

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1173 Judgement Liens
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Benjamin
TIED BILLS: IDEN./SIM. **BILLS:** SB 1758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Regulatory Reform Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

When a plaintiff in a civil suit obtains a monetary judgment in its favor (“judgment creditor”), either the defendant (“judgment debtor”) will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the property of the judgment debtor which is not exempt from the reach of creditors. To assist in judgment satisfaction, Florida law authorizes a judgment creditor to obtain a lien on the judgment debtor’s non-exempt:

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.
- Tangible personal property, secured by recording a judgment lien certificate with the Florida Department of State.

A judgment creditor has numerous judicial remedies available to enforce a judgment lien, including a writ of execution and a proceeding supplementary to execution. However, Florida law provides that a judgment lien on a motor vehicle or mobile home, though enforceable against the owner, is not enforceable against creditors or subsequent purchasers for value unless the lien is noted on the title certificate. Further, current law does not allow a judgment lien to attach to intangible personal property.

CS/HB 1173 creates the Judgment Lien Improvement Act to:

- Create two statutory mechanisms by which a judgment creditor may cause a judgment lien to be noted on the title certificate for a judgment debtor’s motor vehicle or vessel.
- Allow a judgment lien to attach to payment intangibles and accounts and the proceeds thereof.
- Expressly state that a judgment lien on personal property may only be enforced through judicial process and is not enforceable through self-help repossession or replevin without the judgment debtor’s express consent.

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

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Judgment Liens

When a plaintiff in a civil suit obtains a monetary judgment in its favor (“judgment creditor”), either the defendant (“judgment debtor”) will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor’s property which is not exempt from the reach of creditors.¹ To assist in judgment satisfaction, Florida law authorizes a judgment creditor to obtain a lien² on the judgment debtor’s non-exempt:

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.³
- Tangible personal property,⁴ secured by recording a judgment lien certificate with the Florida Department of State.⁵

The main benefit of a lien is that the judgment debtor can no longer easily sell the lien property because any purchaser would, generally speaking, acquire the property subject to the lien. In other words, a purchaser would assume the obligation to satisfy the lien, making the property unappealing to buy. Additionally, a judgment creditor seeking to enforce a judgment lien on personal property has several judicial remedies, including a writ of execution, which is an order issued by the clerk of court directing the sheriff to levy a judgment debtor’s property to satisfy the judgment.⁶ Where a writ of execution has been issued but the judgment remains unsatisfied, a judgment creditor may bring a proceeding supplementary to execution in which the court may summon the judgment debtor and any involved third parties to be questioned about property that may be the subject of the writ and issue an order that such property be taken into possession by the sheriff.⁷ A proceeding supplementary to execution is a continuation of the original lawsuit that resulted in the judgment and, thus, a judgment creditor is not required to file a separate action to initiate the proceeding.⁸

Judgment Liens on Specific Property

Florida law requires that a judgment lien on a motor vehicle or mobile home be noted on the title certificate but does not specify a mechanism for a judgment creditor to accomplish such recording. Further, Florida law provides that a judgment lien on such property, though enforceable against the judgment debtor, is not enforceable against subsequent purchasers for value unless the lien is noted on the title certificate.⁹ Thus, where a judgment creditor obtains a lien on a motor vehicle or mobile home and the lien is not noted on the title certificate, the judgment debtor may sell the subject property free of the lien.

¹ S. 55.141, F.S.

² A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens § 37:1.

³ Homestead property is exempt from the reach of a judgment creditor. Art. X, s. 4, Fla. Const.; S. 55.10(1), F.S.

⁴ “Tangible personal property” is property which is leviable – that is, capable of being taken into possession by the sheriff. Examples include motor vehicles, vessels, mobile homes, furniture, jewelry, stocks, and artwork. S. 56.061, F.S.

⁵ A judgment debtor that is an individual may choose to exempt one motor vehicle worth \$1,000 or less and, if the debtor does not claim or receive a homestead exemption, additional personal property items with an aggregate worth of \$4,000 or less. Corporations and other business entities are not entitled to exemptions. Tangible personal property does not include fixtures, money, negotiable instruments, or mortgages. Ss. 55.201-55.209 and 222.25(1) and (4), F.S.

⁶ Other judicial remedies include attachment under ch. 76, F.S.; garnishment under ch. 77, F.S.; and a charging order under ss. 605.0503, 620.1703, or 620.8504, F.S. Legal Information Institute, *Writ of Execution*, https://www.law.cornell.edu/wex/writ_of_execution (last visited Feb. 2, 2022).

⁷ S. 56.29, F.S.

⁸ *Id.*

⁹ “Title certificate” means the record that is evidence of ownership of a vehicle, whether a paper certificate authorized by the Department of Highway Safety and Motor Vehicles or a certificate consisting of information that is stored in an electronic form in the department’s database. Ss. 319.001(1) and 319.27(2), F.S.

Further, current law does not allow a judgment lien to attach to intangible personal property, which includes royalty rights and the right to receive rents or payments for the sale of goods or services.¹⁰ Thus, a judgment debtor's intangible personal property remains outside the reach of a judgment creditor even though the value of such property may be significant, and sufficient to satisfy the judgment.

Accounts and Payment Intangibles Under the UCC

The Uniform Commercial Code ("UCC"), a set of laws governing and providing uniformity in commercial transactions and adopted in all fifty states, is a joint project between the Uniform Law Commission ("ULC") and the American Law Institute ("ALI").¹¹ The UCC includes general and specific provisions governing sales, leases, negotiable instruments, bank deposits and collections, letters of credit, documents of title, investment securities, secured transactions, and leases.¹² Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

Article 9 of the UCC (codified in chapter 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit secured by personal property ("collateral"), where the creditor may take possession of the collateral if the debtor defaults on the loan.¹³ Collateral recognized by the UCC includes:

- Accounts, meaning a right to payment of a monetary obligation, whether or not earned by performance:
 - For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - For services rendered or to be rendered;
 - For a policy of insurance issued or to be issued;
 - For a secondary obligation incurred or to be incurred;
 - For energy provided or to be provided;
 - For the use or hire of a vessel under a charter or other contract;
 - Arising out of the use of a credit or charge card; or
 - As winnings in a lottery or other game of chance operated or sponsored by a state or governmental unit of a state.¹⁴
- Payment intangibles, meaning general intangibles¹⁵ under which the account debtor's¹⁶ principal obligation is a monetary obligation.¹⁷

Accounts and payment intangibles are intangible personal property to which a judgment lien may not attach under current Florida law.

¹⁰ S. 56.061, F.S.

¹¹ Chs. 670-680, F.S.; Uniform Law Commission, Uniform Commercial Code, <https://www.uniformlaws.org/acts/ucc> (last visited Feb. 2, 2022).

¹² *Id.*

¹³ Chs. 670-680, F.S.; Uniform Law Commission, Uniform Commercial Code, <https://www.uniformlaws.org/acts/ucc> (last visited Feb. 2, 2022).

¹⁴ The term includes healthcare receivables but does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card. S. 9-102(2), UCC; s. 679.1021(1), F.S.

¹⁵ "General intangibles" are any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. S. 9-102, UCC; s. 679.1021(1)(pp), F.S.

¹⁶ "Account debtor" means a person obligated on an account, chattel paper, or general intangible but does not include a person obligated to pay a negotiable instrument. S. 9-102, UCC; s. 679.1021(1)(c), F.S.

¹⁷ S. 9-406, UCC; s. 679.1021(1), F.S.

Effect of Proposed Changes

CS/HB 1173 creates the Judgment Lien Improvement Act (“Act”). Under the Act, if a judgment debtor’s non-exempt personal property includes a motor vehicle or a vessel for which a Florida title certificate has been issued, and the judgment creditor wants the judgment lien to be enforceable against subsequent purchasers, the judgment creditor has two options to cause the lien to be noted on the title certificate. Specifically, a judgment creditor may:

- Obtain, in a proceeding supplementary to execution, a court order instructing the Department of Highway Safety and Motor Vehicles (“DHSMV”) to note the lien on the title certificate.
- Send a written request to DHSMV to have the lien noted on the title certificate, along with a copy of the judgment lien certificate, after which DHSMV must add the judgment creditor’s name to its records. A judgment creditor utilizing this option must also send a written request to the person in possession of the title certificate,¹⁸ by certified mail, who must then forward the certificate to DHSMV for endorsement. If the person in possession of the title certificate fails to return the certificate to DHSMV, then DHSMV must void the title certificate and issue a replacement certificate which notes the judgment lien.

The bill also provides that, under the Act, a judgment lien may attach to payment intangibles and accounts and the proceeds thereof,¹⁹ as those terms are defined in the UCC. For payment intangibles and accounts, the bill provides that:

- A judgment creditor’s rights are subject to the rights of a secured party under Article 9 of the UCC who has a prior filed financing statement encumbering such payment intangibles or accounts.
- This change does not affect an account debtor’s obligations under Article 9 of the UCC, except as the rights and obligations are otherwise adjudicated in a legal proceeding to which the secured party and account debtor are joined as parties.
- The account debtor may, absent receipt of notice under s. 679.607(1)(a), F.S., from a secured party, discharge the account debtor’s obligation to pay payment intangibles or accounts or the proceeds thereof by paying the judgment debtor until, but not after, the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor’s obligation to pay payment intangibles or accounts or the proceeds thereof under the Act only in accordance with a final order or judgment issued in such judicial process that complies with the Act.

Finally, the bill provides that, under the Act, a:

- Judgment lien on personal property may only be enforced through judicial process, including through execution and proceedings supplementary to execution.
- Judgment creditor may not enforce his or her rights through self-help repossession or replevin without the express consent of the judgment debtor in a record authenticated after default.

The bill makes conforming changes and deletes obsolete language relating to liens created by a writ of execution which has been delivered to the sheriff before October 1, 2001.

The bill provides an effective date of July 1, 2022.

¹⁸ This person is either the first lienholder (e.g., the bank that loaned money for a motor vehicle’s purchase that is still owed money on the loan) or the property’s owner.

¹⁹ Under the bill, a judgment lien on personal property existing before October 1, 2022, becomes enforceable and perfected as of October 1, 2022, as to the judgment debtor’s payment intangibles and accounts. Any security interest or lien on the judgment debtor’s payment intangibles or accounts which is enforceable and perfected before October 1, 2022, continues to have the same rights and priority as existed before October 1, 2022, and may not be primed as to payment intangibles or accounts by a judgment lien certificate filed before October 1, 2022.

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Amends s. 55.202, F.S., relating to judgments, orders, and decrees; lien on personal property.

Section 3: Amends s. 55.205, F.S., relating to effect of judgment lien.

Section 4: Amends s. 55.208, F.S., relating to effect of filed judgment lien on writs of execution previously delivered to a sheriff.

Section 5: Amends s. 55.209, F.S., relating to department of state; processing fees, responsibilities.

Section 6: Amends s. 56.29, F.S., relating to proceedings supplementary.

Section 7: Amends s. 319.24, F.S., relating to issuance in duplicate; delivery; liens and encumbrances.

Section 8: Amends s. 319.241, F.S., relating to removal of lien from records.

Section 9: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on judgment creditors as it expands the types of property to which a judgment lien may attach and creates two mechanisms whereby judgment creditors can cause a lien to be noted on a title certificate for a motor vehicle or vessel. The bill may also have a positive economic impact on judgment debtors as it prohibits seizure of their lien property except through judicial process.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 319.17, F.S., vests the DHSMV with the authority to adopt rules pursuant to ss. 120.536 and 120.54, F.S., to implement ch. 319, F.S. Additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deleted a provision:

- Authorizing a judgment creditor to use the statutory mechanisms for title certificate lien notation created by the bill to cause a lien to be noted on the title certificate of a mobile home.
- That would have modified current law to except from the reach of a judgment lien a mobile home to which title has been retired.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.