last known address on the records of the banking institution from the banking institution officer upon whom such demand is made, and shall mail forthwith a copy of the execution and an exemption claim form prescribed by this section to the judgment debtor at the address provided him by the banking institution, postage prepaid, by registered or certified mail, return receipt requested, and that return of such service shall be made to the court.

(c) If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall remove from the debtor's account the amount of such indebtedness not exceeding the amount due on such execution before its midnight deadline, as defined by section 42a-4-104, and shall hold the amount removed for thirty days from the date the execution was presented to the banking institution or until an execution verification as prescribed by this section is received, or until a court order regarding disposition of the funds is received, whichever occurs earlier.

(d) Upon receipt of the execution from the serving officer, the banking institution officer upon whom such demand is made shall provide to such serving officer the judgment debtor's last known address as it appears on the records of the banking institution.

(e) To claim an exemption, the judgment debtor may give notice of a claim of exemption by delivering to the clerk of the court which issued the execution, within ten days of the date of the execution, the exemption claim form, by mail or other means, the exemption claim form or other written notice that an exemption is being claimed.

(f) Upon receipt of an exemption claim form, the clerk shall enter the appearance of the judgment debtor with the address set forth in the exemption claim form. The clerk shall forthwith send file-stamped copies of the form to the judgment creditor and judgment debtor with a notice stating that the disputed assets are being held and judgment debtor must, within seven days of the date of filing upon the banking institution, present the notice, claim its execution for a short calendar hearing with notice to the judgment debtor. If the judgment creditor claims its execution for short calendar, the court shall hold a hearing on such claim within seven days of the date upon which the short calendar claim was filed.

The claim of exemption filed by said debtor shall be prima facie evidence at such hearing of the existence of the exemption. If both exempt and non-exempt monies have been deposited into an account, a rule of last-in, last-out shall be followed to determine the exempt status of money in the account at the time execution was levied.

(g) If, within thirty days from the date the order of execution was presented to the banking institution, no court order regarding disposition of the funds removed pursuant to subsection (c) is received and no execution verification as prescribed by this section is received, such banking institution shall return the funds to the judgment debtor's account.

(h) If no exemption is claimed to the court within fifteen days of the date the execution order was presented to the banking institution, the clerk shall, upon demand, issue an execution verification as prescribed by this section to be served upon the banking institution. Upon receiving the execution verification the banking institution shall forthwith pay the serving officer the amount removed from the judgment debtor's account who shall thereupon pay said sum less his fees to the judgment creditor, unless prior to said judgment he is ordered otherwise by the superior court. If such banking institution fails or refuses to pay over to such officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action therefor to the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution.

(i) The execution verification, exemption claim form, execution, and clerk's notice regarding the filing of a claim of exemption shall be in such form as prescribed by the judges of the superior court pursuant to section 51-14 of the general statutes. The execution verification shall certify that the clerk has not received a claim of exemption from the judgment debtor. The exemption claim form shall be in plain language, shall be dated, and shall include a list and description of the most common exemptions, instructions on the manner of claiming the exemptions, and a space for the judgment debtor to certify those exemptions claimed under penalty of false statement.

(j) Nothing in this section shall in any way restrict the rights and remedies otherwise available to a judgment debtor at law or in equity.

PROPOSED PROPERTY EXECUTION STATUTE
Substitute for S.B. 1274

Revised draft, Feb. 25, 1981

Sec. 1. Section 52-367a of the general statutes is hereby repealed and the following enacted in lieu thereof:

As used in this section, and SECTION 2 OF THIS ACT, the term "banking institution" means a state bank and trust company, national banking association, savings bank, industrial bank, credit union, FEDERAL CREDIT UNION, savings and loan association and federal savings and loan association. Execution may be granted PURSUANT TO THIS SECTION against any debts due from any banking institution to a judgment debtor WHICH IS NOT A NATURAL PERSON. If execution is desired against any such debt, the plaintiff requesting the execution shall so notify the clerk, and the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precincts of such officer for the payment of any debt due to the judgment debtor, and, after having made such demand, shall leave a true and attested copy thereof, with his doings thereon endorsed, with the banking institution officer upon whom such demand is made. If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall pay to such officer, in the manner and of the time hereinafter described, the amount of such indebtedness not exceeding the amount due on such execution, to be received and applied on such execution by such officer. Such banking institution shall act upon such execution according to section 42a-4-303 before its midnight deadline, as defined in section 42a-4-104. If such banking institution fails or refuses to pay over to such officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action therefor to the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution.

Sec. 2. (New) (a) Execution may be granted pursuant to this section against any debts due from any banking institution to a judgment debtor who is a natural person except to the extent such debts are protected from execution by sections 52-352a, 52-352b, 52-352c, 52-354 and 52-361 of the general statutes, as well as any other laws or regulations of this state or of the United States which exempt such debts from execution.

(b) If execution is desired against any such debt, the plaintiff requesting the execution shall notify the clerk. If the papers are in order, the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precinct of such officer for payment of any such non-exempt debt due to the judgment debtor and, after having made such demand, shall leave with the banking institution officer upon whom such demand is made a true and attested copy of the execution, together with the affidavit and exemption claim form prescribed by this section, with his doings endorsed thereon.

(c) If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall remove from the debtor's account the amount of such indebtedness not exceeding the amount due on such execution before its midnight deadline, as defined by section 42a-4-104, provided that it shall not remove that portion of an account consisting of the proceeds of a directly deposited Social Security check.

(d) Upon receipt of the execution and exemption claim form from the serving officer, the banking institution shall forthwith mail copies thereof, postage prepaid, to the judgment debtor at his last known address on the records of the banking institution. The institution shall hold the amount removed from the debtor's account pursuant to subsection (c) for fifteen days from the date of the mailing to the judgment debtor and during such period shall not pay the serving officer.

(e) To claim an exemption, the judgment debtor may give notice of a claim of exemption by delivering to the banking institution, by mail or other means, the exemption claim form or other written notice that an exemption is being claimed. The banking institution may designate an address to which the notice of claim of exemption shall be delivered. Upon receipt of such notice, the banking institution shall, within two business days, send a copy of such notice to the clerk of the court which issued the execution.

(f) Upon receipt of an exemption claim form, the clerk shall enter the appearance of the judgment debtor with the address set forth in the exemption claim form. The clerk shall forthwith send file-stamped copies of the form to the judgment creditor and judgment debtor with a notice stating that the disputed assets are being held for twenty days from the date the exemption claim form was received by the banking institution and the judgment creditor must claim its execution for a short calendar hearing with notice to the judgment debtor. If the judgment creditor claims its execution for short calendar, the court shall hold a hearing on such claim within seven days of the date upon which the short calendar claim was filed. The claim of exemption filed by said debtor shall be prima facie evidence at such hearing of the existence of the exemption.

(g) If both exempt and non-exempt monies have been deposited into an account, a rule of last-in, last-out shall be followed to determine the exempt status of money in the account at the time execution was levied. The records of a banking institution as to the dates and amount of deposits into an account in such institution shall, if certified as true and accurate by an officer of the banking institution, be admissible as evidence without the presence of the officer in any hearing to determine the legitimacy of a claim of exemption made under this act.

(h) If no claim of exemption is received by the banking institution within fifteen days of the mailing to the judgment debtor of the execution and exemption claim form pursuant to subsection (d), the banking institution shall, upon demand, forthwith pay the serving officer the amount removed from the judgment debtor's account, and the serving officer shall thereupon pay such sum, less his fees to the judgment

creditor, except to the extent otherwise ordered by a court.

(i) If an exemption claim is made, the banking institution shall continue to hold the amount removed from the judgment debtor's account for twenty days or until a court order is received regarding disposition of the funds, whichever occurs earlier. If no order is received within the twenty days, the banking institution shall return the funds to the judgment debtor's account.

(j) The banking institution shall not set off any amount against the funds removed from the judgment debtor's account at any time from the date on which the execution is served on it until after the funds are paid to the serving officer or returned to the judgment debtor's account.

(k) The exemption claim form, execution, and clerk's notice regarding the filing of a claim of exemption shall be in such form as prescribed by the judges of the superior court pursuant to section 51-14 of the general statutes. The exemption claim form shall be in plain language and shall include a list and description of the most common exemptions, and a space for the judgment debtor to certify those exemptions claimed under penalty of false statement.

PROPOSED PROPERTY EXECUTION STATUTE
Substitute for S.B. 1274

Revised draft, Feb. 25, 1981

Sec. 1. Section 52-367a of the general statutes is hereby repealed and the following enacted in lieu thereof:

As used in this section, and SECTION 2 OF THIS ACT, the term "banking institution" means a state bank and trust company, national banking association, savings bank, industrial bank, credit union, FEDERAL CREDIT UNION, savings and loan association and federal savings and loan association. Execution may be granted PURSUANT TO THIS SECTION against any debts due from any banking institution to a judgment debtor WHICH IS NOT A NATURAL PERSON. If execution is desired against any such debt, the plaintiff requesting the execution shall so notify the clerk, and the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precincts of such officer for the payment of any debt due to the judgment debtor, and, after having made such demand, shall leave a true and attested copy thereof, with his doings thereon endorsed, with the banking institution officer upon whom such demand is made. If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall pay to such officer, in the manner and of the time hereinafter described, the amount of such indebtedness not exceeding the amount due on such execution, to be received and applied on such execution by such officer. Such banking institution shall act upon such execution according to section 42a-4-303 before its midnight deadline, as defined in section 42a-4-104. If such banking institution fails or refuses to pay over to such officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action therefor to the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution.

Sec. 2. (New) (a) Execution may be granted pursuant to this section against any debts due from any banking institution to a judgment debtor who is a natural person except to the extent such debts are protected from execution by sections 52-352a, 52-352b, 52-352c, 52-354 and 52-361 of the general statutes, as well as any other laws or regulations of this state or of the United States which exempt such debts from execution.

(b) If execution is desired against any such debt, the plaintiff requesting the execution shall notify the clerk. If the papers are in order, the clerk shall insert in the execution a direction that the officer serving the same shall make demand upon the main office of any banking institution having a main office within the precinct of such officer for payment of any such non-exempt debt due to the judgment debtor and, after having made such demand, shall leave with the banking institution officer upon whom such demand is made a true and attested copy of the execution, together with the affidavit and exemption claim form prescribed by this section, with his doings endorsed thereon.

(c) If any such banking institution to which such execution is presented and upon which such demand is made is indebted to the judgment debtor, it shall remove from the debtor's account the amount of such indebtedness not exceeding the amount due on such execution before its midnight deadline, as defined by section 42a-4-104, provided that it shall not remove that portion of an account consisting of the proceeds of a directly deposited Social Security check.

(d) Upon receipt of the execution and exemption claim form from the serving officer, the banking institution shall forthwith mail copies thereof, postage prepaid, to the judgment debtor at his last known address on the records of the banking institution. The institution shall hold the amount removed from the debtor's account pursuant to subsection (c) for fifteen days from the date of the mailing to the judgment debtor and during such period shall not pay the serving officer.

(e) To claim an exemption, the judgment debtor may give notice of a claim of exemption by delivering to the banking institution, by mail or other means, the exemption claim form or other written notice that an exemption is being claimed. The banking institution may designate an address to which the notice of claim of exemption shall be delivered. Upon receipt of such notice, the banking institution shall, within two business days, send a copy of such notice to the clerk of the court which issued the execution.

(f) Upon receipt of an exemption claim form, the clerk shall enter the appearance of the judgment debtor with the address set forth in the exemption claim form. The clerk shall forthwith send file-stamped copies of the form to the judgment creditor and judgment debtor with a notice stating that the disputed assets are being held for twenty days from the date the exemption claim form was received by the banking institution and the judgment creditor must claim its execution for a short calendar hearing with notice to the judgment debtor. If the judgment creditor claims its execution for short calendar, the court shall hold a hearing on such claim within seven days of the date upon which the short calendar claim was filed. The claim of exemption filed by said debtor shall be prima facie evidence at such hearing of the existence of the exemption.

(g) If both exempt and non-exempt monies have been deposited into an account, a rule of last-in, last-out shall be followed to determine the exempt status of money in the account at the time execution was levied. The records of a banking institution as to the dates and amount of deposits into an account in such institution shall, if certified as true and accurate by an officer of the banking institution, be admissible as evidence without the presence of the officer in any hearing to determine the legitimacy of a claim of exemption made under this act.

(h) If no claim of exemption is received by the banking institution within fifteen days of the mailing to the judgment debtor of the execution and exemption claim form pursuant to subsection (d), the banking institution shall, upon demand, forthwith pay the serving officer the amount removed from the judgment debtor's account, and the serving officer shall thereupon pay such sum, less his fees to the judgment

creditor, except to the extent otherwise ordered by a court.

(i) If an exemption claim is made, the banking institution shall continue to hold the amount removed from the judgment debtor's account for twenty days or until a court order is received regarding disposition of the funds, whichever occurs earlier. If no order is received within the twenty days, the banking institution shall return the funds to the judgment debtor's account.

(j) The banking institution shall not set off any amount against the funds removed from the judgment debtor's account at any time from the date on which the execution is served on it until after the funds are paid to the serving officer or returned to the judgment debtor's account.

(k) The exemption claim form, execution, and clerk's notice regarding the filing of a claim of exemption shall be in such form as prescribed by the judges of the superior court pursuant to section 51-14 of the general statutes. The exemption claim form shall be in plain language and shall include a list and description of the most common exemptions, and a space for the judgment debtor to certify those exemptions claimed under penalty of false statement.