

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 175 Judgment Liens
SPONSOR(S): Civil Justice Subcommittee, Benjamin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 984

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 175 passed the House on March 6, 2024, as CS/SB 984.

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a "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 a creditor's reach. To assist in judgment satisfaction, Florida law has long authorized a judgment creditor to obtain a lien on the judgment debtor's non-exempt real and tangible personal property. However, until July 1, 2023, Florida law did not allow a judgment lien to attach to a judgment debtor's intangible personal property, including payment intangibles and accounts and the proceeds thereof, which could be pledged as collateral for a security agreement under Article 9 of the Uniform Commercial Code ("UCC"), codified in ch. 679, F.S. This changed with the passage of 2023 CS/HB 27, which, in pertinent part:

- Allowed a judgment lien to attach to payment intangibles and accounts and the proceeds thereof;
- Specified such a judgment lien's priority as against pre-existing security agreements; and
- Clarified when a third party owing money to a judgment debtor under payment intangibles or accounts ("account debtor") must stop paying the judgment debtor, and specified how such an account debtor may thereafter discharge its payment obligations.

Once a judgment lien is secured, the judgment lienholder has numerous judicial remedies available to enforce the lien. However, Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers unless the lien is noted on the vehicle or vessel's title certificate. 2023 CS/HB 27 created two statutory mechanisms for lien notation on title certificates.

The bill:

- Clarifies when a judgment lien may attach to payment intangibles or accounts.
- Clarifies that the filing of a noncompliant judgment lien certificate does not preclude the subsequent filing of a compliant certificate.
- Clarifies that the priority of conflicting rights between a secured party and a judgment lienholder or a judgment creditor without an enforceable lien is determined under ch. 679, F.S.
- Clarifies that, if a judgment debtor's personal property includes a motor vehicle or vessel, ch. 679, F.S., may be used where appropriate to determine a judgment lien's enforceability.
- Provides that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge its payment obligation in accordance with a settlement agreement.
- Changes the phrase "be primed as to" to "take priority over" as it relates to a judgment lien's effect to conform the terminology with terminology used elsewhere in Florida law and the UCC.

The bill does not appear to have a fiscal impact on local governments but may have a limited fiscal impact on the state court system.

The Governor approved the bill on June 13, 2024, ch. 2024-233, L.O.F., and it takes effect on July 1, 2024.

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

STORAGE NAME: h0175z1.DOCX

DATE: 6/25/2024

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Judgment Liens

Creation and Enforcement

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a “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 has long authorized a judgment creditor to obtain a lien² on the judgment debtor’s non-exempt³

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.⁴
- Tangible personal property,⁵ secured by recording a judgment lien certificate with the Florida Department of State (“DOS”).⁶

The main benefit of a judgment 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, or else face the possibility that the judgment lienholder may foreclose on the lien. Additionally, a judgment creditor seeking to enforce a judgment lien on personal property has several judicial remedies, including an order, known as a writ of execution, issued by the clerk of the circuit court directing the sheriff to take into possession a judgment debtor’s non-exempt property to satisfy the lien.⁷

Further, where the clerk has issued a writ of execution 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 the sheriff seize such property.⁸ 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.⁹

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 s. 37:1.

³ 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. Ss. 55.201-55.209 and 222.25(1) and (4), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

⁴ Recording the certified copy of the judgment establishes the lien’s priority; in other words, the recording of the judgment generally guarantees that the lienholder will be paid before lienholders with later-recorded liens on the same property. However, homestead property is exempt from the reach of creditors. S. 55.10(1), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

⁵ “Tangible personal property” is property which 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.

⁶ The judgment lien certificate establishes the lien’s priority; in other words, the filing of a judgment lien certificate generally guarantees that the lienholder will be paid before lienholders with later-perfected liens on the judgment debtor’s tangible personal property.

⁷ 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 June 25, 2024).

⁸ Judicial process is important for lien satisfaction as it gives the judgment debtor an opportunity to go before the court and argue that specific property the judgment creditor is trying to obtain is exempt from seizure and should not be taken to satisfy the lien. S. 56.29, F.S.

⁹ *Id.*

Judgment Liens on Intangible Personal Property

Before July 1, 2023, Florida law did not allow a judgment lien to attach to intangible personal property, such as 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 remained outside the reach of a judgment creditor even though the value of such property might have been significant and sufficient to satisfy the judgment lien. However, during the 2023 Legislative Session, the Legislature passed CS/HB 27 which, in pertinent part, allowed a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specified the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.¹¹

Judgment Liens on Motor Vehicles and Vessels

Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers for value unless the lien is noted on the title certificate.¹² Thus, where a judgment creditor obtains a lien on a motor vehicle or vessel and the lien is not noted on the title certificate, the judgment debtor may sell the subject vehicle or vessel free of the lien.

Before July 1, 2023, a judgment creditor's only remedy was to petition the court to order the Department of Highway Safety and Motor Vehicles ("DHSMV") to note the lien on the title certificate; however, this process was not spelled out in statute and confusion existed as to whether the judgment creditor needed to institute a separate action to obtain such an order or merely initiate a proceeding supplementary to execution. 2023 CS/HB 27 provided two statutory mechanisms by which a judgment creditor may cause a judgment lien to be noted on the title certificate of a judgment debtor's motor vehicle or vessel, thereby ensuring that a subsequent purchaser of the vehicle or vessel takes title to such property subject to the lien.

Secured Transactions Under the UCC

The Uniform Commercial Code ("UCC"), adopted in all fifty states, is a set of laws governing and providing uniformity in commercial transactions.¹³ Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit under a security agreement in exchange for the borrower's pledge of personal property ("collateral") which the secured party may take possession of if the debtor defaults on the loan.¹⁴ In addition to tangible personal property, collateral recognized by the UCC includes:

- Accounts, meaning a right to payment of a monetary obligation:
 - 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;

¹⁰ S. 56.061, F.S.

¹¹ Ch. 2023-300, L.O.F.

¹² "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.

¹³ Chs. 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited June 25, 2024).

¹⁴ For example, a mortgage loan is typically a secured transaction wherein the home is pledged as collateral for the loan; in other words, if the borrower defaults on his or her mortgage payments, the mortgage company may (through appropriate legal process) take possession and ownership of the purchased home. *Id.*

- 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 its governmental unit.¹⁵
- Payment intangibles, meaning general intangibles¹⁶ under which the account debtor's¹⁷ principal obligation is a monetary obligation.¹⁸

Under 2023 CS/HB 27, accounts and payment intangibles are forms of intangible personal property to which a judgment lien may now attach. Further, CS/HB 27 clarified that a third party owing money to a judgment debtor under payment intangibles or accounts ("account debtor") must stop paying the judgment debtor only when 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 payment obligation only in accordance with a final order or judgment.

Effect of the Bill

Judgment Liens

The bill amends s. 55.202(2), F.S., to clarify that, for a judgment lien to attach to payment intangibles or accounts, the judgment debtor must be located in the state (as established by s. 679.3071, F.S., which provision establishes rules for determining a debtor's location). Thus, the bill attempts to forestall jurisdictional or due process disputes which could otherwise arise if a judgment creditor inappropriately tried to enforce a judgment lien across state lines. The bill also amends this subsection to clarify that the filing of a non-compliant judgment lien certificate, which certificate is permanently void and of no effect by operation of law, does not preclude the subsequent filing of a compliant judgment lien certificate. Thus, the bill ensures that a judgment creditor is able to preserve his or her rights by filing a statutorily-compliant judgment lien certificate even if the judgment creditor first files a non-compliant certificate.

Further, the bill amends s. 55.202(3), F.S., to clarify that the priority of conflicting rights as between a judgment lienholder and a secured party will be determined under Article 9 of the UCC, as codified in ch. 679, F.S. Thus, the bill continues to prevent a judgment lienholder's rights from taking priority over the rights of a secured party whose security interest predated the filing of the judgment lien certificate unless ch. 679, F.S., specifies otherwise.

Similarly, the bill amends s. 55.205(1), F.S. to clarify that, where a judgment creditor who has not acquired a judgment lien or whose lien has lapsed decides to proceed against the judgment debtor's property through appropriate judicial process, the judgment creditor may do so subject to the priority of conflicting rights under ch. 679, F.S. Thus, the bill continues to prevent the rights of a judgment creditor without an enforceable judgment lien from taking priority over the rights of a secured party whose security interest predated the establishment of the judgment creditor's rights unless ch. 679, F.S., specifies otherwise.

Finally, the bill amends s. 55.205(5)(a), F.S., to clarify that, if a judgment debtor's personal property includes a motor vehicle or vessel, the enforceability of a judgment lien against the creditors or

¹⁵ 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.

¹⁶ "General intangibles" are any form of intangible 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. Examples include partnership interests, various licenses (such as a liquor license), publication rights, and intellectual property (such as copyrights). S. 9-102, UCC; s. 679.1021(1)(pp), F.S.

¹⁷ "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.

¹⁸ S. 9-406, UCC; s. 679.1021(1), F.S.

subsequent purchasers of such vehicle or vessel may be determined under ch. 679, F.S., in addition to the title statutes already provided for in current law. Thus, the bill continues to preserve the rights of creditors and subsequent purchasers of a vehicle or vessel on which a judgment lien attached.

Secured Transactions Under the UCC

The bill amends s. 55.205(7), F.S., to provide that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge the account debtor’s payment obligation in accordance with a settlement agreement. Thus, where there is a dispute as to an account debtor’s payment obligations, the parties to the dispute would be allowed to resolve the dispute by settlement agreement, instead of having to wait for the account debtor’s payment obligations to be established by final order or judgment as required under current law.

Further, the bill changes the phrase “may not be primed as to” in s. 55.208(1), F.S., to “may not take priority over.” This is a non-substantive change conforming the terminology used in this section, relating to the effect of prior liens on payment intangibles and accounts, to the terminology used elsewhere in Florida law and the UCC.

Effective Date

The Governor approved the bill on June 13, 2024, ch. 2024-233, L.O.F., and it takes effect on July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
The bill may reduce state government expenditures to the extent that disputes involving an account debtor’s payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing the burden on the state court system.

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 financial impact on the private sector to the extent that:

- Certain jurisdictional and due process disputes are forestalled due to clarifications made by the bill.
- Disputes involving an account debtor's payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing litigation costs for the parties to the dispute.
- The rights of a secured party are further protected by the clarifications made in the bill.

D. FISCAL COMMENTS:

None.