

By the Committee on Judiciary and Senator Burt

308-1815A-01

1 A bill to be entitled
2 An act relating to judgments and liens;
3 amending s. 55.201, F.S.; conforming
4 terminology; amending s. 55.202, F.S.;
5 clarifying enforceable judgments subject to
6 law; amending s. 55.203, F.S.; providing for
7 electronic filing of liens, assessments,
8 warrants, and judgments directly into database;
9 amending s. 55.204, F.S.; clarifying content of
10 judgment lien certificates; conforming
11 terminology and clarifying filekeeping of
12 judgment lien files by the Department of State;
13 providing that filing of a judgment lien
14 certificate does not extend the life of a
15 judgment, order, decree, or warrant; amending
16 s. 55.205, F.S.; clarifying the effect of
17 judgment liens upon buyers who buy without
18 notice as defined in s. 678.1051, F.S.;
19 amending s. 55.206, F.S.; conforming
20 terminology regarding amendments of judgment
21 lien files; amending s. 55.207, F.S.;
22 conforming terminology regarding correction of
23 judgment lien files; amending s. 55.208, F.S.;
24 conforming terminology regarding effect of
25 filed judgment liens on writs of execution
26 previously delivered to sheriffs; amending s.
27 55.209, F.S.; clarifying provisions regarding
28 processing fees of judgment lien filing;
29 amending s. 55.604, F.S.; eliminating
30 requirement to file foreign judgments with the
31 Department of State; amending s. 55.605, F.S.;

1 eliminating requirements that the Secretary of
2 State maintain a list of foreign jurisdictions
3 recognizing judgments; amending s. 56.21, F.S.;
4 clarifying provisions regarding execution
5 sales; amending s. 56.27, F.S.; clarifying
6 provisions regarding execution and payments
7 thereunder; amending s. 77.01, F.S.; providing
8 that certain debts related to negotiable
9 instruments are not subject to garnishment;
10 amending s. 77.041, F.S.; providing that only
11 individuals subject to garnishment must be
12 provided a "Notice to Defendant"; amending s.
13 678.1051, F.S.; providing that a judgment lien
14 certificate does not constitute an adverse
15 claim against a financial asset; providing an
16 effective date.

17

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

19

20 Section 1. Section 55.201, Florida Statutes, is
21 amended to read:

22

23 55.201 Central database of judgment liens on personal
24 property.--The Department of State shall maintain a database
25 of judgment lien files ~~records~~ established in accordance with
26 ss. 55.201-55.209.

27

28 Section 2. Section 55.202, Florida Statutes, is
29 amended to read:

30

31 55.202 Judgments, orders, and decrees; lien on
personal property.--

32

33

1 (1) A judgment lien securing the unpaid amount of any
2 money judgment may be acquired by the holder of a judgment
3 ~~entered by:~~

4 (a) Enforceable in this state under its laws or the
5 laws of the United States ~~A court of this state;~~

6 **(b)** ~~A court of the United States having jurisdiction~~
7 ~~in this state;~~

8 **(c)** ~~A court of the United States or any other state to~~
9 ~~the extent enforceable under the Florida Enforcement of~~
10 ~~Foreign Judgments Act, ss. 55.501-55.509;~~

11 **(d)** ~~A foreign state as defined in the Uniform~~
12 ~~Out-of-country Foreign Money Judgment Recognition Act, ss.~~
13 ~~55.601-55.607, from the time and to the extent enforceable~~
14 ~~thereunder;~~

15 **(b)(e)** Entered by an issuing tribunal with respect to
16 a support order being enforced in this state pursuant to
17 chapter 88; or

18 **(c)(f)** Enforceable by operation of law pursuant to s.
19 61.14(6).

20 (2) A judgment lien may be acquired on a ~~the~~ judgment
21 debtor's interest in all personal property in this state
22 subject to execution under s. 56.061 ~~in this state~~, other than
23 fixtures, money, negotiable instruments, and mortgages.

24 (a) A judgment lien is acquired by filing ~~recording~~ a
25 judgment lien certificate in accordance with s. 55.203 with
26 the Department of State after the judgment has become final
27 and if no stay of the judgment or its enforcement is then in
28 effect ~~at the time the certificate is filed.~~

29 (b) For any ~~tax lien, warrant, or assessment, or~~
30 judgment collected by the Department of Revenue ~~granted by law~~
31 ~~to the state or any of the political subdivisions for any tax~~

1 ~~enumerated in s. 72.011~~, a judgment lien may be acquired by
2 filing the judgment lien certificate information ~~recording the~~
3 ~~lien~~ or warrant with the Department of State in accordance
4 with s. 55.205(5).

5 (c) Except as provided in s. 55.208, the effective
6 date of a judgment lien is the date, including the time of
7 day, of filing. ~~Although A judgment lien is effective as of~~
8 ~~the date of recording, but~~ no lien attaches to property, and a
9 creditor does not become a lien creditor as to liens under
10 chapter 679, until the debtor acquires an interest in the
11 property, priority among competing judgment liens is
12 determined in order of filing date and time.

13 (d) Except as provided in s. 55.204(3), a judgment
14 creditor may file ~~record~~ only one effective judgment lien
15 certificate based upon a particular judgment.

16 (3) Except as otherwise provided in s. 55.208, the
17 priority of a judgment lien acquired in accordance with this
18 section or s. 55.204(3) is established at the date and time
19 the judgment lien is filed ~~recorded.~~ ~~Such judgment lien is~~
20 ~~deemed recorded as of its effective date as provided in this~~
21 ~~section or s. 55.204(3).~~

22 (4) As used in ss. 55.201-55.209, the terms "holder of
23 a judgment" and "judgment creditor" include the Department of
24 Revenue with respect to a judgment being enforced by the
25 Department of Revenue as the state IV-D agency.

26 (5) Liens, assessments, warrants, or judgments filed
27 pursuant to paragraph (2)(b) ~~administered by or secured on~~
28 ~~behalf of any state agency or political subdivision of the~~
29 ~~state~~ may be filed directly into the central database by the
30 Department of Revenue ~~such agency or subdivision~~ through
31 electronic or information data exchange programs approved by

1 the Department of State. Such filings must contain the
2 information set forth in s. 55.203(1).

3 Section 3. Section 55.203, Florida Statutes, is
4 amended to read:

5 55.203 Judgment lien certificate; content, recording,
6 and indexing.--

7 (1) An original judgment lien certificate, ~~as provided~~
8 ~~in s. 55.202,~~ must include:

9 (a) The legal name of each judgment debtor and, if a
10 recorded legal entity, the registered name and document filing
11 number as shown in the records of the Department of State.

12 (b) The last known address and ~~social security number,~~
13 ~~federal identification number, or, in the instance in which~~
14 ~~the judgment creditor is a state agency or a political~~
15 ~~subdivision of the state, a taxpayer or other distinct~~
16 ~~identification number of each judgment debtor, except that in~~
17 ~~cases of default judgment, the social security number must be~~
18 ~~included only if known, or federal employer identification~~
19 number of each judgment debtor if shown on the judgment
20 itself.

21 (c) The legal name of the judgment creditor and, if a
22 recorded legal entity, the registered name and document filing
23 number as shown in the records of the Department of State, and
24 the name of the judgment creditor's attorney or duly
25 authorized representative, if any.

26 (d) The address ~~and social security number or federal~~
27 ~~employer identification number~~ of the judgment creditor.

28 (e) The identity of the court which entered the
29 judgment and the case number and the date the written judgment
30 was entered.

31

1 (f) The amount due on the money judgment and the
2 applicable interest rate.

3 (g) The signature of the judgment creditor or the
4 judgment creditor's attorney or duly authorized
5 representative.

6 (h) With respect to a lien acquired ~~created~~ by a
7 delivery of a writ of execution to a sheriff prior to October
8 1, 2001, an affidavit by the judgment creditor which attests
9 that the person or entity possesses any documentary evidence
10 of the date of delivery of the writ, and a statement of that
11 date or a certification by the sheriff of the date as provided
12 in s. 30.17(4).

13 (2) A second judgment lien certificate, as provided in
14 s. 55.204(3), must include the information required in
15 subsection (1) and must state the file number assigned to the
16 file record of the original judgment lien certificate, the
17 money amount remaining unpaid, and the interest accrued
18 thereon.

19 (3) An amendment, as provided in s. 55.206, or a
20 correction statement, as provided in s. 55.207, must state the
21 file number of the judgment lien file record to which the
22 amendment or correction statement relates and must state the
23 action, change, or statement to be added.

24 (4) The Department of State shall examine, for
25 compliance with ss. 55.201-55.209, each document submitted for
26 filing recording and shall accept or reject the document
27 accordingly. For each judgment lien certificate filed
28 ~~recorded~~, the department shall:

29 (a) Create a file record.

30 (b) Assign a unique file number to the record.

31

1 (c) Include the date and time of filing of the
2 judgment lien certificate.

3 (d) Maintain the file record in a database accessible
4 to the public via the Internet.

5 (e) Index the judgment lien certificate according to
6 the name of each judgment debtor.

7 (f) Index all subsequently filed documents relating to
8 an original judgment lien certificate in a manner that
9 associates them to the original judgment lien certificate.

10 (5) ~~The validity of A judgment lien certificate~~
11 substantially satisfying the requirements of this section is
12 effective even if it has minor errors or omissions that make
13 the filing recorded under this section may not be defeated by
14 technical or clerical errors made in good faith which are not
15 seriously misleading, nor may any claim of estoppel be based
16 on such errors.

17 (6) The Department of State shall prescribe mandatory
18 forms of all documents to be filed under this section.

19 Section 4. Section 55.204, Florida Statutes, is
20 amended to read:

21 55.204 Duration and continuation of judgment lien;
22 destruction of records.--

23 (1) Except as provided in this section, a judgment
24 lien acquired under s. 55.202 lapses and becomes invalid 5
25 years after the date of filing recording the judgment lien
26 certificate.

27 (2) Liens securing the payment of child support or tax
28 obligations as set forth in s. 95.091(1)(b) shall not lapse
29 until 20 years after the date of the original filing of the
30 warrant or other document required by law to establish a lien.
31 No second lien based on the original filing may be obtained.

1 (3) At any time within 6 months before or 6 months
2 after the scheduled lapse of a judgment lien under subsection
3 (1), the judgment creditor may acquire a second judgment lien
4 by filing ~~recording~~ a new judgment lien certificate. The
5 effective date of the second judgment lien is ~~becomes~~
6 ~~effective on the date of lapse of the original judgment lien~~
7 ~~or on the date and time on which the judgment lien certificate~~
8 ~~is filed recorded, whichever is later. The second judgment~~
9 ~~lien is deemed recorded on its effective date.~~ The second
10 judgment lien is ~~deemed~~ a new judgment lien and not a
11 continuation of the original judgment lien. The second
12 judgment lien permanently lapses and becomes invalid 5 years
13 after its filing ~~effective~~ date, and no additional liens based
14 on the original judgment or any judgment based on the original
15 judgment may be acquired ~~obtained~~.

16 (4) A judgment lien continues only as to itemized
17 property for an additional 90 days after lapse of the lien.
18 Such judgment lien will continue only if:

19 (a) The property had been itemized and its location
20 described with sufficient particularity in the instructions
21 for levy;

22 (b) The levy had been delivered to the sheriff prior
23 to the date of lapse of the lien to permit the sheriff to act;
24 and

25 (c) The property was located in the county in which
26 the sheriff has jurisdiction at the time of delivery of the
27 instruction for levy. Subsequent removal of the property does
28 not defeat the lien. A court may order continuation of the
29 lien beyond the 90-day period on a showing that extraordinary
30 circumstances have prevented levy.

31

1 (5) The date of lapse of a judgment lien whose
2 enforceability has been temporarily stayed or enjoined as a
3 result of any legal or equitable proceeding is tolled until 30
4 days after the stay or injunction is terminated.

5 (6) The Department of State shall maintain each
6 judgment lien file record and all information contained
7 therein for a minimum of 1 year after the judgment lien lapses
8 in accordance with this section.

9 (7) Nothing in this section shall be construed to
10 extend the life of a judgment lien beyond the time that the
11 underlying judgment, order, decree, or warrant otherwise
12 expires or becomes invalid pursuant to law.

13 Section 5. Section 55.205, Florida Statutes, is
14 amended to read:

15 55.205 Effect of judgment lien.--

16 (1) A valid judgment lien gives the judgment creditor
17 the right to proceed against ~~take possession of~~ the property
18 of the debtor ~~subject to levy~~ through writ of execution,
19 garnishment, or other judicial process. A judgment creditor
20 who has not acquired recorded a judgment lien as provided in
21 s. 55.202 ~~certificate in accordance with s. 55.203~~ or whose
22 lien has lapsed may nevertheless proceed against ~~take~~
23 ~~possession of~~ the judgment debtor's property through ~~such~~
24 other judicial process. Such ~~A~~ judgment creditor proceeding by
25 writ of execution acquires ~~obtains~~ a lien as of the time of
26 levy and only on the property levied upon. Except as provided
27 in s. 55.208, such judgment creditor takes subject to the
28 claims and interest of priority judgment creditors.

29 (2) A buyer in the ordinary course of business as
30 defined in s. 671.201(9) takes free of a judgment lien
31 acquired as provided in s. 55.202 or s. 55.204 ~~created under~~

1 ~~this section~~ even though the buyer knows of its existence. A
2 valid security interest as defined in chapter 679 in
3 after-acquired property of the judgment debtor which is
4 perfected before the debtor acquires an interest in the
5 property prior to the effective date of a judgment lien takes
6 priority over the judgment lien on the after-acquired
7 property.

8 (3) An individual buyer of goods for personal, family,
9 or household use who buys the goods from a seller who held the
10 goods for personal, family, or household use, and who pays
11 value without knowledge that the goods are subject to a
12 judgment lien, is entitled, to the extent of the value paid,
13 to a lien on the goods superior to the judgment lien. If the
14 buyer has made improvements to the goods, or other reasons
15 justify doing so, a court may adjust the amount secured by the
16 lien as the equities may require.

17 (4) A buyer of stock in a corporation takes free of a
18 judgment lien hereunder if the buyer pays value in good faith
19 without notice as defined in s. 678.1051.

20 Section 6. Section 55.206, Florida Statutes, is
21 amended to read:

22 55.206 Amendment of judgment lien file record;
23 termination, partial release, assignment, continuation,
24 tolling, correction.--

25 (1) An amendment to a judgment lien acquired as
26 provided under s. 55.202 may be filed ~~recorded~~ by or on behalf
27 of the judgment creditor of record, which may provide for:

28 (a) The termination, partial release, or assignment of
29 the judgment creditor's interest in a judgment lien;

30 (b) The continuation and termination of the
31 continuation of a judgment lien, as provided in s. 55.204(4);

1 (c) The tolling and termination of the tolling of a
2 lapse of a judgment lien, as provided in s. 55.204(5); or

3 (d) The correction or change of any other information
4 provided in the ~~record of a~~ judgment lien file.

5 (2) Within 30 days following receipt of a written
6 demand by a judgment debtor after the obligation underlying a
7 judgment lien has been fully or partially released, the
8 judgment lienholder must deliver to the judgment debtor a
9 written statement indicating that there is no longer a claim
10 for a lien on the personal property of the judgment debtor or
11 that the judgment lien has been partially released and setting
12 forth the value of the lien remaining unpaid as of the date of
13 the statement. A statement signed by an assignee must include
14 or be accompanied by a separate written acknowledgement of
15 assignment signed by or for the benefit of the judgment
16 creditor of record. If the judgment lienholder fails to
17 deliver such a statement within 30 days after proper written
18 demand therefor, the judgment lienholder is liable to the
19 judgment debtor for \$100, and for any actual or consequential
20 damages, including reasonable attorney's fees, caused by such
21 failure to the judgment debtor.

22 ~~(3)~~ The judgment debtor, the judgment creditor, or
23 assignee may file such statement with the Department of State.

24 Section 7. Section 55.207, Florida Statutes, is
25 amended to read:

26 55.207 Correction of judgment lien file ~~record~~.--

27 (1) A person may file with the Department of State a
28 correction statement with respect to a judgment lien file
29 ~~record~~, as provided in s. 55.203, indexed under any the
30 person's name, if the person believes that the file ~~record~~ is
31

1 inaccurate or that the judgment lien certificate was
2 wrongfully filed.

3 (2) A correction statement must:

4 (a) State the judgment debtor named and the file
5 number assigned to the judgment lien file ~~record~~ to which the
6 correction statement relates;

7 (b) Indicate that it is a correction statement;

8 (c) Provide the basis for the person's belief that the
9 judgment lien certificate was wrongfully filed or the file
10 ~~record~~ is inaccurate; and

11 (d) Indicate the manner in which the person believes
12 the file ~~record~~ should be corrected to cure any inaccuracy.

13 (3) The department shall ensure that a correction
14 statement is indexed and available in the same manner as any
15 filed ~~recorded~~ lien certificate in the central database of
16 judgment lien files ~~records~~.

17 (4) The filing of a correction statement does not
18 affect the effectiveness of the judgment lien or other filing
19 ~~filed~~ ~~record~~.

20 Section 8. Section 55.208, Florida Statutes, is
21 amended to read:

22 55.208 Effect of filed ~~recorded~~ judgment lien on writs
23 of execution previously delivered to a sheriff.--

24 (1) Any lien created by a writ of execution which has
25 been delivered to the sheriff of any county before October 1,
26 2001, remains in effect for 2 years thereafter as to any
27 property of the judgment debtor located in that county before
28 October 1, 2001, and remaining within that county after that
29 date. As to any property of the judgment debtor brought into
30 the county on or after October 1, 2001, such writs create no
31 lien, inchoate or otherwise.

1 (2) If a judgment creditor who has delivered a writ of
2 execution to a sheriff in any county prior to October 1, 2001,
3 properly files a judgment lien certificate with the Department
4 of State by October 1, 2003, the resulting judgment lien is
5 deemed filed ~~recorded~~ on the date the writ was delivered to
6 the sheriff as to all ~~leviable~~ property of the judgment debtor
7 subject to execution in this state under s. 56.061 which is
8 located in that county on October 1, 2001, and that remains
9 continuously in that county thereafter. Priority of such
10 judgment liens is determined as of the effective date they are
11 considered to have been filed.As to all other property of the
12 judgment debtor, the effective date of the judgment lien is as
13 provided in s. 55.202. The duration of all judgment liens is
14 as provided in s. 55.204, ~~regardless of the date on which a~~
15 ~~lien is determined to have been recorded.~~

16 (3) If a judgment creditor who has delivered a writ of
17 execution to a sheriff in any county before October 1, 2001,
18 does not properly file ~~record~~ a judgment lien certificate with
19 the Department of State by October 1, 2003, such writ is
20 considered to have been abandoned and to be of no effect after
21 October 1, 2003.

22 Section 9. Section 55.209, Florida Statutes, is
23 amended to read:

24 55.209 Department of State; processing fees,
25 responsibilities.--

26 (1) Except for liens, assessments, warrants, or
27 judgments filed electronically ~~by a state agency or a~~
28 ~~political subdivision of the state~~, as provided in s.
29 55.202(2)~~s. 55.202(6)~~, the Department of State shall collect
30 the following nonrefundable processing fees for all documents
31 filed ~~or recorded~~ in accordance with ss. 55.201-55.209:

1 (a) For any judgment lien certificate or other
2 documents permitted to be filed, \$20.

3 (b) For the certification of any filed ~~recorded~~
4 document, \$10.

5 (c) For copies of judgment lien documents which are
6 produced by the Department of State, \$1 per page or part
7 thereof. However, no charge may be collected for copies
8 provided in an on-line electronic format via the Internet.

9 (d) For indexing a judgment lien by multiple judgment
10 debtor names, \$5 per additional name.

11 (e) For each additional facing page attached to a
12 judgment lien certificate or document permitted to be filed ~~or~~
13 ~~recorded~~, \$5.

14 (2) Unless otherwise provided by law, the Department
15 of State may not conduct any search of the database
16 established under s. 55.201 to determine the existence of any
17 judgment lien file ~~record~~ or to perform any service other than
18 in connection with those services for which payment of
19 services are required under this section. The information
20 maintained in the database is for public notice purposes only
21 and the department may make no certification or determination
22 of the validity of any judgment lien acquired under ss. 55.202
23 and 55.204(3).

24 Section 10. Subsections (6) and (8) of section 55.604,
25 Florida Statutes, are amended to read:

26 55.604 Recognition and enforcement.--Except as
27 provided in s. 55.605, a foreign judgment meeting the
28 requirements of s. 55.603 is conclusive between the parties to
29 the extent that it grants or denies recovery of a sum of
30 money. Procedures for recognition and enforceability of a
31 foreign judgment shall be as follows:

1 (6) Once an order recognizing the foreign judgment has
2 been entered by a court of this state, the order and a copy of
3 the judgment ~~shall be filed with the Department of State and~~
4 may be recorded in any other county of this state without
5 further notice or proceedings, and shall be enforceable in the
6 same manner as the judgment of a court of this state.

7 (8) A judgment lien on personal property is acquired
8 only when a judgment lien certificate is filed in accordance
9 with s. 55.203 ~~satisfying the requirements of s. 55.203 has~~
10 ~~been recorded~~ with the Department of State.

11 Section 11. Section 55.605, Florida Statutes, is
12 amended to read:

13 55.605 Grounds for nonrecognition.--

14 (1) A foreign judgment is not conclusive if:

15 (a) The judgment was rendered under a system which
16 does not provide impartial tribunals or procedures compatible
17 with the requirements of due process of law.

18 (b) The foreign court did not have personal
19 jurisdiction over the defendant.

20 (c) The foreign court did not have jurisdiction over
21 the subject matter.

22 (2) A foreign judgment need not be recognized if:

23 (a) The defendant in the proceedings in the foreign
24 court did not receive notice of the proceedings in sufficient
25 time to enable him or her to defend.

26 (b) The judgment was obtained by fraud.

27 (c) The cause of action or claim for relief on which
28 the judgment is based is repugnant to the public policy of
29 this state.

30 (d) The judgment conflicts with another final and
31 conclusive order.

1 (e) The proceeding in the foreign court was contrary
2 to an agreement between the parties under which the dispute in
3 question was to be settled otherwise than by proceedings in
4 that court.

5 (f) In the case of jurisdiction based only on personal
6 service, the foreign court was a seriously inconvenient forum
7 for the trial of the action.

8 (g) The foreign jurisdiction where judgment was
9 rendered would not give recognition to a similar judgment
10 rendered in this state. ~~For purposes of this paragraph, the~~
11 ~~Secretary of State shall establish and maintain a list of~~
12 ~~foreign jurisdictions where the condition specified in this~~
13 ~~paragraph has been found to apply.~~

14 Section 12. Section 56.21, Florida Statutes, is
15 amended to read:

16 56.21 Execution sales; notice.--Notice of all sales
17 under execution shall be given by advertisement once each week
18 for 4 successive weeks in a newspaper published in the county
19 in which the sale is to take place. The time of such notice
20 may be shortened in the discretion of the court from which the
21 execution issued, upon affidavit that the property to be sold
22 is subject to decay and will not sell for its full value if
23 held until date of sale. On or before the date of the first
24 publication or posting of the notice of sale, a copy of the
25 notice of sale shall be furnished by certified mail to the
26 attorney of record of the judgment debtor, or to the judgment
27 debtor at the judgment debtor's last known address if the
28 judgment debtor does not have an attorney of record. Such copy
29 of the notice of sale shall be mailed even though a default
30 judgment was entered. When levying upon personal property, a
31 notice of such levy and execution sale and a copy of the

1 affidavit required by s. 56.27(4) shall be made by the levying
2 creditor to the attorney of record of the judgment creditor or
3 the judgment creditor who has acquired a judgment lien
4 ~~recorded a judgment lien certificate~~ as provided in s. 55.202
5 or s. 55.204(3) at the address listed in the judgment lien
6 certificate, or, if amended, in any amendment to the judgment
7 lien certificate, and to all secured creditors who have filed
8 financing statements as provided in s. 679.401 in the name of
9 the judgment debtor reflecting a security interest in property
10 of the kind to be sold at the execution sale at the address
11 listed in the financing statement, or, if amended, in any
12 amendment to the financing statement. Such notice shall be
13 made in the same manner as notice is made to any judgment
14 debtor under this section. When levying upon real property,
15 notice of such levy and execution sale shall be made to the
16 property owner of record in the same manner as notice is made
17 to any judgment debtor pursuant to this section. When selling
18 real or personal property, the sale date shall not be earlier
19 than 30 days after the date of the first advertisement.

20 Section 13. Subsections (1) and (2) of section 56.27,
21 Florida Statutes, are amended to read:

22 56.27 Executions; payment of money collected.--

23 (1) All money received under executions shall be paid,
24 in the order prescribed, to the following: the sheriff, for
25 costs; the levying creditor in the amount of \$500 as
26 liquidated expenses; and the priority lienholder under s.
27 55.202, s. 55.204(3), or s. 55.208(2)~~judgment lienholder~~
28 ~~having the earliest recorded judgment lien acquired under ss.~~
29 ~~55.202 and 55.204(3)~~, as set forth in an affidavit required by
30 subsection (4), or his or her attorney, in satisfaction of the
31 judgment lien, provided that the judgment lien has not lapsed

1 at the time of the levy. The receipt of the attorney shall be
2 a release of the officer paying the money to him or her. When
3 the name of more than one attorney appears in the court file,
4 the money shall be paid to the attorney who originally
5 commenced the action or who made the original defense unless
6 the file shows that another attorney has been substituted.

7 (2) When property sold under execution brings more
8 than the amount needed to satisfy the provisions of subsection
9 (1), the surplus shall be paid in the order of priority to any
10 judgment lienholders whose judgment liens have not lapsed.
11 Priority shall be based on the effective date of the judgment
12 lien acquired under s. 55.202, or s. 55.204(3), or s.
13 55.208(2), as set forth in an affidavit required under
14 subsection (4). If there is a surplus after all valid judgment
15 liens and execution liens have been satisfied, the surplus
16 must be paid to the defendant.

17 Section 14. Section 77.01, Florida Statutes, is
18 amended to read:

19 77.01 Right to garnishment.--Every person or entity
20 who has sued to recover a debt or has recovered judgment in
21 any court against any person or entity has a right to a writ
22 of garnishment, in the manner hereinafter provided, to subject
23 any debt due ~~or any debt under a negotiable instrument that~~
24 ~~will become due~~ to defendant by a third person or any debt not
25 evidenced by a negotiable instrument that will become due
26 absolutely through the passage of time only to the defendant
27 by a third person, and any tangible or intangible personal
28 property of defendant in the possession or control of a third
29 person. The officers, agents, and employees of any companies
30 or corporations are third persons in regard to the companies
31

1 or corporations, and as such are subject to garnishment after
2 judgment against the companies or corporations.

3 Section 15. Section 77.041, Florida Statutes, is
4 amended to read:

5 77.041 Notice to individual defendant for claim of
6 exemption from garnishment; procedure for hearing.--

7 (1) Upon application for a writ of garnishment by a
8 plaintiff, if the defendant is an individual, the clerk of the
9 court shall attach to the writ the following "Notice to
10 Defendant":

11
12 NOTICE TO DEFENDANT OF RIGHT AGAINST
13 GARNISHMENT OF WAGES, MONEY,
14 AND OTHER PROPERTY
15

16 The Writ of Garnishment delivered to you with this
17 Notice means that wages, money, and other property belonging
18 to you have been garnished to pay a court judgment against
19 you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES,
20 MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

21 State and federal laws provide that certain wages,
22 money, and property, even if deposited in a bank, savings and
23 loan, or credit union, may not be taken to pay certain types
24 of court judgments. Such wages, money, and property are exempt
25 from garnishment. The major exemptions are listed below on the
26 form for Claim of Exemption and Request for Hearing. This list
27 does not include all possible exemptions. You should consult a
28 lawyer for specific advice.

29 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY
30 FROM BEING GARNISHED, OR TO GET BACK ANYTHING
31 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR

1 CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS
2 SET FORTH BELOW AND HAVE THE FORM NOTARIZED.
3 YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE
4 WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS
5 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU
6 MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM
7 TO THE PLAINTIFF AND THE GARNISHEE AT THE
8 ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

9 If you request a hearing, it will be held as soon as
10 possible after your request is received by the court. The
11 plaintiff must file any objection within 2 business days if
12 you hand delivered to the plaintiff a copy of the form for
13 Claim of Exemption and Request for Hearing or, alternatively,
14 7 days if you mailed a copy of the form for claim and request
15 to the plaintiff. If the plaintiff files an objection to your
16 Claim of Exemption and Request for Hearing, the clerk will
17 notify you and the other parties of the time and date of the
18 hearing. You may attend the hearing with or without an
19 attorney. If the plaintiff fails to file an objection, no
20 hearing is required, the writ of garnishment will be dissolved
21 and your wages, money, or property will be released.

22 YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION
23 IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR
24 PROPERTY FROM BEING APPLIED TO THE COURT
25 JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL
26 ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD
27 SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE
28 LAWYER, LEGAL SERVICES MAY BE AVAILABLE.
29 CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE
30 CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM
31 IN YOUR AREA.

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CLAIM OF EXEMPTION AND
REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked:

- 1. Head of family wages. (You must check a. or b. below.)
- a. I provide more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
- b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than \$500 per week, but have not agreed in writing to have my wages garnished.
- 2. Social Security benefits.
- 3. Supplemental Security Income benefits.
- 4. Public assistance (welfare).
- 5. Workers' Compensation.
- 6. Unemployment Compensation.
- 7. Veterans' benefits.
- 8. Retirement or profit-sharing benefits or pension money.
- 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- 10. Disability income benefits.
- 11. Prepaid College Trust Fund or Medical Savings Account.
- 12. Other exemptions as provided by law.

1(explain)

2

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

5

6 Address:

7 Telephone number:.....

8

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

11

12

13 Defendant's signature

14 Date.....

15

16 STATE OF FLORIDA

17 COUNTY OF

18

19 Sworn and subscribed to before me this day of
20 ...(month and year)..., by ...(name of person making
21 statement)...

22 Notary Public/Deputy Clerk

23 Personally KnownOR Produced Identification....

24 Type of Identification Produced.....

25

26 (2) The plaintiff must mail, by first class, a copy of
27 the writ of garnishment, a copy of the motion for writ of
28 garnishment, and, if the defendant is an individual, the
29 "Notice to Defendant" to the defendant's last known address
30 within 5 business days after the writ is issued or 3 business
31 days after the writ is served on the garnishee, whichever is

1 later. However, if such documents are returned as
2 undeliverable by the post office, or if the last known address
3 is not discoverable after diligent search, the plaintiff must
4 mail, by first class, the documents to the defendant at the
5 defendant's place of employment. The plaintiff shall file in
6 the proceeding a certificate of such service.

7 (3) Upon the filing by a defendant of a claim of
8 exemption and request for hearing, a hearing will be held as
9 soon as is practicable to determine the validity of the
10 claimed exemptions. If the plaintiff does not file a sworn
11 written statement that contests the defendant's claim of
12 exemption within 2 business days after hand delivering the
13 claim and request or, alternatively, 7 business days, if the
14 claim and request were served by mail, no hearing is required
15 and the clerk must automatically dissolve the writ and notify
16 the parties of the dissolution by mail.

17 Section 16. Subsection (5) of section 678.1051,
18 Florida Statutes, is amended to read:

19 678.1051 Notice of adverse claim.--

20 (5) Filing of a financing statement under chapter 679
21 or a judgment lien certificate under chapter 55 is not notice
22 of an adverse claim to a financial asset.

23 Section 17. This act shall take effect October 1,
24 2001.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1744

Specifies that a debt that becomes due in the future under a negotiable instrument is not subject to current garnishment.

Clarifies that the requirement to provide Notice to Defendant of Request for Hearing and Garnishment Exemptions in garnishment proceedings is only applicable to individual defendants.

Clarifies that a buyer of corporate stock who buys value in good faith takes free of a judgment lien as long as he or she did not receive formal notice of an adverse claim to a financial asset as provided under chapter 679, F.S.

Makes technical changes to replace incorrect terminology reference to "financing statement" in lieu of "filing."