

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1744

SPONSOR: Judiciary Committee and Senator Burt

SUBJECT: Judgments and Liens

DATE: April 16, 2001 REVISED: 04/18/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1744 is commonly referred to as a “glitch bill.” It corrects inconsistencies and oversights in ch. 2000-258, L.O.F., which created a new statutory framework for perfecting and prioritizing claims of judgment liens on leviable property through a centralized database maintained by the Department of State (department). The committee substitute amends garnishment provisions enacted during the 2000 Regular Session to clarify that certain debts are not subject to garnishment and that only individual defendants must be provided notice of right against garnishment. The committee substitute also deletes the requirements that copies of foreign judgments be filed with the department and that the department maintain a list of foreign jurisdictions that do not recognize judgments issued from this state.

This committee substitute substantially amends the following sections of the Florida Statutes: 55.201, 55.202, 55.203, 55.204, 55.205, 55.206, 55.207, 55.208, 55.209, 55.604, 55.605, 56.21, 56.27, 77.01, 77.041, and 678.1051.

II. Present Situation:

During the 2000 Regular Session, the Legislature enacted Committee Substitute for Senate Bill 1194 (ch. 2000-258, L.O.F.) (act). Mostly, the act was designed to implement the recommendations of the Secretary of State’s Constitutional Transition Task Force. These recommendations addressed issues stemming from Revision No. 8 to the State Constitution, as approved by the voters of Florida on November 3, 1998, and the revision’s consequence that the Secretary of State is eliminated from the Cabinet and replaced by a custodian of state records effective January 7, 2003.

In addition, sections 5 through 29 of the act related to the execution of judgment liens. The act amended various provisions relating to debtors and creditors, generally effective October 1, 2001. It established a statutory framework for perfecting and prioritizing judgment liens on personal property. The act replaced the system of county-by-county filing of judgment liens on leivable personal property, and incorporated liens supporting underlying child support orders and tax liens, with a statewide centralized filing database by October 1, 2003. The act required the Department of State to establish and maintain the database and provided appropriations from the Corporations Trust Fund.

The act also revised and expanded provisions governing notice, rights, and hearing procedures relating to writs of garnishment. It provided a statutory form and process for filing a Notice of Homestead and for filing a declaratory action within 45 days to determine the validity of a homestead claim on property to be sold or mortgaged or to foreclose on lien against the property. Additionally, the act revised the initial recording and re-recording period for a judgment lien on real property from seven years to 10 years. The act provided for the transfer of increased trust funds from the Corporations Trust Fund to the Cultural Institutions Trust Fund and the Grants and Donations Trust Fund.

III. Effect of Proposed Changes:

The committee substitute addresses issues that have arisen during implementation efforts by the Department of State (department) to establish the centralized database of judgment liens as provided in ch. 2000-258, L.O.F. Commonly referred to as a “glitch bill,” the committee substitute corrects inconsistencies and oversights identified by the department. Substantive changes are detailed in the following section-by-section analysis. In addition, grammatical and stylistic changes are made throughout the committee substitute, some of which have been specifically mentioned. For example, reference to “judgment lien records” and “recording” are replaced with reference to “judgment lien files” and “filing” to more accurately reflect the role of the department in preserving the files of judgment lien certificates.

Section 1 amends s. 55.201, F.S., relating to the Department of State’s authority to establish a centralized database of judgment liens, to make a stylistic change only.

Section 2 amends s. 55.202, F.S., relating to judgments, orders and decrees that may serve as the underlying basis for a judgment lien under ss. 55.201-55.209, F.S. It collapses into one category several enumerated types of enforceable judgments. It includes a cross-reference to s. 56.061, F.S., relating to the types of property that are subject to levy and sale under execution, to specify the scope of personal property that will be subject to a judgment lien. It also clarifies that a judgment lien may be acquired by either the person or entity filing a judgment lien certificate or by the Department of Revenue filing the lien, assessment, warrant or judgment information directly into the Department of State’s database through an electronic exchange program. The latter change reflects the current situation that the Department of Revenue is the only state agency or political subdivision that plans to avail itself of this provision at this time.

Section 3 amends s. 55.203, F.S., relating to content requirements of a judgment lien certificate. It removes the requirement that a social security number, federal identification number, or taxpayer number of the debtor or the creditor must be provided on the judgment lien certificate.

The debtor's identifying number need only be provided if it is already disclosed on the judgment itself.

Section 4 amends s. 55.204, F.S., relating to the duration and continuation of judgment liens and destruction of records. It allows up to an additional six months after the scheduled lapse of a judgment lien to acquire a second judgment lien. It clarifies that the Department of State must retain the judgment lien files for a minimum of one year from the date the judgment lien lapses. It also adds that this section is not intended to extend the life of a judgment lien beyond the time that the underlying judgment, order, decree, or warrant otherwise expires or becomes invalid.

Section 5 amends s. 55.205, F.S., relating to the effect of a judgment lien. It provides that a valid security interest as defined in ch. 679, F.S., must be perfected before a debtor acquires an interest in the property. This provision will allow the valid security interest to take priority over a judgment lien on the after-acquired property. It also corrects language that might otherwise be construed to give a creditor the right to simply take possession of a debtor's personal property without resorting to an execution, writ, or other judicial process. A new subsection (3) provides that a buyer of personal property who is without knowledge of an existing judgment lien on the property is entitled to a lien for amount paid and that lien will be superior to the pre-existing judgment lien. The court may adjust the amount of the lien to reflect any improvements to the personal property. Subsection (4) is also added to state that a buyer of corporate stock takes free of the judgment lien if purchased in good faith without formal notice of an adverse claim against a financial asset as provided under ch. 678, F.S.

Sections 6 and 7 amend, respectively, s. 55.206, F.S., relating to amendments to a judgment lien record, and s. 55.207, F.S., relating to corrections to a judgment lien record, to make grammatical and stylistic changes.

Section 8 amends s. 55.208, F.S., relating to the effect of judgment liens on writs of execution previously delivered to a sheriff before October 1, 2001. It clarifies that the priority of such judgment liens is determined on their effective date of filing.

Section 9 amends s. 55.209, F.S., relating to the duties of the Department of State as they pertain to the centralized database. The committee substitute adds warrants to the list of documents that are exempt from the processing fees to be imposed by the Department of State for filing judgment lien certificates into the database. It also replaces the reference to "any state agency or political subdivision" with a statutory cross-reference that restricts this exemption provision to just documents filed electronically by the Department of Revenue.

Section 10 amends s. 55.604, F.S., relating to the recognition and enforcement of foreign judgments. It deletes the requirement that foreign judgments must be filed with the Department of State in order to be enforceable in this state. Grammatical changes are also made.

Section 11 amends s. 55.605, F.S., relating to nonrecognition of foreign judgments, to delete the requirement that the Secretary of State maintain a list of foreign jurisdictions which do not reciprocate with recognition of judgments issued by this state.

Section 12 amends s. 56.21, F.S., relating to the notice of sales under execution, to make stylistic changes consistent with other changes in the committee substitute.

Section 13 amends s. 56.27, F.S., relating to the distribution scheme for monies collected in sales under execution, to correct a cross-reference oversight to s. 55.208(2), F.S. It clarifies that priority judgment lienholders receive the remaining proceeds from the execution sale after payments have been made to the sheriff and the levying creditor.

Section 14 amends s. 77.01, F.S., relating to the right to garnishment, to clarify that a debt that becomes due under a negotiable instrument in the future is not subject to current garnishment.

Section 15 amends s. 77.041, F.S., to specify that the notice of garnishment requirements only apply to individual defendants and not to all defendants.

Section 16 amends s. 678.1051, F.S., to add that a judgment lien certificate filed under ch. 55, F.S., does not constitute notice of an adverse claim to a financial asset.

Section 17 provides the committee substitute's effective date of October 1, 2001, which coincides with the delayed effective date of the provisions of ch. 2000-258, L.O.F., relating to the centralized database of judgment liens against personal property.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Department of Revenue has raised a concern that section 5 of the committee substitute, which allows a buyer of goods to take free of an existing judgment lien, may conflict with s. 212.10(1), F.S., relating to the sales tax liability of a transferee whereby such purchaser of business or stock goods must withhold a sufficient amount of the purchase money for unpaid tax, interest, or penalty by the former owner.

B. Private Sector Impact:

For those creditors and debtors who have access to the Internet, the committee substitute facilitates the process for verifying the status of liens established with the Department of State. This assessment presumes that the process will allow persons throughout the state to file judgment lien certificates and any amendments or corrections through local locations.

Current lienholders who do not execute on current judgment liens against personal property or convert to the judgment lien certification system with the Department of State within the time period provided will revert to the status of unsecured creditors.

C. Government Sector Impact:

This committee substitute does not appear to alter the fiscal impact of ch. 2000-258, L.O.F. The Department of State estimates that the committee substitute creates no additional fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce & Economic Opportunities:

Requires federal liens to be marked, held, and indexed in the central database of judgment liens in lieu of the manner used for filing, indexing, and stamping financing statements for secured transactions under Article 9 of the Uniform Commercial Code (ch. 679, F.S.); removes an unnecessary cross-reference; allows the filing officer, including the Secretary of State, to use a filing system consisting of electronic or magnetic medium in lieu of a paper filing system for recording filings affecting federal tax liens; and permits federal officials to file certain notices and certificates affecting federal tax liens using the electronic or magnetic-medium filing system.
(WITH TITLE AMENDMENT)