

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 592

INTRODUCER: Senator Galvano

SUBJECT: Garnishment

DATE: March 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	<b>Favorable</b>
2.			CM	
3.				
4.				
5.				
6.				

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**I. Summary:**

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 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 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 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 repeals s. 222.12, F.S., which provides procedures for claims of exemptions for garnishment.

The bill substantially amends section 77.041, Florida Statutes.

The bill repeals s. 222.12, Florida Statutes

## 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 bailee<sup>1</sup> 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.”<sup>2</sup>

Garnishment is a statutory remedy prescribed by chapters 77 and 222, F.S. In general, a plaintiff initiates a garnishment action as a means of either prejudgment seizure<sup>3</sup> or postjudgment collection.<sup>4</sup> A creditor may obtain a continuing writ of garnishment against the debtor’s salary or wages.<sup>5</sup> A garnishee is a person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment.<sup>6</sup> Certain property of a debtor is exempt from creditor claims, at times and with conditions. Such exemptions include, but are not limited to:

- Homestead real property;<sup>7</sup>
- Personal property up to the value of \$1,000;<sup>8</sup>
- Head of family wages;<sup>9</sup>
- Firefighters’ pensions;<sup>10</sup>
- Medical savings account;<sup>11</sup>
- Motor vehicles;<sup>12</sup>
- Pension benefits; and<sup>13</sup>
- Veterans’ benefits;<sup>14</sup>

A writ of garnishment must contain a notice to the garnishment defendant who is a natural person of the right to an immediate hearing for dissolution of the writ.<sup>15</sup> When a garnishment plaintiff applies for a writ of garnishment, s. 77.041, F.S., provides a form for the notice that the clerk of court must furnish to a debtor who is delivered a writ of garnishment. The notice informs the debtor that he or she may have certain assets that are exempt from garnishment. If the debtor fails to timely claim an exemption, the writ of garnishment plaintiff may obtain a default judgment and is entitled to the garnished property.<sup>16</sup>

<sup>1</sup> 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).

<sup>2</sup> BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>3</sup> 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).

<sup>4</sup> Section 77.03, F.S.

<sup>5</sup> Section 77.0305, F.S.

<sup>6</sup> BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>7</sup> FLA. CONST. art. X, s. 4.

<sup>8</sup> *Id.*

<sup>9</sup> Section 222.11, F.S.

<sup>10</sup> Section 175.241, F.S.

<sup>11</sup> Section 222.22(1), F.S.

<sup>12</sup> Section 222.25, F.S.

<sup>13</sup> Section 222.21(1), F.S.

<sup>14</sup> Section 744.626, F.S.

<sup>15</sup> Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 33:6 (2012 edition). See also s. 77.014, F.S.

<sup>16</sup> Section 77.081, F.S.

The clerk of court must also give the debtor a statutory form for a claim of exemption. The form lists common exemptions to garnishment that the defendant may elect, along with a request for a hearing and a signature line for the debtor.<sup>17</sup> 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.

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.<sup>18</sup> If the creditor does not timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.<sup>19</sup> If the creditor fails to timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.<sup>20</sup> 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.<sup>21</sup>

Section 222.12, F.S., 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 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.

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.<sup>22</sup>

### III. Effect of Proposed Changes:

The bill 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 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 also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S., to include a requirement for certification under oath and penalty of perjury

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<sup>17</sup> Section 77.041, F.S.

<sup>18</sup> 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.

<sup>19</sup> *Id.*

<sup>20</sup> Section 77.041(3), F.S.

<sup>21</sup> Section 77.041(3), F.S.

<sup>22</sup> *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So. 2d 1276, 1279 (Fla. 4th DCA 2006).

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 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 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.

The bill takes effect 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:

None.

**VI. Technical Deficiencies:**

The bill on lines 109-118 contains provisions in the statutory form for the debtor to certify under oath as to the facts contained in the claim. The Legislature may wish to amend s. 77.041(3), F.S., to conform to the statutory form to require the debtor (defendant) to file a sworn claim of exemption and request for hearing.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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