

By the Committee on Judiciary; and Senator Crist

590-03367-08

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1 A bill to be entitled

2 An act relating to service of process; amending s. 30.231,
3 F.S.; increasing the fees charged by the sheriff in civil
4 cases for service of process; exempting the State of
5 Florida and its agencies from increased fees; deleting a
6 prohibition on additional fees for certain documents;
7 amending s. 48.021, F.S.; providing that criminal witness
8 subpoenas and criminal summonses may be served by a
9 special process server appointed by the local sheriff or
10 by a certified process server; amending s. 48.27, F.S., to
11 conform; providing for selection of authorized certified
12 process servers to serve such subpoenas and summonses;
13 amending s. 56.041, F.S.; providing that all unsatisfied
14 executions in the possession of the sheriff docketed
15 before October 1, 2001, may be returned to the issuing
16 court; amending s. 56.21, F.S.; requiring the submission
17 of an affidavit before levying a judgment upon real
18 property; requiring the sheriff to furnish to the judgment
19 debtor or the debtor's attorney of record a copy of the
20 notice of sale, notice of levy, and affidavit within a
21 specified period before execution of a sale or levy;
22 amending s. 56.27, F.S.; requiring that priority of liens
23 on real property be based on the effective date of the
24 judgment lien for a specified purpose; requiring a levying
25 creditor to deliver to the sheriff at the time of the levy
26 request an affidavit setting forth certain information and
27 attestations; amending ss. 741.30 and 784.046, F.S.,
28 relating to service of process in cases of domestic
29 violence or sexual abuse; authorizing clerks of court to

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30 transmit facsimile copies of previously certified
31 injunctions to sheriffs upon request; requiring sheriffs
32 to verify receipt of facsimile copies of injunctions with
33 clerks of court before attempting service; authorizing law
34 enforcement officers to serve facsimile copies of
35 injunctions in the same manner as certified copies;
36 providing an effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Subsections (1) and (4) of section 30.231,
41 Florida Statutes, are amended to read:

42 30.231 Sheriffs' fees for service of summons, subpoenas,
43 and executions.--

44 (1) The sheriffs of all counties of the state in civil
45 cases shall charge fixed, nonrefundable fees for docketing and
46 service of process, according to the following schedule:

47 (a) All summons or writs except executions: \$40 ~~\$20~~ for
48 each summons or writ to be served, except when more than one
49 summons or writ is issued at the same time out of the same cause
50 of action to be served upon one person or defendant at the same
51 time, in which case the sheriff shall be entitled to one fee.

52 (b) All writs except executions requiring a levy or seizure
53 of property: \$50 in addition to the \$40 ~~\$20~~ fee as stated in
54 paragraph (a).

55 (c) Witness subpoenas: \$40 ~~\$20~~ for each witness to be
56 served.

57 (d) Executions:

58 1. Forty ~~Twenty~~ dollars for docketing and indexing each

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59 writ of execution, regardless of the number of persons involved.

60 2. Fifty dollars for each levy.

61 a. A levy is considered made when any property or any
62 portion of the property listed or unlisted in the instructions
63 for levy is seized, or upon demand of the sheriff the writ is
64 satisfied by the defendant in lieu of seizure. Seizure requires
65 that the sheriff take actual possession, if practicable, or,
66 alternatively, constructive possession of the property by order
67 of the court.

68 b. When the instructions are for levy upon real property, a
69 levy fee is required for each parcel described in the
70 instructions.

71 c. When the instructions are for levy based upon personal
72 property, one fee is allowed, unless the property is seized at
73 different locations, conditional upon all of the items being
74 advertised collectively and the sale being held at a single
75 location. However, if the property seized cannot be sold at one
76 location during the same sale as advertised, but requires
77 separate sales at different locations, the sheriff is then
78 authorized to impose a levy fee for the property and sale at each
79 location.

80 3. Forty ~~Twenty~~ dollars for advertisement of sale under
81 process.

82 4. Forty ~~Twenty~~ dollars for each sale under process.

83 5. Forty ~~Twenty~~ dollars for each deed, bill of sale, or
84 satisfaction of judgment.

85
86 Fees under this subsection chargeable to the State of Florida or
87 its agencies shall be those fees that were effective under this

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88 subsection on June 30, 2008.

89 (4) All fees collected under paragraphs (1) (a), (b), (c),
90 and (d) shall be nonrefundable and shall be earned when each
91 original request or service of process is made, ~~and no additional~~
92 ~~fees shall be required for alias and pluries documents when~~
93 ~~service was not effected on the original document in that county~~
94 ~~by that sheriff.~~

95 Section 2. Subsection (1) of section 48.021, Florida
96 Statutes, is amended to read:

97 48.021 Process; by whom served.--

98 (1) All process shall be served by the sheriff of the
99 county where the person to be served is found, except initial
100 nonenforceable civil process, criminal witness subpoenas, and
101 criminal summonses may be served by a special process server
102 appointed by the sheriff as provided for in this section or by a
103 certified process server as provided for in ss. 48.25-48.31.
104 Civil witness subpoenas may be served by any person authorized by
105 rules of civil procedure.

106 Section 3. Subsection (2) of section 48.27, Florida
107 Statutes, is amended to read:

108 48.27 Certified process servers.--

109 (2) (a) The addition of a person's name to the list
110 authorizes him or her to serve initial nonenforceable civil
111 process on a person found within the circuit where the process
112 server is certified when a civil action has been filed against
113 such person in the circuit court or in a county court in the
114 state. Upon filing an action in circuit or county court, a person
115 may select from the list for the circuit where the process is to
116 be served one or more certified process servers to serve initial

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117 nonenforceable civil process.

118 (b) The addition of a person's name to the list authorizes
119 him or her to serve criminal witness subpoenas and criminal
120 summonses on a person found within the circuit where the process
121 server is certified. The state in any proceeding or investigation
122 by a grand jury or any party in a criminal action, prosecution,
123 or proceeding may select from the list for the circuit where the
124 process is to be served one or more certified process servers to
125 serve the subpoena or summons.

126 Section 4. Subsection (2) of section 56.041, Florida
127 Statutes, is amended to read:

128 56.041 Executions; collection and return.--

129 (2) All unsatisfied executions in the hands of the sheriff
130 docketed before October 1, 2001, or 20 years after the date of
131 issuance of final judgment upon which the execution was issued
132 may be returned, to the court issuing the execution, ~~20 years~~
133 after the date of issuance of final judgment upon which the
134 execution was issued. Upon such return, the clerk of the court of
135 issuance shall provide a receipt, to the sheriff submitting the
136 return, acknowledging the return of the unsatisfied execution.

137 Section 5. Section 56.21, Florida Statutes, is amended to
138 read:

139 56.21 Execution sales; notice.--Notice of all sales under
140 execution shall be given by advertisement once each week for 4
141 successive weeks in a newspaper published in the county in which
142 the sale is to take place. The time of such notice may be
143 shortened in the discretion of the court from which the execution
144 issued, upon affidavit that the property to be sold is subject to
145 decay and will not sell for its full value if held until date of

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146 sale. On or before the date of the first publication or posting
147 of the notice of sale, a copy of the notice of sale shall be
148 furnished by the sheriff by certified mail to the attorney of
149 record of the judgment debtor, or to the judgment debtor at the
150 judgment debtor's last known address if the judgment debtor does
151 not have an attorney of record. Such copy of the notice of sale
152 shall be mailed even though a default judgment was entered. When
153 levying upon real or personal property, a notice of such levy and
154 execution sale and a copy of the affidavit required by s.
155 56.27(4) shall be sent by the sheriff to the attorneys of record
156 of all judgment creditors, or to all judgment creditors who do
157 not have an attorney of record, who have acquired a judgment lien
158 as provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),
159 and whose liens have not lapsed at the time of levy, at the
160 address listed in the judgment lien certificate, or, if amended,
161 in any amendment to the judgment lien certificate, and to all
162 secured creditors who have filed financing statements as provided
163 in part V of chapter 679 in the name of the judgment debtor
164 reflecting a security interest in property of the kind to be sold
165 at the execution sale at the address listed in the financing
166 statement, or, if amended, in any amendment to the financing
167 statement. Such notice shall be made in the same manner as notice
168 is made to any judgment debtor under this section. When levying
169 upon real property, notice of such levy and execution sale and
170 affidavit required by s. 56.27(4) shall be made to the property
171 owner of record in the same manner as notice is made to any
172 judgment debtor pursuant to this section. When selling real or
173 personal property, the sale date shall not be earlier than 30
174 days after the date of the first advertisement.

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175 Section 6. Subsections (1), (2), and (4) of section 56.27,
176 Florida Statutes, are amended to read:

177 56.27 Executions; payment of money collected.--

178 (1) All money received under executions shall be paid, in
179 the order prescribed, to the following: the sheriff, for costs;
180 the levying creditor in the amount of \$500 as liquidated
181 expenses; ~~and if the levy is upon real property, the first~~
182 priority lienholder under s. 55.10(1) and (2), s. 55.10; and if
183 ~~the levy is upon personal property, the first priority lienholder~~
184 ~~under~~ s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
185 an affidavit required by subsection (4), or his or her attorney,
186 in satisfaction of the judgment lien, ~~if provided that the~~
187 judgment lien has not lapsed at the time of the levy. The receipt
188 of the attorney shall be a release of the officer paying the
189 money to him or her. ~~If when~~ the name of more than one attorney
190 appears in the court file, the money shall be paid to the
191 attorney who originally commenced the action or who made the
192 original defense unless the file shows that another attorney has
193 been substituted.

194 (2) ~~If when~~ property sold under execution brings more than
195 the amount needed to satisfy the provisions of subsection (1),
196 the surplus shall be paid in the order of priority to any
197 judgment lienholders whose judgment liens have not lapsed. For
198 the purpose of the sheriff's distribution of the surplus to
199 judgment lienholders under this subsection:

200 (a) Priority of liens on personal property shall be based
201 on the effective date of the judgment lien acquired under s.
202 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an
203 affidavit required under subsection (4).

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204 (b) Priority of liens on real property shall be based on
205 the effective date of the judgment lien acquired under s.
206 55.10(1) and (2), as set forth in an affidavit required under
207 subsection (4).

208
209 If there is a surplus after all valid judgment liens and
210 execution liens have been satisfied, the surplus must be paid to
211 the owner of the property sold ~~defendant~~.

212 (4) Before the date of the first publication or posting of
213 the notice of sale provided for under s. 56.21, at the time of
214 the levy request to the sheriff, the levying creditor shall
215 deliver to the sheriff an affidavit setting forth all of the
216 following as to the judgment debtor:

217 (a) For a personal property levy, an attestation by that
218 the levying creditor or the creditor's attorney of record that he
219 or she has reviewed the database or judgment lien records
220 established in accordance with ss. 55.201-55.209 and that the
221 information contained in the affidavit based on that review is
222 true and correct. For real property levy in accordance with s.
223 55.10(1) and (2), an attestation by the levying creditor or his
224 or her attorney of record that he or she has reviewed the records
225 of the clerk of court of the county where the property is
226 situated, or that he or she has performed a title search, and
227 that the information contained in the affidavit based on that
228 review or title search is true and correct.†

229 (b) The information required under s. 55.203(1) and (2) for
230 each judgment lien certificate indexed under the name of the
231 judgment debtor as to each judgment creditor; the file number
232 assigned to the record of the original and, if any, the second

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233 judgment lien; and the date of filing for each judgment lien
234 certificate under s. 55.202 or s. 55.204(3). For real property,
235 the information contained in the certified copy of recordation of
236 lien pursuant to s. 55.10(1) and (2) for each lien recorded on
237 real property. ~~and~~

238 (c) A statement that the levying creditor either does not
239 have any other levy in process or, if another levy is in process,
240 the levying creditor believes in good faith that the total value
241 of the property under execution does not exceed the amount of
242 outstanding judgments.

243 Section 7. Paragraph (a) of subsection (8) of section
244 741.30, Florida Statutes, is amended to read:

245 741.30 Domestic violence; injunction; powers and duties of
246 court and clerk; petition; notice and hearing; temporary
247 injunction; issuance of injunction; statewide verification
248 system; enforcement.--

249 (8)(a)1. The clerk of the court shall furnish a copy of the
250 petition, financial affidavit, Uniform Child Custody Jurisdiction
251 and Enforcement Act affidavit, if any, notice of hearing, and
252 temporary injunction, if any, to the sheriff or a law enforcement
253 agency of the county where the respondent resides or can be
254 found, who shall serve it upon the respondent as soon thereafter
255 as possible on any day of the week and at any time of the day or
256 night. When requested by the sheriff, the clerk of court may
257 transmit a facsimile copy of an injunction that has been
258 certified by the clerk of court, and this facsimile copy may be
259 served in the same manner as a certified copy. Upon receiving a
260 facsimile copy, the sheriff must verify receipt with the sender
261 before attempting to serve it upon the respondent. In addition,

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262 if the sheriff is in possession of an injunction for protection
263 that has been certified by the clerk of court, the sheriff may
264 transmit a facsimile copy of that injunction to a law enforcement
265 officer who shall serve it in the same manner as a certified
266 copy. The clerk of the court shall be responsible for furnishing
267 to the sheriff such information on the respondent's physical
268 description and location as is required by the department to
269 comply with the verification procedures set forth in this
270 section. Notwithstanding any other provision of law to the
271 contrary, the chief judge of each circuit, in consultation with
272 the appropriate sheriff, may authorize a law enforcement agency
273 within the jurisdiction to effect service. A law enforcement
274 agency serving injunctions pursuant to this section shall use
275 service and verification procedures consistent with those of the
276 sheriff.

277 2. When an injunction is issued, if the petitioner requests
278 the assistance of a law enforcement agency, the court may order
279 that an officer from the appropriate law enforcement agency
280 accompany the petitioner and assist in placing the petitioner in
281 possession of the dwelling or residence, or otherwise assist in
282 the execution or service of the injunction. A law enforcement
283 officer shall accept a copy of an injunction for protection
284 against domestic violence, certified by the clerk of the court,
285 from the petitioner and immediately serve it upon a respondent
286 who has been located but not yet served.

287 3. All orders issued, changed, continued, extended, or
288 vacated subsequent to the original service of documents
289 enumerated under subparagraph 1., shall be certified by the clerk
290 of the court and delivered to the parties at the time of the

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291 entry of the order. The parties may acknowledge receipt of such
292 order in writing on the face of the original order. In the event
293 a party fails or refuses to acknowledge the receipt of a
294 certified copy of an order, the clerk shall note on the original
295 order that service was effected. If delivery at the hearing is
296 not possible, the clerk shall mail certified copies of the order
297 to the parties at the last known address of each party. Service
298 by mail is complete upon mailing. When an order is served
299 pursuant to this subsection, the clerk shall prepare a written
300 certification to be placed in the court file specifying the time,
301 date, and method of service and shall notify the sheriff.

302
303 If the respondent has been served previously with the temporary
304 injunction and has failed to appear at the initial hearing on the
305 temporary injunction, any subsequent petition for injunction
306 seeking an extension of time may be served on the respondent by
307 the clerk of the court by certified mail in lieu of personal
308 service by a law enforcement officer.

309 Section 8. Paragraph (a) of subsection (8) of section
310 784.046, Florida Statutes, is amended to read:

311 784.046 Action by victim of repeat violence, sexual
312 violence, or dating violence for protective injunction; powers
313 and duties of court and clerk of court; filing and form of
314 petition; notice and hearing; temporary injunction; issuance;
315 statewide verification system; enforcement.--

316 (8) (a) 1. The clerk of the court shall furnish a copy of the
317 petition, notice of hearing, and temporary injunction, if any, to
318 the sheriff or a law enforcement agency of the county where the
319 respondent resides or can be found, who shall serve it upon the

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320 respondent as soon thereafter as possible on any day of the week
321 and at any time of the day or night. When requested by the
322 sheriff, the clerk of court may transmit a facsimile copy of an
323 injunction that has been certified by the clerk of court, and
324 this facsimile copy may be served in the same manner as a
325 certified copy. Upon receiving a facsimile copy, the sheriff must
326 verify receipt with the sender before attempting to serve it upon
327 the respondent. In addition, if the sheriff is in possession of
328 an injunction for protection that has been certified by the clerk
329 of court, the sheriff may transmit a facsimile copy of that
330 injunction to a law enforcement officer who shall serve it in the
331 same manner as a certified copy. The clerk of the court shall be
332 responsible for furnishing to the sheriff such information on the
333 respondent's physical description and location as is required by
334 the department to comply with the verification procedures set
335 forth in this section. Notwithstanding any other provision of law
336 to the contrary, the chief judge of each circuit, in consultation
337 with the appropriate sheriff, may authorize a law enforcement
338 agency within the chief judge's jurisdiction to effect this type
339 of service and to receive a portion of the service fee. No person
340 shall be authorized or permitted to serve or execute an
341 injunction issued under this section unless the person is a law
342 enforcement officer as defined in chapter 943.

343 2. When an injunction is issued, if the petitioner requests
344 the assistance of a law enforcement agency, the court may order
345 that an officer from the appropriate law enforcement agency
346 accompany the petitioner and assist in the execution or service
347 of the injunction. A law enforcement officer shall accept a copy
348 of an injunction for protection against repeat violence, sexual

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349 | violence, or dating violence, certified by the clerk of the
350 | court, from the petitioner and immediately serve it upon a
351 | respondent who has been located but not yet served.

352 | Section 9. This act shall take effect July 1, 2008.