

## CHAPTER 2010-97

### Committee Substitute for Senate Bill No. 492

An act relating to garnishment; amending s. 222.11, F.S.; increasing the amount of wages of a head of family which is exempt from garnishment; providing a form that must be used for an agreement to waive the exemption from garnishment; amending s. 77.041, F.S.; increasing the amount of wages of a head of family which is exempt from garnishment; providing an effective date.

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

Section 1. Section 222.11, Florida Statutes, is amended to read:

222.11 Exemption of wages from garnishment.—

(1) As used in this section, the term:

(a) “Earnings” includes compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus.

(b) “Disposable earnings” means that 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.

(c) “Head of family” includes any natural person who is providing more than one-half of the support for a child or other dependent.

(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to ~~\$750~~ \$500 a week are exempt from attachment or garnishment.

(b) Disposable earnings of a head of a family, which are greater than \$750 \$500 a week, may not be attached or garnished unless such person has agreed otherwise in writing. The agreement to waive the protection provided by this paragraph must:

1. Be written in the same language as the contract or agreement to which the waiver relates;

2. Be contained in a separate document attached to the contract or agreement; and

3. Be in substantially the following form in at least 14-point type:

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR  
A CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR  
INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA

LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

...(Consumer’s Signature)... ...(Date Signed)...

I have fully explained this document to the consumer.

...(Creditor’s Signature)... ...(Date Signed)...

~~In no event shall~~ The amount attached or garnished may not exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(c) Disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(3) Earnings that are exempt under subsection (2) and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

Section 2. Subsection (1) of section 77.041, Florida Statutes, is amended to read:

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

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

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

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

State and federal laws provide that certain wages, money, and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment. The major exemptions are listed below on the form for Claim of Exemption and Request for Hearing. This list

does not include all possible exemptions. You should consult a lawyer for specific advice.

TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW AND HAVE THE FORM NOTARIZED. YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF AND THE GARNISHEE AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

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

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

CLAIM OF EXEMPTION AND REQUEST FOR HEARING

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

- ..... 1. Head of family wages. (You must check a. or b. below.)
  - ..... a. I provide more than one-half of the support for a child or other dependent and have net earnings of ~~\$750~~ \$500 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~~ \$500 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. 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.
- ..... 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: .....

The statements made in this request are true to the best of my knowledge and belief.

.....  
Defendant's signature

Date .....

STATE OF FLORIDA  
COUNTY OF

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

Notary Public/Deputy Clerk

Personally Known ..... OR Produced Identification .....

Type of Identification Produced .....

Section 3. This act shall take effect October 1, 2010.

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.