

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 150

SPONSOR: Senator Horne

SUBJECT: Property Exempt from Legal Process

DATE: February 19, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Johnson	JU	Favorable
2.	Fournier	Johansen	FT	Favorable
3.				
4.				
5.				

I. Summary:

This bill exempts a debtor's interest in an earned income refund, credit or deposit thereof in a financial institute from attachment, garnishment or other legal process under the bankruptcy law.

This bill substantially amends section 222.25 of the Florida Statutes.

II. Present Situation:

The federal Bankruptcy Code provides a debtor with the option to claim exemptions from legal process for certain enumerated property listed under one of two mutually exclusive sets of property eligible for federal exemption. See 11 U.S.C. s. 522(b)-(d). However, in order for the debtor to claim the federal exemption, the state must recognize the federal exemptions under its state law. Florida, as may any state, has opted out. See ss. 222.20, F.S. Therefore, the Florida law on exemptions from creditor's actions applies and operates independently of the federal Bankruptcy Code. Article X, sec. 4 of the Florida Constitution exempts a homestead and personal property to the value of one thousand dollars from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments, and mortgages and mechanics' liens on the property. Florida law provides various additional exemptions from garnishment, attachment, and other legal process by creditors including, but not limited to:

- Certain disposable earnings of a head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).

- Pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund monies and medical savings account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to \$1,000 and the debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation or public assistance benefit (e.g., AFDC, WIC, and food stamps); veterans' benefits; disability, illness or unemployment benefits; alimony, support or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S., recognizing a subclass of property for federal exemptions under 11 U.S.C. s. 522(d)(10)).

Neither federal law nor Florida provides an exemption from creditors' action for earned income credit. However, a state that has opted out is not precluded from exempting such property.

The Earned Income Credit¹

The earned income credit (EIC) is a special federal refundable tax credit available for low-income, working taxpayers who meet eligibility requirements.² The earned income amount can not exceed \$31,152. Originally established by Congress in 1975, it is intended to help offset some of the increases in living expenses and Social Security taxes and to encourage low-income persons to seek employment versus welfare. Based on the earned income amount and the number of qualifying children a taxpayer has, the EIC increases until it is capped as follows:

<i>Earned Income</i>	Maximum EIC Amount		
	<i>No Children</i>	<i>One Child</i>	<i>Two or More Children</i>
$\$5,750 \leq x < \$5,800$	\$353		
$\$10,400 \leq x < \$12,700$		\$2,343	\$3,888

Once the EIC reaches the maximum amount allowable, the EIC phases out with the amount decreasing, as the earned income continues to increase, until the EIC reaches zero for earned income at \$12,700 (if there are no children), at \$27,500 (if there is one child) and at \$31,152 (if there are two or more children).

Earned income includes any taxable or nontaxable income one receives from working (e.g., wages, salaries and tips, net earnings from self-employment, gross income received as a statutory employee, salary deferrals and reductions, meals and lodging, dependent care benefits, adoption benefits, and educational assistance benefits and disability benefits under specified circumstances. Earned income does not include interest and dividends, pensions and annuities, social security and railroad retirement benefits, alimony and child support, welfare benefits, workers' compensation benefits, unemployment compensation, nontaxable foster care payments, veterans' benefits, inmate earnings, workfare payments, or community property. *Id.*

¹ See Department of Treasury, Publication Earned Income Credit, Topic 601 (2000) and Department of the Treasury, Internal Revenue Service, Earned Income Credit (EIC), Pub. 596 (2000)

² Eligible persons may receive money back, even if they don't owe taxes, but they must file a tax return and document their income to qualify.

III. Effect of Proposed Changes:

The bill will allow persons entitled to an earned income credit to protect that credit against attachment, garnishment or other lien resulting from a bankruptcy proceeding or other legal process, regardless of whether the credit has been received or commingled with the debtor's financial accounts as long as it is traceable.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Department of Revenue indicates that this bill will prevent it from using its garnishment authority to collect unpaid taxes in the unlikely event that a taxpayer commingles business and personal assets, which include earned income refund or credit payments, in a financial institution.

B. Private Sector Impact:

The exemption under this bill will benefit low-income working debtors who are eligible for earned income credit by exempting this class of tax credits from legal process.³ This exemption will also result in a reduction of the amount subject to a bankruptcy proceeding⁴ or other legal process.

C. Government Sector Impact:

None.

³ For the tax year 1998, almost 20% of the tax returns (7,100,000) filed in Florida claimed an earned income tax credit totaling an estimated \$2,050,000. See IRS, Florida Individual Income and Tax Date by State, SOI Bulletin, Spring 2000, and IRS Information Services, Martinburg Computing Cntr, Dev. Center Branch.

⁴ There were almost 78,000 business and non-business bankruptcy filings in 1999 in Florida, representing an average decline of 1.5% from the previous year. See Administrative Office of the U.S. Courts, *Judicial Business of the U.S. Courts, 1999 Annual Report of the Director*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
