

By Senator Galvano

26-00651-13

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1 A bill to be entitled
 2 An act relating to garnishment; amending s. 77.041,
 3 F.S.; revising "Notice to Defendant" provided by clerk
 4 of court in a garnishment proceeding; providing that a
 5 defendant in a garnishment proceeding may provide
 6 notice of a garnishment exemption to plaintiff or
 7 garnishee's attorney; extending time for plaintiff to
 8 respond to defendant's claim of exemption and request
 9 for hearing; requiring defendant to certify under oath
 10 and penalty of perjury that he or she provided notice
 11 of exemption claim and request for hearing to
 12 plaintiff, garnishee, or their respective attorneys;
 13 repealing s. 222.12, F.S., relating to proceedings for
 14 exemption; providing an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Subsections (1) and (3) of section 77.041,
 19 Florida Statutes, are amended to read:

20 77.041 Notice to individual defendant for claim of
 21 exemption from garnishment; procedure for hearing.—

22 (1) Upon application for a writ of garnishment by a
 23 plaintiff, if the defendant is an individual, the clerk of the
 24 court shall attach to the writ the following "Notice to
 25 Defendant":

26
 27 NOTICE TO DEFENDANT OF RIGHT AGAINST
 28 GARNISHMENT OF WAGES, MONEY,
 29 AND OTHER PROPERTY

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

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

44 IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND
45 YOU WANT TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY
46 FROM BEING GARNISHED, OR TO RECOVER ~~GET BACK~~ ANYTHING
47 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF
48 EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW
49 AND HAVE THE FORM NOTARIZED. IF YOU HAVE A VALID
50 EXEMPTION, YOU MUST FILE THE FORM WITH THE CLERK'S
51 OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS
52 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO
53 MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF
54 AND THE GARNISHEE OR THEIR RESPECTIVE ATTORNEYS AT THE
55 ADDRESSES LISTED ON THE WRIT OF GARNISHMENT. NOTE THAT
56 THE FORM REQUIRES YOU TO COMPLETE A CERTIFICATION THAT
57 YOU MAILED OR HAND DELIVERED COPIES TO THE PLAINTIFF
58 AND GARNISHEE OR THEIR RESPECTIVE ATTORNEYS.

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

72 IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE
 73 FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR
 74 WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE
 75 COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL
 76 ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A
 77 LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL
 78 SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR
 79 ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL
 80 SERVICES PROGRAM IN YOUR AREA.

81
 82 CLAIM OF EXEMPTION AND
 83 REQUEST FOR HEARING

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 85 I claim exemptions from garnishment under the following
 86 categories as checked:

.... 1. Head of family wages. (Check either ~~You must check a.~~ or

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- b. below, if one applies to you.)
- 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.
- 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.
- 2. Social Security benefits.
- 3. Supplemental Security Income benefits.
- 4. Public assistance (welfare).
- 5. Workers' Compensation.
- 6. Reemployment assistance or 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.

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.... 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:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this claim of exemption and request for hearing has been furnished by
 U.S. mail or hand delivery on ...(insert date)..., to:
...(insert names and addresses of plaintiff or plaintiff's attorney and of garnishee or garnishee's attorney to whom a copy of this document was mailed or hand delivered....

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

.....
Defendant's signature
Date.....

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124 STATE OF FLORIDA

125 COUNTY OF

126

127 Sworn and subscribed to before me this day of ...(month
128 and year)..., by ...(name of person making statement)...

129 Notary Public/Deputy Clerk

130 Personally KnownOR Produced Identification....

131 Type of Identification Produced.....

132

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

143 Section 2. Section 222.12, Florida Statutes, is repealed.

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