

By the Committee on Commerce and Tourism; and Senator Galvano

577-02585-13

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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 the  
4 clerk of court in a garnishment proceeding; providing  
5 that a defendant in a garnishment proceeding may  
6 provide notice of a garnishment exemption and request  
7 for hearing to the plaintiff's or the garnishee's  
8 attorney; extending the time allowed for the plaintiff  
9 or the plaintiff's attorney to respond to the  
10 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, the garnishee, or their  
19 respective attorneys in order to obtain a hearing;  
20 repealing s. 222.12, F.S., relating to proceedings for  
21 exemption; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Subsections (1) and (3) of section 77.041,  
26 Florida Statutes, are amended to read:

27 77.041 Notice to individual defendant for claim of  
28 exemption from garnishment; procedure for hearing.—

29 (1) Upon application for a writ of garnishment by a

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30 plaintiff, if the defendant is an individual, the clerk of the  
31 court shall attach to the writ the following "Notice to  
32 Defendant":

33  
34 NOTICE TO DEFENDANT OF RIGHT AGAINST  
35 GARNISHMENT OF WAGES, MONEY,  
36 AND OTHER PROPERTY  
37

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

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

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

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59 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO  
60 MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF  
61 OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE  
62 GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON THE  
63 WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU  
64 TO COMPLETE A CERTIFICATION THAT YOU MAILED OR HAND  
65 DELIVERED COPIES TO THE PLAINTIFF OR THE PLAINTIFF'S  
66 ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S  
67 ATTORNEY.

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

84 IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE  
85 FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR  
86 WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE  
87 COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL

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88           ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A  
89           LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL  
90           SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR  
91           ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL  
92           SERVICES PROGRAM IN YOUR AREA.

93

94                                   CLAIM OF EXEMPTION AND  
95                                   REQUEST FOR HEARING

96

97 I claim exemptions from garnishment under the following  
98 categories as checked:

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

99

.... 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.

100

.... 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.

101

.... 2. Social Security benefits.

102

.... 3. Supplemental Security Income benefits.

103

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

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.... 5. Workers' Compensation.

105

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

106

.... 7. Veterans' benefits.

107

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

108

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

109

.... 10. Disability income benefits.

110

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

111

.... 12. Other exemptions as provided by law.

.....(explain)

112

113

114

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

117

Address: .....

Telephone number:.....

120

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

121

122

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124 date)..., to: ...(insert names and addresses of Plaintiff or  
125 Plaintiff's attorney and of Garnishee or Garnishee's attorney to  
126 whom this document was furnished)....

127  
128 I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the  
129 statements made in this request are true to the best of my  
130 knowledge and belief.

131  
132 .....  
133 Defendant's signature  
134 Date.....

135  
136 STATE OF FLORIDA  
137 COUNTY OF

138  
139 Sworn and subscribed to before me this ..... day of ...(month  
140 and year)...., by ...(name of person making statement)...  
141 Notary Public/Deputy Clerk  
142 Personally Known .....OR Produced Identification....  
143 Type of Identification Produced.....

144  
145 (3) Upon the filing by a defendant of a sworn claim of  
146 exemption and request for hearing, a hearing will be held as  
147 soon as is practicable to determine the validity of the claimed  
148 exemptions. If the plaintiff or the plaintiff's attorney does  
149 not file a sworn written statement that answers ~~contests~~ the  
150 defendant's claim of exemption within 8 ~~3~~ business days after  
151 hand delivering the claim and request or, alternatively, 14 ~~8~~  
152 business days~~7~~ if the claim and request were served by mail, no

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153 hearing is required and the clerk must automatically dissolve  
154 the writ and notify the parties of the dissolution by mail.

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

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