



Policy Council

**THURSDAY, FEBRUARY 4, 2010
MORRIS HALL
8:15 A.M. – 9:00 A.M.**

MEETING PACKET

**Larry Cretul
Speaker**

REVISED 1

**Rep. Marcelo Llorente
Chair**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Policy Council

Start Date and Time: Thursday, February 04, 2010 08:15 am

End Date and Time: Thursday, February 04, 2010 09:00 am

Location: Morris Hall (17 HOB)

Duration: 0.75 hrs

Consideration of the following bill(s):

CS/HB 297 Vehicle Crashes Involving Death by Public Safety & Domestic Security Policy Committee, Planas

CS/HB 409 Garnishment by Civil Justice & Courts Policy Committee, Brisé

NOTICE FINALIZED on 01/28/2010 11:16 by Glatfelter.Sukie

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

Section 316.027(b), F.S. provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062¹. Any person who willfully violates this subsection commits a first degree felony².

Section 901.02, F.S. provides a law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount³ or, in some circumstances⁴, require the arrestee be held until first appearance⁵ for determination of a bond amount⁶. A person arrested on a warrant with a

¹ Section 316.062, F.S. provides that a driver of a vehicle involved in a crash resulting in death or serious bodily injury or damage to any vehicle or other property driven or attended by any person must provide his or her name, address, and the registration number of the vehicle he or she is driving, and must provide a driver's license to a police officer or other person involved in the crash. Section 316.062, F.S. provides the driver of any vehicle involved in a crash must report the incident to the nearest police department.

² A first degree felony is punishable by imprisonment for up to 30 years and a maximum \$10,000 fine. Sections 775.082, 775.083, F.S.

³ A bond amount can also include the amount of "no bond." A defendant is held with no bond if warrant is issued for an offense where the defendant has committed a dangerous crime, there is a substantial probability the defendant committed the crime, the facts of the crime indicate the defendant has a disregard for the safety of the community, and the defendant poses such a harm to the community that no conditions of release can reasonably protect the community (e.g. homicide, robbery, sexual battery, etc.). 907.041(4)(c)5, F.S.

⁴ Section 741.2901(3), F.S. provides that a defendant arrested for domestic violence shall be held in custody until brought before the court for admittance to bail under Chapter 903. At first appearance the court must consider the safety of the victim if the defendant is released.

⁵ Florida Rule of Criminal Procedure 3.130 requires the state to bring an arrestee before a judge for a first appearance within 24 hours of arrest. At first appearance, a judge determines if there is probable cause to hold the arrestee, provides the arrestee notice of the charges against them, and advises the arrestee of his or her rights. If an arrestee is eligible for bail, the judge conducts a hearing in accordance with s. 903.046, F.S.

⁶ Section 903.046, F.S. provides criteria a judge may consider in determining a bail amount.

predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed.⁷ In this case, the arrestee is generally held until first appearance for a determination of probable cause and bail amount. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

Proposed Changes

The CS/HB 297 requires a person who has been arrested for failure to stop a vehicle at the scene of an accident involving death to be held in custody for the court to set bail at first appearance if the person has previously been convicted of leaving the scene of an accident, racing on highways, reckless driving, driving under the influence (DUI), or driving while license suspended, revoked, canceled, or disqualified.⁸ This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The CS would also prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.027, relating to crash in involving death or personal injuries.

Section 2. Provides an effective date of July 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:

There could be a potential jail bed impact since defendants arrested under the provisions of the CS/HB 297 would be required to remain in jail until first appearance. Since first appearance must occur within 24 hours of arrest, the impact is likely to be minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁷ Section 901.15

⁸ Leaving accident scene (ss. 316.027 & 316.061, F.S.); racing on highways (s. 316.191, F.S.) reckless driving (s. 316.192, F.S.); DUI (s. 316.193, F.S.); driving while license suspended, revoked, etc. (s. 322.34, F.S.)

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 Public Safety & Domestic Security Committee adopted a strike-all amendment which limited the scope of the persons affected by the bill to persons who have been previously convicted of leaving the scene of an accident, racing on highways, reckless driving, driving under the influence, or driving while license suspended, revoked, canceled, or disqualified.

On January 14, 2010, the original bill was reported favorably as a Committee Substitute by the Public Safety & Domestic Security Committee. The analysis reflects the Committee Substitute.

1 A bill to be entitled
 2 An act relating to vehicle crashes involving death;
 3 amending s. 316.027, F.S.; requiring that a defendant
 4 arrested for leaving the scene of a crash involving death
 5 must be held in custody until brought before a judge for
 6 admittance to bail in certain circumstances; providing an
 7 effective date.

8

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

10

11 Section 1. Paragraph (b) of subsection (1) of section
 12 316.027, Florida Statutes, is amended to read:

13 316.027 Crash involving death or personal injuries.—

14 (1)

15 (b) The driver of any vehicle involved in a crash
 16 occurring on public or private property that results in the
 17 death of any person must immediately stop the vehicle at the
 18 scene of the crash, or as close thereto as possible, and must
 19 remain at the scene of the crash until he or she has fulfilled
 20 the requirements of s. 316.062. A person who is arrested for a
 21 violation of this paragraph and who has previously been
 22 convicted of a violation of s. 316.027, s. 316.061, s. 316.191,
 23 s. 316.192, s. 316.193, or s. 322.34 shall be held in custody
 24 until brought before the court for admittance to bail in
 25 accordance with chapter 903. Any person who willfully violates
 26 this paragraph commits a felony of the first degree, punishable
 27 as provided in s. 775.082, s. 775.083, or s. 775.084. Any person
 28 who willfully commits such a violation ~~violates this paragraph~~

CS/HB 297

2010

29 | while driving under the influence as set forth in s. 316.193(1)
30 | shall be sentenced to a mandatory minimum term of imprisonment
31 | of 2 years.

32 | Section 2. This act shall take effect July 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.¹ 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 earnings² are less than or equal to \$500 a week (\$26,000 a year) is exempt from wage garnishment.³ 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.⁴ 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.⁵ With inflation, the corresponding amount today would be \$748.55.⁶

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.⁷

¹ Black's Law Dictionary 300 (2d pocket ed. 2001).

² 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.

³ Section 222.11(2)a, F.S.

⁴ Section 222.11(2)b, F.S.

⁵ See 1993 Fla. Laws ch. 256

⁶ See http://www.bls.gov/data/inflation_calculator.htm

⁷ *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.⁸ 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.⁹ The current Federal minimum hourly wage is \$7.25.¹⁰

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."¹¹ 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 CS/HB 409 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.¹² Therefore, a person who earns 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.

CS/HB 409 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 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, therefore, does not affect waivers entered into prior to the effective date of July 1, 2010.¹³

B. SECTION DIRECTORY:

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

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

⁸ Section 222.11(2)c, F.S.

⁹ 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.

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

¹¹ *Department of Health and Rehabilitative Services v. Sweeting*, 423 So.2d 1025, 1026 (Fla. App. 4 Dist.1982). See *Sokolsky v. Kuhn*, 405 So.2d 975 (Fla. 1981).

¹² The exemption amount of \$500 per week was last updated in 1993. See http://www.bls.gov/data/inflation_calculator.htm

¹³ 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 for this bill of July 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.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

A bill to be entitled

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

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

Section 1. 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,

29 | and property, even if deposited in a bank, savings and loan, or
 30 | credit union, may not be taken to pay certain types of court
 31 | judgments. Such wages, money, and property are exempt from
 32 | garnishment. The major exemptions are listed below on the form
 33 | for Claim of Exemption and Request for Hearing. This list does
 34 | not include all possible exemptions. You should consult a lawyer
 35 | for specific advice.

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

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

57 | or property will be released.
 58 | YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO
 59 | KEEP YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE
 60 | COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU
 61 | NEED LEGAL ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT
 62 | AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE.
 63 | CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE
 64 | ABOUT ANY LEGAL SERVICES PROGRAM IN YOUR AREA.

65 | CLAIM OF EXEMPTION AND
 66 | REQUEST FOR HEARING

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

69 |

_____ 1. Head of family wages. (You must check a.
 or b. below.)

70 |

_____ 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.

71 |

_____ 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.

72 |

CS/HB 409

2010

73

_____ 2. Social Security benefits.

74

_____ 3. Supplemental Security Income benefits.

75

_____ 4. Public assistance (welfare).

76

_____ 5. Workers' Compensation.

77

_____ 6. Unemployment Compensation.

78

_____ 7. Veterans' benefits.

79

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

80

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

81

_____ 10. Disability income benefits.

82

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

83

_____ 12. Other exemptions as provided by law.
_____ (explain)

84

I request a hearing to decide the validity of my claim. Notice

CS/HB 409

2010

85 of the hearing should be given to me at:

86 Address: _____

87 Telephone number: _____

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

90 _____

91 Defendant's signature

92 Date _____

93 STATE OF FLORIDA

94 COUNTY OF

95 Sworn and subscribed to before me this _____ day of

96 ... (month and year) ..., by ... (name of person making
97 statement) ...

98 Notary Public/Deputy Clerk

99 Personally Known _____ OR Produced Identification _____

100 Type of Identification Produced _____

101 Section 2. Subsection (2) of section 222.11, Florida
102 Statutes, is amended to read:

103 222.11 Exemption of wages from garnishment.--

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

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

112 1. Be in the same language as the contract or agreement to

113 which the waiver relates.

114 2. Be contained in a separate document attached to the
115 contract or agreement.

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

118
119 IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A
120 CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS
121 EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE
122 THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING
123 BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM
124 GARNISHMENT.

125
126 ...(Consumer's Signature)... ...(Date Signed)...

127
128 I have fully explained this document to the consumer.

129
130 ...(Creditor's Signature)... ...(Date Signed)...

131
132 ~~In no event shall~~ The amount attached or garnished may not
133 exceed the amount allowed under the Consumer Credit Protection
134 Act, 15 U.S.C. s. 1673.

135 (c) Disposable earnings of a person other than a head of
136 family may not be attached or garnished in excess of the amount
137 allowed under the Consumer Credit Protection Act, 15 U.S.C. s.
138 1673.

139 Section 3. This act shall take effect July 1, 2010.



Policy Council

**THURSDAY, FEBRUARY 4, 2010
MORRIS HALL
8:15 A.M. – 9:00 A.M.**

**MEETING PACKET
ADDENDUM "A"**

**Larry Cretul
Speaker**

**Rep. Marcelo Llorente
Chair**

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 409 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Policy Council
2 Representative(s) Brisé offered the following:

3

4 **Amendment #1:**

5 **On Line 139, remove: July 1, 2010**

6

7 **and insert: October 1, 2010**