

# 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: SB 3012

SPONSOR: Senator Campbell

SUBJECT: Judgment Liens

DATE: April 20, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
3.	_____	_____	<u>AAV</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 3012 makes clarifying and technical changes to provisions in Florida law relating to judgment liens. The bill amends various sections of statute to:

- clarify provisions relating to the responsibilities of a clerk of court regarding the satisfaction of a judgment lien;
- clarify provisions relating to the timing for filing a judgment lien certificate;
- clarify provisions regarding instructions to the sheriff and recordkeeping by the Department of State;
- remove an unnecessary sentence which has been misread to require the filing of a judgment lien certificate as a condition precedent to seeking garnishment;
- make clarifying changes to the “Uniform Out-of-Country Foreign Money Judgment Recognition Act”;
- make clarifying changes to provisions relating to the execution of liens and execution sales to recognize the possibility of multiple judgment lien creditors and give control over the mailing of notices to the sheriff;
- recognize that the provisions of s. 55.27, F.S., apply to liens on real property, as well as liens on personal property;
- remove the unnecessary requirement of delivery of a writ of execution prior to initiating proceedings supplementary to execution when the judgment debtor has no property available for a judgment lien;
- provide that a homestead property owner may use the notice of homestead provisions for liens based on foreign judgments; and
- provide a clarifying reference within the definition of “lien creditor” in the Uniform Commercial Code provisions of Florida law relating to secured transactions.

This bill substantially amends the following sections of the Florida Statutes: 55.141, 55.202, 55.204, 55.205, 55.602, 55.603, 55.604, 55.605, 55.606, 56.21, 56.27, 56.29, 222.01, 319.27, and 679.1021.

## II. Present Situation:

### Background

In 2000, the Legislature adopted a major revision of Florida's judgment lien laws.<sup>1</sup> This revision became effective on October 1, 2001. Prior to the revision, judgment creditors were required to file a lien in each separate county where a judgment debtor may own property. Florida was one of 11 states that still followed the lien-on-delivery rule which provides that a true lien is not actually created on personal property until the property is levied and sold by the sheriff. The revision established a statutory framework for perfecting and prioritizing judgment liens on personal property.<sup>2</sup> With the revision in place, judgment creditors need only to file a single judgment lien certificate with the Department of State. Since the implementation of this major revision, the need for some clarification to the law has been identified.<sup>3</sup>

### Judgment Liens

A judgment lien refers to a lien against property that is based on an underlying money judgment. When a party prevails in a law suit and is awarded monetary damages, the losing party is referred to as the "judgment debtor" and the winning party is referred to as the "judgment creditor" or "judgment holder." If the judgment debtor fails to pay the judgment creditor all or part of the judgment, the judgment creditor may seek to attach and execute a lien against property owned by the judgment debtor. A judgment lien may be acquired on a judgment debtor's interest in all personal property in the state other than fixtures, money, negotiable instruments, and mortgages, by filing a judgment lien certificate with the Department of State.<sup>4</sup>

A valid judgment lien confers on the judgment holder the right to proceed against the property of the judgment debtor through writ of execution, garnishment, or other judicial process.<sup>5</sup> A writ of execution authorizes the enforcement of a money judgment. The writ must be obtained from the clerk of the court. The judgment creditor must deliver the writ to the sheriff. The writ of execution directs the sheriff to levy on the property owned by the judgment debtor located in the county. Upon levy, the sheriff seizes the property and sells it. The proceeds of the sale are distributed to cover the costs of the sale, to pay the judgment creditor and any other judgment

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<sup>1</sup> Chapter 2000-258, L.O.F.

<sup>2</sup> Sections 55.201 – 55.209, F.S.

<sup>3</sup> See Jeffrey Davis, *Fixing Florida's Execution Lien Law Part Two: Florida's New Judgment Lien on Personal Property*, 54 Fla. L. Rev. 119 (2002). Prof. Davis first wrote about the need to modernize Florida judgment lien law in 1996 which was a strong motivating factor for the revisions in 2000. See Jeffrey Davis, *Fixing Florida Execution Lien Law*, 48 Fla. L. Rev. 657 (1996).

<sup>4</sup> Section 55.202(2), F.S.

<sup>5</sup> Section 55.205(1), F.S. A judgment holder who has not acquired a judgment lien through the filing of a judgment lien certificate with the Department of State may nevertheless acquire a lien by writ of execution. Such lien is acquired at the time of levy against the property of the judgment debtor and is taken subject to the claims and priority of other judgment holders.

creditors, with the remainder, if any, going to the judgment debtor.<sup>6</sup> The levy is the process by which the property is seized for sale to satisfy the writ of execution based on the underlying judgment. A sheriff may take actual or constructive custody of personal property. The sheriff must take enough property to satisfy the judgment although he or she may accept payment in full on the writ in lieu of making a levy.<sup>7</sup>

### Satisfaction of Judgments

Section 55.141, F.S., authorizes a judgment debtor to satisfy the judgment against him or her before a judgment holder attempts to collect the judgment by paying the full amount of the judgment, with interest, plus the cost of issuing a satisfaction of judgment into the registry of the court that issued the judgment. Upon the payment, the clerk, or the judge if there is no clerk, must “record a satisfaction of judgment, *provided by the judgment holder*, upon the payment of the recording charge . . . plus the necessary costs of mailing to the clerk or judge.”<sup>8</sup> The clerk or judge then must notify the judgment holder, if such person and his or her address are known to the clerk or judge, and pay the funds to the judgment holder upon request, less fees for receiving into and paying out of the registry of the court.<sup>9</sup>

Section 55.141, F.S., “was enacted primarily for the benefit of judgment debtors, and not judgment creditors.”<sup>10</sup> The benefits to a judgment holder of making a payment to the registry of a court were described as follows in *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969):

By making such a deposit he precludes a levy from being made against his property, arrests the further accrual of interest on the judgment, and at the same time releases any property he may own from the lien of the judgment. The statute furthermore permits the judgment debtor to discharge his obligation by availing himself of the provisions of the statute under circumstances where the judgment creditor is unknown, cannot be reached, or his place of residence cannot be ascertained.

According to the Real Property, Probate, and Trust Law Section of the Florida Bar (RPPTL), a clerk of court in southwest Florida has declined to record a satisfaction of judgment because the judgment holder could not be located or because the judgment holder failed to deliver a satisfaction of judgment form to the clerk.<sup>11</sup> As a result, the purpose of the statute to allow an expedited procedure to clear judgment liens when the judgment holder cannot be located or refuses to timely deliver a satisfaction is defeated, according to RPPTL.<sup>12</sup> The ability to clear judgment liens quickly is important to real estate practitioners who seek to close on a real estate transaction.<sup>13</sup>

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<sup>6</sup> Chapter 30, F.S., contains provisions relating to sheriffs and their responsibilities regarding writs, execution, and other related processes.

<sup>7</sup> See ch. 56, F.S., for provisions regarding writs of executions and execution sales.

<sup>8</sup> Section 55.141(2), F.S. Emphasis added.

<sup>9</sup> *Id.*

<sup>10</sup> *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969).

<sup>11</sup> The Florida Bar, Real Property, Probate, and Trust Law Section, *White Paper on F.S. 55.141 SATISFACTION OF JUDGMENTS AND DECREES*.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

### III. Effect of Proposed Changes:

The provisions of the bill make clarifying and technical changes to provisions in Florida law relating to judgment liens.

#### Satisfaction of Judgments

**Section 1.** Amends s. 55.141, F.S. The bill clarifies that a judgment holder does not have to supply a satisfaction of judgment form to a clerk of court in order for a clerk of court to record a satisfaction of judgment under s. 55.141, F.S. Upon the payment of the full amount of the judgment, with interest, and other required fees into the registry of the court, a clerk must record a satisfaction of judgment.

The bill also deletes a requirement for a judge to record the satisfaction of judgment if there is no clerk. The inherent equitable powers of a court may enable it to issue a satisfaction of judgment when there is no clerk.<sup>14</sup> As such, express statutory authority for a judge to issue a satisfaction of judgment may be redundant.

Additionally, the bill creates a satisfaction of judgment form for use by a clerk of court to record judgments satisfied by judgment debtors under s. 55.141, F.S.

#### Judgment Liens

**Section 2.** Amends s. 55.202, F.S. The bill clarifies that a judgment has become final enabling a judgment holder to file a lien certificate with the Department of State when the time to move for a rehearing has expired and no motion for a rehearing is pending. However, a judge, for cause shown, may authorize a judgment holder to file a lien certificate before the judgment becomes final. According to Professor Davis, a judge may wish to authorize a judgment holder to file a lien certificate before a judgment becomes final if there has been a showing that the judgment debtor may seek to remove to an out-of-state location personal property to which a lien certificate will apply.

**Section 3.** Amends s. 55.204, F.S. The bill clarifies the effect of a judgment lien after it lapses. A judgment lien regarding itemized property continues for an additional 90 days after the lien lapses if certain circumstances are met. Accordingly, the bill provides that a judgment lien continues for 90 day after it lapses if the instructions to levy are clear enough “to permit a sheriff to act” by placing a levy on the judgment debtor’s property and the instructions for the levy are delivered before the lapse of a judgment lien.

The bill clarifies the documents that must be maintained and the length of time those documents must be maintained by the Department of State (department) when a second judgment lien is filed by the judgment holder on the property of the judgment debtor. Under the bill, the department must maintain documents related to both the first and second liens for at least 1 year after the second judgment lien expires.

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<sup>14</sup> See *Ford Motor Credit Co. v. Simmons*, 421 So. 2d 698, 700 (Fla. 2nd DCA 1982) (Stating that “[e]very court of law possesses inherent equitable power sufficient to control its own judgments, and this includes power to set aside a satisfaction of one of its own judgments”).

**Section 4.** Amends s. 55.205, F.S. The bill deletes redundant language in s. 55.205(1), F.S., which authorizes a judgment holder to proceed against the property of a judgment debtor through judicial process. The bill also clarifies that a judgment holder that does not file a judgment lien may proceed against the judgment debtors' property through judicial process.

**Sections 5-9.** Amends ss. 55.602 – 55.606, F.S., to provide a method for the enforcement of specified judgments issued by courts of foreign countries. Throughout these provisions a judgment from a court of a foreign country is referred to as a foreign judgment from a “foreign state.” To prevent confusion between a state of the United States and a “foreign state,” the bill clarifies that a foreign state means an “out-of-country foreign state.” The bill also corrects an error in s. 55.604, F.S., by deleting the last sentence of s. 55.604(7), F.S. That sentence referred to a person designated pursuant to “paragraph (1).” No person, however is designated in subsection (1) of s. 55.604, F.S.

**Section 10.** Amends s. 56.21, F.S., to clarify the process by which notice of a levy and execution sale is to be made.

**Section 11.** Section 56.27, F.S., is amended by the bill to clarify that lien holders with the highest priority liens get paid before lien holders of lower priority are paid from the proceeds from the levy on the property of a judgment debtor.

**Section 12.** Section 56.29, F.S., is amended by the bill to provide that a person or entity that has an unsatisfied judgment instead of an unsatisfied execution is entitled to supplemental proceedings to attempt to collect the unsatisfied judgment.

**Sections 13-14.** The sections make technical changes to correct statutory references.

**Section 15.** The bill also amends s. 679.1021(1)(zz), F.S., to provide that the term “lien creditor” includes a creditor that has acquired a judgment lien certificate.

The bill takes effect upon becoming a law except as provided therein.

#### **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:**

None.

**B. Private Sector Impact:**

The bill clarifies those procedures that a judgment debtor may follow to quickly obtain a satisfaction of judgment issued by a clerk of court. Additionally, judgment holders may be able to collect judgments more efficiently when attempting to collect a judgment from the proceeds of a judgment debtor's property.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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