

By the Committee on Judiciary; and Senator Campbell

590-838-05

1                                   A bill to be entitled  
2           An act relating to procedures for the  
3           satisfaction of debts; amending s. 55.141,  
4           F.S.; revising provisions relating to  
5           satisfaction of judgments and decrees;  
6           eliminating the authority of judges to act  
7           under these provisions when there is no clerk  
8           of court; revising requirements of the clerk  
9           when accepting payment for satisfaction of a  
10          judgment and executing and recording a  
11          satisfaction of judgment; providing a sample  
12          form to be used by a clerk when recording a  
13          satisfaction of judgment; revising provisions  
14          relating to notification of satisfaction of  
15          judgment to a judgment holder; amending s.  
16          55.202, F.S.; revising procedures for acquiring  
17          a judgment lien; authorizing the court to file  
18          a judgment lien certificate before a judgment  
19          becomes final under certain circumstances;  
20          providing that an improperly filed certificate  
21          is of no effect; amending s. 55.204, F.S.;  
22          revising provisions relating to the  
23          continuation of judgment liens; revising  
24          provisions requiring the Department of State to  
25          maintain certain files and information;  
26          amending s. 55.205, F.S.; deleting a provision  
27          authorizing certain creditors to bring certain  
28          actions against the property of a debtor;  
29          amending ss. 55.602, 55.603, 55.604, 55.605,  
30          and 55.606, F.S.; revising provisions relating  
31          to foreign judgments to apply only to

1 out-of-country foreign judgments; amending s.  
2 56.21, F.S.; revising requirements for notices  
3 of a levy and execution sale; amending s.  
4 56.27, F.S.; clarifying provisions relating to  
5 payment of money received under execution;  
6 amending s. 56.29, F.S.; revising requirements  
7 regarding supplementary proceedings for  
8 unsatisfied judgments; amending s. 77.03, F.S.;  
9 deleting the provision that a garnishing  
10 creditor must believe that execution would be  
11 unavailing; amending s. 77.041, F.S.;  
12 increasing the time period during which a  
13 garnishing creditor may object to the debtor's  
14 claim of exemption and request a hearing;  
15 amending s. 222.01, F.S.; revising provisions  
16 relating to the designation of homestead  
17 property by the owner prior to levy to include  
18 foreign judgments; amending s. 319.27, F.S.;  
19 correcting a cross-reference; amending s.  
20 679.1021, F.S.; redefining the term "lien  
21 creditor"; amending s. 701.02, F.S.; providing  
22 that chapters 670-680 of the Uniform Commercial  
23 Code govern the attachment and perfection of a  
24 security interest in a mortgage upon real  
25 property and in a promissory note or other  
26 right to payment or performance secured by that  
27 mortgage; providing that the assignment of such  
28 a mortgage need not be recorded under s.  
29 701.02, F.S., in order for a security interest  
30 in the mortgage to attach or be perfected under  
31 the Uniform Commercial Code; providing that a

1 creditor or subsequent purchaser of real  
2 property or of any interest therein may rely on  
3 a full or partial release, discharge, consent,  
4 joinder, subordination, satisfaction, or  
5 assignment of a mortgage upon the property  
6 which was made by the mortgagee of record,  
7 without regard to the filing of certain Uniform  
8 Commercial Code financing statements; providing  
9 that the filing of such a financing statement  
10 does not constitute notice for the purposes of  
11 s. 701.02, F.S.; defining the term "mortgagee  
12 of record"; providing effective dates.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 55.141, Florida Statutes, is  
17 amended to read:

18 55.141 Satisfaction of judgments and decrees; duties  
19 of clerk ~~and judge~~--

20 (1) All judgments and decrees for the payment of money  
21 rendered in the courts of this state and which have become  
22 final, may be satisfied at any time prior to the actual levy  
23 of execution issued thereon by payment of the full amount of  
24 such judgment or decree, with interest thereon, plus the costs  
25 of the issuance, if any, of execution thereon into the  
26 registry of the court where rendered.

27 (2) Upon such payment, the clerk, ~~or the judge if~~  
28 ~~there is no clerk,~~ shall execute ~~issue his or her receipt~~  
29 ~~therefor~~ and ~~shall~~ record in the official records a  
30 satisfaction of judgment, ~~provided by the judgment holder,~~  
31 upon payment of the recording charge prescribed in s.

1 ~~28.24(12) plus the necessary costs of mailing to the clerk or~~  
2 ~~judge. Upon payment of the amount required in subsection (1)~~  
3 ~~and the recording charge required by this subsection and~~  
4 ~~execution and recordation of the satisfaction by the clerk,~~  
5 ~~any lien created by the judgment is satisfied and discharged.~~  
6 ~~The clerk or judge shall formally notify the owner of record~~  
7 ~~of such judgment or decree, if such person and his or her~~  
8 ~~address are known to the clerk or judge receiving such~~  
9 ~~payment, and, upon request therefor, shall pay over to the~~  
10 ~~person entitled, or to his or her order, the full amount of~~  
11 ~~the payment so received, less his or her service charge for~~  
12 ~~providing a receipt upon the court issuing a writ of execution~~  
13 ~~on such judgment or decree, if any has been issued, and less~~  
14 ~~his or her service charge for receiving into and paying out of~~  
15 ~~the registry of the court such payment, together with the~~  
16 ~~service charge of the clerk for receiving into and paying such~~  
17 ~~money out of the registry of the court.~~

18 (3) The satisfaction of judgment executed by the clerk  
19 must be substantially in the following form:

20  
21 Satisfaction of Judgment by Clerk

22  
23 The undersigned Clerk acknowledges on this \_\_\_\_\_ day of  
24 (month), (year), receipt from (identity of party making  
25 payment) of \$ (total amount received), comprised of \$ \_\_\_\_\_ face  
26 amount of the judgment; \$ \_\_\_\_\_ interest accruing on the  
27 judgment through the date of payment; \$ \_\_\_\_\_ costs of issuance  
28 of any execution; and \$ \_\_\_\_\_ for recording.

29  
30 Pursuant to section 55.141, Florida Statutes, said sum is paid  
31 to satisfy the lien and to discharge that certain final

1 judgment in favor of (name of judgment holder) whose last  
2 known address, if known, is (address if shown on face of  
3 judgment or in recorded affidavit pursuant to section  
4 55.10(1), Florida Statutes,) against (name of judgment debtor)  
5 recorded in Official Records Volume/Book \_\_\_\_\_, page \_\_\_\_\_ of the  
6 public records of \_\_\_\_\_ County, Florida.

7  
8 Upon the execution of this satisfaction, said judgment is  
9 satisfied and discharged.

10  
11 If an address for the judgment holder was provided under  
12 section 55.10(1), Florida Statutes, I certify that a copy of  
13 this notice has been sent to the judgment holder at said  
14 address by certified mail with return receipt requested or by  
15 registered mail if the notice is to be sent outside the  
16 continental United States.

17  
18 Clerk of Court

19 (4) If an address for the judgment holder was provided  
20 under s. 55.10(1), the clerk shall formally send a copy of the  
21 satisfaction to the judgment holder at that address by  
22 certified mail with return receipt or by registered mail if  
23 the notice is to be sent outside the continental United  
24 States. If an address is not provided under s. 55.10(1) or if  
25 delivery cannot be effected to such address, the clerk may,  
26 but is not obligated to, make reasonable attempts to locate  
27 the judgment holder. The discharge of the lien by the issuance  
28 of the satisfaction is not dependent upon the delivery of  
29 notice by the clerk.

30 (5) Upon application of the judgment holder, the clerk  
31 shall pay over to the judgment holder the full amount of the

1 payment received, less the clerk's fees for issuing execution  
2 on such judgment, if any has been issued; less the clerk's  
3 fees for receiving into and paying out of the registry of the  
4 court such payment; less the clerk's fees for recording the  
5 satisfaction of judgment; and, if the clerk incurred expenses  
6 in locating the judgment holder, less the reasonable expenses  
7 so incurred.

8 ~~(3) Full payment of judgments and decrees as in the~~  
9 ~~preceding subsections of this section provided shall~~  
10 ~~constitute full payment and satisfaction thereof and any lien~~  
11 ~~created by such judgment or decree shall thereupon be~~  
12 ~~satisfied and discharged.~~

13 Section 2. Subsections (2) and (3) of section 55.202,  
14 Florida Statutes, are amended to read:

15 55.202 Judgments, orders, and decrees; lien on  
16 personal property.--

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

21 (a) A judgment lien is acquired by filing a judgment  
22 lien certificate in accordance with s. 55.203 with the  
23 Department of State after the judgment has become final and if  
24 the time to move for rehearing has lapsed, no motion for  
25 rehearing is pending, and no stay of the judgment or its  
26 enforcement is then in effect. A court may authorize, for  
27 cause shown, the filing of a judgment lien certificate before  
28 a judgment has become final when the court has authorized the  
29 issuance of a writ of execution in the same matter. A judgment  
30 lien certificate not filed in compliance with this subsection  
31 is permanently void and of no effect.

1           (b) For any lien, warrant, assessment, or judgment  
2 collected by the Department of Revenue, a judgment lien may be  
3 acquired by filing the judgment lien certificate information  
4 or warrant with the Department of State in accordance with  
5 subsection (5).

6           (c) Except as provided in s. 55.208, the effective  
7 date of a judgment lien is the date, including the time of  
8 day, of filing. Although 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 only one effective judgment lien certificate  
15 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 certificate is filed.

20           Section 3. Subsections (4) and (6) of section 55.204,  
21 Florida Statutes, are amended to read:

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

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

27           (a) The property had been itemized and its location  
28 described with sufficient particularity in the instructions  
29 for levy to permit the sheriff to act;  
30  
31

1           (b) The instructions for the levy had been delivered  
2 to the sheriff prior to the date of lapse of the lien ~~to~~  
3 ~~permit the sheriff to act~~; and

4           (c) The property was located in the county in which  
5 the sheriff has jurisdiction at the time of delivery of the  
6 instruction for levy. Subsequent removal of the property does  
7 not defeat the lien. A court may order continuation of the  
8 lien beyond the 90-day period on a showing that extraordinary  
9 circumstances have prevented levy.

10           (6) If no second judgment lien is filed, the  
11 Department of State shall maintain each judgment lien file and  
12 all information contained therein for a minimum of 1 year  
13 after the judgment lien lapses in accordance with this  
14 section. If a second judgment lien is filed, the department  
15 shall maintain both files and all information contained in  
16 such files for a minimum of 1 year after the second judgment  
17 lien lapses.

18           Section 4. Subsection (1) of section 55.205, Florida  
19 Statutes, is amended to read:

20           55.205 Effect of judgment lien.--

21           (1) ~~A valid judgment lien gives the judgment creditor~~  
22 ~~the right to proceed against the property of the debtor~~  
23 ~~through writ of execution, garnishment, or other judicial~~  
24 ~~process.~~ A judgment creditor who has not acquired a judgment  
25 lien as provided in s. 55.202 or whose lien has lapsed may  
26 nevertheless proceed against the judgment debtor's property  
27 through any appropriate ~~other~~ judicial process. Such judgment  
28 creditor proceeding by writ of execution acquires a lien as of  
29 the time of levy and only on the property levied upon. Except  
30 as provided in s. 55.208, such judgment creditor takes subject  
31 to the claims and interest of priority judgment creditors.



1           Section 5. Subsection (2) of section 55.602, Florida  
2 Statutes, is amended to read:

3           55.602 Definitions.--As used in this act, the term:

4           (2) "Out-of-country foreign judgment" means any  
5 judgment of a foreign state granting or denying recovery of a  
6 sum of money, other than a judgment for taxes, a fine, or  
7 other penalty.

8           Section 6. Section 55.603, Florida Statutes, is  
9 amended to read:

10           55.603 Applicability.--This act applies to any  
11 out-of-country foreign judgment that is final and conclusive  
12 and enforceable where rendered, even though an appeal  
13 therefrom is pending or is subject to appeal.

14           Section 7. Section 55.604, Florida Statutes, is  
15 amended to read:

16           55.604 Recognition and enforcement.--Except as  
17 provided in s. 55.605, an out-of-country ~~a~~ foreign judgment  
18 meeting the requirements of s. 55.603 is conclusive between  
19 the parties to the extent that it grants or denies recovery of  
20 a sum of money. Procedures for recognition and enforceability  
21 of an out-of-country ~~a~~ foreign judgment shall be as follows:

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

25           (a) At the time of the recording of an out-of-country  
26 ~~a~~ foreign judgment, the judgment creditor shall make and  
27 record with the clerk of the circuit court an affidavit  
28 setting forth the name, social security number, if known, and  
29 last known post-office address of the judgment debtor and of  
30 the judgment creditor.

31

1           (b) Promptly upon the recording of the out-of-country  
2 foreign judgment and the affidavit, the clerk shall mail  
3 notice of the recording of the out-of-country foreign  
4 judgment, by registered mail with return receipt requested, to  
5 the judgment debtor at the address given in the affidavit and  
6 shall make a note of the mailing in the docket. The notice  
7 shall include the name and address of the judgment creditor  
8 and of the judgment creditor's attorney, if any, in this  
9 state. In addition, the judgment creditor may mail a notice of  
10 the recording of the judgment to the judgment debtor and may  
11 record proof of mailing with the clerk. The failure of the  
12 clerk to mail notice of recording will not affect the  
13 enforcement proceedings if proof of mailing by the judgment  
14 creditor has been recorded.

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

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

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

28           (5) Upon entry of an order recognizing the  
29 out-of-country foreign judgment, or upon recording of the  
30 clerk's certificate set forth above, the out-of-country  
31

1 foreign judgment shall be enforced in the same manner as the  
2 judgment of a court of this state.

3 (6) Once an order recognizing the out-of-country  
4 foreign judgment has been entered by a court of this state,  
5 the order and a copy of the judgment may be recorded in any  
6 other county of this state without further notice or  
7 proceedings, and shall be enforceable in the same manner as  
8 the judgment of a court of this state.

9 (7) A lien on real estate in any county shall be  
10 created only when there has been recorded in the official  
11 records of the county (a) a certified copy of the judgment,  
12 and (b) a copy of the clerk's certificate or the order  
13 recognizing the out-of-country foreign judgment. The priority  
14 of such lien will be established as of the time the latter of  
15 the two recordings has occurred. ~~Such lien may be partially~~  
16 ~~released or satisfied by the person designated pursuant to~~  
17 ~~paragraph (1).~~

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

21 Section 8. Section 55.605, Florida Statutes, is  
22 amended to read:

23 55.605 Grounds for nonrecognition.--

24 (1) An out-of-country ~~A~~ foreign judgment is not  
25 conclusive if:

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

29 (b) The foreign court did not have personal  
30 jurisdiction over the defendant.

31

1 (c) The foreign court did not have jurisdiction over  
2 the subject matter.

3 (2) An out-of-country ~~A~~ foreign judgment need not be  
4 recognized if:

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

8 (b) The judgment was obtained by fraud.

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

12 (d) The judgment conflicts with another final and  
13 conclusive order.

14 (e) The proceeding in the foreign court was contrary  
15 to an agreement between the parties under which the dispute in  
16 question was to be settled otherwise than by proceedings in  
17 that court.

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

21 (g) The foreign jurisdiction where judgment was  
22 rendered would not give recognition to a similar judgment  
23 rendered in this state.

24 Section 9. Section 55.606, Florida Statutes, is  
25 amended to read:

26 55.606 Personal jurisdiction.--The out-of-country  
27 foreign judgment shall not be refused recognition for lack of  
28 personal jurisdiction if:

29 (1) The defendant was served personally in the foreign  
30 state;

31

1           (2) The defendant voluntarily appeared in the  
2 proceedings, other than for the purpose of protecting property  
3 seized or threatened with seizure in the proceedings or of  
4 contesting the jurisdiction of the court over him or her;

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

8           (4) The defendant was domiciled in the foreign state  
9 when the proceedings were instituted, or, being a body  
10 corporate, had its principal place of business, was  
11 incorporated, or had otherwise acquired corporate status, in  
12 the foreign state;

13           (5) The defendant had a business office in the foreign  
14 state and the proceedings in the foreign court involved a  
15 cause of action or a claim for relief arising out of business  
16 done by the defendant through that office in the foreign  
17 state; or

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

21           Section 10. Effective October 1, 2005, section 56.21,  
22 Florida Statutes, is amended to read:

23           56.21 Execution sales; notice.--Notice of all sales  
24 under execution shall be given by advertisement once each week  
25 for 4 successive weeks in a newspaper published in the county  
26 in which the sale is to take place. The time of such notice  
27 may be shortened in the discretion of the court from which the  
28 execution issued, upon affidavit that the property to be sold  
29 is subject to decay and will not sell for its full value if  
30 held until date of sale. On or before the date of the first  
31 publication or posting of the notice of sale, a copy of the

1 | notice of sale shall be furnished by certified mail to the  
2 | attorney of record of the judgment debtor, or to the judgment  
3 | debtor at the judgment debtor's last known address if the  
4 | judgment debtor does not have an attorney of record. Such copy  
5 | of the notice of sale shall be mailed even though a default  
6 | judgment was entered. When levying upon personal property, a  
7 | notice of such levy and execution sale and a copy of the  
8 | affidavit required by s. 56.27(4) shall be sent by the sheriff  
9 | ~~made by the levying creditor~~ to the attorneys attorney of  
10 | record of all the judgment creditors, creditor or to all the  
11 | judgment creditors who do not have an attorney of record,  
12 | ~~creditor~~ who have ~~has~~ acquired a judgment lien as provided in  
13 | s. 55.202 or s. 55.204(3), and whose liens have not lapsed at  
14 | the time of levy, at the address listed in the judgment lien  
15 | certificate, or, if amended, in any amendment to the judgment  
16 | lien certificate, and to all secured creditors who have filed  
17 | financing statements as provided in part V of chapter 679 s-  
18 | ~~679.401~~ in the name of the judgment debtor reflecting a  
19 | security interest in property of the kind to be sold at the  
20 | execution sale at the address listed in the financing  
21 | statement, or, if amended, in any amendment to the financing  
22 | statement. Such notice shall be made in the same manner as  
23 | notice is made to any judgment debtor under this section. When  
24 | levying upon real property, notice of such levy and execution  
25 | sale shall be made to the property owner of record in the same  
26 | manner as notice is made to any judgment debtor pursuant to  
27 | this section. When selling real or personal property, the sale  
28 | date shall not be earlier than 30 days after the date of the  
29 | first advertisement.

30 |       Section 11. Subsections (1), (2), and (4) of section  
31 | 56.27, Florida Statutes, are amended to read:

1           56.27 Executions; payment of money collected.--  
2           (1) All money received under executions shall be paid,  
3 in the order prescribed, to the following: the sheriff, for  
4 costs; the levying creditor in the amount of \$500 as  
5 liquidated expenses; if the levy is upon real property, the  
6 first priority lienholder under s. 55.10; and if the levy is  
7 upon personal property, and the first priority lienholder  
8 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth  
9 in an affidavit required by subsection (4), or his or her  
10 attorney, in satisfaction of the judgment lien, provided that  
11 the judgment lien has not lapsed at the time of the levy. The  
12 receipt of the attorney shall be a release of the officer  
13 paying the money to him or her. When the name of more than one  
14 attorney appears in the court file, the money shall be paid to  
15 the attorney who originally commenced the action or who made  
16 the original defense unless the file shows that another  
17 attorney has been substituted.

18           (2) When property sold under execution brings more  
19 than the amount needed to satisfy the provisions of subsection  
20 (1), the surplus shall be paid in the order of priority to any  
21 judgment lienholders whose judgment liens have not lapsed.  
22 Priority of liens on personal property shall be based on the  
23 effective date of the judgment lien acquired under s. 55.202,  
24 s. 55.204(3), or s. 55.208(2), as set forth in an affidavit  
25 required under subsection (4). If there is a surplus after all  
26 valid judgment liens and execution liens have been satisfied,  
27 the surplus must be paid to the defendant.

28           (4) ~~On or~~ Before the date of the first publication or  
29 posting of the notice of sale provided for under s. 56.21, the  
30 levying creditor shall deliver to the sheriff file an  
31

1 affidavit setting forth the following as to the judgment  
2 debtor:

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

8 (b) The information required under s. 55.203(1) and  
9 (2) for each judgment lien certificate indexed under the name  
10 of the judgment debtor as to each judgment creditor; the file  
11 number assigned to the record of the original and, if any, the  
12 second judgment lien; and the date of filing for each judgment  
13 lien certificate under s. 55.202 or s. 55.204(3); and

14 (c) A statement that the levying creditor either does  
15 not have any other levy in process or, if another levy is in  
16 process, the levying creditor believes in good faith that the  
17 total value of the property under execution does not exceed  
18 the amount of outstanding judgments.

19 Section 12. Subsection (1) of section 56.29, Florida  
20 Statutes, is amended to read:

21 56.29 Proceedings supplementary.--

22 (1) When any person or entity holds an unsatisfied  
23 ~~judgment execution and has delivered a writ of execution to~~  
24 ~~any sheriff, the judgment holder plaintiff in execution~~ may  
25 file an affidavit so stating, identifying the issuing court,  
26 the case number, and the unsatisfied amount of the judgment,  
27 including accrued costs and interest, and stating that the  
28 execution is valid and outstanding, and thereupon the judgment  
29 holder is entitled to these proceedings supplementary to  
30 execution.  
31



1 Section 13. Section 77.03, Florida Statutes, is  
2 amended to read:

3 77.03 Issuance of writ after judgment.--After judgment  
4 has been obtained against defendant but before the writ of  
5 garnishment is issued, the plaintiff, the plaintiff's agent or  
6 attorney, shall file a motion (which shall not be verified or  
7 negative defendant's exemptions) stating the amount of the  
8 judgment ~~and that movant does not believe that defendant has~~  
9 ~~in his or her possession visible property on which a levy can~~  
10 ~~be made sufficient to satisfy the judgment.~~ The motion may be  
11 filed and the writ issued either before or after the return of  
12 execution.

13 Section 14. Subsections (1) and (3) of section 77.041,  
14 Florida Statutes, are amended to read:

15 77.041 Notice to individual defendant for claim of  
16 exemption from garnishment; procedure for hearing.--

17 (1) Upon application for a writ of garnishment by a  
18 plaintiff, if the defendant is an individual, the clerk of the  
19 court shall attach to the writ the following "Notice to  
20 Defendant":

21  
22 NOTICE TO DEFENDANT OF RIGHT AGAINST  
23 GARNISHMENT OF WAGES, MONEY,  
24 AND OTHER PROPERTY  
25

26 The Writ of Garnishment delivered to you with this  
27 Notice means that wages, money, and other property belonging  
28 to you have been garnished to pay a court judgment against  
29 you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES,  
30 MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.  
31

1 State and federal laws provide that certain wages,  
2 money, and property, even if deposited in a bank, savings and  
3 loan, or credit union, may not be taken to pay certain types  
4 of court judgments. Such wages, money, and property are exempt  
5 from garnishment. The major exemptions are listed below on the  
6 form for Claim of Exemption and Request for Hearing. This list  
7 does not include all possible exemptions. You should consult a  
8 lawyer for specific advice.

9 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY  
10 FROM BEING GARNISHED, OR TO GET BACK ANYTHING  
11 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR  
12 CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS  
13 SET FORTH BELOW AND HAVE THE FORM NOTARIZED.  
14 YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE  
15 WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS  
16 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU  
17 MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM  
18 TO THE PLAINTIFF AND THE GARNISHEE AT THE  
19 ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

20 If you request a hearing, it will be held as soon as  
21 possible after your request is received by the court. The  
22 plaintiff must file any objection within 3 ~~2~~ business days if  
23 you hand delivered to the plaintiff a copy of the form for  
24 Claim of Exemption and Request for Hearing or, alternatively,  
25 8 business ~~7~~ days if you mailed a copy of the form for claim  
26 and request to the plaintiff. If the plaintiff files an  
27 objection to your Claim of Exemption and Request for Hearing,  
28 the clerk will notify you and the other parties of the time  
29 and date of the hearing. You may attend the hearing with or  
30 without an attorney. If the plaintiff fails to file an  
31 objection, no hearing is required, the writ of garnishment

1 will be dissolved and your wages, money, or property will be  
2 released.

3           YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION  
4           IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR  
5           PROPERTY FROM BEING APPLIED TO THE COURT  
6           JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL  
7           ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD  
8           SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE  
9           LAWYER, LEGAL SERVICES MAY BE AVAILABLE.  
10          CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE  
11          CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM  
12          IN YOUR AREA.

13  
14                           CLAIM OF EXEMPTION AND  
15                           REQUEST FOR HEARING

16  
17 I claim exemptions from garnishment under the following  
18 categories as checked:

- 19       ....     1. Head of family wages. (You must check a.  
20                or b. below.)  
21       ....     a. I provide more than one-half of the  
22                support for a child or other dependent and  
23                have net earnings of \$500 or less per week.  
24       ....     b. I provide more than one-half of the  
25                support for a child or other dependent, have  
26                net earnings of more than \$500 per week, but  
27                have not agreed in writing to have my wages  
28                garnished.  
29       ....     2. Social Security benefits.  
30       ....     3. Supplemental Security Income benefits.  
31       ....     4. Public assistance (welfare).

- 1 | .... 5. Workers' Compensation.
- 2 | .... 6. Unemployment Compensation.
- 3 | .... 7. Veterans' benefits.
- 4 | .... 8. Retirement or profit-sharing benefits or
- 5 | pension money.
- 6 | .... 9. Life insurance benefits or cash surrender
- 7 | value of a life insurance policy or proceeds
- 8 | of annuity contract.
- 9 | .... 10. Disability income benefits.
- 10 | .... 11. Prepaid College Trust Fund or Medical
- 11 | Savings Account.
- 12 | .... 12. Other exemptions as provided by law.
- 13 | .....(explain)
- 14 |

15 | I request a hearing to decide the validity of my claim. Notice  
16 | of the hearing should be given to me at:

17 |  
18 | Address: .....  
19 | Telephone number:.....

20 |  
21 | The statements made in this request are true to the best of my  
22 | knowledge and belief.

23 |  
24 | .....  
25 | Defendant's signature  
26 | Date.....

27 |  
28 | STATE OF FLORIDA  
29 | COUNTY OF

30 |  
31 |

1 Sworn and subscribed to before me this ..... day of  
2 ...(month and year)..., by ...(name of person making  
3 statement)...

4 Notary Public/Deputy Clerk

5 Personally Known .....OR Produced Identification....

6 Type of Identification Produced.....

7

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

18 Section 15. Subsections (2) and (4) of section 222.01,  
19 Florida Statutes, are amended to read:

20 222.01 Designation of homestead by owner before  
21 levy.--

22 (2) When a certified copy of a judgment has been filed  
23 in the public records of a county pursuant to chapter 55 ~~s-~~  
24 ~~55-10~~, a person who is entitled to the benefit of the  
25 provisions of the State Constitution exempting real property  
26 as homestead and who has a contract to sell or a commitment  
27 from a lender for a mortgage on the homestead may file a  
28 notice of homestead in the public records of the county in  
29 which the homestead property is located in substantially the  
30 following form:

31

1 NOTICE OF HOMESTEAD

2  
3 To:...(Name and address of judgment creditor as  
4 shown on recorded judgment and name and address  
5 of any other person shown in the recorded  
6 judgment to receive a copy of the Notice of  
7 Homestead)....

8  
9 You are notified that the undersigned claims as  
10 homestead exempt from levy and execution under  
11 Section 4, Article X of the State Constitution,  
12 the following described property:

13  
14 ... (Legal description) ...

15  
16 The undersigned certifies, under oath, that he  
17 or she has applied for and received the  
18 homestead tax exemption as to the  
19 above-described property, that .... is the tax  
20 identification parcel number of this property,  
21 and that the undersigned has resided on this  
22 property continuously and uninterruptedly from  
23 ...(date)... to the date of this Notice of  
24 Homestead. Further, the undersigned will either  
25 convey or mortgage the above-described property  
26 pursuant to the following:

27  
28 ... (Describe the contract of sale or loan  
29 commitment by date, names of parties, date of  
30 anticipated closing, and amount. The name,  
31 address, and telephone number of the person

1 conducting the anticipated closing must be set  
2 forth.)...

3  
4 The undersigned also certifies, under oath,  
5 that the judgment lien filed by you on  
6 ...(date)... and recorded in Official Records  
7 Book ....., Page ....., of the Public Records of  
8 ..... County, Florida, does not constitute a  
9 valid lien on the described property.

10  
11 YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION  
12 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN  
13 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU  
14 MUST FILE AN ACTION IN THE CIRCUIT COURT OF  
15 ..... COUNTY, FLORIDA, FOR A DECLARATORY  
16 JUDGMENT TO DETERMINE THE CONSTITUTIONAL  
17 HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO  
18 FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY  
19 AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS  
20 OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED.  
21 YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER  
22 OR LENDER, OR HIS OR HER SUCCESSORS AND  
23 ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF  
24 SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR  
25 OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE  
26 PROPERTY.

27  
28 This .... day of ....., 2.....  
29 .....  
30 ...(Signature of Owner)...

31

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.....  
...(Printed Name of Owner)...  
.....  
...(Owner's Address)...

Sworn to and subscribed before me by  
..... who is personally  
known to me or produced  
..... as identification,  
this .... day of ....., 2.....

.....  
Notary Public

(4) A lien pursuant to chapter 55 ~~s. 55.10~~ of any  
lienor upon whom such notice is served, who fails to institute  
an action for a declaratory judgment to determine the  
constitutional homestead status of the property described in  
the notice of homestead or to file an action to foreclose the  
judgment lien, together with the filing of a lis pendens in  
the public records of the county in which the homestead is  
located, within 45 days after service of such notice shall be  
deemed as not attaching to the property by virtue of its  
status as homestead property as to the interest of any buyer  
or lender, or his or her successors or assigns, who takes  
under the contract of sale or loan commitment described above  
within 180 days after the filing in the public records of the  
notice of homestead. This subsection shall not act to prohibit  
a lien from attaching to the real property described in the



1 notice of homestead at such time as the property loses its  
2 homestead status.

3 Section 16. Subsection (2) and paragraph (b) of  
4 subsection (3) of section 319.27, Florida Statutes, are  
5 amended to read:

6 319.27 Notice of lien on motor vehicles or mobile  
7 homes; notation on certificate; recording of lien.--

8 (2) No lien for purchase money or as security for a  
9 debt in the form of a security agreement, retain title  
10 contract, conditional bill of sale, chattel mortgage, or other  
11 similar instrument or any other nonpossessory lien, including  
12 a lien for child support, upon a motor vehicle or mobile home  
13 upon which a Florida certificate of title has been issued  
14 shall be enforceable in any of the courts of this state  
15 against creditors or subsequent purchasers for a valuable  
16 consideration and without notice, unless a sworn notice of  
17 such lien has been filed in the department and such lien has  
18 been noted upon the certificate of title of the motor vehicle  
19 or mobile home. Such notice shall be effective as constructive  
20 notice when filed. ~~The No~~ interest of a statutory  
21 nonpossessory lienor; the interest of a nonpossessory  
22 execution, attachment, or equitable lienor; or the interest of  
23 a lien creditor as defined in s. ~~679.1021(1)(zz) 679.301(3)~~,  
24 if nonpossessory, shall not be enforceable against creditors  
25 or subsequent purchasers for a valuable consideration unless  
26 such interest becomes a possessory lien or is noted upon the  
27 certificate of title for the subject motor vehicle or mobile  
28 home prior to the occurrence of the subsequent transaction.  
29 Provided the provisions of this subsection relating to a  
30 nonpossessory statutory lienor; a nonpossessory execution,  
31 attachment, or equitable lienor; or the interest of a lien

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

4 (a) The date of the lien if a security agreement,  
5 retain title contract, conditional bill of sale, chattel  
6 mortgage, or other similar instrument was executed prior to  
7 the filing of the notice of lien;

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

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

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

12 (3)

13 (b) As applied to a determination of the respective  
14 rights of a secured party under this chapter and a lien  
15 creditor as defined by s. 679.1021(1)(zz) ~~679.301(3)~~, or a  
16 nonpossessory statutory lienor, a security interest under this  
17 chapter shall be perfected upon the filing of the notice of  
18 lien with the department, the county tax collector, or their  
19 agents. Provided, however, the date of perfection of a  
20 security interest of such secured party shall be the same date  
21 as the execution of the security agreement or other similar  
22 instrument if the notice of lien is filed in accordance with  
23 this subsection within 15 days after the debtor receives  
24 possession of the motor vehicle or mobile home and executes  
25 such security agreement or other similar instrument. The date  
26 of filing of the notice of lien shall be the date of its  
27 receipt by the department central office in Tallahassee, if  
28 first filed there, or otherwise by the office of the county  
29 tax collector, or their agents.

30 Section 17. Paragraph (zz) of subsection (1) of  
31 section 679.1021, Florida Statutes, is amended to read:

1           679.1021 Definitions and index of definitions.--  
2           (1) In this chapter, the term:  
3           (zz) "Lien creditor" means:  
4           1. A creditor that has acquired a lien on the property  
5 involved by attachment, levy, judgment lien certificate, or  
6 the like;  
7           2. An assignee for benefit of creditors from the time  
8 of assignment;  
9           3. A trustee in bankruptcy from the date of the filing  
10 of the petition; or  
11           4. A receiver in equity from the time of appointment.  
12           Section 18. Section 701.02, Florida Statutes, is  
13 amended to read:  
14           701.02 Assignment not effectual against creditors  
15 unless recorded and indicated in title of document;  
16 applicability--  
17           (1) ~~An~~ ~~no~~ assignment of a mortgage upon real property  
18 or of any interest therein, ~~is not~~ ~~shall be~~ good or effectual  
19 in law or equity, against creditors or subsequent purchasers,  
20 for a valuable consideration, and without notice, unless the  
21 assignment is contained in a document that ~~which~~, in its  
22 title, indicates an assignment of mortgage and is recorded  
23 according to law.  
24           (2) This section also applies ~~The provisions of this~~  
25 ~~section shall also extend~~ to assignments of mortgages  
26 resulting from transfers of all or any part or parts of the  
27 debt, note or notes secured by mortgage, and none of same is  
28 ~~shall be~~ effectual in law or in equity against creditors or  
29 subsequent purchasers for a valuable consideration without  
30 notice, unless a duly executed assignment be recorded  
31 according to law.

1           (3) Any assignment of a mortgage, duly executed and  
2 recorded according to law, purporting to assign the principal  
3 of the mortgage debt or the unpaid balance of such principal,  
4 shall, as against subsequent purchasers and creditors for  
5 value and without notice, be held and deemed to assign any and  
6 all accrued and unpaid interest secured by such mortgage,  
7 unless such interest ~~is shall be~~ specifically and  
8 affirmatively reserved in such an assignment by the assignor,  
9 and ~~a no~~ reservation of such interest or any part thereof may  
10 not shall be implied.

11           (4) Notwithstanding subsections (1), (2), and (3)  
12 governing the assignment of mortgages, chapters 670-680 of the  
13 Uniform Commercial Code of this state govern the attachment  
14 and perfection of a security interest in a mortgage upon real  
15 property and in a promissory note or other right to payment or  
16 performance secured by that mortgage. The assignment of such a  
17 mortgage need not be recorded under this section for purposes  
18 of attachment or perfection of a security interest in the  
19 mortgage under the Uniform Commercial Code.

20           (5) Notwithstanding subsection (4), a creditor or  
21 subsequent purchaser of real property or any interest therein,  
22 for valuable consideration and without notice, is entitled to  
23 rely on a full or partial release, discharge, consent,  
24 joinder, subordination, satisfaction, or assignment of a  
25 mortgage upon such property made by the mortgagee of record,  
26 without regard to the filing of any Uniform Commercial Code  
27 financing statement that purports to perfect a security  
28 interest in the mortgage or in a promissory note or other  
29 right to payment or performance secured by the mortgage, and  
30 the filing of any such financing statement does not constitute  
31 notice for the purposes of this section. For the purposes of

1 this subsection, the term "mortgagee of record" means the  
2 person named as the mortgagee in the recorded mortgage or, if  
3 an assignment of the mortgage has been recorded in accordance  
4 with this section, the term "mortgagee of record" means the  
5 assignee named in the recorded assignment.

6 Section 19. Except as otherwise expressly provided in  
7 this act, this act shall take effect upon becoming a law.

8  
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
10 COMMITTEE SUBSTITUTE FOR  
11 Senate Bill 370

12 The committee substitute adds a new subsection (5) to s.  
13 701.02, F.S., to clarify that, for transactions involving real  
14 property, creditors and subsequent purchasers may rely on the  
records filed with the clerk of court as opposed to Uniform  
Commercial Code filings.

15 The committee substitute also revises the title of the  
16 legislation to an act relating to "procedures for the  
satisfaction of debts."

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