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MEMORANDUM

DATE: March 5, 2014

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell  Chairperson
State Council for Persons with Disabilities

RE: H.B. 230 (Family Financial Protection Act)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 230 which adopts the Model Family Financial Protection Act and is based on model legislation authored by the National Consumer Law Center ("NCLC"). The proposed legislation establishes many protections applicable to consumer contracts and debt collection.

SCPD endorses the concept of the legislation given that the following features would benefit individuals with disabilities.

First, individuals can incur a disability (including TBI) through defective products or services. Suppliers have an incentive to include contract provisions designed to prevent any recourse for injuries or harm. The bill disallows such provisions (lines 53-54). This benefits not only the aggrieved consumer but Delaware public assistance programs as well. If a consumer is severely injured, the consumer often loses employment and joins the Medicaid rolls if there is no source of compensation from the entity responsible for the injury.

Second, the bill requires a seller of consumer debt to provide certain information to the buyer or assignee, including the following: a) any illness or disability claimed by the consumer or known to the seller; b) whether the consumer has a disability; and c) whether the consumer is known to receive income (e.g. Social Security Disability; SSI) exempt from garnishment or attachment (lines 115-120). This may deter assignees of debt from claiming ignorance of the disability status of a consumer and pursuing protected income and benefits. Debt collector garnishment and attachment of Social Security and SSI benefits has been a significant historical problem. See attachments.

Third, the scope of consumer property exempt from execution is expanded. One explicit rationale for the additional protections is to permit individuals to compile resources to meet “medical needs” (line 358). Other justifications include prevention of homelessness and reduction of the “burden upon society of supporting impoverished debtors and their families” (lines 360-361). Property exempt from execution includes the following: a) personal health aids (lines 410-411); b) medications (line 411); c) necessary provisions, i.e., those “reasonably essential for everyday living, including any special needs by reason of health or physical or mental infirmity” (lines 379-380, 409); d) motor vehicles adapted for special use because of disability up to \$25,000 (lines 416-417); e) all public assistance benefits and disability benefits (lines 428-429); and f) health insurance, disability insurance, long-term care insurance policies and medical expense accounts (lines 430-431).

SCPD did want to make you aware that the proposed legislation may result in some inconsistencies with other Code provisions. Such an analysis is beyond the scope of this analysis. However, there are a few discrete references that merit amendment:

- A. Line 68 contains the following incomplete reference: “[cite to state usury cap]”. SCPD does not believe Delaware has a usury cap.
- B. Line 530 refers to “mount” rather than “amount”.
- C. Line 695 refers to “Title”. The reference should ostensibly be to “chapter”.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 230 financial protection 3-5-14



Social Security Payments Caught in Illegally Frozen Bank Accounts

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New America Media, News Report, Khalil Abdullah. Posted: Apr 23, 2009 [NT Review It on NewsTrust](#)

Editor's Note: Bank account freezes are designed to prevent account holders from withdrawing funds before creditors can collect on legal claims. Some debt collectors, however, often file claims on exempt accounts, which include Social Security and veteran benefits writes NAM editor Khalil Abdullah.

When Ronald Coote went to an ATM in the autumn of 2008 to get the money to fill the prescription for his heart medication, he was stunned to find his funds unavailable.

Coote received a monthly direct deposit into his bank account, a \$783 disability check from the Social Security Administration (SSA). Since recovering from open-heart surgery, and with high blood pressure, he was always careful to set aside the cost of medication. The ordeal that followed was almost more than his 60-year-old heart could take.

His Washington Mutual account had been frozen by the bank at a debt collector's request for non-payment of an old credit card bill. The collector attempted to garnish Coote's Social Security disability checks, funds that are deemed exempt from collection under federal law. In part, the law reads, "none of the monies paid or payable ... shall be subject to execution, levy, attachment, [or] garnishment." In all but a few instances, such as child support or non-payment of federal taxes, can SSA funds be garnished; even then there are caps to ensure that a person is left with enough to live on.

"I have to have my medication or I die," Coote said, explaining his decision not to pay the bill. "I have to eat, I have to pay rent, gas, electric. It wasn't a choice."

Coote's situation was far from unique. Margot Saunders of the National Consumer Law Center estimates that "tens of thousands of people every month," who are elderly or disabled, are being forced into dire financial circumstances. Bank account freezes and illegal garnishments of exempt funds, including veterans' benefits, are shredding safety nets. In her 2008 testimony before a House Ways and Means Subcommittee on Social Security, Saunders included a long list of stories similar to Coote's--or worse.

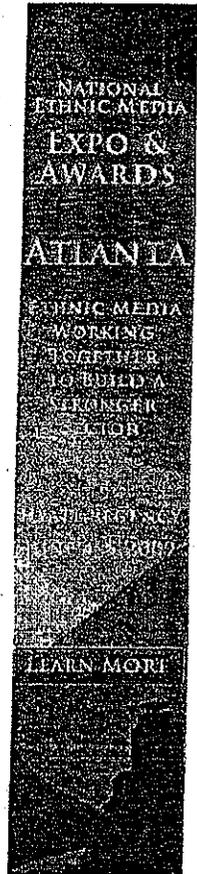
According to SSA, its payments provide baseline financial solvency for 13 million Americans, who would otherwise be in poverty. However, a 2008 report by SSA's inspector general, estimated that direct-deposit beneficiaries across the United States have incurred \$177.7 million in total garnishments. The report did not attempt to estimate the near incalculable damage of bank account freezes.

Bank account freezes are designed to prevent account holders from withdrawing funds before creditors can collect on legal claims. Debt collectors, though, often file claims on exempt accounts.

"The freeze creates a hostage-like situation where the creditor can wait out the debtor by demanding payment," said attorney Johnson Tyler, director of the Social Security/Consumer Rights Unit at South Brooklyn Legal Services.

Tyler explained that often consumers don't know SSA funds are exempt and agree to make payments to have the freeze lifted, so they can access their accounts. He suggested the problem might be worse in communities where limited proficiency in English is common.

In 2002, Coote was a mid-level manager at a Western Beef grocery store in the Bronx, when his foot got caught in an uncovered drain at the facility. He fell, and the injury rendered him unable to work.



In addition to two herniated disks, tests confirmed arthritis in the lower part of his spine, a heart ailment, and other debilitating medical conditions. Then in his early 50s, Coote began receiving benefits in 2003. Friends and family members also helped at times.

"Taking money from loved ones, well, it doesn't make me feel good," Coote confided.

Last year, Coote complied with the debt collector's request for three months of his bank statements to show that he was barely surviving financially with SSA funds and should be considered uncollectable. But the collection agency saw that he had deposited non-SSA money, modest personal gifts. The collector claimed Coote's account was no longer exempt because it included "co-mingled funds."

Coote contacted Tyler, who convinced the collection agency that, under the Social Security Act, his account could not be garnished. Because Coote had already spent the money by the time the bank had frozen the account, the claim of co-mingled funds was not valid, Tyler told the collection agency. He threatened to sue if the bank did not end the freeze.

'Debt Collection on steroids'

Because of complications with bank account freezes, varying definitions of co-mingled accounts, or imprecise calculations of exempt funds, consumer rights advocates contend bank freezes and garnishments on accounts, such as Coote's, are illegal. They argue that the freezes violate the intent and spirit of the federal law's mandate to provide a floor above the poverty line for Americans.

Collection agencies use computer searches for debtors' accounts as easily as commercial fishing crews use huge trawling nets to haul in a catch. Using a database and a keystroke, a collector can broadcast an electronic inquiry on a claim to every bank in a state.

"It's debt collection on steroids," said Tyler. "Computers are talking to computers."

In Coote's case, had the collection agency attempted to seize his account after January 2009, New York's recently enacted Exempt Income Protection Act (EIPA) would have shielded his funds. EIPA protects up to \$1,716, equal to two months of work at the minimum wage, from bank freezes, regardless of the source of funds. If the source of the funds is from Social Security or other exempt sources, such as veterans' benefits, a bank can freeze only funds above \$2,500. But New York is only one of a handful of states that offers this protection.

Earlier this year, the National Academy of Social Insurance (NASI) in Washington, D.C., triggered interest in the issue by publishing an analysis of the barriers to protecting vulnerable Social Security recipients from abuses of the rules. The article noted that the five entities responsible for banking oversight are currently hashing out the details of best practices. Others, though, said the squabbling among the group is impeding a regulatory consensus that might resolve the issue. (New America Media did not receive a reply to its inquiry from the U.S. Treasury Department, which is reportedly coordinating this effort.)

Stalled legislation

The author of the NASI paper, John Infranca, criticized the "patchwork of state regulations" that continually produces inconsistent results. He called for federal legislation to settle the issue.

However, a Capitol Hill staffer on the Senate Committee on Aging spoke to New America Media about proposed legislation. The committee's chair, Sen. Herbert Kohl, D-Wis., sponsored the Illegal Garnishment Prevention Act in 2008. But the legislation stalled during last year's election cycle. The bill would prohibit SSA from promoting the use of direct deposit accounts until they are better protected.

Kohl will reintroduce the bill, said the committee staffer, but Congress is not wedded to any particular solution and would actually prefer a regulatory fix from the five banking agencies.

Sybil Hebb, an attorney at the Oregon Law Center, is not waiting for Congress or the regulators. She is lobbying Oregon's legislature to enact a law similar to California's or New York's EIPA. "The money is really important to our clients because it's their only source of income," Hebb stated. She knows of cases where "all of the money taken was exempt," adding that often "clients have to file a claim to get the money back."

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Few states have directly addressed the issue. In others, class action suits have been filed or individual lawsuits have been successful against some collection agencies and banks. Consumer rights advocates are hopeful that banks may now be more receptive to a solution that would bring countrywide uniformity.

Tyler contended that profit has been at the heart of the banking industry's reluctance to adhere to Social Security Act provisions. Computerization has invalidated the previous assertion of banks that they couldn't distinguish exempt funds from others, Tyler said.

Also, Tyler noted, banks impose fees on their customers for freezes ordered by state courts and collect bounced-check fees for checks presented to frozen accounts.

"Don't forget that banks are the issuers of credit cards," he said. "They want to be able to collect those fees as well."

Direct deposit: good and bad

Ironically, SSA has saved the public millions of dollars in administrative costs by using electronic deposits, rather than mailing paper checks.

The administration's Web site touts the convenience and security of direct deposit: "Both you and your money are safe." But, when a bank freezes an account, deposits that arrive are also unavailable. A paper SSA check, on the other hand, can be taken to a bank and cashed whether an account is frozen or not.

J.P. Morgan Chase bought Washington Mutual in 2008 for \$1.9 billion. It has made at least \$100 of that outlay back, the fee it charged Coote for the freeze imposed on his account. Coote claims that he was never informed that his Washington Mutual overdraft protection had been terminated. Without overdraft protection, J.P. Morgan Chase charged Coote another \$34 for a bounced check he had written, unaware that his account had been frozen.

Related Articles:

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New rule protects exempted funds from garnishment orders
Debtors no longer have to worry about frozen exempted funds

By Martin Merzer

The latest in a series of new federal regulations intended to protect credit card holders and other indebted Americans has kicked in, and this measure covers new ground: It offers aid and comfort to some of the nation's most desperate debtors -- those who face frozen bank accounts and, ultimately, seizure of the funds in those accounts.

As of May 1, 2011, banks and other financial institutions no longer can automatically freeze accounts that are subject to garnishment orders won by credit card companies, their representatives or any other creditor. Instead, banks, credit unions and similar institutions must examine those accounts -- and ensure that electronically deposited federal benefit payments are exempted from the garnishment order and remain available to account holders.

Among the federal payments that cannot be slapped into the deep freezer and later thawed and handed out to creditors: Social Security benefits, Supplemental Security Income benefits, veterans benefits, federal employee and civil service retirement benefits, and benefits administered by the Railroad Retirement Board.

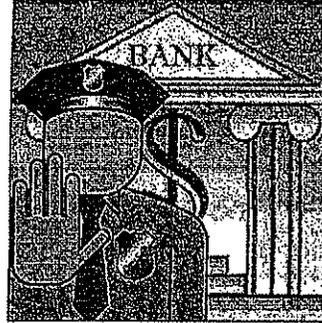
Protecting exempt funds

The move is seen as a significant reform that will pre-empt inconsistent state rules and clarify procedures for banking institutions. Most importantly, it will end a practice that often left many of the nation's most debt-ridden and impoverished people -- including retirees, veterans and the disabled -- without even the minimal financial resources they needed for food, shelter, health care and other matters of basic subsistence.

Consumer advocates estimate that more than 1 million low income people each year, including hundreds of thousands of credit card customers, received Social Security and other federal payments that were improperly frozen as a result of garnishment orders. These actions often rendered such people temporarily destitute.

"We applaud the work of the Treasury Department and the other agencies to safeguard these essential benefits ...," said Margot Saunders, an attorney with the National Consumer Law Center, which represented Consumers Union, Public Citizen and 19 other consumer groups before the U.S. Department of the Treasury, which took the lead in crafting the new regulation.

"All too often, elders, veterans and disability benefit recipients who rely on these benefits for their basic needs have been unable to access them for extended periods because of creditor-imposed garnishment freezes," she said.



We recognize that the procedures that banks had to follow before the rule could result in very real hardships for some individuals ...

— Mark Tenhundfeld
American Bankers Association

"We recognize that the procedures that banks had to follow before the rule could result in very real hardships for some individuals, and so we support a rule that avoids those hardships by protecting the customer's access to funds."

On the other side of the equation, the American Bankers Association, the trade group representing virtually all of the nation's banks, also expressed approval.

"The ABA supports adoption of the proposal," said Mark Tenhundfeld, a senior vice president of the association.

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National Average	15.00%
Low Interest	10.46%
Balance Transfer	12.56%
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Airline	14.51%
Cash Back	14.62%
Reward	14.91%
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Banks caught in the middle

Put simply, garnishment is a last-ditch effort by a creditor to collect legitimate debts owed by consumers. If you become and remain delinquent in your payments, and if you fail to respond to a series of efforts by the creditor or its representatives to collect the amount due, the creditor can obtain a court order allowing it to "garnish" your account and seize your money.

Such garnishment orders generally come in two flavors: If you are earning a paycheck, the court can order your employer to divert a portion of your wages to the creditor. If you are not employed, the court can order your bank to turn over to the creditor some of the proceeds of your account.

Social Security and other federal payments that end up in your bank account have been exempt from court-issued garnishment orders for years, but those orders often produced inconsistent or overly broad responses by banks that found themselves between a rock (court orders won by creditors) and a hard place (account holders needing access to their money).

When the account is frozen, no money is available to cover any expenses for food, rent or medical care.

— National Consumer Law Center

"On the one hand, a creditor, having received a court order entitling it to payment, expects the bank to comply with that order or risk incurring liability for the full amount of the judgment," Tenhundfeld of the bankers association said last year in a letter to the U.S. Treasury. "On the other hand, a debtor that receives benefits payments that are exempt from garnishment expects the bank to refuse to pay to the creditor funds that are presumably protected."

In the end, many banks and other financial institutions simply froze the entire account and then required consumers to prove that the funds — or a particular portion of the funds — in that account came from exempted federal sources and should not be and could not be frozen or seized.

The process of unfreezing an account could take weeks or even months, consumer advocates said, and usually required the assistance of an attorney. As a consequence, it often took a heavy toll on credit card holders and others who already were nearly at their wit's end.

"When the account is frozen, no money is available to cover any expenses for food, rent or medical care," the National Consumer Law Center noted. "Checks and debits previously drawn on the account, before the recipient learned that the account was frozen, are returned unpaid. Subsequent monthly deposits into the account will also be subject to the freeze and inaccessible to the recipient."

Vulnerable most impacted

The NCLC offered several examples, including the case of Ethel Silmon of Montgomery, Ala. A disabled, 59-year-old widow, she fell behind on her credit card payments. Her bank account ended up getting hit with a garnishment order for \$15,895.44. The only money in her account — less than \$1,000 — came from her \$889 monthly Social Security disability payments, funds that should have been exempted from the order but were frozen by the bank. It took her — and a volunteer attorney — about four weeks to sort it out.

"During the month without access to her money, Mrs. Silmon suffered severe anxiety attacks. She had to go to the food bank for food and had to rely on her doctors for samples of medicine," the Center reported. "She is still fearful that they will try it again and states that she cannot handle it if they do."

Attorneys and consumer advocates say the regulation that takes effect May 1 should go a long way toward preventing similar cases in the future. The new garnishment rules come in the wake of other recent federal efforts to protect consumers, including the staged phase-in of landmark credit card reforms and creation of the Consumer Financial Protection Bureau.

Applies only to direct deposits

Importantly, the garnishment regulation applies only to electronic direct deposits. It does not apply to old-fashioned paper deposits of federal payments. Those deposits also are exempt from garnishment, but banks are not required under this regulation to identify or protect them. This should not pose much of a problem, given that 87 percent of Social Security recipients received their payments electronically last year, and the federal government is making electronic delivery mandatory for virtually everyone who receives federal payments.

Under the regulation:

- The federal government must insert an electronic "tag" in all direct deposits of exempted payments.
- When a bank receives a garnishment order from a court, it must review the debtor's account within two business days and determine what – if any – federal payments are exempt under the new regulation. Those payments cannot be frozen or garnished.
- Banks are required to exempt all tagged deposits made during the two months prior to the receipt of any garnishment order and protect those deposits from garnishment. No longer will consumers be required to identify or help segregate payments that are exempt from garnishment.
- Within three business days of receiving the garnishment order, the bank must provide the debtor with the name of the creditor, the date of the garnishment and the amount of both protected and nonprotected assets in the account.
- As in the past, amounts owed for federal taxes and in response to state child support agencies cannot be protected from garnishment – even if they come from otherwise exempted federal sources. In other words, even under this new regulation, your Social Security or federal pension payments can be garnished to pay for overdue federal taxes or for child support.

Though both sides of the issue – the banks and consumer representatives or attorneys – had urged federal officials to tweak an early version of the regulation in various (and mostly minor) ways, everyone seemed pleased with the result.

"This rule is truly an amazing and wonderful thing ...," the National Consumer Law Center said in a written statement. "The Treasury Department has led a remarkable effort."

"The agencies have tried hard to strike the right balance," said ABA's Tenhundfeld. "While the rule will result in additional burdens for the banking industry, we believe the balance struck by the agencies is reasonable."

See related: [How wage garnishment works – and how to avoid it](#), [Wage garnishment after unemployment](#), [Take these steps to avoid wage garnishment](#), [After medical bills lead to wage garnishment, consider bankruptcy](#), [3 ways to rebuild your credit after wage garnishment](#), [Bankruptcy protects against wage garnishment](#), [The truth about Social Security benefits and wage garnishment](#), [Ignoring debt collection lawsuit can lead to wage garnishment](#)

Updated: May 3, 2011

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