

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1599 Support Obligations  
**SPONSOR(S):** Civil Justice & Courts Policy Committee; Ambler  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1858

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee	14 Y, 0 N, As CS	Bond	De La Paz
2)	Policy Council			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

Current law provides for awards of alimony and child support. Current law also provides for lawsuits to collect money from a debtor, provides for legal means to collect on such judgments, and provides that certain assets of persons are not subject to those legal means of collection.

Under current law, case law holds that child support received by a parent is not subject to claims of creditors of the parent holding the money. Statutory law does not address the issue. It is possible that alimony may be subject to creditor claims as soon as it is deposited into a bank account of a debtor/recipient of alimony.

This bill amends the statutory exemptions from creditor claims to provide that alimony and child support actually received is exempt from creditor claims, but only to the extent that such is reasonably necessary for support of the debtor or a dependent.

This bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Current law provides court process for the collection of lawful debts. A creditor may sue a debtor and, if the creditor prevails, the creditor may receive a final judgment awarding money damages. If the debtor does not voluntarily pay the judgment, the creditor has several legal means for forcibly collecting on the debt, including:

- Wage garnishment.
- Garnishment of money in a bank account.
- Directing the sheriff to seize assets, sell them, and give the proceeds to the creditor.

In order to protect debtors from being destitute, current law provides that certain property is exempt from being forcibly taken by a creditor. The state constitution provides that a homestead and \$1,000 worth of personal property is exempt. Statutory law provides numerous categories of exempt property, and federal statutory law also provides certain exemptions that apply in all of the states.<sup>1</sup>

Bankruptcy is means by which a person's assets are liquidated in order to pay the person's debts under court supervision. Art. 1, s. 8, cl. 4 of the United States Constitution gives Congress the right to uniformly govern bankruptcy law. Bankruptcy courts are operated by the federal government. A debtor (a bankrupt person) is not required to give up all of his or her assets in bankruptcy. Certain property is deemed "exempt" from the bankruptcy case, and may be kept by the debtor without being subject to creditor claims. The Bankruptcy Code at 11 U.S.C. s. 522 provides for exempt property in a bankruptcy case. In general, a debtor may choose to utilize the exempt property listing in state law or the exempt property of the Bankruptcy Code. 11 U.S.C. s. 522(b), however, allows a state to opt-out of the federal law and thereby insist that debtors only utilize state law exemptions. Florida, like most states, has made the opt-out election to prohibit the use of the federal exemptions and require that debtors may only use state law exemptions. See s. 222.20, F.S.

Where the parents of a minor child are not married and living together, current law provides that, in most circumstances, the parties should share the cost of the child by having one parent make payments to the other known as child support. Case law provides that child support payments are for the benefit of the child, not the parent. A recipient of support payments receives the monies not in his or her own right, but for the child.<sup>2</sup> A recipient of child support cannot contract away the right to child

<sup>1</sup> For example, the federal ERISA law provides that most retirement plans are exempt from creditor claims.

<sup>2</sup> *Dorset v. Dorset*, 902 So.2d 947 (Fla. 4th DCA 2005); *Thompson v. Korupp*, 440 So.2d 68, 69 (Fla. 1st DCA 1983).

support.<sup>3</sup> Accordingly, child support received and held by a parent may not be taken by creditors of the recipient parent.

In current law, a debtor's future right to collect alimony or child support is exempt in bankruptcy.<sup>4</sup> Note that this section exempts the "right to receive" certain property, it does not exempt such property once received. Thus, in a bankruptcy the intangible asset of the future support payments is an exempt asset (to the extent reasonably necessary), but a bank account containing support received is an asset that belongs to the bankruptcy estate (that is, it is an asset that is taken from the bankrupt person and paid pro rata to creditors).

This bill amends s. 222.25, F.S.<sup>5</sup> to provide that alimony, child support, or separate maintenance that has already been received is exempt from creditors, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor.<sup>6</sup> The exemption applies to bankruptcy cases and state court actions.

#### B. SECTION DIRECTORY:

Section 1 amends s. 222.25, F.S., to add a category of exempt property.

Section 2 provides an effective date of July 1, 2010.

### II. 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:

None.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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<sup>3</sup> *Sotoloff v. Sotoloff*, 745 So.2d 959 (Fla. 4th DCA 1998).

<sup>4</sup> Section 222.201, F.S.

<sup>5</sup> Section 222.25, F.S., contains miscellaneous categories of property exempt from creditors.

<sup>6</sup> While the phrase "reasonably necessary for the support of . . ." is vague, the same language is in the federal bankruptcy code and has been since the code was revised in 1984. It is likely that the state courts would look to federal precedent in interpreting that phrase.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2010, the Civil Justice & Courts Policy Committee adopted 1 amendment to this bill. The amendment:

- Removed the provision that would have required child support to be held in trust.
- Amended the provision on the exemption of support to provide that it applies both in and out of bankruptcy.

The bill was then reported favorably as a committee substitute.