

District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill is a Member's bill in the name of Anahila Kanongata'a-Suisuiki MP.

The bill would amend the District Court Act 2016 to protect people with disabilities who owe money under a court order (a "judgment debtor"). It would prohibit the seizure of any item from a judgment debtor with a disability that is necessary for their care, support, or independence, or to promote their inclusion and participation in society.

The District Court Act allows bailiffs to seize property from a judgment debtor provided they act fairly and reasonably in doing so. The bill would codify existing practice, and make clearer the existing protection against unreasonable seizure of property that is provided for in the New Zealand Bill of Rights Act 1990. Any discrimination on the grounds of disability would be in violation of the New Zealand Bill of Rights Act. The Act does not expressly prohibit bailiffs seizing property that disabled people may rely on, such as mobility devices.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Circumstances where property cannot be seized from a judgment debtor

Clause 4 of the bill would amend section 167 of the Act to prohibit a bailiff or constable seizing property from a judgment debtor with a disability in certain circumstances. They are where the proposed item is required for the debtor's care, support, or independence, or to promote their inclusion and participation in society.

We are concerned that the bill would not prohibit seizure of property from a judgment debtor who was the principal caregiver to a person with a disability. The seized item could be required for the care, support, or independence of the disabled person.

We note that the District Court Act prohibits the seizure of household items or effects from judgment debtors and their family. We believe that prohibiting the seizure of items that are necessary for the care, support, or independence of a disabled person who is in the care of a judgment debtor would be consistent with the Act.

We recommend amending clause 4 so that proposed new section 167(2)(a)(iii) also covers any item necessary for the care, support, or independence of a disabled person who is in the care of a judgment debtor.

Definition of “disabled person”

Clause 4 of the bill would insert section 167(5). This would give a definition of “disability” that aligns with section 21(1)(h) of the Human Rights Act 1993. It would also insert a definition of “mobility device” that aligns with section 2 of the Land Transport Act 1998.

We recommend amending the proposed definition of “disabled person” so it aligns with the definition provided for in the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This would allow for the wider disability community to be included in the group that the bill would provide protection for. We note that the CRPD definition focuses on how an environment can be disabling for people with impairments, rather than framing it in terms of the disability alone.

Some of us are concerned that amending clause 4 to align the definition of “disabled person” with the CRPD definition could be too vague. It could potentially decrease the enforceability of a bailiff's power to collect debt from a judgment debtor. Some of us are also concerned about how a bailiff would exercise discretion if they did not know in advance that a judgment debtor was a disabled person, or the primary caregiver for a disabled person.

Other issues raised

The bill's potential effect on lending and repossession of goods

Some of us are concerned about whether the bill would have an effect on lending and the repossession of goods under the Credit Contracts and Consumer Finance Act

2003. We note the bill does not prevent repossession of goods provided for in a credit contract pursuant to the Credit Contracts and Consumer Finance Act.

We do not make any recommendations for amendments to the bill in regards to this concern. However, we consider it important that lenders and industry bodies be informed about the provisions of this bill and what the rights and responsibilities of creditors and debtors are.

Appendix

Committee process

The District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill was referred to the Justice Committee of the 52nd Parliament on 21 July 2020. It was reinstated with this committee in the 53rd Parliament on 26 November 2020.

The closing date for submissions on the bill was 29 January 2021. We received and considered 21 submissions from interested groups and individuals. We heard oral evidence from 8 submitters.

We received advice on the bill from the Ministry of Justice and the Office for Disability Issues in the Ministry of Social Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Simon Bridges

Simeon Brown

Dr Emily Henderson

Nicole McKee

Willow-Jean Prime

Hon Dr Nick Smith

Vanushi Walters

Arena Williams

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted

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Anahila Kanongata'a-Suisuiki

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the District Court (Protection of Judgment Debtors with Disabilities) Amendment Act **2020**.

2 Commencement

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This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the District Court Act 2016 (the **principal Act**).

4 Section 167 amended (Warrant to seize property)

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(1) After section 167(2)(a)(ii), insert:

(iii) ~~in the case of the judgment debtor with a disability, any item that is necessary for his or her care or support, independence, or to promote his or her inclusion and participation in society (for~~

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~~example any mobility device, specially adapted motor vehicle, or medical equipment)~~

- (iii) if the judgment debtor is a disabled person or is a principal caregiver for a disabled person, any item that is necessary for the care, support, or independence of, or to promote the inclusion and participation in society of, the judgment debtor who is the disabled person or, as the case may be, the disabled person for whom the judgment debtor is the principal caregiver (for example, without limitation, any mobility device, specially adapted motor vehicle, or medical equipment); and

(2) After section 167(4), insert:

(5) In this section,—

~~**disability** has the same meaning as in section 21(1)(h) of the Human Rights Act 1993~~

disabled person includes a person who has long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others

mobility device has the same meaning as in section 2(1) of the Land Transport Act 1998.

5 Section 168 amended (Immobilisation of motor vehicles)

After section 168(2), insert:

(2A) ~~A vehicle that is needed by a judgment debtor with a disability for his or her care or support, independence, or to promote his or her inclusion and participation in society, must not be immobilised under subsection (1).~~

(2A) A motor vehicle to which **section 167(2)(a)(iii)** applies may not be immobilised under this section.

Legislative history

18 June 2020
21 July 2020

Introduction (Bill 284–1)
First reading and referral to Justice Committee