

By Senator Campbell

25-1181-98

1 A bill to be entitled
2 An act relating to debtors and creditors;
3 amending s. 30.231, F.S.; providing when
4 seizure of property is made; amending s. 55.03,
5 F.S.; providing for judgments to be paid on
6 simple rate of interest; creating s. 55.105,
7 F.S.; providing for judgments, orders, decrees,
8 and liens on personal property; creating s.
9 55.106, F.S.; providing for a statement of
10 termination, partial release, and assignment of
11 a lien; creating s. 55.107, F.S.; providing
12 effect of a recorded judgment lien on writs of
13 execution; amending s. 55.604, F.S.; providing
14 for recognition and enforcement of judgment
15 liens on personal property; amending s. 56.031;
16 providing for the issuance of multiple writs;
17 amending s. 56.041, F.S.; providing for return
18 of unsatisfied executions in possession of the
19 sheriff; amending s. 56.09, F.S.; providing a
20 limitation on levy of execution; amending s.
21 56.21, F.S.; providing for mailing of notice of
22 a levy and execution sale; amending s. 56.27,
23 F.S.; providing for payment of money received
24 under an execution; amending s. 56.29, F.S.;
25 providing supplementary proceedings; amending
26 s. 77.01, F.S.; providing a right to garnish
27 certain debts; creating s. 77.05, F.S.;
28 providing for notice of procedures for
29 asserting exemptions and requesting hearings;
30 amending s. 77.055, F.S.; providing for service
31 of garnishee's answer and notice of right to

1 move to dissolve writ; amending s. 77.06, F.S.;
2 providing that service of a writ creates a lien
3 on the garnishee's debts or property; amending
4 s. 222.12, F.S.; providing that a person may
5 make an oath before a notary public stating
6 facts justifying an exemption from a
7 garnishment proceeding; amending s. 679.301,
8 F.S.; modifying the definition of lien
9 creditor; repealing s. 30.17, F.S., relating to
10 sheriff's execution docket; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (d) of subsection (1) of section
16 30.231, Florida Statutes, is amended to read:

17 30.231 Sheriffs' fees for service of summons,
18 subpoenas, and executions.--

19 (1) The sheriffs of all counties of the state in civil
20 cases shall charge fixed, nonrefundable fees for docketing and
21 service of process, according to the following schedule:

22 1. Twenty dollars for docketing and indexing each writ
23 of execution, regardless of the number of persons involved.

24 2. Fifty dollars for each levy.

25 a. A levy is considered made when any property or any
26 portion of the property listed in the instructions for levy is
27 seized, or when any property or portion of the property not
28 listed in the instruction for levy is seized, or when upon
29 demand of the sheriff the writ is satisfied by the defendant
30 in lieu of seizure. Seizure requires that the sheriff either
31 take actual possession of the property or take appropriate

1 steps to publicize, without taking possession, that the
2 property has been taken under the sheriff's custody or
3 control.

4 b. When the instructions are for levy upon real
5 property, a levy fee is required for each parcel described in
6 the instructions.

7 c. When the instructions are for levy based upon
8 personal property, one fee is allowed, although the property
9 may be seized at different locations, conditional upon all of
10 the items being advertised collectively and the sale being
11 held at a single location. However, if the property seized
12 cannot be sold at one location during the same sale as
13 advertised, but requires separate sales at different
14 locations, the sheriff is then authorized to impose a levy fee
15 for the property and sale at each location.

16 3. Twenty dollars for advertisement of sale under
17 process.

18 4. Twenty dollars for sale under process.

19 5. Twenty dollars for deed, bill of sale, or
20 satisfaction of judgment.

21 Section 2. Section 55.03, Florida Statutes, is amended
22 to read:

23 55.03 Judgments; rate of interest, generally.--

24 (1) On December 1 of each year beginning December 1,
25 1994, the Comptroller of the State of Florida shall set the
26 simple rate of interest that shall be payable on judgments or
27 decrees for the year beginning January 1 by averaging the
28 discount rate of the Federal Reserve Bank of New York for the
29 preceding year, then adding 500 basis points to the averaged
30 federal discount rate. The Comptroller shall inform the clerk
31 of the courts and chief judge for each judicial circuit of the

1 rate that has been established for the upcoming year. The
2 initial interest rate established by the Comptroller shall
3 take effect on January 1, 1995, and the interest rate
4 established by the Comptroller in subsequent years shall take
5 effect on January 1 of each following year. Judgments obtained
6 on or after January 1, 1995, shall use the previous statutory
7 rate for time periods before January 1, 1995, for which
8 interest is due and shall apply the rate set by the
9 Comptroller for time periods after January 1, 1995, for which
10 interest is due. Interest on a judgment accrues for the life
11 of the judgment at the simple rate set for that year by the
12 Comptroller.~~Nothing contained herein shall affect a rate of~~
13 ~~interest established by written contract or obligation.~~

14 (2) When a contract or obligation entered into after
15 the effective date of this act specifies a contract rate of
16 interest, any judgment entered on that contract or obligation
17 must include accrued interest at the contract rate up to the
18 time the judgment is entered. Thereafter, interest on the
19 judgment accrues for the life of the judgment at the simple
20 interest rate set for that year by the Comptroller.

21 ~~(3)~~(2) Any process, writ, judgment, or decree which is
22 directed to the sheriffs of the state to be dealt with as
23 execution shall bear, on the face of the process, writ,
24 judgment, or decree, the rate of interest which it shall
25 accrue from the date of the judgment until payment.

26 Section 3. Section 55.105, Florida Statutes, is
27 created to read:

28 55.105 Judgments, orders and decrees; lien on personal
29 property.--

30 (1)(a) A judgment lien securing the unpaid amount of
31 any money judgment may be acquired by the holder of a judgment

1 of a Florida court; a judgment of a United States court having
2 jurisdiction in this state; a judgment of a court of the
3 United States or any other state to the extent enforceable
4 under the Florida Enforcement of Foreign Judgments Act, ss.
5 55.501-55.509; or a judgment of a foreign state as defined in
6 the Uniform Foreign Money-Judgment Recognition Act, ss.
7 55.601-55.607, from the time and to the extent enforceable
8 thereunder.

9 (b) The judgment lien may be acquired on the judgment
10 debtor's interest in all personal property subject to
11 execution in the sate other than fixtures, money, and
12 negotiable instruments. The lien is obtained by filing a
13 judgment lien certificate in the office of the Department of
14 State after the judgment has become final and if no stay of
15 the judgment or its enforcement is in effect at the time the
16 certificate is filed. The judgment lien is effective as of the
17 date of filing, but no lien attaches to property until the
18 debtor acquires an interest in the property. Except as
19 provided in paragraph (2)(b), a judgment creditor may file
20 only one effective judgment lien certificate based upon a
21 particular judgment.

22 (2)(a) Except as provided in this subsection, a
23 judgment lien acquired under subsection (1) lapses and becomes
24 invalid 5 years after the date of filing.

25 (b) At any time after the 6th month prior to the
26 scheduled lapse of a judgment lien acquired under subsection
27 (1), the creditor may obtain a second judgment lien by
28 recording a new judgment certificate. The second lien becomes
29 effective on the date of lapse of the original lien or on the
30 date on which the new judgment certificate is recorded,
31 whichever is later. The second lien is a new lien, and not a

1 continuation of the original judgment lien. The second lien
2 permanently lapses and becomes invalid 5 years after its
3 effective date and no additional liens based on the original
4 judgment may be obtained.

5 (c) An original or second lien continues for an
6 additional 90 days after lapse in any specific property that
7 has been itemized with particularity in instructions for levy
8 which have been delivered to a sheriff prior to the time of
9 lapse. The lien will continue only if the itemized property
10 and its location are described with sufficient particularity
11 to permit the sheriff to act, and only if the property is
12 located in the county in which the sheriff has jurisdiction at
13 the time of delivery of the instructions. Subsequent removal
14 of the property does not defeat the itemized lien. A court may
15 order continuation of the itemized lien beyond the 90-day
16 period on a showing that extraordinary circumstances have
17 prevented levy.

18 (3)(a) The judgment lien certificate must:

19 1. Be signed by the judgment creditor or his or her
20 attorney or duly authorized representative;

21 2. State the names and last-known address of the
22 judgment creditor, the judgment creditor's attorney, and the
23 judgment debtor;

24 3. State the court in which the judgment was entered,
25 the case number, and the date on which the judgment was
26 rendered;

27 4. State the amount due on the money judgment, and the
28 applicable interest rate; and

29 5. In the case of a second judgment lien, state the
30 amount of the original money judgment remaining unpaid and the
31 interest accrued thereon.

1 (b) The validity of the certificate may not be
2 defeated by technical or clerical errors made in good faith
3 which are not seriously misleading, nor may any claim of
4 estoppel be based on such errors.

5 (4) The judgment lien certificate must be recorded and
6 indexed in the same manner as financing statements are filed
7 under chapter 679. The Department of State shall provide
8 information about and copies of judgment lien certificates in
9 the same manner that information and copies are provided with
10 respect to financing statements. The Department of State may
11 charge fees for such services commensurate with the fees
12 charged for services in regard to financing statements.

13 (5) A valid judgment lien must give the judgment
14 creditor the right to take possession of the property subject
15 to lien through writ of execution, garnishment, or other
16 judicial process. A creditor who has not filed a judgment lien
17 certificate or whose lien has lapsed may nevertheless take
18 possession of the debtor's property through such judicial
19 process. Such a creditor proceeding by writ of execution
20 obtains a lien as of the time of levy and only on the property
21 levied upon.

22 (6) A buyer in the ordinary course of business as
23 defined in s. 671.201(9) takes free of a judgment lien created
24 under this section even though the buyer knows of its
25 existence. A valid security interest as defined in chapter 679
26 in after-acquired property of the debtor which is perfected
27 prior to the effective date of a judgment lien takes priority
28 over the judgment lien on the after-acquired property.

29 (7) If the enforceability of the judgment lien is
30 temporarily stayed or enjoined as a result of any legal or
31 equitable proceeding, the time for lapse of the judgment lien

1 is tolled until 30 days after the stay or injunction is
2 terminated.

3 Section 4. Section 55.106, Florida Statutes, is
4 created to read:

5 55.106 Statement of termination, partial release,
6 assignment.--

7 (1) Within 30 days following written demand by the
8 debtor after there is no outstanding obligation or the
9 obligation has been partially released, the judgment
10 lienholder must send to the debtor a statement to the effect
11 that he or she no longer claims a lien on the personal
12 property of the debtor or that the lien has been partially
13 released and setting forth the value of the lien remaining
14 unpaid as of the date of the statement. A statement signed by
15 a person other than the record lienholder must include or be
16 accompanied by the assignment or a separate written statement
17 of assignment signed by the lienholder of record. If the
18 affected lienholder fails to send such a statement within 10
19 days after proper written demand therefor, he or she is liable
20 to the debtor for \$100, and in addition for any loss caused to
21 the debtor, including attorney's fees, by such failure.

22 (2) The debtor may file such statement with the
23 Department of State. The statement must be recorded and
24 indexed and fees may be assessed in the same manner as
25 termination statements are filed and fees assessed under
26 chapter 679.

27 Section 5. Section 55.107, Florida Statutes, is
28 created to read:

29 55.107 Effect of recorded judgment lien on writs of
30 execution previously delivered to a sheriff.--

31

1 (1) Any lien created by a writ of execution which has
2 been delivered to the sheriff of any county prior to the
3 effective date of this act remains in effect for 2 years after
4 that date as to any property of the debtor located in that
5 county on the effective date of this act and remaining in that
6 county after that date. As to any property of the debtor
7 brought into the county after the effective date of this act,
8 such writs create no lien, inchoate or otherwise.

9 (2) If a judgment creditor that has delivered a writ
10 of execution to a sheriff in any county prior to the effective
11 date of this act properly records a judgment certificate
12 within 2 years after the effective date of this act, together
13 with a certification by the sheriff as to the date on which
14 the writ was delivered to him or her, the resulting judgment
15 lien is considered to have been recorded on the date the writ
16 was delivered to the sheriff as to all leviable property of
17 the debtor located in that county on the effective date of
18 this act and remains continuously in that county thereafter.
19 As to all other property of the debtor, the effective date of
20 the judgment lien is as provided in this act. The duration of
21 all judgment liens under this act is as provided in this act,
22 regardless of the date on which a lien is deemed to have been
23 recorded.

24 (3) If a judgment creditor that has delivered a writ
25 of execution to a sheriff in any county prior to the effective
26 date of this act does not properly record a judgment
27 certificate within 2 years after the effective date of this
28 act, such writs are considered to have been abandoned and of
29 no effect 2 years after the effective date of this act.

30 Section 6. Subsection (8) is added to section 55.604,
31 Florida Statutes, to read:

1 55.604 Recognition and enforcement.--Except as
2 provided in s. 55.605, a foreign judgment meeting the
3 requirements of s. 55.603 is conclusive between the parties to
4 the extent that it grants or denies recovery of a sum of
5 money. Procedures for recognition and enforceability of a
6 foreign judgment shall be as follows:

7 (8) A judgment lien on personal property is created
8 only when there has been recorded in the office of the
9 Department of State:

10 (a) A certified copy of the judgment;

11 (b) A copy of a circuit court clerk's certificate or
12 order recognizing the foreign judgment; and

13 (c) A judgment certificate satisfying the requirements
14 of s. 55.105.

15
16 The priority of such lien is established as of the time the
17 latter of the three recordings has occurred. Such lien may be
18 partially released or satisfied by the person designated under
19 subsection (1).

20 Section 7. Section 56.031, Florida Statutes, is
21 amended to read:

22 56.031 Writs of executions; form; multiple writs.--All
23 writs of execution ~~executions~~ shall be dated on the day on
24 which they are issued, shall be directed to all and singular
25 the sheriffs of the state and shall be in full force
26 throughout the state. Multiple writs of execution must be
27 issued by the clerk on request of the judgment creditor, which
28 may be docketed in different counties.

29 Section 8. Subsection (2) of section 56.041, Florida
30 Statutes, is amended to read:

31 56.041 Executions; collection and return.--

1 (2) All unsatisfied executions in the hands of the
2 sheriff may be returned to the judgment creditor when the
3 sheriff determines that a reasonable time in which to levy on
4 the property of the debtor has passed and that it would serve
5 no useful purpose for the sheriff to continue in possession of
6 the writ, to the court issuing the execution, 20 years after
7 the date of issuance of final judgment upon which the
8 execution was issued. Upon such return, the clerk of the
9 court of issuance shall provide a receipt, to the sheriff
10 submitting the return, acknowledging the return of the
11 unsatisfied execution.

12 Section 9. Section 56.09, Florida Statutes, is amended
13 to read:

14 56.09 Executions ~~against corporations;~~generally.--

15 (1) On any judgment against a corporation plaintiff
16 may have an execution levied on the current money as well as
17 on the goods and chattels, lands and tenements of said
18 corporation.

19 (2) On any judgment against an individual, plaintiff
20 may have an execution levied on the current money of the
21 individual in excess of \$1,000. This limitation on levy of
22 execution does not create an exemption, nor does it limit the
23 availability of any other exemption.

24 Section 10. Section 56.21, Florida Statutes, is
25 amended to read:

26 56.21 Execution sales; notice.--Notice of all sales
27 under execution shall be given by advertisement once each week
28 for 4 successive weeks in a newspaper published in the county
29 in which the sale is to take place. The time of such notice
30 may be shortened in the discretion of the court from which the
31 execution issued, upon affidavit that the property to be sold

1 is subject to decay and will not sell for its full value if
2 held until date of sale. On or before the date of the first
3 publication or posting of the notice of sale, a copy of the
4 notice of sale shall be furnished by certified mail to the
5 attorney of record of the judgment debtor, or to the judgment
6 debtor at the judgment debtor's last known address if the
7 judgment debtor does not have an attorney of record. Such copy
8 of the notice of sale shall be mailed even though a default
9 judgment was entered. Notice of such levy and execution sale
10 must be mailed in the same manner as notice is mailed to any
11 judgment debtor under this section to all judgment creditors
12 or their attorneys who have filed judgment certificates under
13 s. 55.105 in the name of the judgment debtor, and to all
14 secured creditors who have filed financing statements under s.
15 679.401 in the name of the debtor reflecting a security
16 interest in property of the kind to be sold at the execution
17 sale.When levying upon real property, notice of such levy and
18 execution sale shall be made to the property owner of record
19 in the same manner as notice is made to any judgment debtor
20 pursuant to this section. When selling real or personal
21 property, the sale date shall not be earlier than 30 days
22 after the date of the first advertisement.

23 Section 11. Section 56.27, Florida Statutes, is
24 amended to read:

25 56.27 Executions; payment ~~to execution creditor~~ of
26 money collected.--

27 (1) All money received under executions shall be paid
28 as follows:

29 (a) The first \$500 as liquidated expenses and not in
30 reduction of his or her judgment to the creditor causing the
31 sheriff to levy; and

1 (b) To the judgment lienholder or his or her attorney
2 whose judgment lien certificate was first filed in the office
3 of the Department of State and whose judgment lien has not
4 lapsed at the time of levy to the party in whose favor the
5 ~~execution was issued or his or her attorney.~~ The receipt of
6 the attorney shall be a release of the officer paying the
7 money to him or her. When the name of more than one attorney
8 appears in the court file, the money shall be paid to the
9 attorney who originally commenced the action or who made the
10 original defense unless the file shows that another attorney
11 has been substituted. ~~When property sold under execution~~
12 ~~brings more than the amount of the execution, the surplus~~
13 ~~shall be paid to defendant without delay.~~

14 (2) When property sold under execution brings more
15 than the amount of the earliest valid judgment lien plus
16 sheriff's costs and the levying creditor's liquidated
17 expenses, the surplus must be paid to any other judgment
18 lienholders whose liens have not lapsed in the order of
19 filing. If there is a surplus after paying all valid judgment
20 liens, the surplus must be paid to the creditor who, if not
21 already satisfied, caused the levy through writ or
22 instructions for levy. If there is a surplus after paying all
23 valid judgment and execution liens, the surplus must be paid
24 to the defendant without delay.

25 (3) The value of the property levied upon must not be
26 considered excessive unless the value of the seized property
27 unreasonably exceeds the total debt reflected in all
28 unsatisfied judgment liens that have not lapsed and any
29 unsatisfied lien of the levying creditor.

30 Section 12. Subsection (1) of section 56.29, Florida
31 Statutes, is amended to read:

1 56.29 Proceedings supplementary.--

2 (1) When a person holds an unsatisfied judgment and
3 has delivered a writ of execution to any sheriff ~~holds an~~
4 ~~unsatisfied execution~~, the plaintiff in execution may file an
5 affidavit so stating and that the execution is valid and
6 outstanding and thereupon is entitled to these proceedings
7 supplementary to execution.

8 Section 13. Section 77.01, Florida Statutes, is
9 amended to read:

10 77.01 Right to garnishment.--Every person or entity
11 who has sued to recover a debt or has recovered judgment in
12 any court against any person or entity, ~~natural or corporate~~,
13 has a right to a writ of garnishment, in the manner
14 hereinafter provided, to subject any debt due to defendant by
15 a third person or, except with respect to debts under
16 negotiable instruments, any debts that become due absolutely
17 to defendant by a third person through the passage of time
18 only, and any tangible or intangible personal property of
19 defendant in the possession or control of a third person. The
20 officers, agents, and employees of any companies or
21 corporations are third persons in regard to the companies or
22 corporations, and as such are subject to garnishment after
23 judgment against the companies or corporations.

24 Section 14. Section 77.05, Florida Statutes, is
25 created to read:

26 77.05 Notice to defendant of procedure for asserting
27 exemptions and requesting hearing; procedure for hearing.--

28 (1) Upon application for a writ of garnishment by a
29 plaintiff, the clerk of the court shall attach to the writ the
30 following "Notice to Defendant":

31

1 "NOTICE TO DEFENDANT OF YOUR RIGHT TO KEEP WAGES, MONEY, AND
2 OTHER PROPERTY FROM BEING GARNISHED

3
4 The Writ of Garnishment delivered to you with this Notice
5 means that wages, money, or other property belonging to you
6 has been garnished in order to pay a court judgment against
7 you. HOWEVER, YOU MAY BE ABLE TO GET YOUR MONEY OR PROPERTY
8 BACK, SO READ THIS NOTICE CAREFULLY.

9
10 State and federal laws say that certain money and property may
11 not be taken to pay certain types of court judgments even if
12 deposited in a bank, savings and loan, or credit union. Such
13 money or property is said to be exempt from garnishment. The
14 major exemptions are listed below on the Claim for Exemption
15 form. This list does not include all possible exemptions, so
16 you should consult an attorney for specific advice.

17
18 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING
19 GARNISHED, OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST
20 PREPARE A CLAIM FOR EXEMPTION AND REQUEST FOR HEARING FORM SET
21 OUT BELOW, HAVE IT NOTARIZED, AND FILE THE FORM WITH THE
22 CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS
23 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR
24 DELIVER A COPY TO THE PLAINTIFF AND THE GARNISHEE AT THE
25 ADDRESS LISTED IN THE WRIT OF GARNISHMENT.

26
27 If you request a hearing, it will be held as soon as possible
28 after your request is received by the court. The plaintiff has
29 2 business days, plus 5 days if the copy of your request was
30 mailed to plaintiff, to file an objection to your Claim of
31 Exemption. If the plaintiff files an objection, the clerk will

1 notify you and the other parties of the time and date of the
2 hearing. You may attend the hearing with or without an
3 attorney. If the plaintiff fails to file an objection, the
4 garnishment will be dismissed and your property or money will
5 be released.

6
7 YOU SHOULD FILE YOUR CLAIM FOR EXEMPTION IMMEDIATELY TO KEEP
8 YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE COURT
9 JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED
10 LEGAL ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CAN'T AFFORD
11 A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE. CONTACT
12 YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY
13 LEGAL SERVICES PROGRAM IN YOUR AREA.

14
15 CLAIM FOR EXEMPTION AND REQUEST FOR HEARING

16 I claim that the exemptions from garnishment which are checked
17 below apply in this case:

18 _____1. Head of family wages. (You must check a or b below)

19 _____a. I provide more than one half of the support
20 for a child or other dependent and have net earnings of \$500
21 or less per week.

22 _____b. I provide more than one half of the support
23 for a child or other dependent, have net earnings of more than
24 \$500 per week, but have not agreed in writing to have my wages
25 garnished.

26 _____2. Social Security benefits.

27 _____3. Supplemental Security Income benefits.

28 _____4. Public assistance (welfare).

29 _____5. Workers' Compensation.

30 _____6. Unemployment Compensation.

31 _____7. Veterans' benefits.

1 8. Retirement benefits.

2 9. Life insurance benefits or cash surrender value of a
3 life insurance policy.

4 10. Other

5 I request a hearing to decide the validity of my claim. Notice
6 of the hearing should be given to me at:

7 _____
8 Address: _____ Telephone number: _____

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

11 _____

12 _____

13 Date _____ Defendant's signature _____

14 STATE OF FLORIDA

15 COUNTY OF

16 Subscribed and sworn to before me on _____ by

17 _____, who presented _____ as

18 identification and who took an oath.

19 _____

20 Notary Public/Deputy Clerk."

21 (2) The plaintiff must mail a copy of the writ of
22 garnishment, a copy of the motion for writ of garnishment and
23 the "Notice to Defendant" to the defendant within 5 business
24 days after the writ is issued, or 3 business days after the
25 writ is served on the garnishee, whichever is later. The
26 plaintiff shall mail the motion for writ of garnishment, the
27 writ of garnishment, and "Notice to Defendant" by first class
28 mail to the residence of the defendant. However, if the
29 correspondence is returned as undeliverable by the post
30 office, or if the residence address is not discoverable after
31 diligent search, the correspondence must be sent by first

1 class mail to the defendant at his or her place of employment.
2 The plaintiff shall file in the proceeding a certificate of
3 such service.

4 (3) Upon the filing by a defendant of a claim for
5 exemption and request for hearing, a hearing will be held as
6 soon as is practicable to determine the validity of the
7 claimed exemptions. Unless the plaintiff files, within 2
8 business days plus 5 if the request is served by mail, a
9 written statement under oath that the defendant's claim of
10 exemption is contested, no hearing is required, and the clerk
11 must automatically dissolve the writ and notify the parties of
12 the dissolution by mail.

13 Section 15. Section 77.055, Florida Statutes, is
14 amended to read:

15 77.055 Service of garnishee's answer and notice of
16 right to move to dissolve writ ~~Notice to defendant and other~~
17 ~~interested persons.~~--Within 5 days after service of the
18 garnishee's answer on the plaintiff or after the time period
19 for the garnishee's answer has expired, the plaintiff shall
20 serve, by mail, ~~the following documents: a copy of the writ,~~
21 a copy of the garnishee's answer and ~~a notice, and a~~
22 ~~certificate of service.~~ The notice shall advise ~~advising~~ the
23 recipient that he or she must move to dissolve the writ of
24 garnishment within 20 days after the date set forth in the
25 notice if any allegation in the plaintiff's motion is untrue
26 ~~within the time period set forth in s. 77.07(2) or be~~
27 ~~defaulted and that he or she may have exemptions from the~~
28 ~~garnishment which must be asserted as a defense.~~ The
29 plaintiff shall serve these documents on the defendant at the
30 defendant's last known address and any other address disclosed
31 by the garnishee's answer and on any other person disclosed in

1 the garnishee's answer to have any ownership interest in the
2 deposit, account, or property controlled by the garnishee. The
3 plaintiff shall file in the proceeding a certificate of such
4 service.

5 Section 16. Subsection (1) of section 77.06, Florida
6 Statutes, is amended to read:

7 77.06 Writ; effect.--

8 (1) Service of the writ shall make garnishee liable
9 for all debts due by him or her to defendant and for any
10 tangible or intangible personal property of defendant in the
11 garnishee's possession or control at the time of the service
12 of the writ or at any time between the service and the time of
13 the garnishee's answer. Service of the writ creates a lien in
14 or to any such debts or property at the time of service, or at
15 the time such debts or property come into the garnishee's
16 possession or control, whichever is later.

17 Section 17. Section 222.12, Florida Statutes, is
18 amended to read:

19 222.12 Proceedings for exemption.--Whenever any money
20 or other thing due for labor or services as aforesaid is
21 attached by such process, the person to whom the same is due
22 and owing may make oath before the officer who issued the
23 process or before a notary public that the money attached is
24 due for the personal labor and services of such person, and
25 she or he is the head of a family residing in said state.
26 When such an affidavit is made, notice of same shall be
27 forthwith given to the party, or her or his attorney, who sued
28 out the process, and if the facts set forth in such affidavit
29 are not denied under oath within 2 business days after the
30 service of said notice, the process shall be returned, and all
31 proceedings under the same shall cease. If the facts stated

1 in the affidavit are denied by the party who sued out the
2 process within the time above set forth and under oath, then
3 the matter shall be tried by the court from which the writ or
4 process issued, in like manner as claims to property levied
5 upon by writ of execution are tried, and the money or thing
6 attached shall remain subject to the process until released by
7 the judgment of the court which shall try the issue.

8 Section 18. Section 679.301, Florida Statutes, is
9 amended to read:

10 679.301 Persons who take priority over unperfected
11 security interests; right of "lien creditor."--

12 (1) Except as otherwise provided in subsection (2), an
13 unperfected security interest is subordinate to the rights of:

14 (a) Persons entitled to priority under s. 679.312;

15 (b) A person who becomes a lien creditor before the
16 security interest is perfected;

17 (c) In the case of goods, instruments, documents, and
18 chattel paper, a person who is not a secured party and who is
19 a transferee in bulk or other buyer not in ordinary course of
20 business, or is a buyer of farm products in ordinary course of
21 business, to the extent that he or she gives value and
22 receives delivery of the collateral without knowledge of the
23 security interest and before it is perfected;

24 (d) In the case of accounts and general intangibles, a
25 person who is not a secured party and who is a transferee to
26 the extent that he or she gives value without knowledge of the
27 security interest and before it is perfected.

28 (2) If the secured party files with respect to a
29 purchase money security interest before or within 15 days
30 after the debtor receives possession of the collateral, the
31 secured party ~~he or she~~ takes priority over the rights of a

1 transferee in bulk or of a lien creditor ~~which arise between~~
2 ~~the time the security interest attaches and the time of~~
3 ~~filing.~~

4 (3) A "lien creditor" means a creditor who has
5 acquired a lien on the property involved by attachment, levy,
6 or the like and includes a holder of a valid judgment lien
7 under s. 55.105, an assignee for benefit of creditors from the
8 time of assignment, and a trustee in bankruptcy from the date
9 of the filing of the petition or a receiver in equity from the
10 time of appointment.

11 Section 19. Section 30.17, Florida Statutes, is
12 repealed.

13 Section 20. This act shall take effect October 1,
14 1998.

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16 *****

17 SENATE SUMMARY

18 Amends numerous sections relating to creditors and
19 debtors including judgments, orders, decrees, and liens
20 on personal property; procedures for making seizure of
21 property; the effect of a recorded judgment lien on writs
22 of execution; the recognition and enforcement of judgment
23 liens on personal property; a limitation on levy of
24 execution; supplementary procedures; notice of a levy and
25 execution sale; a right of garnishment of certain debts;
26 procedures for notice, asserting exemptions, and
27 requesting hearings; creates a lien on a garnishee's
28 debts or property. Repeals s. 30.17, F.S., relating to a
29 sheriff's execution docket. (See bill for details.)
30
31