

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

A bill to be entitled

An act relating to judgment liens; amending s. 55.202, F.S.; providing that motor vehicles are personal property for purposes of a judgment lien; revising procedures for acquiring a judgment lien; providing court authorization to file a judgment lien certificate before a judgment becomes final under certain circumstances; providing effect; amending s. 55.204, F.S.; revising provisions relating to continuation of judgment liens; revising provisions requiring the Department of State to maintain certain files and information; amending s. 55.205, F.S.; deleting a provision authorizing certain creditors to bring certain actions against property of a debtor; amending ss. 55.602, 55.603, 55.604, 55.605, and 55.606, F.S.; revising provisions relating to foreign judgments to apply only to out-of-country foreign judgments; amending s. 56.21, F.S.; revising requirements for notices of a levy and execution sale; amending s. 56.27, F.S.; clarifying provisions relating to payment of money received under execution; amending s. 56.29, F.S.; revising requirements regarding supplementary proceedings for unsatisfied judgments; amending s. 319.27, F.S.; excluding certain lien creditors from provisions providing for unenforceability of certain interests; correcting a cross reference; amending s. 679.1021, F.S.; revising a definition of "lien creditor"; providing effective dates.

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

HB 0955

2004

30 Section 1. Subsections (2) and (3) of section 55.202,  
 31 Florida Statutes, are amended to read:

32 55.202 Judgments, orders, and decrees; lien on personal  
 33 property.--

34 (2) A judgment lien may be acquired on a judgment debtor's  
 35 interest in all personal property in this state subject to  
 36 execution under s. 56.061, including motor vehicles as defined  
 37 in s. 320.01, other than fixtures, money, negotiable  
 38 instruments, and mortgages.

39 (a) A judgment lien is acquired by filing a judgment lien  
 40 certificate in accordance with s. 55.203 with the Department of  
 41 State after the judgment has become final and if the time to  
 42 move for rehearing has lapsed, no motion for rehearing is  
 43 pending, and no stay of the judgment or its enforcement is then  
 44 in effect. A court may authorize, for cause shown, the filing of  
 45 a judgment lien certificate before a judgment has become final  
 46 when the court has authorized the issuance of a writ of  
 47 execution in the same matter. A judgment lien certificate not  
 48 filed in compliance with this subsection is permanently void and  
 49 of no effect.

50 (b) For any lien, warrant, assessment, or judgment  
 51 collected by the Department of Revenue, a judgment lien may be  
 52 acquired by filing the judgment lien certificate information or  
 53 warrant with the Department of State in accordance with  
 54 subsection (5).

55 (c) Except as provided in s. 55.208, the effective date of  
 56 a judgment lien is the date, including the time of day, of  
 57 filing. Although no lien attaches to property, and a creditor  
 58 does not become a lien creditor as to liens under chapter 679,

HB 0955

2004

59 until the debtor acquires an interest in the property, priority  
 60 among competing judgment liens is determined in order of filing  
 61 date and time.

62 (d) Except as provided in s. 55.204(3), a judgment  
 63 creditor may file only one effective judgment lien certificate  
 64 based upon a particular judgment.

65 (3) Except as otherwise provided in s. 55.208, the  
 66 priority of a judgment lien acquired in accordance with this  
 67 section or s. 55.204(3) is established at the date and time the  
 68 judgment lien certificate is filed.

69 Section 2. Subsections (4) and (6) of section 55.204,  
 70 Florida Statutes, are amended to read:

71 55.204 Duration and continuation of judgment lien;  
 72 destruction of records.--

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

76 (a) The property had been itemized and its location  
 77 described with sufficient particularity in the instructions for  
 78 levy to permit the sheriff to act;

79 (b) The instructions for the levy had been delivered to  
 80 the sheriff prior to the date of lapse of the lien ~~to permit the~~  
 81 ~~sheriff to act;~~ and

82 (c) The property was located in the county in which the  
 83 sheriff has jurisdiction at the time of delivery of the  
 84 instruction for levy. Subsequent removal of the property does  
 85 not defeat the lien. A court may order continuation of the lien  
 86 beyond the 90-day period on a showing that extraordinary  
 87 circumstances have prevented levy.

HB 0955

2004

88           (6) If no second judgment lien is filed, the Department of  
 89 State shall maintain each judgment lien file and all information  
 90 contained therein for a minimum of 1 year after the judgment  
 91 lien lapses in accordance with this section. If a second  
 92 judgment lien is filed, the department shall maintain both files  
 93 and all information contained in such files for a minimum of 1  
 94 year after the second judgment lien lapses.

95           Section 3. Subsection (1) of section 55.205, Florida  
 96 Statutes, is amended to read:

97           55.205 Effect of judgment lien.--

98           (1) ~~A valid judgment lien gives the judgment creditor the~~  
 99 ~~right to proceed against the property of the debtor through writ~~  
 100 ~~of execution, garnishment, or other judicial process.~~ A judgment  
 101 creditor who has not acquired a judgment lien as provided in s.  
 102 55.202 or whose lien has lapsed may nevertheless proceed against  
 103 the judgment debtor's property through any appropriate ~~other~~  
 104 judicial process. Such judgment creditor proceeding by writ of  
 105 execution acquires a lien as of the time of levy and only on the  
 106 property levied upon. Except as provided in s. 55.208, such  
 107 judgment creditor takes subject to the claims and interest of  
 108 priority judgment creditors.

109           Section 4. Subsection (2) of section 55.602, Florida  
 110 Statutes, is amended to read:

111           55.602 Definitions.--As used in this act, the term:

112           (2) "Out-of-country foreign judgment" means any judgment  
 113 of a foreign state granting or denying recovery of a sum of  
 114 money, other than a judgment for taxes, a fine, or other  
 115 penalty.

HB 0955

2004

116 Section 5. Section 55.603, Florida Statutes, is amended to  
 117 read:

118 55.603 Applicability.--This act applies to any out-of-  
 119 country foreign judgment that is final and conclusive and  
 120 enforceable where rendered, even though an appeal therefrom is  
 121 pending or is subject to appeal.

122 Section 6. Section 55.604, Florida Statutes, is amended to  
 123 read:

124 55.604 Recognition and enforcement.--Except as provided in  
 125 s. 55.605, an out-of-country ~~a~~ foreign judgment meeting the  
 126 requirements of s. 55.603 is conclusive between the parties to  
 127 the extent that it grants or denies recovery of a sum of money.  
 128 Procedures for recognition and enforceability of an out-of-  
 129 country ~~a~~ foreign judgment shall be as follows:

130 (1) The out-of-country foreign judgment shall be filed  
 131 with the clerk of the court and recorded in the public records  
 132 in the county or counties where enforcement is sought.

133 (a) At the time of the recording of an out-of-country ~~a~~  
 134 foreign judgment, the judgment creditor shall make and record  
 135 with the clerk of the circuit court an affidavit setting forth  
 136 the name, social security number, if known, and last known post-  
 137 office address of the judgment debtor and of the judgment  
 138 creditor.

139 (b) Promptly upon the recording of the out-of-country  
 140 foreign judgment and the affidavit, the clerk shall mail notice  
 141 of the recording of the out-of-country foreign judgment, by  
 142 registered mail with return receipt requested, to the judgment  
 143 debtor at the address given in the affidavit and shall make a  
 144 note of the mailing in the docket. The notice shall include the

HB 0955

2004

145 name and address of the judgment creditor and of the judgment  
 146 creditor's attorney, if any, in this state. In addition, the  
 147 judgment creditor may mail a notice of the recording of the  
 148 judgment to the judgment debtor and may record proof of mailing  
 149 with the clerk. The failure of the clerk to mail notice of  
 150 recording will not affect the enforcement proceedings if proof  
 151 of mailing by the judgment creditor has been recorded.

152 (2) The judgment debtor shall have 30 days after service  
 153 of the notice to file a notice of objection with the clerk of  
 154 the court specifying the grounds for nonrecognition or  
 155 nonenforceability under this act.

156 (3) Upon the application of any party, and after proper  
 157 notice, the circuit court shall have jurisdiction to conduct a  
 158 hearing, determine the issues, and enter an appropriate order  
 159 granting or denying recognition in accordance with the terms of  
 160 this act.

161 (4) If the judgment debtor fails to file a notice of  
 162 objection within the required time, the clerk of the court shall  
 163 record a certificate stating that no objection has been filed.

164 (5) Upon entry of an order recognizing the out-of-country  
 165 foreign judgment, or upon recording of the clerk's certificate  
 166 set forth above, the out-of-country foreign judgment shall be  
 167 enforced in the same manner as the judgment of a court of this  
 168 state.

169 (6) Once an order recognizing the out-of-country foreign  
 170 judgment has been entered by a court of this state, the order  
 171 and a copy of the judgment may be recorded in any other county  
 172 of this state without further notice or proceedings, and shall

HB 0955

2004

173 be enforceable in the same manner as the judgment of a court of  
 174 this state.

175 (7) A lien on real estate in any county shall be created  
 176 only when there has been recorded in the official records of the  
 177 county (a) a certified copy of the judgment, and (b) a copy of  
 178 the clerk's certificate or the order recognizing the out-of-  
 179 country foreign judgment. The priority of such lien will be  
 180 established as of the time the latter of the two recordings has  
 181 occurred. ~~Such lien may be partially released or satisfied by~~  
 182 ~~the person designated pursuant to paragraph (1).~~

183 (8) A judgment lien on personal property is acquired only  
 184 when a judgment lien certificate is filed in accordance with s.  
 185 55.203 with the Department of State.

186 Section 7. Section 55.605, Florida Statutes, is amended to  
 187 read:

188 55.605 Grounds for nonrecognition.--

189 (1) An out-of-country A foreign judgment is not conclusive  
 190 if:

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

194 (b) The foreign court did not have personal jurisdiction  
 195 over the defendant.

196 (c) The foreign court did not have jurisdiction over the  
 197 subject matter.

198 (2) An out-of-country A foreign judgment need not be  
 199 recognized if:

HB 0955

2004

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

203 (b) The judgment was obtained by fraud.

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

207 (d) The judgment conflicts with another final and  
 208 conclusive order.

209 (e) The proceeding in the foreign court was contrary to an  
 210 agreement between the parties under which the dispute in  
 211 question was to be settled otherwise than by proceedings in that  
 212 court.

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

216 (g) The foreign jurisdiction where judgment was rendered  
 217 would not give recognition to a similar judgment rendered in  
 218 this state.

219 Section 8. Section 55.606, Florida Statutes, is amended to  
 220 read:

221 55.606 Personal jurisdiction.--The out-of-country foreign  
 222 judgment shall not be refused recognition for lack of personal  
 223 jurisdiction if:

224 (1) The defendant was served personally in the foreign  
 225 state;

226 (2) The defendant voluntarily appeared in the proceedings,  
 227 other than for the purpose of protecting property seized or



HB 0955

2004

228 threatened with seizure in the proceedings or of contesting the  
 229 jurisdiction of the court over him or her;

230 (3) The defendant, prior to the commencement of the  
 231 proceedings, had agreed to submit to the jurisdiction of the  
 232 foreign court with respect to the subject matter involved;

233 (4) The defendant was domiciled in the foreign state when  
 234 the proceedings were instituted, or, being a body corporate, had  
 235 its principal place of business, was incorporated, or had  
 236 otherwise acquired corporate status, in the foreign state;

237 (5) The defendant had a business office in the foreign  
 238 state and the proceedings in the foreign court involved a cause  
 239 of action or a claim for relief arising out of business done by  
 240 the defendant through that office in the foreign state; or

241 (6) The defendant operated a motor vehicle or airplane in  
 242 the foreign state and the proceedings involved a cause of action  
 243 or claim for relief arising out of such operation.

244 Section 9. Effective October 1, 2004, section 56.21,  
 245 Florida Statutes, is amended to read:

246 56.21 Execution sales; notice.--Notice of all sales under  
 247 execution shall be given by advertisement once each week for 4  
 248 successive weeks in a newspaper published in the county in which  
 249 the sale is to take place. The time of such notice may be  
 250 shortened in the discretion of the court from which the  
 251 execution issued, upon affidavit that the property to be sold is  
 252 subject to decay and will not sell for its full value if held  
 253 until date of sale. On or before the date of the first  
 254 publication or posting of the notice of sale, a copy of the  
 255 notice of sale shall be furnished by certified mail to the  
 256 attorney of record of the judgment debtor, or to the judgment

HB 0955

2004

257 debtor at the judgment debtor's last known address if the  
 258 judgment debtor does not have an attorney of record. Such copy  
 259 of the notice of sale shall be mailed even though a default  
 260 judgment was entered. When levying upon personal property, a  
 261 notice of such levy and execution sale and a copy of the  
 262 affidavit required by s. 56.27(4) shall be sent by the sheriff  
 263 ~~made by the levying creditor~~ to the attorneys ~~attorney~~ of record  
 264 of all the judgment creditors, creditor or to all the judgment  
 265 creditors who do not have an attorney of record, creditor who  
 266 have ~~has~~ acquired a judgment lien as provided in s. 55.202 or s.  
 267 55.204(3), and whose liens have not lapsed at the time of levy,  
 268 at the address listed in the judgment lien certificate, or, if  
 269 amended, in any amendment to the judgment lien certificate, and  
 270 to all secured creditors who have filed financing statements as  
 271 provided in part V of chapter 679 s. 679.401 in the name of the  
 272 judgment debtor reflecting a security interest in property of  
 273 the kind to be sold at the execution sale at the address listed  
 274 in the financing statement, or, if amended, in any amendment to  
 275 the financing statement. Such notice shall be made in the same  
 276 manner as notice is made to any judgment debtor under this  
 277 section. When levying upon real property, notice of such levy  
 278 and execution sale shall be made to the property owner of record  
 279 in the same manner as notice is made to any judgment debtor  
 280 pursuant to this section. When selling real or personal  
 281 property, the sale date shall not be earlier than 30 days after  
 282 the date of the first advertisement.

283 Section 10. Subsections (1), (2), and (4) of section  
 284 56.27, Florida Statutes, are amended to read:

285 56.27 Executions; payment of money collected.--

HB 0955

2004

286 (1) All money received under executions shall be paid, in  
 287 the order prescribed, to the following: the sheriff, for costs;  
 288 the levying creditor in the amount of \$500 as liquidated  
 289 expenses; if the levy is upon real property, the first priority  
 290 lienholder under s. 55.10; and if the levy is upon personal  
 291 property, and the first priority lienholder under s. 55.202, s.  
 292 55.204(3), or s. 55.208(2), as set forth in an affidavit  
 293 required by subsection (4), or his or her attorney, in  
 294 satisfaction of the judgment lien, provided that the judgment  
 295 lien has not lapsed at the time of the levy. The receipt of the  
 296 attorney shall be a release of the officer paying the money to  
 297 him or her. When the name of more than one attorney appears in  
 298 the court file, the money shall be paid to the attorney who  
 299 originally commenced the action or who made the original defense  
 300 unless the file shows that another attorney has been  
 301 substituted.

302 (2) When property sold under execution brings more than  
 303 the amount needed to satisfy the provisions of subsection (1),  
 304 the surplus shall be paid in the order of priority to any  
 305 judgment lienholders whose judgment liens have not lapsed.  
 306 Priority of liens on personal property shall be based on the  
 307 effective date of the judgment lien acquired under s. 55.202, s.  
 308 55.204(3), or s. 55.208(2), as set forth in an affidavit  
 309 required under subsection (4). If there is a surplus after all  
 310 valid judgment liens and execution liens have been satisfied,  
 311 the surplus must be paid to the defendant.

312 (4) ~~On or~~ Before the date of the first publication or  
 313 posting of the notice of sale provided for under s. 56.21, the

HB 0955

2004

314 levying creditor shall deliver to the sheriff ~~file~~ an affidavit  
 315 setting forth the following as to the judgment debtor:

316 (a) An attestation that the levying creditor has reviewed  
 317 the database or judgment lien records established in accordance  
 318 with ss. 55.201-55.209 and that the information contained in the  
 319 affidavit based on that review is true and correct;

320 (b) The information required under s. 55.203(1) and (2)  
 321 for each judgment lien certificate indexed under the name of the  
 322 judgment debtor as to each judgment creditor; the file number  
 323 assigned to the record of the original and, if any, the second  
 324 judgment lien; and the date of filing for each judgment lien  
 325 certificate under s. 55.202 or s. 55.204(3); and

326 (c) A statement that the levying creditor either does not  
 327 have any other levy in process or, if another levy is in  
 328 process, the levying creditor believes in good faith that the  
 329 total value of the property under execution does not exceed the  
 330 amount of outstanding judgments.

331 Section 11. Subsection (1) of section 56.29, Florida  
 332 Statutes, is amended to read:

333 56.29 Proceedings supplementary.--

334 (1) When any person or entity holds an unsatisfied  
 335 judgment ~~execution and has delivered a writ of execution to any~~  
 336 ~~sheriff~~, the judgment holder ~~plaintiff in execution~~ may file an  
 337 affidavit so stating, identifying the issuing court, the case  
 338 number, the unsatisfied amount of the judgment including accrued  
 339 costs and interest, and that the execution is valid and  
 340 outstanding, and thereupon the judgment holder is entitled to  
 341 these proceedings supplementary to execution.

HB 0955

2004

342 Section 12. Subsection (2) and paragraph (b) of subsection  
 343 (3) of section 319.27, Florida Statutes, are amended to read:

344 319.27 Notice of lien on motor vehicles or mobile homes;  
 345 notation on certificate; recording of lien.--

346 (2) No lien for purchase money or as security for a debt  
 347 in the form of a security agreement, retain title contract,  
 348 conditional bill of sale, chattel mortgage, or other similar  
 349 instrument or any other nonpossessory lien, including a lien for  
 350 child support, upon a motor vehicle or mobile home upon which a  
 351 Florida certificate of title has been issued shall be  
 352 enforceable in any of the courts of this state against creditors  
 353 or subsequent purchasers for a valuable consideration and  
 354 without notice, unless a sworn notice of such lien has been  
 355 filed in the department and such lien has been noted upon the  
 356 certificate of title of the motor vehicle or mobile home. Such  
 357 notice shall be effective as constructive notice when filed. The  
 358 ~~No~~ interest of a statutory nonpossessory lienor; the interest of  
 359 a nonpossessory execution, attachment, or equitable lienor; or  
 360 the interest of a lien creditor as defined in s.

361 679.1021(1)(zz), other than one who has acquired a lien on a  
 362 motor vehicle by judgment lien certificate ~~679.301(3)~~, if  
 363 nonpossessory, shall not be enforceable against creditors or  
 364 subsequent purchasers for a valuable consideration unless such  
 365 interest becomes a possessory lien or is noted upon the  
 366 certificate of title for the subject motor vehicle or mobile  
 367 home prior to the occurrence of the subsequent transaction.  
 368 Provided the provisions of this subsection relating to a  
 369 nonpossessory statutory lienor; a nonpossessory execution,  
 370 attachment, or equitable lienor; or the interest of a lien

HB 0955

2004

371 creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~ shall not  
 372 apply to liens validly perfected prior to October 1, 1988. The  
 373 notice of lien shall provide the following information:

374 (a) The date of the lien if a security agreement, retain  
 375 title contract, conditional bill of sale, chattel mortgage, or  
 376 other similar instrument was executed prior to the filing of the  
 377 notice of lien;

378 (b) The name and address of the registered owner;

379 (c) A description of the motor vehicle or mobile home,  
 380 showing the make, type, and vehicle identification number; and

381 (d) The name and address of the lienholder.

382 (3)

383 (b) As applied to a determination of the respective rights  
 384 of a secured party under this chapter and a lien creditor as  
 385 defined by s. 679.1021(1)(zz) ~~679.301(3)~~, or a nonpossessory  
 386 statutory lienor, a security interest under this chapter shall  
 387 be perfected upon the filing of the notice of lien with the  
 388 department, the county tax collector, or their agents. Provided,  
 389 however, the date of perfection of a security interest of such  
 390 secured party shall be the same date as the execution of the  
 391 security agreement or other similar instrument if the notice of  
 392 lien is filed in accordance with this subsection within 15 days  
 393 after the debtor receives possession of the motor vehicle or  
 394 mobile home and executes such security agreement or other  
 395 similar instrument. The date of filing of the notice of lien  
 396 shall be the date of its receipt by the department central  
 397 office in Tallahassee, if first filed there, or otherwise by the  
 398 office of the county tax collector, or their agents.

HB 0955

2004

399 Section 13. Paragraph (zz) of subsection (1) of section  
 400 679.1021, Florida Statutes, is amended to read:

401 679.1021 Definitions and index of definitions.--

402 (1) In this chapter, the term:

403 (zz) "Lien creditor" means:

404 1. A creditor that has acquired a lien on the property  
 405 involved by attachment, levy, judgment lien certificate, or the  
 406 like;

407 2. An assignee for benefit of creditors from the time of  
 408 assignment;

409 3. A trustee in bankruptcy from the date of the filing of  
 410 the petition; or

411 4. A receiver in equity from the time of appointment.

412 Section 14. Except as otherwise provided herein, this act  
 413 shall take effect upon becoming a law.