

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: CS/CS/SB 1574

INTRODUCER: Rules Committee, Judiciary Committee and Senator Rouson

SUBJECT: Judgment Liens

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1574 broadens the available remedies that may be used by a judgment creditor to collect a civil judgment from a judgment debtor. The bill:

- Improves the process of perfecting a judgment lien against a motor vehicle or vessel in the records of the Department of Highway Safety and Motor Vehicles. The new process simplifies the imposition of the lien in the state records and protects the interests of subsequent purchasers of the motor vehicle or vessel.
- Expands the scope of a judgment lien recorded with the Secretary of State to additionally encumber certain intangible assets, namely payment intangibles and accounts and the proceeds thereof.
- Specifies in statute that a judgment creditor may not use self-help measures to take personal property of the judgment debtor except with documented consent of the judgment debtor that is agreed to after attachment of the judgment lien.

The bill is effective July 1, 2023.

II. Present Situation:

Judgment Liens - In General

When a party to a civil lawsuit obtains a monetary judgment in its favor (“judgment creditor”), and the other party (“judgment debtor”) does not voluntarily satisfy the judgment, the judgment

creditor may seek to satisfy the judgment from the judgment debtor's property that is not exempt from the reach of creditors.¹

To assist in collecting on a judgment, Florida law authorizes a judgment creditor to obtain a lien² on the judgment debtor's non-exempt³ real property and personal property. A lien against real property is obtained by recording a certified copy of the judgment in the county in which the real property is located.⁴ A judgment lien takes priority based on date of filing, like any other lien. And like any other lien, a judgment lien may be foreclosed. Foreclosure is the forced sale of real property by public auction, with the net proceeds being paid to lienholders in the order of their priority.

Similarly, tangible personal property⁵ may also have a judgment lien attach. This is accomplished by recording a judgment lien certificate with the Florida Department of State ("DOS").⁶ A judgment lien against tangible personal property allows the judgment creditor to request a writ of execution, issued by the clerk of the court, directing the sheriff to take into possession a judgment debtor's non-exempt tangible personal property to satisfy the lien by forced sale at public auction.

There is no legal means for obtaining a judgment lien that would attach to intangible assets owned by a judgment debtor.

One 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 face the possibility that the judgment lienholder may foreclose or execute upon the lien. Thus, merely holding the judgment lien and waiting for the judgment debtor to want to sell the property (at which sale the judgment will be satisfied) is a common collection strategy.

Further, when the clerk has issued a writ of execution but the judgment remains unsatisfied, a judgment creditor may initiate a proceeding supplementary. In this proceeding, 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. At a proceeding supplementary, the court may issue an order to

¹ See generally, ch. 55, F.S.

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

³ As to tangible personal property, 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. Sections 55.201-55.209 and 222.25(1) and (4), F.S.; FLA. CONST. art. X, s. 4; 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. Section 55.10(1), F.S.; Fla. Const. art. X, s. 4; 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. Section 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.

the sheriff to seize such property and sell it at public auction for the benefit of the judgment creditor.⁷

Judgment Liens on Motor Vehicles and Vessels

Florida law requires that a judgment lien on a motor vehicle or vessel be noted on the vehicle's or vessel's title certificate to be effective, but does not specify a mechanism for a judgment creditor to accomplish this notation. Further, Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against subsequent purchasers for value unless the lien is actually noted on the title certificate.⁸ Thus, if 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 motor vehicle or vessel free of the lien. The only means by which a judgment creditor may have to accomplish the notation on the title is to petition a court to order the Department of Highway Safety and Motor Vehicles ("DHSMV") to note the lien on the title certificate; however, this process is not spelled out in statute and confusion exists as to whether the judgment creditor needs to institute a separate action to obtain such an order or merely initiate a proceeding supplementary to execution.

Further, a motor vehicle or vessel owner may apply to the DHSMV to have a lien removed from the motor vehicle or vessel's title certificate and from DHSMV records if certain statutory notice requirements are met and the lien has been filed with the DHSMV or noted on the title certificate for at least 5 years.⁹ The lienholder then has 10 days to file with the DHSMV a written statement that the lien is outstanding, in which case the DHSMV may not remove the lien until the lienholder proves to the DHSMV that the lien has been satisfied.¹⁰ However, Florida law does not currently address what should happen to a lien notation if the lienholder files a second judgment lien certificate with DOS, thereby extending the lien's duration.

Judgment Liens on Intangible Personal Property

Current law does not provide a means to attach a judgment lien to intangible personal property, including royalty rights and the right to receive rents or payments for the sale of goods or services.¹¹ A court in a proceeding supplementary hearing may, however, order the judgment debtor to transfer intangible personal property to satisfy the judgment.

Accounts and Payment Intangibles Under the UCC

The Uniform Commercial Code ("UCC"), adopted in all 50 states, is a set of laws governing and providing uniformity in commercial transactions.¹² Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

⁷ Judicial process is important for lien satisfaction as it gives the judgment debtor an opportunity to go before the court and argue that the specific property the judgment creditor is trying to obtain is exempt from seizure and should not be taken to satisfy the lien. Section 56.29, F.S.

⁸ "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. Sections 319.001(1) and 319.27(2), F.S.

⁹ Section 319.241, F.S.

¹⁰ *Id.*

¹¹ Section 56.061, F.S.

¹² Chapters 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited Mar. 22, 2023).

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 creditor may take possession of if the debtor defaults on the loan. In addition to tangible personal property, the debtor may pledge intangible property as collateral. The pledges recognized by the UCC include:

- 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;
 - 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.¹³
- Payment intangibles, meaning general intangibles¹⁴ under which the account debtor's¹⁵ principal obligation is a monetary obligation.¹⁶

Accounts and payment intangibles are forms of intangible personal property to which a judgment lien may not attach under current Florida law, although such property may be pledged as collateral in a secured transaction.

III. Effect of Proposed Changes:

CS/CS/SB 1574 creates the Judgment Lien Improvement Act ("Act") to allow a judgment lien to attach to additional forms of property.

Judgment Liens on Intangible Personal Property

The bill provides that a judgment lien filed with the Department of State also attaches to the intangible assets of payment intangibles and accounts and the proceeds thereof. A judgment lien existing before October 1, 2023, becomes enforceable and perfected as of October 1, 2023, as to the judgment debtor's payment intangibles and accounts, but any security interest in or lien on the judgment debtor's payment intangibles or accounts which is enforceable and perfected before October 1, 2023, continues to have the same rights and priority as existed before that date and may not be primed as to payment intangibles or accounts by a judgment lien certificate filed

¹³ 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. Section 9-102(2), UCC; s. 679.1021(1), F.S.

¹⁴ "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). Section 9-102, UCC; s. 679.1021(1)(pp), F.S.

¹⁵ "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. Section 9-102, UCC; s. 679.1021(1)(c), F.S.

¹⁶ Section 9-406, UCC; s. 679.1021(1), F.S.

before October 1, 2023.¹⁷ The priority of a judgment lien is determined by the general priority of liens under the Secured Transactions law at ch. 679, F.S.

A judgment creditor's rights in the lien against certain intangible property is subject to the rights of a secured creditor with a prior-filed security agreement pledging such payment intangibles or accounts as collateral. A third party owing money to a judgment debtor under a payment intangible or account may continue to pay such money to the judgment debtor directly until, but not after, the judgment creditor serves the third party with a complaint or petition seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the third party may pay the money owed only in accordance with a settlement agreement, final order or final judgment issued in such proceeding.

Judgment Liens on Motor Vehicles and Vessels

The bill creates a mechanism for creation of a judgment lien encumbering a motor vehicle or vessel titled at the DHSMV. To create the judgment lien, the judgment creditor must obtain, in a proceeding supplementary to execution, a court order instructing the DHSMV to note the lien on the title certificate. Thus, this procedure makes it unnecessary to file a separate action to create the notation.

Alternatively, the judgment creditor may, under a new process created by the bill, send a written request to the DHSMV to have the lien noted on the title certificate, along with a copy of the judgment lien certificate, after which the DHSMV must add the judgment creditor's name to its records. A judgment creditor using this option must also send a written request to the person possessing the title certificate,¹⁸ by certified mail, who must then forward the certificate to the DHSMV for lien notation. However, under the bill, if the person possessing the title certificate fails to return the certificate to the DHSMV, the DHSMV must void the existing title certificate and issue a replacement certificate noting the judgment lien.

Finally, the bill addresses what happens to a lien notation when a lienholder extends the duration of his or her lien by filing a second judgment lien certificate with DOS. Specifically, the bill provides that, where the owner of a motor vehicle or vessel applies to the DHSMV to have an outstanding lien removed from the vehicle's or vessel's title certificate, the lienholder has 10 days to file with the DHSMV a statement that the lien is outstanding or that a second judgment lien certificate was filed with DOS. Where the DHSMV receives a statement that a second judgment lien certificate was filed with DOS, the DHSMV must remove the notation of the first judgment lien and note the second judgment lien on the title certificate.

¹⁷ Lien priority determines the order in which creditors are paid. Generally, under the "first in time, first in right rule," earlier-perfected liens have priority over later-perfected liens; however, some liens, such as property tax liens, generally take priority over pre-existing liens. The bill would not change the priority of existing liens; thus, even where a judgment lien could attach to a payment intangible or account on or after October 1, 2023, any existing liens with a higher priority that could also attach to such property would be paid first.

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

Prohibition on Self-Help

The bill also prohibits a judgment creditor from attempting to enforce a judgment lien by self-help repossession or replevin. Absent consent of the judgment debtor, a judgment creditor may only enforce a judgment lien by lawful court process using one or more of the following means:

- Attachment under ch. 76, F.S.
- Execution under ch. 56, F.S.
- Garnishment under ch. 77, F.S.
- A charging order under ss. 605.0503, 620.1703, or 620.8504, F.S.
- Proceedings supplementary to execution under s. 56.29, F.S.

Consent of the judgment debtor to a self-help measure (i.e. - surrender of property to the judgment creditor) must be documented pursuant to the Uniform Electronic Transaction Act¹⁹ or the Uniform Commercial Code²⁰, which documentation must be executed after attachment of the judgment lien.

Effective Date

The bill is effective July 1, 2023.

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.

¹⁹ Section 668.50, F.S.

²⁰ Section 679.1021(1)(g), F.S., defines the term “authenticate” to allow for signing of a written document or electronic confirmation.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will aid in the satisfaction of judgment liens.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles may incur some additional costs relating to liens on motor vehicle and vessel titles.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 55.202, 55.205, 55.208, 55.209, 56.29, 319.24, and 319.241.

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

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

CS/CS by Rules on April 19, 2023:

The committee substitute reaffirms that the priority of a judgment lien against personal property is governed by ch. 679, F.S. The committee substitute also adds a reference to a settlement agreement as an alternative to a court order of judgment.

CS by Judiciary on March 29, 2023:

The committee substitute changes the bill by requiring that consent to self-help measures be documented and providing that the consent is valid only if the consent is agreed to after entry of the judgment lien.

B. Amendments:

None.