

CHAPTER 2013-233

Committee Substitute for Senate Bill No. 592

An act relating to garnishment; amending s. 77.04, F.S.; authorizing an employee or agent of a business entity to answer a writ of garnishment on behalf of the entity; amending s. 77.041, F.S.; revising “Notice to Defendant” provided by the clerk of court in a garnishment proceeding; providing that a defendant in a garnishment proceeding may provide notice of a garnishment exemption and request for hearing to the plaintiff’s or the garnishee’s attorney; extending the time allowed for the plaintiff or the plaintiff’s attorney to respond to the defendant’s claim of exemption and request for hearing; providing response procedures of the clerk of court and the plaintiff’s attorney when the plaintiff’s attorney is served with a notice of garnishment exemption and request for hearing; requiring the defendant to certify under oath and penalty of perjury that he or she provided notice of the garnishment exemption claim and request for hearing to the plaintiff, the garnishee, or their respective attorneys in order to obtain a hearing; repealing s. 222.12, F.S., relating to proceedings for exemption; providing an effective date.

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

Section 1. Section 77.04, Florida Statutes, is amended to read:

77.04 Writ; form.—The writ shall require the garnishee to serve an answer ~~to it on the plaintiff~~ within 20 days after service of the writ stating whether the garnishee he or she is indebted to the defendant at the time of the answer, or was indebted at the time of service of the writ, plus up to sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff’s motion. If the garnishee is a business entity, an authorized employee or agent of the entity may execute, file, and serve the answer on behalf of the entity.

Section 2. Subsections (1) and (3) of section 77.041, Florida Statutes, are 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.

IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND YOU WANT TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO RECOVER 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. IF YOU HAVE A VALID EXEMPTION, 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 OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO COMPLETE A CERTIFICATION THAT YOU MAILED OR HAND DELIVERED COPIES TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S ATTORNEY.

If you request a hearing, it will be held as soon as possible after your request is received by the court. The plaintiff or the plaintiff's attorney must file any objection within 8 3 business days if you hand delivered to the plaintiff or the plaintiff's attorney a copy of the form for Claim of Exemption and Request for Hearing or, alternatively, 14 8 business days if you mailed a copy of the form for claim and request to the plaintiff or the plaintiff's attorney. If the plaintiff or the plaintiff's attorney 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 or the plaintiff's attorney 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.

IF YOU HAVE A VALID EXEMPTION, 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. (Check either ~~You must check~~ a. or b. below, if applicable.)
- 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.
- 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 (circle one)United States 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 this document was furnished)....

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.....

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 KnownOR Produced Identification.....

Type of Identification Produced.....

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

Section 3. Section 222.12, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2013.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.