

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 27 Judgment Liens

**SPONSOR(S):** Regulatory Reform & Economic Development Subcommittee, Civil Justice Subcommittee, Benjamin

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
3) Judiciary Committee			

### SUMMARY ANALYSIS

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor (“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 authorizes a judgment creditor to obtain a lien on the judgment debtor’s non-exempt real and tangible personal property. Such a lien is secured by filing a judgment lien certificate with the Department of State (“DOS”) or, for real property, by recording the lien in the county where the property lies.

Once a lien is secured, a judgment creditor has numerous judicial remedies available to enforce the lien, including a writ of execution and a proceeding supplementary to execution. However, 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 vehicle’s or vessel’s title certificate notes the lien. Further, current law does not:

- Allow a judgment lien to attach to intangible personal property; or
- Expressly prohibit a judgment creditor from using self-help methods to satisfy a judgment lien.

HB 27 creates the Judgment Lien Improvement Act to:

- Provide 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.
- Clarify how the Department of Highway Safety and Motor Vehicles may remove a judgment lien from its records and relevant title certificates where the lienholder files a second judgment lien certificate with the DOS.
- Allow a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specify the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.
- Expressly state that a judgment lien on personal property may only be enforced through judicial process absent the judgment debtor’s express written consent to do otherwise.
- Clarify that a third party owing money to a judgment debtor under a payment intangible or account may continue to pay the judgment debtor directly until he or she receives specified orders to pay the judgment creditor instead.

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

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Judgment Lien Creation and Enforcement

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor (“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.<sup>1</sup> To assist in judgment satisfaction, Florida law authorizes a judgment creditor to obtain a lien<sup>2</sup> on the judgment debtor’s non-exempt:<sup>3</sup>

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

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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> S. 55.141, F.S.

<sup>2</sup> A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens § 37:1.

<sup>3</sup> 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 opt to 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.

<sup>4</sup> 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.

<sup>5</sup> “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.

<sup>6</sup> 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.

<sup>7</sup> 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](https://www.law.cornell.edu/wex/writ_of_execution) (last visited Feb. 24, 2023).

<sup>8</sup> 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.

<sup>9</sup> *Id.*

## 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 but does not specify a mechanism for a judgment creditor to accomplish this notation. Further, Florida law provides that a judgment lien on such property, though enforceable against the judgment debtor, is not enforceable against subsequent purchasers for value unless noted on the title certificate.<sup>10</sup> 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 property free of the lien. The only remedy currently available to a judgment creditor is 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 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 five years.<sup>11</sup> The lienholder then has ten 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.<sup>12</sup> 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 allow a judgment lien to attach to intangible personal property, including royalty rights and the right to receive rents or payments for the sale of goods or services.<sup>13</sup> Thus, a judgment debtor's intangible personal property remains outside the reach of a judgment creditor even though the value of such property may be significant and sufficient to satisfy the judgment lien.

## Accounts and Payment Intangibles 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.<sup>14</sup> 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 creditor may take possession of if the debtor defaults on the loan.<sup>15</sup> 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;

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<sup>10</sup> "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.

<sup>11</sup> S. 319.241, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> S. 56.061, F.S.

<sup>14</sup> Chs. 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited Feb. 24, 2023).

<sup>15</sup> 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) taken 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.<sup>16</sup>
- Payment intangibles, meaning general intangibles<sup>17</sup> under which the account debtor's<sup>18</sup> principal obligation is a monetary obligation.<sup>19</sup>

Accounts and payment intangibles are forms of intangible personal property to which a judgment lien may not attach under current Florida law; such property may only be pledged as collateral in a secured transaction. Thus, such property is out of the reach of a judgment creditor.

## Effect of Proposed Changes

### Judgment Liens on Intangible Personal Property

HB 27 creates the Judgment Lien Improvement Act ("Act") to allow a judgment lien to attach to payment intangibles and accounts and the proceeds thereof, thus expanding the types of property a judgment creditor may reach to satisfy his or her lien. Under the bill, 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 before October 1, 2023.<sup>20</sup>

Further, the bill specifies that a:

- Judgment creditor's rights are subject to the rights of a secured creditor with a prior-filed security agreement pledging such payment intangibles or accounts as collateral.
- 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 the final order or judgment issued in such proceeding.

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<sup>16</sup> 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.

<sup>17</sup> "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.

<sup>18</sup> "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.

<sup>19</sup> S. 9-406, UCC; s. 679.1021(1), F.S.

<sup>20</sup> 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.

## Judgment Liens on Motor Vehicles and Vessels

The bill clarifies that, if a judgment debtor's non-exempt personal property includes a motor vehicle or a vessel for which a Florida title certificate has been issued, and the judgment creditor wants the judgment lien to be enforceable against subsequent purchasers, the judgment creditor may obtain, in a proceeding supplementary to execution, a court order instructing the DHSMV to note the lien on the title certificate. Thus, the judgment creditor would not need to file a separate action to avail himself or herself of the court-ordered process.

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 utilizing this option must also send a written request to the person possessing the title certificate,<sup>21</sup> 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 states 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 ten 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.

## Judgment Lien Creation and Enforcement

The bill clarifies that a judgment lien may only be enforced through judicial process absent the judgment debtor's express consent in a record authenticated after the judgment lien attaches.<sup>22</sup> In other words, absent such consent, the judgment creditor may not enforce his or her rights through self-help repossession<sup>23</sup> or replevin.<sup>24</sup> This gives a judgment debtor the chance to be heard in court and for the court to determine whether any of the judgment debtor's property is exempt from the judgment creditor's reach. The bill clarifies that this does not impact enforceability of other liens, such as a holder of a mechanic's lien.

## Miscellaneous Provisions

The bill:

- Makes conforming changes.
- Deletes obsolete language relating to liens created by a writ of execution which has been delivered to the sheriff before October 1, 2001.
- Provides an effective date of July 1, 2023.

## B. SECTION DIRECTORY:

**Section 1:** Creates a short title.

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<sup>21</sup> This person is either the first lienholder (e.g., the bank that loaned money for a motor vehicle's purchase that is still owed money on the loan) or the property's owner.

<sup>22</sup> Judicial process may include 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, 320.1703, or 620.8504, F.S., or a proceeding supplementary to execution under s. 56.29, F.S.

<sup>23</sup> "Repossession" is an act by a creditor to take possession of a debtor's property that is pledged as collateral or in which the creditor has an interest to satisfy a debt. Legal Information Institute, *Repossession*, <https://www.law.cornell.edu/wex/repossession> (last visited Feb. 24, 2023).

<sup>24</sup> "Replevin" is an action seeking the return of personal property that was wrongfully taken or is wrongfully held by another. Florida law provides a statutory right of replevin that authorizes a plaintiff to bring a replevin action without notice to the defendant in certain circumstances. See ch. 78, F.S.; Legal Information Institute, *Replevin*, <https://www.law.cornell.edu/wex/replevin> (last visited Feb. 24, 2023).

- Section 2:** Amends s. 55.202, F.S., relating to judgments, orders, and decrees; lien on personal property.
- Section 3:** Amends s. 55.205, F.S., relating to effect of judgment lien.
- Section 4:** Amends s. 55.208, F.S., relating to effect of prior liens on payment intangibles and accounts.
- Section 5:** Amends s. 55.209, F.S., relating to Department of State; processing fees, responsibilities.
- Section 6:** Amends s. 56.29, F.S., relating to proceedings supplementary.
- Section 7:** Amends s. 319.24, F.S., relating to issuance in duplicate; delivery; liens and encumbrances.
- Section 8:** Amends s. 319.241, F.S., relating to removal of liens from records.
- Section 9:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### 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 economic impact on:

- Judgment creditors as it:
  - Expands the types of property to which a judgment lien may attach; and
  - Creates mechanisms whereby judgment creditors can cause a lien to be noted on a motor vehicle's or vessel's title certificate.
- Judgment debtors as it expressly prohibits seizure of their lien property except through judicial process or the debtor's consent, reducing the chance that a judgment creditor may seize a judgment debtor's exempt personal property through self-help methods.
- Third parties owing money to a judgment debtor, as it provides payment direction for such persons that may limit their liability exposure.

However, the bill may have a negative economic impact on judgment debtors as it exposes more of their property (that is, non-exempt payment intangibles and accounts) to the reach of judgment creditors.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 319.17, F.S., vests the DHSMV with the authority to adopt rules under ss.120.536 and 120.54, F.S., to implement ch. 319, F.S. Additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The committee substitute clarifies:

- the rights between a judgment lien holder and a creditor or purchaser of a vehicle or vessel; and
- that a judgment lien holder who has no relationship to a vehicle, vessel, or other tangible property is not given the right to engage in self-help remedies, and must seek a court order or obtain a signed consent from a judgment debtor after the judgment lien attaches.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.