

‘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 1442

INTRODUCER: Senator Collins and others

SUBJECT: Terrorism

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
3.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 1442 expands the fugitive disentitlement doctrine to collection activities related to a private civil action related to terrorism. The bill provides that a fugitive from justice who is a judgment debtor in a civil action relating to an act of terrorism may not use the resources of the state in defending against collection proceedings related to the judgment. Additionally, in such collection proceedings no party may demand a jury trial.

The bill takes effect upon becoming law, and its provisions apply to pending cases.

II. Present Situation:

It may seem that the court’s entry of a final judgment is the culmination of a civil case. It often is not. A final civil judgment awarding money damages does not automatically put money in the hands of the prevailing party, referred to as the judgment creditor. A final judgment merely gives the judgment creditor the legal right to seek out assets of the judgment debtor and forcibly sell or transfer those assets to or for the judgment creditor. This is commonly referred to as the collections process.

Civil Judgment Collections Process

There are several means for a judgment debtor to forcibly attempt to collect the judgment. The primary means of collection are:

- Execution – An “execution” is the lawful seizure of property owned by the judgment debtor to be sold at public auction. The net proceeds of an execution on property are paid to the judgment creditor to be applied against the debt. Execution applies to real property and personal property. Execution and sale are conducted by the sheriff.¹

¹ The civil execution process is governed by ch. 56, F.S.

- Garnishment – A “garnishment” is the seizure of monies owed to the judgment debtor, which money is then paid to the judgment creditor to be applied against the debt. Common targets of a garnishment are bank accounts and wages.²
- Proceedings Supplementary – Proceedings supplementary is a collections tool created by statute. When any judgment creditor holds an unsatisfied judgment or judgment lien, the judgment creditor may file a motion asking for proceedings supplementary. In the proceeding, the court may issue a Notice to Appear to the judgment debtor or to any person alleged to be holding property of the judgment debtor, or to any person who may have property that was fraudulently transferred by the judgment debtor to that third party. After hearing, the court may order the sheriff to execute on property found to be owned by the judgment debtor, or found to have been fraudulently conveyed by the judgment debtor, for sale for the benefit of the judgment creditor.³

While collection actions are primarily focused on assets of the judgment debtor, there may be occasions where property titled or held in the name of another may be seized in payment of the judgment. This occurs where the judgment debtor has fraudulently transferred the property to a third party in an attempt to thwart collection of the judgment. Florida has adopted the Uniform Fraudulent Transfer Act to address these situations.⁴

In some post-judgment proceedings, any party may demand a jury trial. Section 56.18, F.S., provides that the portion of a proceedings supplementary process that determines whether property is subject to execution, and the value of the property, is to be tried by jury, unless waived by the parties. Section 77.08, F.S., allows either party in a garnishment action the right to demand a jury trial. The statutory right to a jury trial applies to a civil action attempting to collect a judgment related to an act of terrorism.⁵

“Terrorism” or “terrorist activity” as defined in s. 775.30, F.S., mean an activity that:

- Involves:
 - A violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
 - A violation of s. 815.06, F.S. (offenses against computer users); and
- Is intended to:
 - Intimidate, injure, or coerce a civilian population;
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

A person who commits the offenses specified in s. 775.30(2), F.S., in furtherance of intimidating or coercing the policy of a government, or in furtherance of affecting the conduct of a government by mass destruction, assassination, or kidnapping, commits the crime of terrorism, a first degree felony.⁶

² The garnishment process is generally governed by ch. 77, F.S.

³ Section 56.29, F.S.

⁴ Chapter 726, F.S.

⁵ *Stansell v. Revolutionary Armed Forces of Columbia*, 45 F.4th 1340 (11th Cir. 2022).

⁶ A first degree felony is punishable by up to 30 years' imprisonment and a \$10,000 fine.

A person who commits a violation of s. 775.30(2), F.S., which results in death or serious bodily injury commits a life felony.⁷

Civil Remedy for Victims of Acts of Terrorism

Section 772.13, F.S., creates a civil remedy for victims of acts of terrorism or facilitating or furthering terrorism. A person who is injured by an act of terrorism, or by an act facilitating or furthering terrorism, has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$1,000 and reasonable attorney fees and court costs in the trial and appellate courts. A similar civil cause of action for acts of terrorism is created in federal law at 18 U.S.C. s. 2333.

Fugitive Disentitlement Doctrine

The fugitive disentitlement doctrine initially arose in the criminal context, contemplating the dismissal of an absconding criminal appellant's appeal. It reflects the inherent authority of the courts to place conditions on the exercise of their jurisdiction. In one sense, the doctrine is a tool of case management, justifying the dismissal of certain cases from a court docket. Over time it has been extended to civil cases.⁸ The doctrine generally prohibits a person from using the resources of the courts in furtherance of a legal claim upon a finding that such person, evading prosecution for crime, purposely leaves the jurisdiction of the court or otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

The doctrine currently applies to civil forfeiture actions related to a criminal action, in both federal and state law.⁹ The doctrine prohibits a fugitive from proceeding as a plaintiff in a civil action.¹⁰ It is unclear whether the doctrine applies to civil collection actions where a fugitive is a judgment debtor.

III. Effect of Proposed Changes:

The bill expands the fugitive disentitlement doctrine to collection activities related to a private civil action related to an act of terrorism. Specifically, the bill provides that in any postjudgment execution proceedings to enforce a judgment entered under state or federal laws creating a civil cause of action for a victim of terrorism:

- There is no right to a jury trial under s. 56.18 or s. 77.08; F.S., and
- A defendant or a person may not use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person.

⁷ A life felony is punishable by up to life imprisonment or a term of years not exceeding life and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

⁸ https://www.justice.gov/sites/default/files/civil/legacy/2014/10/17/March_2013.pdf.

⁹ 28 U.S.C s. 2466; s. 896.106, F.S.

¹⁰ *Jaffe v. Snow*, 610 So. 2d 482 (Fla. 5th DCA 1992).

Additionally, this provision applies to any entity that is owned or controlled by a person to whom this applies.

The bill is effective upon becoming law, and it applies to any judgment collectible under state law and to any civil action pending or filed on or after the effective date.

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:

The right to a jury trial is at Art. I, s. 22 of the State Constitution. In civil law, the right only applies to an action at law, not an action for equity. Post-judgment collections activities are equitable in nature, and thus the constitutional right to a jury does not apply.¹¹

Bills related to the fugitive disentitlement doctrine relate only to remedies or procedure, and thus may constitutionally affect pending civil proceedings.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹¹ *381651 Alberta, Ltd., v. 279298 Alberta, Ltd.*, 675 So.2d 1385 (Fla. 4th DCA 1996).

¹² *Tejada v. In re Forfeiture of The Following Described Prop., \$406,626.11 In U.S. Currency*, 820 So. 2d 385, 390 (Fla. 3rd DCA 2002).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 772.13 of the Florida Statutes.

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.