

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 409 Garnishment  
**SPONSOR(S):** Criminal & Civil Justice Policy Council; Policy Council; Civil Justice & Courts Policy Committee; Brisé and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 492

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee	11 Y, 0 N, As CS	DeZego	De La Paz
2)	Policy Council	17 Y, 0 N, As CS	Varn	Ciccone
3)	Criminal & Civil Justice Policy Council	14 Y, 0 N, As CS	De La Paz	Havlicak
4)				
5)				

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### SUMMARY ANALYSIS

A garnishment is a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property, such as wages or bank accounts, held by that third party. In Florida, a person who provides more than half the support for a child or other dependent (head of family) whose disposable earnings are less than or equal to \$500 a week (\$26,000 a year) is exempt from wage garnishment. A head of family whose disposable earnings are greater than \$500 a week is also exempt from wage garnishment, unless he or she waives the exemption in writing.

The bill increases the amount of disposable earnings a head of family can make and still be exempt from garnishment of wages with or without a written waiver from \$500 to \$750 a week (\$39,000 a year). In addition, the bill provides specific requirements for the written waiver of garnishment to be effective and example language for the format of the waiver.

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

The bill provides an effective date of October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Law

A garnishment is a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property, such as wages or bank accounts, held by that third party.<sup>1</sup> One of the most common types of garnishment is wage garnishment, where an employer is required to deduct money from an employee's wages in accordance with a court order.

In Florida, a head of family whose disposable earnings<sup>2</sup> are less than or equal to \$500 a week (\$26,000 a year) is exempt from wage garnishment.<sup>3</sup> In addition, a head of family whose disposable earnings are greater than \$500 a week is exempt from wage garnishment unless he or she has agreed otherwise in writing.<sup>4</sup> Florida law defines a head of family as a person who provides more than half the support for a child or other dependent. In a two income household, only one person may be considered the head of family. The \$500 amount for disposable earnings was created by statute in 1993 and has not been increased since that time.<sup>5</sup> With inflation, the corresponding amount today would be \$748.55.<sup>6</sup>

Section 77.041, F.S., streamlines procedures in garnishment proceedings against individuals and requires the Clerk of Court to attach a notice to writs of garnishment along with a "Claim of Exemption and Request for Hearing" form. This form contains eleven authorized exemptions, including head of family, as well as a space to list any other exemptions provided by law. The burden is on the debtor to prove entitlement to any exemption.<sup>7</sup>

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<sup>1</sup> Black's Law Dictionary 300 (2d pocket ed. 2001).

<sup>2</sup> Section 222.11(1)b, F.S., provides that "disposable earnings" are the part of the earnings of any head of family remaining after the deduction from those earnings of any amounts required by law to be withheld. Section 222.11(1)a, F.S., provides that "earnings" represent monies paid or payable in a sum certain, as a result of personal services or of labor performed.

<sup>3</sup> Section 222.11(2)a, F.S.

<sup>4</sup> Section 222.11(2)b, F.S.

<sup>5</sup> See 93-256, L.O.F

<sup>6</sup> See [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)

<sup>7</sup> *In re Harrison*, 216 B.R. 451, 453 (So.Dis.Fla.1997) (citing *In re Parker*, 147 B.R. 810 (M.D.Fla.1992)); *Brock v. Westport Recovery Corp.*, 832 So.2d 209, 211 (Fla. 4th DCA 2002).

If a person's wages are attached or garnished, they cannot exceed the amount allowed under the Consumer Credit Protection Act.<sup>8</sup> This act provides that garnishment generally cannot exceed the lesser of twenty-five per cent of a person's disposable earnings for that week, or the amount by which his or her disposable earnings for that week exceed thirty times the Federal minimum hourly wage in effect at the time the earnings are payable.<sup>9</sup> The current Federal minimum hourly wage is \$7.25.<sup>10</sup>

Section 61.12, F.S., "creates an exception to the head of family exemption from garnishment with respect to orders of the court for alimony, suit money, or child support."<sup>11</sup> Therefore, the head of family exemption in s. 222.11, F.S., does not apply to wage garnishment in child support cases.

### Effect of Bill

The proposed effect of the bill is to increase the amount of disposable earnings a head of family may earn and still be exempted from garnishment of wages from \$500 a week to \$750 a week, which is consistent with the rate of inflation.<sup>12</sup> Therefore, a person who provides more than half the support for a child or other dependent whose disposable earnings are equal to or less than \$39,000 a year is exempt from wage garnishment under this bill.

The bill also provides that if the head of family's disposable earnings are greater than \$750 a week, instead of the current \$500 a week, then he or she is exempt from garnishment unless the exemption is waived in writing. In addition, this bill adds requirements for the waiver to be valid. Specifically, this bill requires the waiver to be:

- In the same language as the contract or agreement to which the waiver relates,
- In a separate document that is attached to the contract or the agreement, and
- Written in at least size 14 point font.

The waiver must be in substantially the same format as the language provided in the bill, which consists of a statement that must be signed by the consumer. The statement acknowledges that a person who provides more than one-half of the support for a child or other dependent is exempt in full or part from garnishment under Florida law and that this exemption may only be waived by signing the document. The creditor must also sign a statement confirming that the creditor has fully explained the document to the consumer.

The bill is not retroactive and does not affect waivers entered into prior to the effective date of October 1, 2010.<sup>13</sup>

## B. SECTION DIRECTORY:

Section 1. Amends s. 77.041, F.S., relating to notice to an individual defendant for a claim of exemption from garnishment.

Section 2. Amends s. 222.11, F.S., relating to exemption of wages from garnishment.

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<sup>8</sup> Section 222.11(2)c, F.S.

<sup>9</sup> See Consumer Credit Protection Act, 15 USC. S. 1673. The restrictions regarding maximum allowable garnishment do not apply to any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review; any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11; or any debt due for any State or Federal tax.

<sup>10</sup> See <http://www.dol.gov/dol/topic/wages/minimumwage.htm>

<sup>11</sup> *Department of Health and Rehabilitative Services v. Sweeting*, 423 So.2d 1025, 1026 (Fla. 4<sup>th</sup> DCA 1982). See *Sokolsky v. Kuhn*, 405 So.2d 975 (Fla. 1981).

<sup>12</sup> The exemption amount of \$500 per week was last updated in 1993. See

[http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)

<sup>13</sup> Unless the Legislature states otherwise, legislation is presumed only to operate prospectively. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

Section 3. Provides an effective date of October 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have an indeterminate positive fiscal impact on consumers due to the increase in persons who would qualify for a waiver of garnishment of wages under this bill. The bill also appears to have a corresponding negative fiscal impact on creditors.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill. The amendment updates the Claim of Exemption and Request for Hearing Form in s. 77.041, F.S, to reflect the increase in the wage garnishment exemption increase from \$500 to \$750.

On February 4, 2010, the Policy Council adopted one amendment to the bill to change the effective date from July 1, 2010, to October 1, 2010. The bill was reported favorably as a Council Substitute for CS/HB 409.

On April 12, 2010, the Criminal & Civil Justice Policy Council adopted an amendment to clarify that the agreement to waive the exemption from garnishment must also be written in the same language as the contract or agreement to which the waiver relates.