1983

Session Law 83-097

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis

Part of the Legislation Commons

Recommended Citation

https://ir.law.fsu.edu/staff-analysis/351

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.
**LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT**

Sess. Law # 83-97 | Sec. # | LOF cite
--- | --- | ---
Prime Bill # HB 472 | Comp./Sim. Bills | JB 1066
JLMC Senate Hist. Cites House | Comm. of Ref. Senate House |  |

**COMMITTEE RECORDS**

<table>
<thead>
<tr>
<th>H/S Committee</th>
<th>Year</th>
<th>Record Series: Folder title, etc.</th>
<th>Loc. Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>J83</td>
<td>HB 472 (PCC?)</td>
<td>19/11/12</td>
</tr>
<tr>
<td>S</td>
<td>Jm. 79-83</td>
<td>SB 1066</td>
<td>18/14/14</td>
</tr>
</tbody>
</table>

☐ continued on reverse

**Senate/House Journals**

<table>
<thead>
<tr>
<th>Page #</th>
<th>?</th>
<th>Date</th>
<th>Page #</th>
<th>?</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>HJ 122</td>
<td>35</td>
<td>4/11/83</td>
<td>HJ 932</td>
<td>5/22/83</td>
<td></td>
</tr>
<tr>
<td>SJ 225</td>
<td>35</td>
<td>5/5/83</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Committee/Floor Tapes**

<table>
<thead>
<tr>
<th>H/S c/f</th>
<th>Committee/subcommittee name</th>
<th>Date</th>
<th>#</th>
<th>Location Cite</th>
</tr>
</thead>
</table>

**Other Documentation**

Record Series Title, folder title, etc. | Location Cite
<table>
<thead>
<tr>
<th>H/S</th>
<th>Committee</th>
<th>Year</th>
<th>Record Series: Folder title, etc.</th>
<th>Loc. Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTES**
Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session H

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
### H 0470

**LOCAL BILL BY UPLCHURCH**

- **St. John's/Flagler Counties**: Provides for quorum at landowners' meetings in sixteen mile creek water control district; provides notification for such meetings. Effective date: 06/25/83.

<table>
<thead>
<tr>
<th>Date</th>
<th>Action Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/22/83</td>
<td>House passed as amended; placed on calendar by community affairs</td>
</tr>
<tr>
<td>04/28/83</td>
<td>Senate passed as amended; immediately certified</td>
</tr>
</tbody>
</table>

- **Signed by Officers and Presented to Governor**: HJ 00035

### H 0471

**GENERAL BILL BY JUDICIARY**

- **CIVIL ACTIONS**: Provides for appointment of judge pro tempore to try nonjury civil cases where parties agree to such a procedure; provides for reference by direction of court; provides for order of reference, appointment of judges pro tempore, qualifications of judges pro tempore, etc. Effective date: 10/01/83.

<table>
<thead>
<tr>
<th>Date</th>
<th>Action Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/22/83</td>
<td>House referred to appropriations</td>
</tr>
<tr>
<td>04/28/83</td>
<td>House referred to appropriations</td>
</tr>
<tr>
<td>05/03/83</td>
<td>House passed as amended; placed on calendar by appropriations</td>
</tr>
</tbody>
</table>

- **Belamed Law Without Governor's Signature**: HJ 00015

### H 0472

**GENERAL BILL BY JUDICIARY**

- **GARNISHMENT**: Provides for issuance of writ of garnishment before judgment; provides for dissolution of writ of garnishment; provides that judgment in excess of amount remaining unpaid on final judgment against defendant shall be entered against garnisher, etc. Amends continued on next page.
H 403 GENERAL BILL BY JUDICIARY (COMPARE CS/S 0103)

JUDGES; PROVIDES THAT CHIEF JUDGE OF CIRCUIT MAY RECONSIDER CERTAIN ORDERS ENTERED BY DISQUALIFIED JUDGE; PROVIDES THAT ORDER OF ASSIGNMENT SHALL BE ENTERED PURSUANT TO ORDER OF DISQUALIFICATION; AMENDS PROVISION RE DISQUALIFICATION OF JUDGE FOR PREJUDICE, ETC. AMENDS 38.07, 09, 10, 16073; EFFECTIVE DATE: 07/01/83.

03/22/83 HOUSE PREFILED
03/28/83 HOUSE PLACED ON CALENDAR
04/05/83 HOUSE INTRODUCED, PLACED ON CALENDAR → HJ 00057
04/07/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR; READ SECOND TIME → HJ 00085
04/11/83 HOUSE READ THIRD TIME; AMENDMENT ADOPTED; PASSED AS AMENDED; YEA 88 NAYS 24 → HJ 00122
04/12/83 SENATE IN MESSAGES
04/14/83 SENATE RECEIVED, REFERRED TO JUDICIARY-CIVIL, TAXATION AND CLAIMS → SJ 00107
04/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
05/02/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
05/03/83 SENATE WITHDRAWN FROM JUDICIARY-CIVIL, TAXATION AND CLAIMS; SUBSTITUTED FOR SB 1066; PASSED AS AMENDED; YEAS 34 NAYS 1 → SJ 00225
05/11/83 HOUSE IN MESSAGES
05/12/83 HOUSE REFUSED TO CONCUR, REQUESTED SENATE TO RECEDE → HJ 00311
05/12/83 SENATE IN MESSAGES
05/17/83 SENATE REFUSED TO RECEDE, REQUESTS HOUSE TO CONCUR → SJ 00285
05/19/83 HOUSE IN MESSAGES
05/20/83 HOUSE AMENDMENTS TO SENATE AMENDMENTS ADOPTED; CONCURRED IN SENATE AMENDMENTS AS AMENDED; PASSED AS FURTHER AMENDED; YEAS 88 NAYS 12 → HJ 00492; FURTHER ACTION REQUIRED FOR FINAL PASSAGE
05/20/83 SENATE IN MESSAGES
05/25/83 SENATE CONCURRED; PASSED AS AMENDED; YEAS 36 NAYS 1 → SJ 00338
05/26/83 HOUSE ORDERED ENGROSSED, THEN ENROLLED
06/01/83 HOUSE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR → HJ 00937
06/06/83 APPROVED BY GOVERNOR CHAPTER NO. 83-97

H 4047 GENERAL BILL BY CARLTON AND OTHERS (COMPARE ENG/H 1202)

DRIVING UNDER THE INFLUENCE; PROVIDES FOR VICTIM IMPACT STATEMENTS RE CERTAIN CASES WHERE OFFENDER IS CONVICTED OF DRIVING WHILE UNDER INFLUENCE OF ALCOHOLIC BEVERAGES, MODEL GLUE, OR CONTROLLED SUBSTANCES. CREATES 316.193b, EFFECTIVE DATE: 10/01/83.

03/22/83 HOUSE PREFILED
03/28/83 HOUSE REFERRED TO CRIMINAL JUSTICE
04/05/83 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE → HJ 00058; SUBREFERRED TO SUBCOMMITTEE ON CRIMINAL CODE

CONTINUED ON NEXT PAGE
06/02/83 HOUSE READ SECOND TIME; AMENDMENTS ADOPTED, READ THIRD TIME; PASSED AS AMENDED; YEAS 103 NAYS 2 -HJ 01010
06/02/83 SENATE IN MESSAGES
06/03/83 SENATE CONCURRED; C/S PASSED AS AMENDED, YEAS 36 NAYS 0; ORDERED ENGROSSED, THEN ENROLLED -SJ 00609
06/14/83 SENATE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR
06/24/83 APPROVED BY GOVERNOR CHAPTER NO. 63-268

S 1066 GENERAL BILL BY HAIR (COMPARE ENG/H 0472) GARNISHMENT, PROVIDES FOR ISSUANCE OF WRITS OF GARNISHMENT BEFORE JUDGMENT, PROVIDES FOR DISSOLUTION OF WRITS OF GARNISHMENT. AMENDS 77.031.01, EFFECTIVE DATE: 07/01/83.
04/18/83 SENATE FILED
04/21/83 SENATE INTRODUCED, REFERRED TO JUDICIARY-CIVIL -SJ 04149
04/25/83 SENATE ON COMMITTEE AGENDA—JUDICIARY-CIVIL, 04/27/83, 2:00 PM, RM. 8
04/27/83 SENATE COMM. REPT: FAVORABLE, PLACED ON CALENDAR BY JUDICIARY-CIVIL -SJ 00182
05/05/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; AMENDMENT ADOPTED, IDEN./SIM. HOUSE BILL SUBSTITUTED; LAID ON TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED; REFER TO HB 472 (CH. 83-97) -SJ 00225

S 1067 GENERAL BILL BY DUNN (SIMILAR S 0948) BUDGET STABILIZATION FUND; CREATES SAID FUND; PROVIDES THAT CERTAIN REVENUE ACCRUE TO BUDGET STABILIZATION FUND; PRESCRIBES USE OF SUCH FUND & LIMITATION ON RATE OF GROWTH IN CERTAIN STATE EXPENDITURES, SPECIFIES REVENUE TO BE DEPOSITED IN SUCH FUND, ETC. AMENDS CH. 215, 215.32, 212.081, EFFECTIVE DATE: 07/01/83.
04/18/83 SENATE FILED
04/21/83 SENATE INTRODUCED, REFERRED TO FINANCE, TAXATION AND CLAIMS, APPROPRIATIONS -SJ 00149
04/25/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE FINANCE, TAXATION AND CLAIMS
05/06/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE FINANCE, TAXATION AND CLAIMS
05/11/83 SENATE WILDER FROM FINANCE, TAXATION AND CLAIMS, APPROPRIATIONS, INDEFINITE POSTPONED -SJ 00247

S 1068 GENERAL BILL BY DUNN AND OTHERS (SIMILAR H 0635) FLORIDA LAW ENDOMENT ACT; CREATES SAID ACT; CREATES FLA. LAW ENDOMENT, A QUASI-PUBLIC, NONPROFIT CORPORATION TO PROVIDE LEGAL ASSISTANCE TO THE POOR; REQUIRES ENDOMENT & CERTAIN OTHER NONPROFIT CORPORATIONS & ASSOCIATIONS TO APPLY FOR FEDERAL TAX EXEMPTIONS, ETC. EFFECTIVE DATE: UPON BECOMING LAW.
04/18/83 SENATE FILED
04/21/83 SENATE INTRODUCED, REFERRED TO JUDICIARY-CIVIL, RULES AND CALENDAR -SJ 00149
05/02/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
05/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
05/30/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
06/03/83 SENATE INDEFINITE POSTPONED W/D (SR 1209); WAS IN COMMITTEE ON JUDICIARY-CIVIL

S 1069 GENERAL BILL BY JOHNSTON (COMPARE H 1273, CS/S 0401) SCHOLARSHIPS; (BY REQUEST) PROVIDES CRITERIA FOR SELECTION OF SEMINOLE & MICCOUSKIE INDIAN SCHOLARSHIP RECIPIENTS; PROVIDES THAT SUCH SCHOLARSHIPS BE IN AN AMOUNT DECIDED BY RESPECTIVE SEMINOLE & MICCOUSKIE INDIAN TRIBES. AMENDS 240.135, EFFECTIVE DATE: UPON BECOMING LAW.
04/16/83 SENATE FILED
04/21/83 SENATE INTRODUCED, REFERRED TO EDUCATION, APPROPRIATIONS -SJ 00149
05/03/83 SENATE ON COMMITTEE AGENDA—EDUCATION, 05/03/83, 2:00 PM, RM. A
05/05/83 SENATE COMM. REPT: FAVORABLE WITH AMEND. BY EDUCATION -SJ 00241
05/06/83 SENATE NOW IN APPROPRIATIONS -SJ 00241
05/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPROPRIATIONS
05/30/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPROPRIATIONS CONTINUED ON NEXT PAGE
insurance loss in any civil action in which any person seeks recovery under a policy against an insurance company for an insurance loss, subject to the provisions of subsection (5).

(7) No person shall intentionally refuse to release any information requested pursuant to this section.

(8) Any person willfully violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 8, 1983.

Filed in Office Secretary of State June 9, 1983.

CHAPTER 83-97
House Bill No. 472

An act relating to garnishment; amending s. 77.031, Florida Statutes; providing for the issuance of writs of garnishment before judgment; amending s. 77.07(1), Florida Statutes; providing for the dissolution of writs of garnishment; amending s. 77.083, Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee; providing an effective date.

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

Section 1. Section 77.031, Florida Statutes, is amended to read:

77.031 Issuance of writ before judgment.—Before judgment has been obtained by the plaintiff against the defendant:

(1) Writs of garnishment shall be issued by the court or by the clerk on order of the court.

(2) To obtain issuance of the writ the plaintiff, or his agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action, the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid, that the garnishment is not sued out to injure either the defendant or the garnishee, and that the plaintiff believes that the defendant will not have in his possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of his right to an immediate hearing for dissolution of such writ pursuant to s. 77.07. Upon issuance of the
CHAPTER 83-97

LAWS OF FLORIDA

CHAPTER 83-97

writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

(3) Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or his agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment. A garnishment bond is not void or voidable because of an informality in it, nor shall the obligors be discharged because of the informality, even though the garnishment is dissolved because of the informality.

(4) The motion or pleading need not negative any exemptions of the defendant.

Section 2. Subsection (1) of section 77.07, Florida Statutes, is amended to read:

77.07 Dissolution of writ of garnishment.--

(1) The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action shall then proceed as if no writ had been issued. The court to which a garnishment is returnable shall always be open for hearing motions to dissolve the garnishment.

Section 3. Section 77.083, Florida Statutes, is amended to read:

77.083 Judgment.--Judgment against garnishee on his answer or after trial of a reply to his answer shall be entered for the amount of his liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena garnishee to inquire about his liability to or possession of property of defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee.

Section 4. This act shall take effect July 1, 1983.

Approved by the Governor June 8, 1983.

Filed in Office Secretary of State June 9, 1983.

CHAPTER 83-98

House Bill No. 501

An act relating to criminal attempts, solicitations, and conspiracies; amending s. 777.04(4), Florida Statutes; increasing the penalty for attempts, solicitations, and conspiracies to commit a burglary that would be a first degree felony; providing an effective date.
By Committee on Judiciary

A bill to be entitled
An act relating to garnishment; amending s. 77.031, Florida Statutes, providing for issuance of writs of garnishment before judgment; amending s. 77.07(1), Florida Statutes, providing for the dissolution of a writ of garnishment; amending s. 77.083, Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee; amending s. 77.28, Florida Statutes, providing for the deposit of $25 with the court before the issuance of a writ of garnishment as partial payment of the garnishee's attorney's fees; providing that where costs are taxed against the defendant in the proceeding, such costs shall be deducted from the debt owed to the defendant; providing an effective date.

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

Section 1. Section 77.031, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 77.031, F.S., for present text.)

77.031 Issuance of writ before judgment.—Before judgment has been obtained by the plaintiff against the defendant:
(1) Writs of garnishment shall be issued by the court or by the clerk on order of the court.

(2) To obtain issuance of the writ, the plaintiff, or his agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action, the amount of the debt and that the debt for which the plaintiff sues is just, in., and unpaid, that the garnishment is not sued out to injure either the defendant or the garnishee, and that the plaintiff believes that the defendant will not have in his possession after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim.

(3) Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or his agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least four times the debt demanded, conditioned to pay all costs, damages, and attorney's fees, that the defendant sustains in consequence of the plaintiff's improperly seizing out the writ of garnishment. A garnishment bond is not void or voidable because of an informality in it, nor shall the obligors be discharged because of the informality, even though the garnishment is dismissed because of the informality.

(4) notwithstanding any other provision of this section, no writ of garnishment before judgment shall issue for any wages or salary paid or payable to the defendant except as provided in chapter 61 or in any action based on a consumer debt with a principal balance of less than $2,500, exclusive of interest, attorney's fees, and costs.
(5) The motion or pleading need not negative any
exemptions of the defendant.

Section 2. Subsection (1) of section 77.07, Florida
Statutes, is amended to read:

77.07 Dissolution of writ Writ; dissolution.--

(1) The defendant, by motion, may obtain the
dissolution of a writ of garnishment, unless the petitioner
proves the grounds upon which the writ was issued and unless,
in the case of a prejudgment writ, there is a reasonable
probability that the final judgment in the underlying action
will be rendered in his favor. The court shall set down such
motion for an immediate hearing. If the writ is dissolved,
the action shall then proceed as if no writ had been issued.
The court to which a garnishment is returnable shall always be
open for hearing motions to dissolve the garnishment.

Section 3. Section 77.083, Florida Statutes, is
amended to read:

77.083 Judgment.--Judgment against garnishee on his
answer or after trial of a reply to his answer shall be
entered for the amount of his liability as disclosed by the
answer or trial. Instead of scire facias, the court may
subpoena garnishee to inquire about his liability to or
possession of property of defendant. No judgment in excess of
the amount remaining unpaid on the final judgment against the
defendant or in excess of the liability of the garnishee to
the defendant, whichever is less, shall be entered against the
garnishee.

Section 4. Section 77.28, Florida Statutes, is amended
to read:

77.28 Attorney's fee deposit and costs Garnishment;
attorney's-fees,-costs,-expenses,-etc.;-deposit-required.--

CODING Words in struck through type are deletions from existing law, words underlined are additions
Before issuance of any writ of garnishment, the party applying for it shall deposit $25 in the registry of the court that which shall be paid to the garnishor on his demand at any time after the service of the writ for the payment of part payment of his attorney's fee for which he agrees in response to the writ. The clerk shall collect the statutory fee provided by s. 28.33 in addition to the $25 deposited into the registry of the court. On rendering final judgment, the court shall determine the garnishor's costs and expense, including a reasonable attorney's fee, and the amount shall be taxed as costs. Plaintiff may recover in this manner the sum advanced by him and paid into registry of court, and if the amount allowed by the court is greater than the amount of the deposit, judgment for the garnishor shall be entered against the party who is taxed with such costs, where such costs are taxed against the defendant, such costs shall be deducted from the debt owed to the defendant or the property in the garnishor's possession against which the costs are taxed for any deficiency.

Corr. in 5. This act shall take effect July 1, 1983.

--------------------------------------------------------------------------
HOUSE SUMMARY

Provides for writs of garnishment before judgment and provides for dissolution of a writ of garnishment. Provides that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishor to the defendant, whichever is less, shall be entered against the garnishor. Requires deposit of $25 with the court by the plaintiff prior to issuance of a writ of garnishment as partial payment for the garnishor's attorney's fees. Provides that where costs are taxed against the defendant in the garnishment proceeding, such costs shall be deducted from the debt owed to the defendant or the property in the garnishor's possession.
I. SUMMARY:

A. Present Situation:

Certain portions of Ch. 77, F.S., dealing with prejudgment garnishment have been declared unconstitutional in Bunton v. First National Bank of Tampa, 394 F. Supp. 793 (M.D. Fla. 1975) and Ray Lein Construction, Inc. v. Wainwright, 346 So. 2d 1029 (Fla. 1977). These cases held that prejudgment writs of garnishment deny due process to defendants by taking property without judicial supervision, immediate post-seizure hearings, or sworn statements by the plaintiff in his motions.

Chapter 77 does not require motions to be verified; there is no requirement that the court must issue the writ; the court must always be open to hear motions to dismiss the writ, but there is no specific requirement for an immediate post-seizure hearing.

In the event of a default by the garnishee, s. 77.081(2) states that the garnishee is liable for the amount of the plaintiff's claim against the defendant.

Section 77.28 requires that where the amount of the judgment for the garnishee is greater than the plaintiff's deposit, judgment for the garnishee shall be entered against the party against whom the costs are taxed for the deficiency.

B. Probable Effect of Proposed Changes:

The provisions of this bill should eliminate the constitutional defects of Ch. 77.

Section 1. Writs would be required to be issued by the court or by the clerk under the court's order. The plaintiff would have to file a verified motion alleging specific facts. The clerk shall provide a copy of the writ of garnishment to the defendant.

Section 2. The court would immediately hear post-seizure motions for dissolution of writs.

Section 3. When there is a judgment for the garnishee, costs taxed against the defendant would be deducted from the debt owed to the defendant or the property in the garnishee's possession.

II. Fiscal Impact: None

III. COMMENTS: More extensive proposed bills relating to this issue have attempted to address the constitutional defects of Ch. 77. In 1977, HB 476 died on the Calendar; in 1978, HB 614 died on the Calendar, in 1979, HB 25 died in the Senate; in 1980, a proposed Committee bill died in committee, and in 1982, HB 532 died on the Calendar.
To: Chairman, Committee on _Judiciary_

The Subcommittee on _Court Systems and Miscellaneous_

met at 1:00 p.m. o'clock on February 1______, 1983,
in Room 24 HOB________, and considered PCB 8 relating to Garnishment

On motion to report the bill /☐/ FAVORABLE /

FAVORABLE WITH __ AMENDMENTS

The vote was:

<table>
<thead>
<tr>
<th>YEA</th>
<th>MEMBER</th>
<th>MAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒ DUNBAR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ GRANT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ HAWKINS, LARRY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ LAWSON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ PAJICIC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☒ COSGROVE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Yea's 6

<table>
<thead>
<tr>
<th>NAY</th>
<th>MEMBER</th>
<th>MAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ TITONE, CHAIRMAN</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Nays 1

Subcommittee Appearance Record

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nick Yonclas</td>
<td>Fla. Bankers</td>
<td>P.O.Box 1794, Tallahassee</td>
</tr>
</tbody>
</table>

(If additional persons, enter on reverse side and check here )

Received by Parent Committee:

Date ___________

H-74
Committee on Judiciary

Date of meeting: 3/2/83

Time: 3:00 p.m.

Place: Room 233XXHOFXX 317C

Bill No.: PCB 8 relating to Garnishment

Final Action: X Favorable

Vote:

<table>
<thead>
<tr>
<th>Yea</th>
<th>Member</th>
<th>Nay</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>COSGROVE, JOHN</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>DRAGE, TOM</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>DUDLEY, FRED</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>DUNBAR, PETER</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>EASLEY, BETTY</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>GRANT, JOHN</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>HAWKINS, LARRY</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>JOHNSON, BO</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>JOHNSON, BOB</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>LAWSON, AL</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>LEHTINEN, DEXTEP</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>MURPHY TIM,</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>PAJCIC, STEVE</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>PEEPLES, VERNON</td>
<td>X</td>
</tr>
<tr>
<td>X</td>
<td>SAMPLE, DOROTHY</td>
<td></td>
</tr>
</tbody>
</table>

Total Yeas: 13
Total Nays: 5

Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
</table>

Note: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here.)

File 2 copies with Clerk

472
Journal
of the
House of Representatives

Eighty-fifth
Regular Session
since Statehood in 1845
April 5 through June 13, 1983

Including a record of transmittal of Acts subsequent to sine die adjournment
Representative Silver offered the following amendment

Amendment 1—On page 6, lines 21-31 and on page 7, lines 1-19, strike all of said lines and insert: 98 1619 Candidates for supervisor of elections; limitations on political activity.—

(1) A candidate for supervisor of elections shall not:
   (a) Campaign as a member of any political party
   (b) Publicly represent or advertise himself as a member of any political party
   (c) Endorse any candidate
   (d) Make political speeches other than in his own behalf
   (e) Make contributions to political party funds
   (f) Accept contributions from any political party
   (g) Solicit contributions for any political party
   (h) Accept or retain a place on any political party committee
   (i) Make any contributions to any person, group, or organization for its endorsement
   (j) Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed by any such person, group, or organization.

This section shall not preclude any candidate for the office of supervisor of elections from participating in any function so long as he complies with the provisions of this section nor shall this section preclude any supervisor of elections from participating in any activity in his official capacity as supervisor of elections.

(2) A candidate for the office of supervisor of elections who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or 775.083

Rep. Silver moved the adoption of the amendment, which failed adoption.

Representative Drage offered the following amendment

Amendment 2—On page 8, lines 5 and 6, strike "public service commissioner," and insert public service commissioner.

Rep. Drage moved the adoption of the amendment, which was adopted without objection.

Representatives Hodges and Liberti offered the following amendment

Amendment 3—On page 1, line 15, strike the enacting clause

Rep. Hodges moved the adoption of the amendment. Rep. Lewis moved to lay the amendment on the table, which was not agreed to. The question recurred on the adoption of the amendment to strike the enacting clause, which was adopted.

HB 429—A bill to be entitled An act relating to arrests; amending s. 901.15(1), Florida Statutes, permitting arrests without warrant for violations of county ordinances, under certain circumstances, amending s. 901.25(1), Florida Statutes, redefining the term "fresh pursuit" to include violations of chapter 316, Florida Statutes, and county ordinances, providing an effective date.

Amendment 2—On page 3, line 2, after the period insert (6) No writ of garnishment shall be issued prior to judgment unless the defendant has been given notice that he has a right to make a motion to obtain dissolution of the writ of garnishment pursuant to s. 7707

Rep. Press moved the adoption of the amendment. Rep. Upchurch raised the point of order that the pending amendment by Rep. Press was the same as the amendment by Rep. Burke previously defeated. He said the amendment was "substantially the same. it's a different place but the effect is identical." The Speaker asked the Chairman of Rules, Rep. Thompson, to examine the amendments. After reading the amendments by Reps. Burke and Rep. Press, Chairrman Thompson said he believed they were substantially the same. The Speaker said, "The procedure would be ordinarily if an amendment was offered, and that amendment fails, if you wanted to consider the amendment again, you would reconsider the vote by which that amendment fails. That did not happen. Rep. Press has moved basically the same amendment again, which is not a matter of reconsideration." The Speaker ruled the point of order by Rep. Upchurch was well taken and the amendment by Rep. Press was out of order.

Rep. Press moved to reconsider the vote by which Amendment 1 to HB 472 failed of adoption. On motion by Rep. Dunbar, the motion to reconsider was laid on the table.

Representative Burke offered the following amendment

Amendment 3—On page 2, line 30, strike "$2500" and insert $5000
Rep, Burke moved the adoption of the amendment. Rep. Dunbar moved to lay the amendment on the table, which was not agreed to.

Rep. Easley moved the previous question on the amendment and the bill which was agreed to. The question recurred on the adoption of the amendment, which failed of adoption. The vote was—

Yea—42

Abrams Friedman Lehman Murphy
Armstrong Gardner Leitman Press
Bailey Gordon Liberti Reaves
Bass Grant Hargrett Logan Reynolds
Brown, C. Grant Hawkins, L. R. Mackenzie Simon
Burke Hawkins, L. R. Hargrett McKenzie
tian Jameson Meffert Thomas
Deutsch Kelly Mills
Fig Lawson Mitchell

Nay—66

The Chair Danson Johnson, R. M. Selph
Allen Dantzler Jones, D L Shelley
Arnold Deratany Lewis Simone
Bankhead Drage McEwan Smith
Bell Dudley Messersmith Stewart
Brantley Dunbar Morgan Thompson
Bronson Easley Nergard Titone
Brown, T.C. Evans, Jones Pajic Tobiassen
Burnsed Gallagher Patchett Upchurch
Burnsall Grindle Peeples Wallace
Carlin Hanson Ready Ward
Carpenter Harris Reddick Watt
Casas Hawkins, M. E Richmond Webster
Combee Hazeouri Robinson Wetherell
Cortina Hill Ros Woduff
Cray Hedges Sample
Crotty Johnson, B L. Sanderson

Votes after roll call:

Yea—Hollingsworth

Under Rule 8.19, the bill was referred to the Engrossing Clerk.

On motions by Rep. Thompson, the rules were waived and—

By Representatives Morgan, Thompson, and Lawson—

HR 801—A resolution commending Kurt Waldheim for his accomplishments in the pursuit of world peace

WHEREAS, Kurt Waldheim was born in Woerdern, Austria, in 1919, educated at the University of Vienna as an attorney and graduated from the Vienna Counselor-Academy, and

WHEREAS, few individuals attain a position of international prominence and respect which can influence the course of global events in favor of peace, and

WHEREAS, Kurt Waldheim entered diplomatic service in 1945, was posted to the United Nations as a permanent observer in 1955, was named permanent United Nations Representative and served as Secretary General of the United Nations from 1971 through 1981, and

WHEREAS, Kurt Waldheim brought to the United Nations an enduring dedication to world peace together with a talent for reconciling the diverse personalities which the organization was composed of to accomplish the goals of the United Nations, and

WHEREAS, the State of Florida is fortunate to have Kurt Waldheim as a Distinguished Visiting Lecturer in International Relations and Law at the Florida State University, where he has been sharing his unique viewpoint of world politics with our citizens, and

WHEREAS, it is appropriate that the House of Representatives take time out from the Legislative process to recognize Kurt Waldheim for the singular contributions he has made towards world peace, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida.

That the State of Florida hereby recognizes and commends Kurt Waldheim for his singular contributions to world peace, both in his official capacities as a representative of the United Nations and in his continuing personal efforts to aid others in the achievement of a lasting world peace.

—was read the first time by title, the second time in full and adopted.

Rep. Lewis was recorded as voting Nay.

HB 473—A bill to be entitled An act relating to judges; amending s. 38.07, Florida Statutes, providing that the chief judge of the circuit may reconsider certain orders entered by a disqualified judge, amending s. 38.09, Florida Statutes, providing that an order of assignment shall be entered pursuant to an order of disqualification as provided for in the Florida Rules of Judicial Administration; providing an effective date

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 498—A bill to be entitled An act relating to service of process, amending s. 48.183, Florida Statutes, allowing service of process on persons 15 years of age or older residing at the usual place of residence of a tenant in an action for possession of residential premises, requiring the landlord to provide the clerk of the court with an additional copy of the summons and complaint together with a pre-stamped envelope in certain actions for possession of residential premises, requiring the clerk to mail the copy to the defendant at the premises involved, requiring the clerk to keep certain records with respect to such actions, providing an effective date

—was read the second time by title

Representative Drage offered the following amendment

Amendment 1—On page 2, lines 10-13, strike all of said lines after "mailing"

Rep. Drage moved the adoption of the amendment, which was adopted

Under Rule 8.19, the bill was referred to the Engrossing Clerk

By the Committee on Judiciary and Representatives Titone, Tobin, Lawson, Cosgrove, Simon, L. R. Hawkins, Peeples, and R. M. Johnson—

CS/HJR 114—A joint resolution proposing an amendment to Section 8, Article V of the State Constitution, relating to eligibility for the office of judge, to require that a county court judge be a member of the bar of Florida for the 5 years preceding his qualification and to allow for exceptions

—was read the first time by title. On motion by Rep. Tobin, the rules were waived and CS/HJR 114 was read the second time by title

Representative Williams offered the following amendment

Amendment 1—On page 1, line 21, after the period insert "no justice or judge shall serve by appointment, and every such justice or judge shall be elected"

Rep. Williams moved the adoption of the amendment. Rep. Upchurch raised a point of order under Rule 11.8 that the amendment was not germane and that it unduly expanded the joint resolution. In speaking to the point, Rep. Thompson stated that the joint resolution dealt with Article V, Section 8, of the State Constitution, relating to eligibility for the office of judge. The amendment was...
The question recurred on the passage of HB 472. The vote was: Yeas-88

The Chair—Brantley
Abrams—Broxon
Allen—Burke
Arnold—Burnsed
Bailey—Carpenter
Bankhead—Clements
Bass—Casas
Bell—Clements
Theye—Dudley
Combee—Duban
Cortina—Easley
Cosgrove—Evans-Jones
Figg—Figg
Friedman—Gallagher
Gallagher—Gallagher
Grindle—Gustafson
Harriss—Harriss
Hill—Hill
Hogan—Hogan
Hargrett—Hargrett
Hawkins, L R—Hawkins, L R
Hawkins, M E—Hawkins, M E
Hazouri—Hazouri
Healey—Healey
Henderson—Henderson
Hill—Hill
Hollingsworth—Hollingsworth
Johnson, B L—Johnson, B L
Johnson, R M—Johnson, R M
Jones, C F—Jones, C F
Jenkins—Jenkins

Nays—None

Votes after roll call:

Yeas—Kutun, Gordon, Crotty, Morgan, Nergard, Simon, Patchett, Deratany

So the bill passed and was certified to the Senate.

HB 472—A bill to be entitled An act relating to garnishment, amending s. 77.031, Florida Statutes, providing for issuance of writs of garnishment before judgment, amending s. 77.07, Florida Statutes, providing for the dissolution of a writ of garnishment; amending s. 77.083, Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee, amending s. 77.28, Florida Statutes, providing for the dissolution of a writ of garnishment; amending s. 82.28, Florida Statutes, providing that costs shall be deducted from the debt owed to the defendant, providing for an effective date

—was read the third time by title On passage, the vote was

Yeas—115

The Chair—Drage
Abrams—Dudley
Allen—Dudley
Armstrong—Easley
Arnold—Evans-Jones
Bailey—Figg
Bankhead—Friedman
Bass—Gallagher
Bell—Gardner
Brantley—Gordon
Bronson—Grant
Brown, C—Gustafson
Burke—Harriss
Burnsed—Hargrett
Burrell—Harriss
Carlton—Hawkins, L R
Carpenter—Hawkins, M E
Clements—Hazouri
Combee—Healey
Cortina—Hollingsworth
Cosgrove—Johnson, B L
Crady—Johnson, R C
Dany—Jones, D L

Nays—None

Votes after roll call:

Yeas—Crotty, Morgan, Deratany
Nays—Liberti, Reynolds
Yeas to Nays—Clements
Nays to Yeas—D L Jones

So the bill passed, as amended, and was certified to the Senate after engrossment.

HB 473—A bill to be entitled An act relating to judges, amending s. 38.07, Florida Statutes, providing that the chief judge of the circuit may reconsider certain orders entered by a disqualified judge, amending s. 38.09, Florida Statutes, providing that an order of assignment shall be entered pursuant to an order of disqualification as provided for in the Florida Rules of Judicial Administration, providing an effective date

—was read the third time by title On passage, the vote was

Yeas—115

The Chair—Drage
Abrams—Dudley
Allen—Dudley
Armstrong—Easley
Arnold—Evans-Jones
Bailey—Figg
Bankhead—Friedman
Bass—Gallagher
Bell—Gardner
Brantley—Gordon
Bronson—Grant
Brown, C—Gustafson
Burke—Harriss
Burnsed—Hargrett
Burrell—Harriss
Carlton—Hawkins, L R
Carpenter—Hawkins, M E
Clements—Hazouri
Combee—Healey
Cortina—Hollingsworth
Cosgrove—Johnson, B L
Crady—Johnson, R C
Dany—Jones, D L

Nays—None
HB 472, and again requests the House to concur after roll call.

Nays—1

Woodruff

Votes after roll call

Yeas—Carpenter, Ready, Young

So the bill passed and was certified to the Senate

The Honorable H. Lee Moffitt, Speaker

I am directed to inform the House of Representatives that the Senate has refused to recede from Senate Amendments 1 and 2 to HB 472, and again requests the House to concur

Joe Brown, Secretary

HB 472—A bill to be entitled An act relating to garnishment, amending s 77.031, Florida Statutes, for issuance of writs of garnishment before judgment, amending s 77.07 (1), Florida Statutes, for the dissolution of a writ of garnishment, amending s 77.083, Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee; amending s 77.28, Florida Statutes, providing for the deposit of $25 with the court before issuance of a writ of garnishment as partial payment of the garnishee's attorney's fees, providing that where costs are taxed against the defendant in the proceeding, such costs shall be deducted from the debt owed to the defendant, providing an effective date.

Senate Amendment 1—On page 1, line 25, strike everything after the enacting clause and insert Section 1 Section 77.031, Florida Statutes, is amended to read

(Substantial rewording of section. See s 77.031, F.S., for present text.)

77.031 Issuance of writ before judgment—Before judgment has been obtained by the plaintiff against the defendant

(1) Writs of garnishment shall be issued by the court or by the clerk on order of the court.

(2) To obtain issuance of the writ the plaintiff, or his agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action, the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid, that the garnishment is not sued out to injure either the defendant or the garnishee, and that the plaintiff believes that the defendant will not have in his possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of his right to an immediate hearing for dissolution of such writ pursuant to s 77.07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

(3) Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or his agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment. A garnishment bond is not void or voidable because of an informality in it, nor shall the obligors be discharged because of the informality, even though the garnishment is dissolved because of the informality.

(4) The motion or pleading need not negative any exemptions of the defendant.

Section 2 Subsection (1) of section 77.07, Florida Statutes, is amended to read

77.07 Dissolution of writ Writ, dissolution

(1) The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action shall then proceed as if no writ had been issued. The court to which a garnishment is returnable shall always be open for hearing motions to dissolve the garnishment.

Section 3 This act shall take effect July 1, 1983.

Senate Amendment 2—In title, on page 1, lines 2-21, strike all of said lines and insert An act relating to garnishment, amending s 77.031, Florida Statutes, for the issuance of writs of garnishment before judgment, amending s 77.07 (1), Florida Statutes, for the dissolution of a writ of garnishment, amending s 77.083, Florida Statutes, for the dissolution of a writ of garnishment, providing for the issuance of writs of garnishment before judgment, amending s 77.07 (1), Florida Statutes, for the dissolution of a writ of garnishment, providing an effective date.

Representative Upchurch offered the following amendment.

House Amendment 1 to Senate Amendment 1—On page 2, lines 18 and 19, strike all of said lines and insert (4) Notwithstanding any other provision of this section, no writ of garnishment before judgment shall issue for any wages or salary paid or payable to the defendant except as provided in chapter 61.

(6) The motion or pleading need not negative any exemptions of the defendant.

Rep. Upchurch moved the adoption of the amendment to Senate Amendment 1, which failed of adoption.

Representative Upchurch offered the following amendment.

House Amendment 2 to Senate Amendment 1—On page 3, line 3, insert Section 3 Section 77.083, Florida Statutes, is amended to read

77.083 Judgment—Judgment against garnishee on his answer or after trial of a reply to his answer shall be entered for the amount of his liability as disclosed by the answer or trial. Instead of a writ of scire facias, the court may subpoena garnishee to inquire about his liability to or possession of property of defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee. (renumber remaining section accordingly)

Rep. Upchurch moved the adoption of the amendment to Senate Amendment 1, which was adopted.

Representative Upchurch offered the following title amendment:

House Amendment 1 to Senate Amendment 2—On page 1, line 17, following the word "garnishment," insert amending s 77.083, Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee,
Rep. Upchurch moved the adoption of the amendment to Senate Amendment 2, which was adopted.

On motions by Rep. Upchurch, the House concurred in Senate Amendments 1 and 2, as amended by House amendments and requested the Senate to concur. The question recurred on the passage of HB 472. The vote was—

---

**Yeas—88**

The Chair: Evans-Jones

Abrams: Figg

Bailey: Friedman

Bankhead: Gallagher

Bass: Gardner

Bell: Gordon

Bronson: Grindle

Brown, T C: Gustafson

Burke: Hanson

Burnsed: Harris

Burnall: Hawkins, L R

Clark: Hawkins, M E

Combee: Hazouri

Crosgrove: Healey

Cready: Hill

Crotty: Hodges

Dantzler: Jamerson

Deutsch: Johnson, B L

Drage: Johnson, R C

Dudley: Jones, C F

Dunbar: Jones, D L

Easley: Kutun

---

**Nays—12**

Brantley: Danson

Brown, C: Davis

Clements: Deratany

---

**Yeas—101**

The Chair: Dunbar

Abrams: Easley

Bailey: Evans-Jones

Bankhead: Figg

Bell: Friedman

Bass: Gallagher

Brantley: Gardner

Bronson: Gordon

Brown, C: Grant

Brown, T C: Grindle

Burke: Gustafson

Burnsed: Hanson

Burnall: Harris

Carlton: Hawkins, L R

Clark: Hawkins, M E

Clements: Hazouri

Combee: Healey

Crosgrove: Hill

Cready: Hodges

Crotty: Jamerson

Danson: Johnson, B L

Dantzler: Johnson, R C

Davis: Jones, C F

Deutsch: Jones, D L

Drage: Lawson

Dudley: Lehman

---

**Nays—1**

Deratany

---

**Votes after roll call.**

Yeas—Carpenter

So the bill passed, as further amended. The action, together with the bill and amendments thereto, was certified to the Senate.

The Honorable H. Lee Moffitt, Speaker

I am directed to inform the House of Representatives that the Senate has passed HB's 868, 270, 437, 1150, CS/HB 73.

Joe Brown, Secretary

The bills were ordered enrolled.

**Bills and Joint Resolutions on Third Reading.**

CS/HB 208—A bill to be entitled An act relating to sheriffs, amending s 30 251 (1), Florida Statutes, 1982 Supplement, increasing sheriff's fees for service of writs, subpoenas, and executions, adding s 39 405 (12), Florida Statutes, providing that certain dependency orders need not be served under specified circumstances, amending s 76 13, Florida Statutes, clarifying duties of the sheriff with respect to writs of attachment, creating s 76 151, Florida Statutes, providing for service of writs of attachment upon property passing into possession of third persons, amending s 78 065 (2) (a), Florida Statutes, deleting a restriction upon show cause order hearings relating to property to be taken under a writ of replevin, amending s 78 08, Florida Statutes, clarifying sheriffs' duties with respect to such a writ, amending s 78 10, Florida Statutes, providing a procedure for the execution of a writ of replevin on property where there are no reasonable grounds to believe it is located in certain enclosures, amending ss 83 13, 83 14, and 83 19 (2), Florida Statutes, 1982 Supplement, clarifying sheriffs' duties in the execution of writs pursuant to distress for rent actions against commercial tenants, expanding the locations of sale of property levied pursuant to such writs, amending s 559 23, Florida Statutes, increasing the permit fee for fire and going-out-of-business sales, providing an effective date—was read the third time by title. On passage, the vote was—

---

**Yeas—99**

The Chair: Crosgrove

Abrams: Crady

Bailey: Crotty

Bankhead: Danson

Bass: Dantzler

Brantley: Deratany

Bronson: Deutsch

Brown, T C: Dunbar

Burke: Dudley

Burnsed: Dunbar

Burnall: Easley

Burns: Carpenter

Clark: Figg

Clements: Friedman

Combee: Gallagher

---

**May 20, 1983**
Journal
of the
SENATE
State of Florida

FIFTEENTH REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
APRIL 5 THROUGH JUNE 13, 1983
Amendment 1—On page 2, line 11, strike “joiner” and insert “pander”.

Amendment 2—On page 2, line 15, after “action” insert “based on the nuptuarius of the husband”.

Amendment 3—On page 2, line 20, after “mortgage” insert “This sub-section shall not be construed to revive any action that has been barred.”

On motion by Senator Scott, by two-thirds vote SB 671 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was—

Year—38

Mr President  Frank Johnston Neal
Barron  Gersten Kirkpatrick Plummer
Beard  Girardeau Langley Rehm
Carlucci  Gordon Malchon Scott
Castor  Grant Mann Stuart
Children, D  Grizzle Margolis Thurman
Children, W D  Hair Maxwell Vogt
Crawford  Henderson McPherson Weinsten
Dunn  Hill Meek
Fox  Jennings Myers

Nays—None

Consideration of CS for SB 1051 was deferred.

SB 1066—A bill to be entitled An act relating to garnishment, amending s 77 07(1), Florida Statutes, providing for the issuance of writs of garnishment before judgment, amending s 77 07(1), Florida Statutes, providing for the dissolution of writs of garnishment, providing an effective date

—was read the second time by title

Senator Hair moved the following amendment which was adopted

Amendment 1—On page 2, line 2, after “claim” insert “The writ of garnishment shall set forth a notice to the defendant of his right to an immediate hearing for dissolution of such writ pursuant to s 77 07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.”

Pending further consideration of SB 1066 as amended, on motion by Senator Hair, the rules were waived and by two-thirds vote HB 472 was withdrawn from the Committee on Judiciary-Civil and Finance, Taxation and Claims.

On motion by Senator Hair—

HB 472—A bill to be entitled An act relating to garnishment, amending s 77 07(1), Florida Statutes, providing for the issuance of writs of garnishment before judgment, amending s 77 07(1), Florida Statutes, providing for the dissolution of a writ of garnishment, amending s 77 07(1), Florida Statutes, providing that no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the liability of the garnishee to the defendant, whatsoever is less, shall be entered against the garnishee, amending s 77 28, Florida Statutes, providing for the deposit of $25 with the court before the issuance of a writ of garnishment as partial payment of the garnishee's attorney's fees; providing that where costs are taxed against the defendant in the proceeding, such costs shall be deducted from the debt owed to the defendant, providing an effective date

—a companion measure, was substituted for SB 1066 and read the second time by title

Senator Hair moved the following amendments which were adopted:

Amendment 1—On page 1, line 25, strike everything after the enacting clause and insert

Section 1 Section 77 031, Florida Statutes, is amended to read

(Substantial rewriting of section See s 77 031, F S for present text)

77 031 Issuance of writ before judgment.—Before judgment has been obtained by the plaintiff against the defendant.

(1) Writs of garnishment shall be issued by the court or by the clerk on order of the court

(2) To obtain issuance of the writ the plaintiff, or his agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action, the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid; that the garnishment is not sued out to injure either the defendant or the garnishee, and that the plaintiff believes that the defendant will not have in his possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of his right to an immediate hearing for dissolution of such writ pursuant to s 77 07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

(3) Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or his agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment. A garnishment bond is not void or voidable because of an informality in it, nor shall the obligors be discharged because of the informality, even though the garnishment is dissolved because of the formality.

(4) The motion or pleading need not negative any exemptions of the defendant.

Section 2 Subsection (1) of section 77 07, Florida Statutes, is amended to read

77 07 Dissolution of writ. Writ dissolution

(1) The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in her favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action shall then proceed as if no writ had been issued. The court to which a garnishment is returnable shall always be open for hearing motions to dissolve the garnishment.

Section 3 This act shall take effect July 1, 1983

Amendment 2—In title, on page 1, strike all of lines 2-21 and insert

An act relating to garnishment, amending s 77 031, Florida Statutes, providing for the issuance of writs of garnishment before judgment, amending s 77 07(1), Florida Statutes, providing for the dissolution of writs of garnishment, providing an effective date

On motion by Senator Hair, by two-thirds vote HB 472 as amended was read the third time by title, passed and certified to the House. The vote on passage was—

Year—34

Mr President  Gersten Kirkpatrick Rehm
Beard  Girardeau Langley Scott
Castor  Grant Malchon Stuart
Children, D  Grizzle Margolis Thomas
Children, W D  Hair Maxwell Thurman
Crawford  Henderson McPherson Vogt
Dunn  Jenne Myers Weinsten
Fox  Jennings Neal
Frank  Johnston Plummer

Nays—1

Nay—Meek

SB 1066 was laid on the table.

SB 830—A bill to be entitled An act relating to the judiciary, amending s 54 021(3), Florida Statutes, permitting certain persons who are members of The Florida Bar to seek election and to serve as a county court judge in certain counties, providing an effective date

—was read the second time by title
A bill to be entitled
An act relating to garnishment; amending s.
77 031, Florida Statutes, providing for the
issuance of writs of garnishment before
judgment, amending s. 77 07(1), Florida
Statutes; providing for the dissolution of
writs of garnishment; providing an effective
date.

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

Section 1. Section 77 031, Florida Statutes, is
amended to read:

(Substantial rewording of section See
s. 77.031, F.S., for present text.)

77.031 Issuance of writ before judgment.—Before
judgment has been obtained by the plaintiff against the
defendant:

(1) Writs of garnishment shall be issued by the court
or by the clerk on order of the court

(2) To obtain issuance of the writ the plaintiff, or
his agent or attorney, shall file in the court where the
action is pending a verified motion or affidavit alleging by
specific facts the nature of the cause of action, the amount
of the debt and that the debt for which the plaintiff sues is
just, due, and unpaid, that the garnishment is not sued out to
injure either the defendant or the garnishee, and that the
plaintiff believes that the defendant will not have in his
possession, after execution is issued, tangible or intangible
property in this state and in the county in which the action

III. COMMENTS:
The bill is similar to HB 472.

IV. AMENDMENTS:
None.
**BILL ACTION REPORT**

(C3-75: File with Secretary of Senate)  
(S)(W) BILL NO.: 1066

**COMMITTEE ON JUDICIARY-CIVIL**

**DATE** April 27, 1983  
**TIME** 2:00 - 5:00 p.m.  
**PLACE** Committee Room "B"  
**DATE REPORTED** April 27, 1983

**FINAL ACTION:**  
- Favorably with 0 amendments
- Favorably with Committee Substitute
- Unfavorably

**OTHER:** Temporarily Passed  
Reconsidered  
Not Considered

**THE VOTE WAS:**

<table>
<thead>
<tr>
<th>FINAL BILL VOTE</th>
<th>SENATORS</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>GERSTEN, Joseph M. &quot;Joe&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>HAIR, Mattox</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>JENNE, Kenneth C.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>JOHNSTON, Harry A., II</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>LANGLEY, Richard H.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>FOX, Roberta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>SCOTT, James A.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
<th>AYE</th>
<th>NAY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AYE</td>
<td>NAY</td>
<td>AYE</td>
<td>NAY</td>
<td>AYE</td>
<td>NAY</td>
<td>AYE</td>
<td>NAY</td>
</tr>
</tbody>
</table>

(Attach additional page if necessary)

**Please Complete:**  
The key sponsor appeared  (X) Hair  
A Senator appeared  ( )  
Sponsor's aide appeared  ( )  
Other appearance  ( )
THIS BILL AMENDS THE FLORIDA PRE-JUDGMENT GARNISHMENT STATUTE, WHICH HAS BEEN HELD UNCONSTITUTIONAL BY THE FLORIDA SUPREME COURT, BY PROVIDING THAT:

(1) ALL WRITS BE ISSUED BY A JUDGE RATHER THAN THE CLERK;

(2) THE ISSUANCE OF A WRIT BE BASED ON SPECIFIC FACTS SUPPORTED BY A VERIFIED PETITION OR AFFIDAVIT; AND

(3) ON MOTION BY THE DEFENDANT, AN IMMEDIATE POST-SEIZURE HEARING BE HELD AT WHICH TIME THE WRIT SHALL DISSOLVE UNLESS THE PETITIONER PROVES THE GROUNDS UPON WHICH THE WRIT WAS ISSUED AND A REASONABLE PROBABILITY THAT THE FINAL JUDGMENT WILL BE RENDERED IN HIS FAVOR.

AMENDMENT #1

THE AMENDMENT PROVIDES THAT THE WRIT OF GARNISHMENT SHALL SET FORTH NOTICE TO THE DEFENDANT OF HIS RIGHT TO AN IMMEDIATE HEARING; AND THE CLERK OF COURT SHALL PROVIDE BY MAIL A COPY OF THE WRIT TO THE DEFENDANT.
I. SUMMARY:

A. Present Situation:

Certain portions of Ch. 77, F.S., dealing with prejudgment garnishment have been declared unconstitutional in Bunton v. First National Bank of Tampa, 394 F. Supp. 793 (M.D. Fla. 1975) and Ray Lein Construction, Inc. v. Wainwright, 346 So. 2d 1029 (Fla. 1977). These cases held that prejudgment writs of garnishment deny due process to defendants by taking property without judicial supervision, immediate post-seizure hearings, or sworn statements by the plaintiff in his motions.

Chapter 77 does not require motions to be verified; there is no requirement that the court must issue the writ; the court must always be open to hear motions to dismiss the writ, but there is no specific requirement for an immediate post-seizure hearing.

In the event of a default by the garnishee, s. 77.081(2) states that the garnishee is liable for the amount of the plaintiff's claim against the defendant.

Section 77.28 requires that where the amount of the judgment for the garnishee is greater than the plaintiff's deposit, judgment for the garnishee shall be entered against the party against whom the costs are taxed for the deficiency.

B. Probable Effect of Proposed Changes:

The provisions of this bill should eliminate the constitutional defects of Ch. 77.

Section 1. Writs would be required to be issued by the court or by the clerk under the court's order. The plaintiff would have to file a verified motion alleging specific facts. No writ of garnishment before judgment shall issue for any wages or salary paid or payable to the defendant except as provided in ch. 61.

Section 2. The court would immediately hear post-seizure motions for dissolution of writs.

Section 3. The garnishee's liability would be limited to the lesser of either his liability to the defendant, or the amount which the defendant owes to the plaintiff.

Section 4. When there is a judgment for the garnishee, costs taxed against the defendant would be deducted from the debt owed to the defendant or the property in the garnishee's possession.

II. Fiscal Impact: None

III. COMMENTS: More extensive proposed bills relating to this issue have attempted to address the constitutional defects of Ch. 77. In 1977, HB 476 died on the Calendar; in 1978, HB 614 died on the Calendar, in 1979, HB 25 died in the Senate; in 1980, a proposed Committee bill died in committee, and in 1982, HB 532 died on the Calendar.