

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: Committee on Judiciary and Senator Burt

SUBJECT: Judgments & Liens

DATE: April 11, 2001 REVISED: 04/12/01 _____

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

I. Summary:

This bill is primarily a glitch bill to correct inconsistencies and oversights in chapter 2000-258, L.O.F., relating to provisions for a new statutory framework of perfecting and prioritizing claims of judgment liens on leivable property through a centralized database maintained by the Department of State. This bill also amends garnishment provisions enacted last year to clarify that certain debts are not subject to garnishment and that only individual defendants must be provided notice of right against garnishment. This bill also deletes the requirements that copies of foreign judgments be filed with the Department of State and that the department maintain a list of foreign jurisdictions that do not recognize judgments issued from the State of Florida.

This bill 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:

Chapter 2000-258, L.O.F., amended various provisions relating to the law governing debtors and creditors, including the procedures for the collection of debt based on a money judgment or court order (e.g., child support) and tax liens and warrants such as writs of execution or replevin proceedings; or writs of garnishment, creditors bill, proceedings supplementary and bankruptcy.. The major part of the Act's changes related the creation of a statutory framework for perfecting and prioritizing claims of judgment liens on leivable personal property. *See* ss. 55.201-55.209, F.S. It provided for the replacement of the county-by-county system of filing judgment liens against leivable personal property with a statewide system based on a centralized database of judgment liens against leivable personal property. The effective date of the bill was delayed to October 1, 2001, to allow time for the Department to establish the database and to implement the

process for final judgment lien certificates. Two-year transitional provisions were also included to give creditors the opportunity to execute on their existing liens against personal property, or to covert their judgment lien claims on personal property to the new statewide system by October 1, 2003, or otherwise lose their judgment lien priority.

III. Effect of Proposed Changes:

This bill addresses some issues that have arisen in light of implementation efforts by the Department of State to establish the centralized database of judgment liens as provided in chapter 2000-258, L.O.F. Substantive changes are detailed in the following “Section-by-Section Analysis.” In addition, grammatical and stylistic changes are made throughout the bill, 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 of State as the file keeper of the judgment liens 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 some 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 or political subdivision that will be availing 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 to include a social security number, federal identification number or taxpayer number of the debtor or the creditor 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 6 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 1 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 chapter 679, F.S., must be perfected before a debtor acquires an interest in the property. This 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 chapter 679, 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 are 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 pertains to the centralized database. It 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 bill.

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 chapter 55, F.S., does not constitute notice of an adverse claim to a financial asset.

Section 17 provides for the act's effective date of October 1, 2001, which coincides with the delayed effective date of the provisions of chapter 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 bill 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, this bill facilitates the process for verifying the status of liens established with the Department of State. It is presumed 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 bill does not otherwise appear to alter the fiscal impacts found in last year's enactment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
