

1 A bill to be entitled
2 An act relating to garnishment; amending s. 77.041,
3 F.S.; revising the "Notice to Defendant" provided by
4 the clerk of court in a garnishment proceeding;
5 providing that a defendant in a garnishment proceeding
6 may provide notice of a garnishment exemption and
7 request for hearing to the plaintiff's or the
8 garnishee's attorney; extending the time allowed for
9 the plaintiff or the plaintiff's attorney to respond
10 to the defendant's claim of exemption and request for
11 hearing; providing response procedures of the clerk of
12 court and the plaintiff's attorney when the
13 plaintiff's attorney is served with a notice of
14 garnishment exemption and request for hearing;
15 requiring the defendant to certify under oath and
16 penalty of perjury that he or she provided notice of
17 the garnishment exemption claim and request for
18 hearing to the plaintiff and the garnishee, or the
19 plaintiff's and garnishee's attorneys, in order to
20 obtain a hearing; repealing s. 222.12, F.S., relating
21 to proceedings for exemption; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsections (1) and (3) of section 77.041,
27 Florida Statutes, are amended to read:

28 77.041 Notice to individual defendant for claim of

29 exemption from garnishment; procedure for hearing.-

30 (1) Upon application for a writ of garnishment by a
 31 plaintiff, if the defendant is an individual, the clerk of the
 32 court shall attach to the writ the following "Notice to
 33 Defendant":

34 NOTICE TO DEFENDANT OF RIGHT AGAINST
 35 GARNISHMENT OF WAGES, MONEY,
 36 AND OTHER PROPERTY

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

42 State and federal laws provide that certain wages, money,
 43 and property, even if deposited in a bank, savings and loan, or
 44 credit union, may not be taken to pay certain types of court
 45 judgments. Such wages, money, and property are exempt from
 46 garnishment. The major exemptions are listed below on the form
 47 for Claim of Exemption and Request for Hearing. This list does
 48 not include all possible exemptions. You should consult a lawyer
 49 for specific advice.

50 IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND YOU WANT TO
 51 KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED,
 52 OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM
 53 FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH
 54 BELOW AND HAVE THE FORM NOTARIZED. IF YOU HAVE A VALID
 55 EXEMPTION, YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN
 56 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE

57 | IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS
 58 | FORM TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND THE
 59 | GARNISHEE OR THE GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON
 60 | THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO
 61 | COMPLETE A CERTIFICATION THAT YOU MAILED OR DELIVERED COPIES TO
 62 | THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND GARNISHEE OR THE
 63 | GARNISHEE'S ATTORNEY.

64 | If you request a hearing, it will be held as soon as
 65 | possible after your request is received by the court. The
 66 | plaintiff or the plaintiff's attorney must file any objection
 67 | within 8 ~~3~~ business days if you hand delivered to the plaintiff
 68 | or the plaintiff's attorney a copy of the form for Claim of
 69 | Exemption and Request for Hearing or, alternatively, 14 ~~8~~
 70 | business days if you mailed a copy of the form for claim and
 71 | request to the plaintiff or the plaintiff's attorney. If the
 72 | plaintiff or the plaintiff's attorney files an objection to your
 73 | Claim of Exemption and Request for Hearing, the clerk will
 74 | notify you and the other parties of the time and date of the
 75 | hearing. You may attend the hearing with or without an attorney.
 76 | If the plaintiff or the plaintiff's attorney fails to file an
 77 | objection, no hearing is required, the writ of garnishment will
 78 | be dissolved, and your wages, money, or property will be
 79 | released.

80 | IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE FORM FOR
 81 | CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR
 82 | PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK
 83 | CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE, YOU
 84 | SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER,

85 | LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR
 86 | ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES
 87 | PROGRAM IN YOUR AREA.

88 | CLAIM OF EXEMPTION AND
 89 | REQUEST FOR HEARING

90 | I claim exemptions from garnishment under the following
 91 | categories as checked:

92 |

.... 1. Head of family wages. (~~You must~~ Check
either a. or b. below if applicable.)

93 |

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

94 |

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

95 |

.... 2. Social Security benefits.

96 |

.... 3. Supplemental Security Income benefits.

97 |

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

98 |

.... 5. Workers' Compensation.

99

.... 6. Reemployment assistance or unemployment compensation.

100

.... 7. Veterans' benefits.

101

.... 8. Retirement or profit-sharing benefits or pension money.

102

.... 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.

103

.... 10. Disability income benefits.

104

.... 11. Prepaid College Trust Fund or Medical Savings Account.

105

.... 12. Other exemptions as provided by law.
.....(explain)

106

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

109 Address:

110 Telephone number:.....

111 I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this
112 CLAIM OF EXEMPTION AND REQUEST FOR HEARING has been furnished by
113 (circle one) hand delivery or United States Mail on

114 | (insert date) , to: (insert names and addresses of
115 | Plaintiff or Plaintiff's attorney and of Garnishee or
116 | Garnishee's attorney to whom this document was furnished) .

117 |
118 | I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the
119 | statements made in this request are true to the best of my
120 | knowledge and belief.

121 |
122 | Defendant's signature
123 | Date.....

124 | STATE OF FLORIDA
125 | COUNTY OF

126 | Sworn and subscribed to before me this day of ... (month
127 | and year)...., by ... (name of person making statement) ...
128 | Notary Public/Deputy Clerk
129 | Personally KnownOR Produced Identification....
130 | Type of Identification Produced.....

131 | (3) Upon the filing by a defendant of a sworn claim of
132 | exemption and request for hearing, a hearing will be held as
133 | soon as is practicable to determine the validity of the claimed
134 | exemptions. If the plaintiff or the plaintiff's attorney does
135 | not file a sworn written statement that answers ~~contests~~ the
136 | defendant's claim of exemption within 8 ~~3~~ business days after
137 | hand delivering the claim and request or, alternatively, 14 ~~8~~
138 | business days~~7~~, if the claim and request were served by mail, no
139 | hearing is required and the clerk must automatically dissolve
140 | the writ and notify the parties of the dissolution by mail.

141 | Section 2. Section 222.12, Florida Statutes, is repealed.

CS/CS/HB 405

2013

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Section 3. This act shall take effect July 1, 2013.