

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 592

INTRODUCER: Commerce and Tourism Committee and Senator Galvano

SUBJECT: Garnishment

DATE: March 19, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Munroe | Cibula | JU | Favorable |
| 2. | Siples | Hrdlicka | CM | Fav/CS |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 592 amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to the creditor or 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. The form will include a requirement for certification under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief. The bill allows a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to attorneys for the creditor and garnishees. Existing law provides for the forms to be delivered only to the creditor and garnishees.

The bill substantially amends s. 77.041, F.S., and repeals s. 222.12, F.S., which provides procedures for claims of exemptions for garnishment.

II. Present Situation:

Garnishment is a “judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee¹ for the debtor to turn over to the creditor any of the debtor’s property (such as wages or bank accounts) held by that third party.”²

Garnishment is a statutory remedy prescribed by chs. 77 and 222, F.S. In general, a creditor (plaintiff) initiates a garnishment action as a means of either prejudgment seizure³ or post-judgment collection.⁴ A creditor may obtain a continuing writ of garnishment against the debtor’s salary or wages to periodically pay a portion of the debtor’s (defendant’s) wages until judgment is satisfied or until otherwise provided by the court order.⁵ Certain property of a debtor is exempt from creditor claims, with conditions. Such exemptions include, but are not limited to:

- Homestead real property;⁶
- Personal property up to the value of \$1,000⁷ or \$4,000;⁸
- Head of family disposable earnings less than or equal to \$750 per week;⁹
- Firefighters’ pensions;¹⁰
- Medical savings account;¹¹
- Motor vehicles up to the value of \$1,000;¹²
- Retirement or pension benefits;¹³ and
- Veterans’ benefits.¹⁴

When a writ of garnishment is ordered, a copy of the writ, the motion for the writ, and if the debtor is an individual, a notice explaining that certain assets may be exempt, are sent to the debtor in the action.¹⁵ The notice, prescribed in s. 77.041(1), F.S., lists common exemptions to garnishment that the debtor may elect, and also contains a request for a hearing and a signature line for the debtor. Although s. 222.12, F.S., requires a claim of exemption to be filed under oath, the statutory form prescribed under s. 77.041(1), F.S., contains language that would not effectuate a sworn statement.

¹ A bailee is a person who receives personal property from another, and has possession of but not title to the property. BLACK’S LAW DICTIONARY (9th ed. 2009).

² BLACK’S LAW DICTIONARY (9th ed. 2009).

³ Section 77.031, F.S. A prejudgment writ of garnishment is a civil remedy available to a party to secure the anticipated money judgment the party ultimately expects to recover. *Garel and Jacobs, P.A. v. Wick*, 683 So.2d 184, 186 (Fla. 3d DCA 1996).

⁴ Section 77.03, F.S.

⁵ Section 77.0305, F.S.

⁶ FLA. CONST. art. X, s. 4.

⁷ *Id.*

⁸ Section 222.25(4), F.S.

⁹ Section 222.11, F.S. Disposable earnings are the part of the earnings of a head of family remaining after the deduction from those earnings of any amounts to required by law to be withheld.

¹⁰ Section 175.241, F.S.

¹¹ Section 222.22(2), F.S.

¹² Section 222.25(1), F.S.

¹³ Section 222.21, F.S.

¹⁴ Section 744.626, F.S.

¹⁵ Section 77.041, F.S.

The debtor must file any claim for exemption and request for hearing with the clerk of court within 20 days after receipt of the notice. If the debtor fails to timely claim an exemption, the creditor may obtain a default judgment and is entitled to the garnished property.¹⁶ If a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the exemption if the form is hand delivered and 8 business days if the form is mailed.¹⁷ If the creditor fails to timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.¹⁸ However, if the debtor files a claim of exemption, and the creditor timely files an objection, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.¹⁹

Section 222.12, F.S., requires a person who claims an exemption as the head of a family to make such allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary public. After notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days and will be tried before the court having jurisdiction. If no objection to the claim is filed, the writ of garnishment will be discharged.

Although the procedure for claims of exemptions for garnishment appear to be in conflict, courts have interpreted the procedure for the claims of exemptions for garnishment in s. 77.041(3), F.S., to supplement rather than replace s. 222.12, F.S.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to creditor. The period is 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. A debtor is required to certify under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill allows a debtor to deliver the form to attorneys for the creditor and any garnishee. Current law provides for the forms to be delivered only to the creditor and garnishees.

Section 2 repeals s. 222.12, F.S., which requires a person who claims that garnished earnings are exempt because that person is the head of a family to make this allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary

¹⁶ Section 77.081, F.S.

¹⁷ Section 77.041(3), F.S. But see s. 222.12, F.S., which predates the enactment of s. 77.041, F.S., and provides that the creditor's objection must be filed within 2 business days.

¹⁸ Id.

¹⁹ Id.

²⁰ *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So.2d 1276, 1279 (Fla. 4th DCA 2006).

public. Under s. 222.12, F.S., after notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Court Administrator's 2013 Judicial Impact Statement, CS/SB 592 may dissuade debtors having no valid claim of exemption from requesting hearings in garnishment cases. Therefore, the bill may reduce expenditures related to these hearings.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²¹ Office of State Courts Administrator, *2013 Judicial Impact Statement* (March 1, 2013) (on file with the Senate Commerce and Tourism Committee).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 18, 2013:

The committee substitute does the following:

- Provides technical changes that clarify that notice may be provided to the plaintiff's attorney or the garnishee's attorney.
- Provides technical changes indicating that the claim of exemption must be sworn, conforming to other provisions in the bill.
- Closes parenthetical statement.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
