

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1208

INTRODUCER: Senator Baxley

SUBJECT: Aircraft Liens

DATE: April 16, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1208 provides that a lien claimed for labor, services, fuel, or material supplied to an aircraft is not a possessory lien. Therefore, a person claiming a lien for those items does not need to keep the aircraft in his or her possession to enforce the lien.

The effective date of the bill is July 1, 2019.

II. Present Situation:

A lien is a legal interest that a creditor has in someone else's property to ensure payment of an obligation. Many classifications and forms of liens exist today, including: a statutory lien which exists by force of statute and not by an agreement between the parties; a judicial lien which is obtained by judgment or other legal or equitable process; and a common-law lien, which was granted by the common law and allows a person to keep possession of property that belongs to someone else until certain demands made by the party in possession of the property, are met.¹ Unlike an equitable lien in which the lienor did not have to keep possession of the property, a party claiming a common law lien must have "independent and exclusive possession of the property."²

Possessory Liens

A possessory lien is only enforceable as long as the lienor retains possession of the property at issue.³ When a lienor releases property on which he or she claims a possessory lien, he or she loses the right to claim the lien. The Third District Court of Appeal addressed this issue in

¹ BLACK'S LAW DICTIONARY (10th ed. 2014). A mechanic's lien secures payment for materials or labor that were supplied in improving or repairing real or personal property.

² 34 FLA. JUR 2D LIENS ss. 3 and 4 (2009).

³ *Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (3d DCA 2010).

Commercial Jet, Inc., v. U.S. Bank, N.A. Commercial Jet provided maintenance and repair work on a Boeing 767 aircraft, then returned the airplane to its operator who put the airplane back into service. After relinquishing possession of the aircraft, Commercial Jet recorded a claim of lien for the unpaid balance pursuant to ss. 713.58 and 329.51, F.S. The trial court and the appellate court held that the type of lien authorized by the statutes was a possessory lien. As a result, Commercial Jet could not foreclose its purported lien because it did not have possession of the aircraft.⁴

Aircraft Liens

Recording, Generally

The U.S. Congress passed the Federal Aviation Act (Act) in 1958.⁵ The Act requires a civil aircraft⁶ lien to be recorded with the Federal Aviation Administration⁷ (FAA).⁸ Until an aircraft lien is recorded with the FAA, it is valid only against those with actual notice of the lien.⁹ The purpose of the recording provision was to create a central clearinghouse for the recording of liens affecting civil aircraft in the United States so that a person would know where to find the information.¹⁰ However, the Act preempted state law only as to the priority of liens, meaning a state could impose requirements affecting the enforceability and validity of liens within that state.¹¹ Further, in 1981, the FAA took the position that aircraft liens could only be recorded with the FAA if the state law creating the lien allows for the creation or perfection of a lien in this way.¹² Currently, the FAA records liens claimed in thirty-six states, including Florida.¹³ Florida specifically provides that no lien affecting title to a civil aircraft is valid until such lien is recorded with the FAA.¹⁴

⁴ In criticizing the majority opinion in *Commercial Jet*, the dissent stated:

Section 329.51, Florida Statutes, clearly provides that a lien for repairs on an aircraft such as the one in this case is perfected simply by recording a claim of lien within ninety days of the services rendered, as the appellant did in this case. The majority holding that following that provision did not have the effect specifically provided by the legislature is in conflict with just about every canon of legislative interpretation there is

Id. at 889 (Schwartz J., dissenting).

⁵ *Creston Aviation, Inc. v. Textron Financial Corp.*, 900 So. 2d 727 (Fla. 4th DCA 2005).

⁶ “Aircraft” means any contrivance invented, used, or designed to navigate, or fly in, the air. 49 USC § 40102(a)(g).

⁷ The Federal Aviation Administration of the Department of Transportation regulates civil aviation and U.S. commercial space transportation, maintains and operates air traffic control and navigation systems for civil and military aircrafts, and develops and administers programs relating to aviation safety and the National Airspace System. See The Federal Register, *Federal Aviation Administration*, <https://www.federalregister.gov/agencies/federal-aviation-administration>.

⁸ See 49 U.S.C. § 44107; see also *Creston*, 900 So. 2d at 729.

⁹ See 49 U.S.C. § 44108; see also *id.*

¹⁰ See *id.* (citing *Aircraft Trading & Servs., Inc. v. Braniff, Inc.*, 819 F. 2d 1227 (2d Cir. 1987).

¹¹ See *id.* at 730 (citing *Philko Aviation, Inc. v. Shackel*, 103 S. Ct. 2476 (1983)).

¹² Federal Aviation Administration, *Artisan Liens on Aircraft; Recordability*, 70 FR 59800 (Oct. 13, 2005) <https://www.federalregister.gov/documents/2005/10/13/05-20467/artisan-liens-on-aircraft-recordability> (last visited Mar. 23, 2019).

¹³ *Id.*

¹⁴ Section 329.01, F.S.

Lien for Landing

The governing body of a publicly owned and operated airport may claim a lien upon an aircraft landing at the airport for all unpaid fees and charges for the use of the airport's facilities after demanding payment for the fees and charges from the aircraft's owner or operator.¹⁵ A lien for landing is a possessory lien that attaches to any aircraft, at the airport, owned or operated by the person owing the charges and fees.¹⁶

A lien for landing is enforced in the same manner as a warehouseman's¹⁷ lien that is by public or private sale of the aircraft after notification to all persons known to claim an interest in the aircraft.¹⁸ The notification must be delivered by certified mail or in person and include:

- An itemized statement of the amount due;
- A description of the aircraft;
- A demand for payment within a specified time; and
- A conspicuous statement that unless the claim is paid within the specified time, the goods will be sold at a specified time and place.¹⁹

Following the expiration of the timeframe given for payment in the notice, the lienor must publish an advertisement for two consecutive weeks in a newspaper of general circulation where the sale is to occur.²⁰ The advertisement must state:

- A description of the aircraft;
- The name of the person on whose account the aircraft is held; and
- The time and place of the sale.²¹

Lien for Fuel, Labor, Services, or Material

A person who provides fuel for an aircraft may claim a lien on the aircraft for any unpaid fuel charges.²² A person who performs labor or services on or for an aircraft may claim a lien on the aircraft for any unpaid costs for the labor or services performed and for the materials used.²³

A lien for fuel, labor, services, or material under ss. 329.41 or 713.58, F.S., is a possessory lien.²⁴ To enforce the lien, a lienor must record a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the fuel, labor, services, or material was last provided.²⁵ The notice must be recorded within 90 days after the date the fuel, labor, services, or material was last furnished and must state:

- The name of the lienor;
- The name of the aircraft's owner;

¹⁵ Section 329.40(1), F.S.

¹⁶ Section 329.40(2), F.S.

¹⁷ "Warehouse" means a person engaged in the business of storing the goods of others for hire. S. 677.102(1)(m), F.S.

¹⁸ Sections. 329.40(1) and 677.210(1) and (2), F.S.

¹⁹ Section 677.210(2), F.S.

²⁰ Section 677.210(2)(f), F.S.

²¹ *Id.*

²² Section 329.41, F.S.

²³ Section 713.58(1), F.S.

²⁴ Section 713.58(3), F.S.; *see also Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (3d DCA 2010)..

²⁵ Section 329.51, F.S.

- A description of the aircraft;
- The amount for which the lien is claimed; and
- The date the expenditure was completed.²⁶

III. Effect of Proposed Changes:

The bill expressly states that possession of an aircraft is not required to perfect a lien claimed under ss. 329.41 and 713.58, F.S., for labor, services, fuel, or material furnished to an aircraft. This change essentially supersedes the opinion of the Second District Court of Appeal in *Commercial Jet, Inc. v. U.S. Bank, N.A.*

The bill does not affect the possessory nature of liens for labor or services to other property claimed under s. 713.58, F.S.,²⁷ or liens for landing claimed under s. 329.40, F.S. These liens remain possessory liens unless categorized otherwise in statute.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ *Id.*

²⁷ E.g., a lien claimed under s. 718.58, F.S., for labor or services performed on a motor vehicle.

B. Private Sector Impact:

A person enforcing a lien for fuel, labor, services, or material furnished to an aircraft would be allowed to release the aircraft to the owner or operator. This may make it easier for a lienor to recover money owed to him or her without keeping a commercial aircraft out of service and potentially disrupting commercial air travel. This may also allow the owner or operator of an aircraft on which a lien is claimed to keep using the aircraft while he or she works to satisfy the lien.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 329.41 and 329.51.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.