

By the Committee on Commerce; and Senator Smith

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1 A bill to be entitled
2 An act relating to garnishment; amending s. 222.11,
3 F.S.; increasing the amount of wages of a head of
4 family which is exempt from garnishment; providing a
5 form that must be used for an agreement to waive the
6 exemption from garnishment; amending s. 77.041, F.S.;
7 increasing the amount of wages of a head of family
8 which is exempt from garnishment; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 222.11, Florida Statutes, is amended to
14 read:

15 222.11 Exemption of wages from garnishment.—

16 (1) As used in this section, the term:

17 (a) "Earnings" includes compensation paid or payable, in
18 money of a sum certain, for personal services or labor whether
19 denominated as wages, salary, commission, or bonus.

20 (b) "Disposable earnings" means that part of the earnings
21 of any head of family remaining after the deduction from those
22 earnings of any amounts required by law to be withheld.

23 (c) "Head of family" includes any natural person who is
24 providing more than one-half of the support for a child or other
25 dependent.

26 (2) (a) All of the disposable earnings of a head of family
27 whose disposable earnings are less than or equal to \$750 ~~\$500~~ a
28 week are exempt from attachment or garnishment.

29 (b) Disposable earnings of a head of a family, which are

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30 greater than \$750 ~~\$500~~ a week, may not be attached or garnished
 31 unless such person has agreed otherwise in writing. The
 32 agreement to waive the protection provided by this paragraph
 33 must:

- 34 1. Be in the same language as the contract or agreement to
- 35 which the waiver relates;
- 36 2. Be contained in a separate document attached to the
- 37 contract or agreement; and
- 38 3. Be in substantially the following form in at least 14-
- 39 point type:

40

41 IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A
 42 CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME
 43 IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN
 44 WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT.
 45 BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION
 46 FROM GARNISHMENT.

47

48 ...(Consumer's Signature)... ...(Date Signed)...

49

50 I have fully explained this document to the consumer.

51

52 ...(Creditor's Signature)... ...(Date Signed)...

53

54 ~~In no event shall~~ The amount attached or garnished may not
 55 exceed the amount allowed under the Consumer Credit Protection
 56 Act, 15 U.S.C. s. 1673.

57 (c) Disposable earnings of a person other than a head of
 58 family may not be attached or garnished in excess of the amount

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59 allowed under the Consumer Credit Protection Act, 15 U.S.C. s.
60 1673.

61 (3) Earnings that are exempt under subsection (2) and are
62 credited or deposited in any financial institution are exempt
63 from attachment or garnishment for 6 months after the earnings
64 are received by the financial institution if the funds can be
65 traced and properly identified as earnings. Commingling of
66 earnings with other funds does not by itself defeat the ability
67 of a head of family to trace earnings.

68 Section 2. Subsection (1) of section 77.041, Florida
69 Statutes, is amended to read:

70 77.041 Notice to individual defendant for claim of
71 exemption from garnishment; procedure for hearing.—

72 (1) Upon application for a writ of garnishment by a
73 plaintiff, if the defendant is an individual, the clerk of the
74 court shall attach to the writ the following "Notice to
75 Defendant":

76 NOTICE TO DEFENDANT OF RIGHT AGAINST
77 GARNISHMENT OF WAGES, MONEY,
78 AND OTHER PROPERTY
79

80 The Writ of Garnishment delivered to you with this Notice
81 means that wages, money, and other property belonging to you
82 have been garnished to pay a court judgment against you.
83 HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY,
84 OR PROPERTY. READ THIS NOTICE CAREFULLY.

85 State and federal laws provide that certain wages, money,
86 and property, even if deposited in a bank, savings and loan, or
87 credit union, may not be taken to pay certain types of court

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88 judgments. Such wages, money, and property are exempt from
89 garnishment. The major exemptions are listed below on the form
90 for Claim of Exemption and Request for Hearing. This list does
91 not include all possible exemptions. You should consult a lawyer
92 for specific advice.

93 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM
94 BEING GARNISHED, OR TO GET BACK ANYTHING ALREADY
95 TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION
96 AND REQUEST FOR HEARING AS SET FORTH BELOW AND HAVE
97 THE FORM NOTARIZED. YOU MUST FILE THE FORM WITH THE
98 CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU
99 RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS.
100 YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO
101 THE PLAINTIFF AND THE GARNISHEE AT THE ADDRESSES
102 LISTED ON THE WRIT OF GARNISHMENT.

103 If you request a hearing, it will be held as soon as
104 possible after your request is received by the court. The
105 plaintiff must file any objection within 3 business days if you
106 hand delivered to the plaintiff a copy of the form for Claim of
107 Exemption and Request for Hearing or, alternatively, 8 business
108 days if you mailed a copy of the form for claim and request to
109 the plaintiff. If the plaintiff files an objection to your Claim
110 of Exemption and Request for Hearing, the clerk will notify you
111 and the other parties of the time and date of the hearing. You
112 may attend the hearing with or without an attorney. If the
113 plaintiff fails to file an objection, no hearing is required,
114 the writ of garnishment will be dissolved and your wages, money,
115 or property will be released.

116 YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION

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117 IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY
118 FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK
119 CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL
120 ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT
121 AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE
122 AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK
123 THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN
124 YOUR AREA.

125 CLAIM OF EXEMPTION AND
126 REQUEST FOR HEARING

127
128 I claim exemptions from garnishment under the following
129 categories as checked:

.... 1. Head of family wages. (You must check a. or b. below.)

130

.... a. I provide more than one-half of the support for a child
or other dependent and have net earnings of \$750 ~~\$500~~ or
less per week.

131

.... b. I provide more than one-half of the support for a child
or other dependent, have net earnings of more than \$750
~~\$500~~ per week, but have not agreed in writing to have my
wages garnished.

132

.... 2. Social Security benefits.

133

.... 3. Supplemental Security Income benefits.

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.... 4. Public assistance (welfare).

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- 5. Workers' Compensation.
- 6. Unemployment Compensation.
- 7. Veterans' benefits.
- 8. Retirement or profit-sharing benefits or pension money.
- 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- 10. Disability income benefits.
- 11. Prepaid College Trust Fund or Medical Savings Account.
- 12. Other exemptions as provided by law.
.....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address:

Telephone number:.....

The statements made in this request are true to the best of my knowledge and belief.

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154
 155 Defendant's signature
 156 Date.....

157
 158 STATE OF FLORIDA
 159 COUNTY OF

160
 161 Sworn and subscribed to before me this day of ...(month
 162 and year)..., by ...(name of person making statement)...
 163 Notary Public/Deputy Clerk
 164 Personally KnownOR Produced Identification....
 165 Type of Identification Produced.....

166 Section 3. This act shall take effect October 1, 2010.