

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 Banking and Insurance

BILL: CS/SB 984

INTRODUCER: Judiciary Committee and Senator Rouson

SUBJECT: Judgment Liens

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 984 is a glitch bill that makes several changes to legislation relating to judgment liens enacted during the 2023 Legislative Session. These changes:

- Clarify that a judgment lien in payment intangibles and accounts only applies to property interests that are located in the state,
- Allow filing of a corrective judgment lien certificate,
- Provide that the Uniform Commercial Code lien priority law prevails over the lien priority of the statute on judgments, and
- Authorize an account debtor to pay a judgment creditor in lieu of paying the judgment debtor pursuant to a settlement agreement between the judgment creditor and judgment debtor without the need for a final order or judgment directing payment.

The bill is effective July 1, 2024.

II. Present Situation:

Judgment Liens - In General

If a court enters a civil judgment, it creates a judgment debtor and a judgment creditor. Should the judgment debtor fail or refuse to pay the amount of the judgment, the judgment creditor may elect to use statutory methods for the involuntary sale of property or the involuntary transfer of money to partially or fully satisfy the judgment.

A common method of judgment collection is the imposition of a judgment lien.¹ The main benefit of a judgment lien is that the judgment debtor can no longer easily sell the property because any purchaser would, generally speaking, acquire the property subject to the lien. A lien in real property is created by recording a certified copy of the judgment in the county in which the real property is located.² Liens against personal property, however, are not so simple.

A general lien against personal property is created by recording a judgment lien certificate with the Florida Department of State (DOS).³ Before July 1, 2023, Florida law did not allow a judgment lien to attach to intangible personal property, such as royalty rights and the right to receive rents or payments for the sale of goods or services.⁴ Thus, a judgment debtor's intangible personal property remained outside the reach of a judgment creditor even though the value of such property might have been significant and sufficient to satisfy the judgment lien. During the 2023 Legislative Session, however, the Legislature passed the Judgment Lien Improvement Act which, in pertinent part, allows a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specified the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.⁵

Filing a judgment lien certificate does not encumber all personal property. Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers for value unless the lien is noted on the title certificate.⁶ The Judgment Lien Improvement Act simplified the process for filing a lien that will appear on the title certificate.

Secured Transactions 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.⁷ 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 secured party may take possession

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

² 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.

³ 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.

⁴ Section 56.061, F.S.

⁵ Chapter 2023-300, L.O.F.

⁶ "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.

⁷ Chapters 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited Jan. 25, 2024).

of if the debtor defaults on the loan.⁸ In addition to tangible personal property, collateral recognized by the UCC includes accounts and payment intangibles

Priority between Competing Liens

Judgment liens in real property are filed with the clerk of court (or county recorder in certain counties) in the same place and manner as mortgages and other liens. A judgment lien in real property stands in line with the mortgages and other liens, equally taking priority according to the date filed (earlier takes priority over later filed).

Similarly, judgment liens against personal property (including intangibles) are filed with the Department of State in the same place and manner as UCC filing statements. The judgment lien law follows the same priority for liens in personal property as real property -- by date of filing.⁹ However, UCC liens are of two general types -- general (encompassing some or all of a debtor's property) and purchase money (taking a lien against specific goods bought with the loan). Under the UCC, most purchase money liens have priority over general liens as to the specific property that was purchased with the money.¹⁰ Additionally, a possessory lien in personal property may take priority under the UCC over an earlier filed lien.¹¹

Effect of Judgment Lien Certificate Improperly Filed

A judgment lien certificate may be filed with the Department of State only after the judgment has become final and if the time to move for rehearing has lapsed, no motion for rehearing is pending, and no stay of the judgment or its enforcement is then in effect.¹² A court may authorize, for cause shown, the filing of a judgment lien certificate before a judgment has become final when the court has authorized the issuance of a writ of execution in the same matter. A judgment lien certificate not filed in compliance with these statutory requirements is permanently void and of no effect. This means that a judgment creditor who files the judgment lien certificate earlier than allowed may lose all rights to the lien.¹³

Redirection of Payment Intangibles or Accounts

The Judgment Lien Improvement Act added that accounts and payment intangibles are forms of intangible personal property to which a judgment lien may now attach. A third party owing money to a judgment debtor that is classified as payment intangibles or accounts ("account debtor") must stop paying the judgment debtor only when the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect

⁸ The UCC right of the creditor to take possession of personal property, sell it, and apply the proceeds to the debt is in contrast with the traditional remedies of foreclosure against real property and execution against personal property. Because real property does not move, foreclosure leaves the debtor in possession of the real property up to the time of sale. Because personal property can move, traditional judgment enforcement against personal property entails seizure by the sheriff and sale at auction.

⁹ Section 55.202(3), F.S.

¹⁰ Section 679.324, F.S.

¹¹ Section 679.333, F.S.

¹² Section 55.202(2)(b), F.S.

¹³ *In re Pullum*, 598 B.R. 489 (Bankr. N.D. Fla. 2019).

to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor's payment obligation only in accordance with a final order or judgment.

III. Effect of Proposed Changes:

The bill clarifies that a judgment lien in payment intangibles and accounts applies only to property interests that are located in the state.

The bill provides that, if a judgment lien certificate is void for having been filed improperly, the judgment creditor may file a judgment lien certificate that is in compliance with the filing requirements. The priority of the lien will be set according to the filing that was in compliance.

The bill provides that if there are conflicting rights between a judgment lienholder and a UCC lienholder, the UCC lien priority law prevails over the lien priority of the statute on judgments.

The bill adds that an account debtor may lawfully pay a judgment creditor in lieu of paying the judgment debtor pursuant to a settlement agreement between the judgment creditor and judgment debtor, as opposed to payment only with a final order or judgment directing payment.

The bill is effective July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in reduced legal costs and collection costs by clarifying the rights and duties of debtors, creditors, and related parties.

C. Government Sector Impact:

The bill by reducing potential ambiguities may reduce litigation and burdens on the state courts system.

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, and 55.208.

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

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

CS by Judiciary on January 16, 2024:

The CS makes a technical change to maintain current law providing that a judgment lien applies only to property located within the state.

B. Amendments:

None.