

STORAGE NAME: h1601z.jud
DATE: September 18, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
FINAL ANALYSIS**

BILL #: HB 1601 (PCB JUD 00-05)

RELATING TO: Creditor's Claims

SPONSOR(S): Committee on Judiciary and Rep. Byrd

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 8 NAYS 0
 - (2) FINANCIAL SERVICES YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1601 amends s. 222.25, F.S., to exempt from attachment, garnishment, or other legal process, a debtor's interest in an earned income credit ("EIC") received or to be received, or the traceable deposits in a financial institution of a debtor's interest in such a credit, pursuant to s. 32 of the Internal Revenue Code.

The bill will allow persons entitled to an earned income credit to protect that credit during a bankruptcy or in the face of other legal process, regardless of whether the credit has been received or commingled with the debtor's financial accounts.

The bill shall be effective on becoming law.

HB 1601 passed the House of Representatives, but died in Senate Committee on Judiciary.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

Exemption from Legal Process

Florida law presently provides various exemptions from garnishment, attachment, and other legal process by creditors. These exemptions are part of a state-created framework that is independent of the federal bankruptcy law. Consequently, Floridians are generally unable to claim the federal exemptions described in s. 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. s. 522(d)). See s. 222.20, F.S.

Chapter 222, F.S., exempts the following:

- 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 values of life insurance policies and the proceeds of annuity contracts (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.).

Florida law does allow debtors to claim one set of federal exemptions. Section 222.201, F.S., allows a debtor to claim the exemptions provided by 11 U.S.C. s. 522(d)(10). That section creates exemptions for social security benefits, unemployment compensation, and local public assistance benefits, among others. See 11 U.S.C. s. 522(d)(10). Benefits such as AFDC, WIC, and food stamps fall under the rubric of "local public assistance." The federal law does not provide an exemption for the earned income credit.

The Earned Income Credit

The EIC is a federal tax credit for certain persons who work and have earned income under \$30,580. While the law provides for a credit against taxes owed, a taxpayer may also receive a refund depending on his or her tax status. See Department of the Treasury, Internal Revenue Service, Earned Income Credit (EIC), Pub. 596 (1999).

The earned income credit rises with income and the number of children a taxpayer has until it reaches a maximum amount of \$3,756 at an annual income of \$9,400 per year with two

children. The credit begins to slide back at an income of \$12,300 and will be zero at an income of \$30,095 (with two children).

C. EFFECT OF PROPOSED CHANGES:

The bill will exempt the earned income credit from legal process, including attachment, garnishment, and bankruptcy. This exemption shall apply regardless of whether the credit has been received or whether the credit has been commingled with a debtor's financial accounts, as long as the deposit of the earned income credit is traceable.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

From data taken from the Internal Revenue Service and the federal courts, it has been estimated that in 1998, approximately 7,325 Floridians who qualified for an earned income credit filed for bankruptcy protection. In that year the estimated average earned income credit in Florida was \$1,611. Therefore, approximately \$11,800,575 could have been exempt from legal process in that year if the bill was in effect.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds, or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared by any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson, J.D.

Staff Director:

P.K. Jameson, J.D.

AS REVISED BY THE COMMITTEE ON FINANCIAL SERVICES:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIARY:

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