

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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| BILL #: | CS/HB 503 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Civil Justice Subcommittee and Renner | 114 Y's | 0 N's |
| COMPANION BILLS: | CS/SB 1042 | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

CS/HB 503 passed the House on February 18, 2016, as CS/SB 1042.

Proceedings supplementary is a legal process for the discovery and recovery of assets that a judgment debtor may have improperly transferred or concealed in an effort to delay or hinder a creditor attempting to satisfy a final judgment. A key part of proceedings supplementary is the ability of a judgment creditor to bring into the proceeding a non-party who improperly received the property from the judgment debtor.

The bill makes a number of changes to current law governing proceedings supplementary:

- Revises and updates terms and creates a stand-alone "Definitions" section to provide uniform usage of terms;
- Provides a procedure for bringing non-parties into proceedings supplementary via service of a Notice to Appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court;
- Provides that Uniform Fraudulent Transaction Act (UFTA) claims raised during proceedings supplementary must be initiated by a supplemental complaint and that such claims are governed by the provisions of the UFTA and the rules of civil procedure; and
- Moves the discovery provisions in current law into a single provision and provides that the discovery provisions are in addition to those provided under the rules of civil procedure.

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

The bill was approved by the Governor on March 9, 2016, ch. 2016-33, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Final Process and Proceedings Supplementary

Chapter 56, F.S., regulates the final process, referred to as “execution,” to enforce a final judgment of a court. Section 56.29, F.S., titled “Proceedings Supplementary,” was enacted to replace the common law requirement of a creditor’s bill in which a judgment creditor initiated a separate action to enjoin the fraudulent disposition of a judgment debtor’s property.¹ Proceedings supplementary allow for the discovery of assets that may have been improperly transferred, covered up, or concealed by a judgment debtor in an effort to delay or hinder creditors attempting to satisfy a final judgment.² A key part of proceedings supplementary is the ability of a judgment creditor to bring a non-party who improperly received the property into the proceeding.

First enacted in 1919, s. 56.29, F.S., has remained substantially unchanged with the exception of a minor change in 2014 that allowed separate claims under the Uniform Fraudulent Transfer Act³ to be filed in proceedings supplementary.⁴ According to a commentator, because of its age, s. 56.29, F.S., “contains formulaic provisions and references to archaic rules of civil procedure resulting in a lack of uniformity in the procedural application of the statute”⁵ and raises concerns about adequate due process to non-parties brought into the proceeding.⁶

The bill makes the following changes to ch. 56, F.S.:

Terms and Definitions

A number of terms currently used in ch. 56, F.S., are not used uniformly, are imprecise, and lack conformity with current law and practice.⁷ Additionally, ch. 56, F.S., does not currently provide definitions for terms used in the chapter.

The bill revises and updates terms in ch. 56, F.S., and creates s. 56.0101, F.S., a stand-alone “Definitions” section, to provide uniform definitions and usage of terms in ch. 56, F.S. Revisions and definitions made in the bill include the following:

- Where applicable, “defendant” and “defendant in execution” is changed to “judgment debtor,” which is defined as “each person who is liable on a judgment, order, or decree subject to execution under this chapter.”
- “Plaintiff,” “plaintiff in execution,” and “creditor” are changed to “judgment creditor,” which is defined as “the holder of an unsatisfied judgment, order, or decree for the payment of money, including a transferee or a surety having the right to control and collect the judgment.”
- “Corporations” is changed to “corporate judgment debtor,” which means “a judgment debtor other than an individual, an estate, or a trust that is not a business trust.”⁸
- “Levying creditor” is defined as the “levying judgment creditor.”
- Where applicable, “defendant” is changed to “claimant,” which is defined as any person other than the judgment debtor who claims any property levied on.”

¹ Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, FLORIDA BAR JOURNAL, Dec. 2012, at 28, available at <https://www.floridabar.org/divcom/jn/injournal01.nsf/Articles/A29338FA50F7A88085257AC2007494DE>.

² See *State v. Viney*, 163 So. 57, 60 (Fla. 1935).

³ ch. 726, F.S.

⁴ s. 17, ch. 2014-182, Laws of Fla.

⁵ Business Law Section of the Florida Bar, *Analysis of Proposed Amendments to Chapter 56*, 1 (on file with the Civil Justice Subcommittee).

⁶ Brodsky, *supra* note 1.

⁷ Business Law Section, *supra* note 5, at 1.

⁸ This definition conforms to corporate law, which encompasses a variety of business entities. See chs. 605-621, F.S.

Discovery in Proceedings Supplementary

Currently, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S. It is also unclear whether these discovery tools are generally available or whether they may be used prior to initiating proceedings supplementary.⁹

The bill moves the discovery provisions in s. 56.29, F.S., to a newly-created s. 56.30, F.S., to provide clearly identifiable discovery procedures in proceedings supplementary. The provisions in s. 56.30, F.S., are identical to current law with the following additions:

- The discovery provisions in s. 56.30, F.S., are in addition to those provided under the rules of civil procedure.
- A judgment debtor may be required to appear before the court in the county of the judgment debtor's principal place of business.
- A court's examination of a judgment debtor may occur before issuance of a Notice to Appear to third-parties.¹⁰
- A corporate judgment debtor may send a designee with knowledge of the property subject to execution to be examined by the court.

Notification and Examination of Third-Parties

As explained above, proceedings supplementary allow for the discovery of assets that may have been transferred, covered up, or concealed by a judgment debtor in an effort to hinder creditors attempting to satisfy a final judgment. Such attempts at hindering creditors generally involve people and entities that were not parties in the underlying case. However, the process for bringing these third-parties into the proceedings under s. 56.29(2), F.S., is unclear, which has caused confusion and raised due process concerns among practitioners and judges.¹¹

The bill amends s. 56.29(2), F.S., to provide a uniform procedure for bringing a non-party into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe the property of the judgment debtor that may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, a court must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The notice to appear must be served by process server, should describe with reasonable particularity the property at issue, require the third-party to serve an answering affidavit within a time to be fixed by the court (no less than seven business days, unless shortened by the court for cause), and require the third-party to assert any defenses in the answering affidavit. The notice to appear must also inform the third-party that he or she has the right to a trial by jury.

Uniform Fraudulent Transfers Act Claims

Section 56.29(5), F.S., currently allows judgment creditors to file claims under the Uniform Fraudulent Transfers Act¹² (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5), F.S., to newly-created s. 56.29(9), F.S. To highlight that UFTA claims are distinct from proceedings supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedures, and that the UFTA claims are subject to ch. 726, F.S., and the rules of civil procedure. Additionally, the bill requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

⁹ Business Law Section, *supra* note 5, at 7.

¹⁰ See Notification and Examination of Third-Parties section below.

¹¹ See Brodsky, *supra* note 1.

¹² ch. 726, F.S.

Defenses or Claims Raised Solely for Delay

Sections 56.16 and 56.18, F.S., currently provide that a person (referred to as a “claimant”), other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. If the court determines that the claimant’s asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages up to 20 percent of the value of the property claimed. The bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that “a person to whom a Notice to Appear has been issued” in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

Other Effects of the Bill

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an “order,” in addition to a judgment or decree. This is a codification of existing case law¹³ and practice.

The bill amends s. 56.29(6), F.S., to provide that the provisions and remedies available in ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill provides cross-references and makes technical and conforming corrections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

¹³ See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

D. FISCAL COMMENTS:

The State Courts System commented on the bill, saying:

Language clarifying process and otherwise providing more explicit direction regarding requirements preliminary to proceedings supplementary will likely assist the courts handling these matters and may contribute to a reduction in the related expenditure of judicial time . . . [however, the] fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from language clarifying ch. 56, F.S., relating to final process in execution of judgments.¹⁴

¹⁴ Office of the State Courts Administrator, 2016 Judicial Impact Statement for HB 503, dated November 25, 2015 (on file with the Civil Justice Subcommittee).