

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 405 Claims of Exemption from Garnishment

SPONSOR(S): Insurance & Banking Subcommittee; Civil Justice Subcommittee; Spano and Grant

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
3) Judiciary Committee	17 Y, 0 N	Cary	Havlicak

SUMMARY ANALYSIS

Garnishment is a creditor's means to collect a monetary judgment through seizure of the debtor's property held by a third party. Current law provides that certain property is exempt from creditor claims.

If a debtor claims that garnished property is exempt and should not be transferred from the third party to the creditor, the creditor has 3 business days to respond if the claim of exemption is delivered by hand or 8 business days to respond if the claim of exemption is mailed. If there is no timely response, the garnishment fails and the debtor keeps the property. The bill increases the number of business days for a plaintiff to respond from 3 to 8 for a hand delivered claim and from 8 to 14 for a mailed claim of exemption.

Current law requires forms applicable to garnishment to be delivered directly to parties, which is contrary to normal legal practice. This bill allows for delivery to a party's attorney.

While current law requires the debtor to certify under oath and penalty of perjury to the facts underlying the claim of exemption, the statutory form does not include the oath. This bill corrects the statutory form for use by a debtor.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

When a litigant obtains a judgment against another litigant, it can sometimes be difficult to collect the judgment. Garnishment is a method to do so, created by statute and unknown to common law.¹ The party to whom the judgment is owed is known as the "creditor" or "judgment creditor," while the party against whom the judgment will be garnished is known as the "garnishee" or the "debtor".²

Garnishment is a statutory remedy, controlled by ch. 77, F.S., and ch. 222, F.S. Section 222.12, F.S., was originally passed into law in 1875,³ while s. 77.041, F.S., was originally passed into law in 2000.⁴ A writ of garnishment is generally filed after a judgment has been entered against the debtor.⁵ However, there is a procedure for issuance of a garnishment prior to judgment⁶ in cases other than a tort action.⁷ For a debtor without assets to satisfy the judgment, the creditor may file a continuing writ of garnishment against salary or wages.⁸ A garnishment may also be filed against any tangible or intangible personal property of the defendant.⁹

As in other forms of remedies available to a creditor, there are limits on collection. State constitutional and statutory law, as well as federal law (such as the Bankruptcy Code), provide that certain property of a debtor is exempt from creditor claims. Exemptions include, usually with qualification, but are not limited to:

- Homestead real property;¹⁰
- Personal property to the value of \$1000;¹¹
- Head of family wages;¹²
- Firefighters' pensions;¹³
- Medical savings account;¹⁴
- Motor vehicles;¹⁵
- Pension benefits;¹⁶
- Veterans' benefits;¹⁷ and
- Workers' compensation payments.¹⁸

Section 77.041, F.S., provides a form for the notice that the clerk of the court must furnish to an individual debtor upon the creditor's application for a writ of garnishment. The notice informs the debtor

¹ *Robinson v. Robinson*, 18 So.2d 29, 31 (Fla. 1944).

² While it may be easier to think of the creditor as the plaintiff in the lawsuit and the debtor as the defendant, there are circumstances where the defendant wins the case and receives a judgment against the plaintiff. Accordingly, it is more accurate to refer to creditor and debtor.

³ Section 2, ch. 2065, L.O.F. (1875).

⁴ Section 22, ch. 2000-258, L.O.F.

⁵ Section 77.03, F.S.

⁶ Section 77.031, F.S.

⁷ Section 77.02, F.S.

⁸ Section 77.0305, F.S.

⁹ Section 77.01, F.S.

¹⁰ Fla. Const., Art. 10, Sec. 4.

¹¹ *Id.*

¹² Section 222.11, F.S.

¹³ Section 175.241, F.S.

¹⁴ Section 222.22, F.S.

¹⁵ Section 222.25, F.S.

¹⁶ Section 222.21, F.S.

¹⁷ Section 744.626, F.S.

¹⁸ Section 61.14, F.S.

that he or she may have certain assets that are exempt from garnishment. The exemptions are not automatic and must be timely and affirmatively asserted by the debtor. If the debtor fails to timely claim an exemption, the creditor is entitled to a default judgment (and is entitled to the property garnished).¹⁹

The clerk is also required to furnish the debtor with a statutory form for a claim of exemption. The statutory form lists some common exemptions that the defendant may check, along with a request for a hearing and a signature line for the debtor.²⁰ While s. 222.12, F.S., requires that a claim of exemption be filed under oath, the statutory form as s. 77.041(1), F.S., does not contain the legal language necessary to effectuate a sworn statement.

Section 77.041(2), F.S., provides that, if a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the claim of exemption if the defendant hand delivers the form and 8 business days if the defendant mails the form. Section 222.12, F.S., however, provides that the creditor's objection must be filed within 2 business days. If the creditor does not timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.²¹

Upon the filing by a debtor of a claim of exemption, and the timely filing of an objection by the creditor, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.²²

It is unclear why there are conflicting statutes regarding claims of exemption. The passage of s. 77.041, F.S., may have been intended to replace s. 222.12, F.S., but the courts have not interpreted it that way.²³ A trial court decision dissolved a writ of garnishment because the plaintiff's answers to the defendant's claims of exemption were not sufficient under s. 77.041(3), F.S., to "contest" the claims because the plaintiff's answers were general denials, rather than specifically contesting each claim. The appellate court reversed, claiming that the trial court erred by narrowly focusing on the word "contest" in s. 77.041(3), F.S., and that the procedure in s. 77.041, F.S., supplements, rather than replaces s. 222.12, F.S.²⁴

Effects of the Bill

This bill amends s. 77.041, F.S., to extend the time that a creditor or creditor's attorney has to file an objection to a defendant's exemption request to 8 business days for a hand-delivered form and 14 business days for a mailed form.

The bill allows delivery of documents to the plaintiff's or defendant's attorney, rather than requiring delivery to the plaintiff or defendant himself or herself.

The bill also modifies the statutory form to include certification under oath and penalty of perjury that the debtor mailed 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 provides for the requirement for a sworn claim of exemption in s. 77.041, F.S., and repeals s. 222.12, F.S., the 1875 statute relating to proceedings for exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 77.041, F.S., relating to notice to individual defendant for claim of exemption from garnishment and the procedures for a hearing.

Section 2 repeals s. 222.12, F.S., relating to proceedings for exemption.

¹⁹ Section 77.081, F.S.

²⁰ Section 77.041, F.S.

²¹ *Id.*

²² Section 77.041(3), F.S.

²³ *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So.2d 1276 (Fla. 4th DCA 2006).

²⁴ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment provides for hand delivery in the form to apply for an exemption from garnishment. The second amendment provides a requirement that the defendant's

claim for an exemption be sworn. The third amendment allows a plaintiff to “answer” a defendant’s claim rather than to “contest” the claim.

On March 19, 2013, the Insurance and Banking Subcommittee considered and adopted one amendment. The amendment inserted “or the plaintiff’s attorney” throughout the committee substitute to clarify that a creditor’s attorney may file an answer to a debtor’s claim of exemption, on behalf the creditor. The Insurance and Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.