

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 955 w/CS Judgment Liens

SPONSOR(S): Committee on Judiciary

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	18 Y, 0 N	Thomas	Havlicak
2) Transportation	22 Y, 0 N w C/S	Garner	Miller
3) Trans. & Econ. Dev. Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

The bill 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.

The bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0955b.tr.doc

DATE: March 10, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill makes clarifying and technical changes to provisions in Florida law relating to judgment liens.

BACKGROUND

In 2000, the Legislature adopted a major revision of Florida’s judgment lien laws.¹ 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.² 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.³

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.” If the judgment debtor fails to pay the judgment creditor all or a 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.⁴

¹ ch. 2000-258, L.O.F.

² ss. 55.201 – 55.209, F.S.

³ 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).

⁴ s. 55.202(2), F.S.

A judgment creditor may file only one effective judgment lien certificate based upon a particular judgment.⁵ The priority of a judgment lien is established at the date and time the judgment lien certificate is filed.⁶ A judgment may not become a lien upon real or personal property after 20 years from the date of the entry of such judgment.⁷ A judgment lien lapses 5 years after the date of filing the judgment lien certificate.⁸ A second lien, valid for up to an additional 5 years, may be obtained within six months of the lapse of the first lien, however, no further liens may be acquired.⁹

A valid judgment lien confers on the judgment creditor the right to proceed against the property of the judgment debtor through writ of execution, garnishment, or other judicial process.¹⁰ 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 and located in the county. Upon levy, the sheriff seizes the property and, if not redeemed by the judgment debtor, the property is sold and the proceeds distributed to cover the costs of the sale, to pay the judgment creditor and any other judgment creditors, with the remainder, if any, going to the judgment debtor.¹¹ 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.¹²

A judgment debtor may satisfy a judgment lien at any time prior to levy by paying into the registry of the court the full amount of the judgment, with interest, plus any costs of issuance of execution by the court.¹³ Procedures from court to court vary as to how the execution is accomplished and what form is used by the courts when recording the satisfaction. Clerks of court are directed to notify the judgment creditor if the judgment creditor's address is known to the clerk and shall pay the judgment creditor the full amount of the judgment, less the clerk's costs, upon request of the judgment creditor.¹⁴

When a resident of the state owns property subject to homestead protection and wishes to protect the homestead property from forced sale under process of law, the resident may make a written statement of such and have it recorded in the records of the circuit court.¹⁵ When a resident of the state owns property eligible for homestead protection and such property is subject to a recorded judgment lien based on a domestic judgment (a judgment issued by a Florida Court) and the resident has a contract to sell the property, the resident may file a notice of homestead in the county records.¹⁶ The clerk must mail a copy of the notice of homestead to the judgment creditor by certified mail.¹⁷ If the judgment creditor fails to bring a declaratory action within 45 days after the service of the notice of homestead,

⁵ s. 55.202(2)(d), F.S.

⁶ s. 55.202(3), F.S.

⁷ s. 55.081, F.S.

⁸ s. 55.204(1), F.S.

⁹ s. 55.204(3), F.S. The second lien is a new lien and takes priority based on the filing date of the second judgment lien certificate.

¹⁰ s. 55.205(1), F.S. A judgment creditor 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 creditors.

¹¹ ch. 30, F.S., contains provisions relating to sheriffs and their responsibilities regarding writs, execution, and other related processes.

¹² See ch. 56, F.S., for provisions regarding writs of executions and execution sales.

¹³ Section 55.141(1), F.S.

¹⁴ Section 55.141(2), F.S.

¹⁵ Section 222.01(1), F.S.

¹⁶ Section 222.01(2), F.S.

¹⁷ Section 222.01(3), F.S.

the judgment creditor may not foreclose the judgment lien on the homestead property.¹⁸ This notice of homestead option is not available to a resident who owns property subject to a lien based on a foreign judgment (a judgment issued by a court within the United States but outside of Florida) or a foreign out-of-country judgment (a judgment issued by a court outside the United States).

PROPOSED CHANGES MADE BY HB 955 w/CS

Section 1 of the bill specifically provides that a clerk of court is to execute and record a satisfaction of judgment lien in the official records. It further provides that upon payment to the clerk of court, and upon execution and recordation of the satisfaction of judgment lien by the clerk, that the judgment lien is satisfied and discharged. A specific form to be used by the clerk of court is provided. Finally, specific instructions are given to the clerk to notify the lien creditor that payment of the judgment lien has been made.

Sections 2 – 4 of the bill provide clarifying language to provisions in ch. 55, F.S., relating to the judgment lien process. Changes to s. 55.202, F.S., specifically clarify provisions relating to the timing for filing a judgment lien certificate. Changes to s. 55.204, F.S., clarify provisions regarding instructions to the sheriff and recordkeeping by the Department of State. The change to s. 55.205, F.S., removes an unnecessary sentence which has been misread to require the filing of a judgment lien certificate as a condition precedent to seeking garnishment.

Sections 5 – 9 of the bill make clarifying changes to the “Uniform Out-of-Country Foreign Money Judgment Recognition Act.”¹⁹ The provisions of this Act govern the recognition and enforcement of judgments of any governmental unit other than the United States or any state, district, commonwealth, territory, or possession of the United States.²⁰ The bill clarifies that these sections of Florida Statutes only apply to out-of-country foreign judgments. This clarification is necessary based on a county court’s recent misinterpretation of its jurisdiction under the Act and refusal to consider a case regarding a judgment from a court in another state. The decision was corrected through appeal to the circuit court.²¹

Sections 10 - 12 make clarifying changes to provisions relating to the execution of liens and execution sales. The changes to s. 56.21, F.S., recognize the possibility of multiple judgment lien creditors and give control over the mailing of notices to the sheriff in order to reduce errors and ensure that all creditors receive proper notice. The changes to s. 56.27, F.S., recognize that the provisions within this section of statute apply to the payment of monies collected through execution sales of real property, as well as on execution sales of personal property. The changes to s. 56.29, F.S., remove the unnecessary requirement of delivery of a writ of execution when the judgment debtor has no property available for a judgment lien and recognize that the sheriff no longer docket writs of execution.

Section 13 provides that the notice of homestead provision in s. 222.01, F.S., is available when a judgment lien on homestead property is based on a foreign judgment, as well as, on a domestic judgment.

Section 14 of the bill amends s. 319.27, F.S., relating to liens on motor vehicles to correct statutory cross-references.

Section 15 of the bill amends s. 679.1021, F.S., to provide a clarifying reference within the definition of “lien creditor” in the Uniform Commercial Code provisions of Florida law relating to secured transactions.

¹⁸ Section 222.01(4), F.S.

¹⁹ ss. 55.601 – 55.609, F.S.

²⁰ s. 56.602, F.S.

²¹ *Kalashnikov, USA v. Hesse*, 10 Fla. L. Weekly Supp 694 (July 1, 2003).

C. SECTION DIRECTORY:

Section 1: Amends s. 55.141, F.S., relating to satisfaction of judgment and decrees.

Section 2: Amends s. 55.202, F.S., relating to the filing of a judgment lien.

Section 3: Amends s. 55.204, F.S., relating to the duration and continuation of a judgment lien.

Section 4: Amends s. 55.205, F.S., relating to the effect of a judgment lien.

Sections 5 - 9: Amend ss. 55.602, 55.603, 55.604, 55.605, and 55.606, F.S., clarifying the application of these provisions to out-of-country foreign judgments.

Section 10: Effective October 1, 2004, amends s. 56.21, F.S., relating to the notice of execution sales.

Section 11: Amends s. 56.27, F.S., relating to the distribution of money collected from an execution sale.

Section 12: Amends s. 56.29, F.S., relating to proceedings supplementary to execution.

Section 13: Amends s. 222.01, F.S., relating to designation of homestead by owner before levy.

Section 14: Amends s. 319.27, F.S., relating to a notice of lien on motor vehicles.

Section 15: Amends s. 679.1021, F.S., relating to the definition of "lien creditor" for purposes of Florida's Uniform Commercial Code for secured transactions.

Section 16: Provides that, except for Section 9, the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local governments' revenues.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

This bill was a PCB in the Judiciary Committee. Two amendments were adopted to the PCB in the Judiciary Committee on January 21, 2004.

Amendment #1 by Rep. Planas:

Adds a technical change to section 55.202, Florida Statutes. The amendment clarifies that it is the filing of the judgment lien certificate that determines the priority of a judgment lien. Under the present law, judgment liens are not filed, rather, judgment lien certificates are filed with the Department of State.

Amendment #2 by Rep. Planas:

Adds technical change to s. 319.27(3)(b), Florida Statutes. The amendment corrects a statutory cross-reference in this paragraph.

This bill was amended in the Committee on Transportation on March 9, 2004. Four amendments were adopted which did the following:

Amendment # 1 by Rep. Kottkamp removed language from the bill which amended s. 52.202, F.S. The language that was removed would have specifically included "motor vehicles" as property subject to attachment by a judgment lien.

Amendment # 2 by Rep. Kottkamp removed language from the bill which amended s. 319.27, F.S. The language that was removed would have specifically provided that a judgment lien on a "motor vehicle" would not be required to appear on the certificate of title for that vehicle.

Amendment # 3 by Rep. Gardiner added a section to the bill amending s. 55.141, F.S. This added section clarifies the duties of clerks of court regarding the payment, recording, discharge, and satisfaction of judgment liens.

Amendment # 4 by Rep. Gardiner added a section to the bill amending s. 222.01, F.S. This added section relating to the designation of homestead by an owner prior to levy on that property makes the provisions for notice of homestead applicable to judgment liens based on foreign judgments, as well as, judgment liens based on domestic judgments.