

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1208

INTRODUCER: Senator Baxley

SUBJECT: Aircraft Liens

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1208 declares liens claimed for labor, services, fuel, or material furnished to an aircraft are not possessory liens. Thus, a person claiming such a lien does not need to keep the aircraft in his or her possession to enforce the lien.

The effective date of the bill is July 1, 2019.

**II. Present Situation:**

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>1</sup> A lien can be created by judgment, equity,<sup>2</sup> agreement, or statute.<sup>3</sup> The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.<sup>4</sup> A judicial lien, including an equitable lien, continues until the terms of the judgment are satisfied, the lien expires, or the judgment is overturned, and a consensual lien expires according to the terms of the parties' agreement.<sup>5</sup> A statutory lien expires in the manner and method set forth in statute.<sup>6</sup>

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<sup>1</sup> Fla. Jur. 2d Liens s. 37:1

<sup>2</sup> Equitable liens are judicial creations designed to prevent unjust enrichment of a party. See Ralph E. Boyer and Barry Kutun, *The Equitable Lien in Florida*, 20 U. Miami L. Rev. 731 (1966).

<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=3127&context=umlr> (last visited Mar. 23, 2019).

<sup>3</sup> Fla. Jur., *supra*, at 1.

<sup>4</sup> *Id.*

<sup>5</sup> Fla. Jur. 2d Liens and Encumbrances on Title s. 4:21.

<sup>6</sup> *Id.*

## Possessory Liens

A possessory lien is only enforceable so long as the lienor retains possession of the subject property.<sup>7</sup> A lienor who releases property on which he or she claims a possessory lien loses his or her right to claim the lien.

## Aircraft Liens

### *Recording, Generally*

The U.S. Congress passed the Federal Aviation Act (Act) in 1958.<sup>8</sup> The Act requires a civil aircraft<sup>9</sup> lien to be recorded with the Federal Aviation Administration<sup>10</sup> (FAA).<sup>11</sup> Until an aircraft lien is recorded with the FAA, it is valid only against those with actual notice of the lien.<sup>12</sup> The purpose of the recording provision was to create a central clearinghouse for the recording of liens affecting civil aircraft in the United States so that a person would know where to find such information.<sup>13</sup> However, the Act preempted state law only as to the priority of liens, meaning a state could impose requirements affecting the enforceability and validity of liens within that state.<sup>14</sup> Further, in 1981, the FAA took the position that aircraft liens could only be recorded with the FAA if the state law creating the lien allows for the creation or perfection of such a lien in this way.<sup>15</sup> Currently, the FAA records liens claimed in thirty-six states, including Florida.<sup>16</sup> Florida specifically provides that no lien affecting title to a civil aircraft is valid until such lien is recorded with the FAA.<sup>17</sup>

### *Lien for Landing*

The governing body of a publicly owned and operated airport may claim a lien upon an aircraft landing at the airport for all unpaid fees and charges for the use of the airport's facilities after demanding payment for such fees and charges from the aircraft's owner or operator.<sup>18</sup> A lien for landing is a possessory lien that attaches to any aircraft, at the airport, owned or operated by the person owing such charges and fees.<sup>19</sup>

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<sup>7</sup> *Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So.3d 887 (3d DCA 2010).

<sup>8</sup> *Creston Aviation, Inc. v. Textron Financial Corp.*, 900 So.2d 727 (2005).

<sup>9</sup> "Aircraft" means any contrivance invented, used, or designed to navigate, or fly in, the air. 49 USC § 40102(a)(g).

<sup>10</sup> The Federal Aviation Administration of the Department of Transportation regulates civil aviation and U.S. commercial space transportation, maintains and operates air traffic control and navigation systems for civil and military aircrafts, and develops and administers programs relating to aviation safety and the National Airspace System. See The Federal Register, *Federal Aviation Administration*, <https://www.federalregister.gov/agencies/federal-aviation-administration> (last visited Mar. 23, 2019).

<sup>11</sup> See 49 U.S.C. § 44107; see also *Creston*, *supra*, at 8.

<sup>12</sup> See 49 U.S.C. § 44108; see also *Creston*, *supra*, at 8.

<sup>13</sup> See *Creston*, *supra*, at 12, citing *Aircraft Trading & Servs., Inc. v. Braniff, Inc.*, 819 F. 2d 1227 (2d Cir. 1987).

<sup>14</sup> See *Creston*, *supra*, at 12, citing *Philko Aviation, Inc. v. Shackel*, 103 S. Ct. 2476 (1983).

<sup>15</sup> Federal Aviation Administration, *Artisan Liens on Aircraft; Recordability*, 70 FR 59800 (Oct. 13, 2005) <https://www.federalregister.gov/documents/2005/10/13/05-20467/artisan-liens-on-aircraft-recordability> (last visited Mar. 23, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> S. 329.01, F.S.

<sup>18</sup> S. 329.40(1), F.S.

<sup>19</sup> S. 329.40(2), F.S.

A lien for landing is enforced in the same manner as a warehouseman's<sup>20</sup> lien, i.e., by public sale of the aircraft after notification to all persons known to claim an interest in the aircraft.<sup>21</sup> The notification must be delivered by certified mail or in person and include:

- An itemized statement of the amount due;
- A description of the aircraft;
- A demand for payment within a specified time; and
- A conspicuous statement that unless the claim is paid within the specified time, the goods will be sold at a specified time and place.<sup>22</sup>

Following the expiration of the timeframe given for payment in the notice, the lienor must publish an advertisement for two consecutive weeks in a newspaper of general circulation where the sale is to occur.<sup>23</sup> The advertisement must state:

- A description of the aircraft;
- The name of the person on whose account the aircraft is held; and
- The time and place of the sale.<sup>24</sup>

### ***Lien for Fuel, Labor, Services, or Material***

A person who provides fuel for an aircraft may claim a lien on the aircraft for any unpaid fuel charges.<sup>25</sup> A person who performs labor or services on or for an aircraft may claim a lien on the aircraft for any unpaid costs for the labor or services performed and for the materials used.<sup>26</sup>

A lien for fuel, labor, services, or material under ss. 329.41 or 713.58, F.S., is a possessory lien.<sup>27</sup> To enforce such a lien, a lienor must record a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the fuel, labor, services, or material was last provided.<sup>28</sup> Such notice must be recorded within 90 days of the date the fuel, labor, services, or material was last furnished and must state:

- The name of the lienor;
- The name of the aircraft's owner;
- A description of the subject aircraft;
- The amount for which the lien is claimed; and
- The date the expenditure was completed.<sup>29</sup>

<sup>20</sup> "Warehouse" means a person engaged in the business of storing the goods of others for hire. S. 677.102(1)(m), F.S.

<sup>21</sup> Ss. 329.40(1) and 677.210(1) and (2), F.S.

<sup>22</sup> S. 677.210(2), F.S.

<sup>23</sup> S. 677.201(3), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> S. 329.41, F.S.

<sup>26</sup> S. 713.58(1), F.S.

<sup>27</sup> S. 713.58(3), F.S.; see also *Commercial Jet, Inc, supra*, at 7.

<sup>28</sup> S. 329.51, F.S.

<sup>29</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill declares liens claimed under ss. 329.41 and 713.58, F.S., for labor, services, fuel, or material furnished to an aircraft are not possessory liens. Thus, a person claiming such a lien does not need to keep the aircraft in his or her possession to enforce the lien.

The bill does not affect the possessory nature of liens for labor or services to other property claimed under s. 713.58, F.S.,<sup>30</sup> or liens for landing claimed under s. 329.40, F.S. These liens remain possessory liens unless categorized otherwise in statute.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A person enforcing a lien for fuel, labor, services, or material furnished to an aircraft would be allowed to release the aircraft to the owner or operator. This may make it easier for a lienor to recover money owed to him or her without keeping a commercial aircraft out of service and potentially disrupting commercial air travel. This may also allow the owner or operator of an aircraft on which a lien is claimed to keep using the aircraft while he or she works to satisfy the lien.

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<sup>30</sup> E.g., a lien claimed under s. 718.58, F.S., for labor or services performed on a motor vehicle.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 329.41 and 329.51.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.