

By the Committee on Judiciary

308-1838A-99

1                                   A bill to be entitled  
2           An act relating to debtors and creditors;  
3           amending s. 15.16, F.S.; providing for  
4           electronic filing of records with the  
5           Department of State; amending s. 30.17, F.S.;  
6           providing for phase-out of sheriff's execution  
7           docket; amending s. 30.231, F.S.; clarifying  
8           seizure of property for levy; amending s.  
9           48.021, F.S.; providing for a sheriff to  
10          periodically add names of process servers to  
11          list; creating s. 55.201, F.S.; requiring the  
12          Department of State to establish a database of  
13          judgment lien records; creating s. 55.202,  
14          F.S.; providing for acquisition of a judgment  
15          lien on personal property; creating s. 55.203,  
16          F.S.; providing requirements for the content,  
17          filing, and indexing of judgment lien  
18          certificates by the Department of State;  
19          creating s. 55.204, F.S.; providing for lapse  
20          of a judgment lien; providing for acquisition  
21          of a second judgment lien; creating s. 55.205,  
22          F.S.; providing for the effect of a judgment  
23          lien; creating s. 55.206, F.S.; providing for  
24          amendment, termination, partial release,  
25          assignment, tolling, or correction of a  
26          recorded judgment lien; creating s. 55.207,  
27          F.S.; providing for filing and effect of a  
28          correction statement as to a judgment lien  
29          record; creating s. 55.208, F.S.; providing for  
30          phase-out of effect of writs of execution  
31          delivered to a sheriff prior to a date certain;

1           creating s. 55.209, F.S.; providing for the  
2           responsibilities of the Department of State and  
3           for filing fees; amending s. 55.604, F.S.;  
4           limiting the effect of a foreign judgment as a  
5           lien on personal property in this state;  
6           amending s. 56.09, F.S.; providing for limited  
7           levy of executions against persons; amending s.  
8           56.21, F.S.; providing for notice of levy and  
9           execution sale and affidavit of levying  
10          creditor to judgment creditors and certain  
11          secured creditors; amending s. 56.27, F.S.;  
12          providing for payment distribution of money  
13          collected under execution; amending s. 56.29,  
14          F.S.; clarifying who may file an affidavit for  
15          purposes of supplementary proceedings; amending  
16          s. 61.11, F.S.; requiring respondent to pay  
17          certain costs and expenses associated with  
18          writs of bodily attachment in connection with  
19          court-ordered child support obligations;  
20          amending s. 77.01, F.S.; providing entities  
21          with right to writ of garnishment; creating s.  
22          77.041, F.S.; providing for notice of  
23          procedures for asserting exemptions and  
24          requesting a hearing; amending s. 77.055, F.S.;  
25          clarifying requirements for service of  
26          garnishee's answer and notice of right to  
27          dissolve writ of garnishment; amending s.  
28          77.06, F.S.; providing for creation of judgment  
29          lien upon service of writ of garnishment;  
30          amending s. 222.12, F.S.; providing for taking  
31          of oath before notary public regarding

1 exemptions from garnishment; amending s.  
2 679.301, F.S.; revising the definition for lien  
3 creditor; providing effective dates.  
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5 Be It Enacted by the Legislature of the State of Florida:  
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7 Section 1. Section 15.16, Florida Statutes, is amended  
8 to read:

9 15.16 Reproduction of records; admissibility in  
10 evidence; electronic receipt and transmission of records;  
11 certification; acknowledgment.--

12 (1) The Department of State may cause to be made  
13 copies of any records maintained by it by miniature  
14 photographic microfilming or microphotographic processes or  
15 any other photographic, mechanical, or other process  
16 heretofore or hereafter devised, including electronic data  
17 processing.

18 (2) Photographs, nonerasable optical images, or  
19 microphotographs in the form of film, facsimiles, or prints of  
20 any records made in compliance with the provisions of this  
21 section shall have the same force and effect as the originals  
22 thereof and shall be treated as originals for the purpose of  
23 their admissibility in evidence. Duly certified or  
24 authenticated reproductions of such photographs, nonerasable  
25 optical images, or microphotographs shall be admitted in  
26 evidence equally with the original photographs, nonerasable  
27 optical images, or microphotographs.

28 (3) The Department of State may cause to be received  
29 electronically any records that are required to be filed with  
30 it under chapter 55, ~~pursuant to~~ chapter 607, chapter 608,  
31 chapter 617, chapter 620, chapter 621, chapter 679, chapter

1 713, or chapter 865, through facsimile or other electronic  
2 transfers, for the purpose of filing such records. The  
3 originals of all such electronically transmitted records must  
4 be executed in the manner prescribed by the department  
5 ~~provided by law and must contain in the lower left-hand corner~~  
6 ~~of the first page the name, address, and telephone number of~~  
7 ~~the preparer of the original and, if prepared by an attorney~~  
8 ~~licensed in this state, the preparer's Florida Bar membership~~  
9 ~~number.~~ The receipt of such electronic transfer constitutes  
10 delivery to the department as required by law.

11 (4) Notwithstanding any other provision of law, the  
12 department may certify or acknowledge and electronically  
13 transmit any record maintained by it. The certification must  
14 be evidenced by a certification code on each page transmitted  
15 which must include the charter or filing number of the  
16 document, date of transmission, and page number of the total  
17 number of pages transmitted, and a sequential certification  
18 number assigned by the department which will identify the  
19 transmission and be available for verification of any  
20 transmitted acknowledgment or certified document.

21 (5) Notwithstanding any other law, for the purposes of  
22 electronic filing ~~if not otherwise provided by law,~~ the  
23 Department of State shall determine:

24 (a) The appropriate format, which must be retrievable  
25 or reproducible in typewritten or printed form and must be  
26 legible.

27 (b) The manner of execution, which may include any  
28 symbol, manual, facsimile, conformed, or electronic signature  
29 adopted by a person with the present intent to authenticate a  
30 document.

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1           (c) The method of electronic transmission and fee  
2 payment for any document placed under its jurisdiction for  
3 filing or recordation.

4           (d) The amount of any fee surcharge for the use of an  
5 electronic filing format.

6           (6) The Department of State may utilize government or  
7 private-sector contractors in the promotion or provision of  
8 any electronic filing services., by rule, the appropriate  
9 ~~format for, number of copies of, manner of execution of,~~  
10 ~~method of electronic transmission of, and amount of and method~~  
11 ~~of payment of fees for any document placed under its~~  
12 ~~jurisdiction for filing or recordation.~~

13           Section 2. Section 30.17, Florida Statutes, is amended  
14 to read:

15           30.17 Sheriff to keep an execution docket.--

16           (1) The sheriff shall keep an execution docket, which  
17 shall contain a list of all executions, orders and decrees  
18 directed to the sheriff, in relation to the collection of  
19 moneys, and a statement of all moneys credited on such orders,  
20 executions and decrees, and when and to whom and by whom paid.

21           (2) Said docket shall be subject to the inspection of  
22 all parties interested.

23           (3) The sheriff's failure to keep said docket, or to  
24 allow inspection of the same, shall be considered a contempt  
25 of court and subject him or her to a fine not exceeding \$100,  
26 at the discretion of the court.

27           (4) On October 1, 2001, the sheriff shall cease  
28 docketing newly delivered writs of executions. The sheriff  
29 shall maintain the existing docket until October 1, 2003. Upon  
30 the request of any person or entity who delivered a writ of  
31 execution to the sheriff before October 1, 2001, the sheriff

1 shall provide written certification of the date on which the  
2 writ was delivered. The sheriff's duties under this section  
3 shall cease on October 1, 2003.

4 Section 3. Subsection (1) of section 30.231, Florida  
5 Statutes, is amended to read:

6 30.231 Sheriffs' fees for service of summons,  
7 subpoenas, and executions.--

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

11 (a) All summons or writs except executions: \$20 for  
12 each summons or writ to be served, except when more than one  
13 summons or writ is issued at the same time out of the same  
14 cause of action to be served upon one person or defendant at  
15 the same time, in which case the sheriff shall be entitled to  
16 one fee.

17 (b) All writs except executions requiring a levy or  
18 seizure of property: \$50 in addition to the \$20 fee as stated  
19 in paragraph (a).

20 (c) Witness subpoenas: \$20 for each witness to be  
21 served.

22 (d) Executions:

23 1. Twenty dollars for docketing and indexing each writ  
24 of execution, regardless of the number of persons involved.

25 2. Fifty dollars for each levy.

26 a. A levy is considered made when any property or any  
27 portion of the property listed or unlisted in the instructions  
28 for levy is seized, or upon demand of the sheriff the writ is  
29 satisfied by the defendant in lieu of seizure. Seizure  
30 requires that the sheriff take actual possession, if

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1 practicable, or alternatively, constructive possession of the  
2 property by order of the court.

3         b. When the instructions are for levy upon real  
4 property, a levy fee is required for each parcel described in  
5 the instructions.

6         c. When the instructions are for levy based upon  
7 personal property, one fee is allowed, although the property  
8 may be seized at different locations, conditional upon all of  
9 the items being advertised collectively and the sale being  
10 held at a single location. However, if the property seized  
11 cannot be sold at one location during the same sale as  
12 advertised, but requires separate sales at different  
13 locations, the sheriff is then authorized to impose a levy fee  
14 for the property and sale at each location.

15         3. Twenty dollars for advertisement of sale under  
16 process.

17         4. Twenty dollars for sale under process.

18         5. Twenty dollars for deed, bill of sale, or  
19 satisfaction of judgment.

20         Section 4. Paragraph (a) of subsection (2) of section  
21 48.021, Florida Statutes, 1998 Supplement, is amended to read:

22         48.021 Process; by whom served.--

23         (2)(a) The sheriff of each county may, in his or her  
24 discretion, establish an approved list of natural persons  
25 designated as special process servers. The sheriff may  
26 periodically ~~shall~~ add to such list the names of those natural  
27 persons who have met the requirements provided for in this  
28 section. Each natural person whose name has been added to the  
29 approved list is subject to annual recertification and  
30 reappointment by the sheriff. The sheriff shall prescribe an  
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1 appropriate form for application for appointment. A reasonable  
2 fee for the processing of the application shall be charged.

3 Section 5. Section 55.201, Florida Statutes, is  
4 created to read:

5 55.201 Central database of judgment liens on personal  
6 property.--The Department of State shall maintain a database  
7 of judgment lien records established in accordance with ss.  
8 55.201-55.209. The database information shall be accessible to  
9 the public via electronic means. The department may not permit  
10 or provide the bulk sale or distribution of such database  
11 information in any form.

12 Section 6. Section 55.202, Florida Statutes, is  
13 created to read:

14 55.202 Judgments, orders and decrees; lien on personal  
15 property.--

16 (1) A judgment lien securing the unpaid amount of any  
17 money judgment may be acquired by the holder of a judgment  
18 entered by:

19 (a) A court of this state;

20 (b) A court of the United States having jurisdiction  
21 in this state;

22 (c) A court of the United States or any other state to  
23 the extent enforceable under the Florida Enforcement of  
24 Foreign Judgments Act, ss. 55.501-55.509; or

25 (d) A foreign state as defined in the Uniform  
26 Out-of-Country Foreign Money-Judgment Recognition Act, ss.  
27 55.601-55.607, from the time and to the extent enforceable  
28 thereunder.

29 (2) A judgment lien may be acquired on the judgment  
30 debtor's interest in all personal property subject to  
31 execution in this state, other than fixtures, money, and



1 negotiable instruments. A judgment lien is acquired by filing  
2 a judgment lien certificate in accordance with s. 55.203 with  
3 the Department of State after the judgment has become final  
4 and if no stay of the judgment or its enforcement is in effect  
5 at the time the certificate is filed. A judgment lien is  
6 effective as of the date of filing, but no lien attaches to  
7 property until the debtor acquires an interest in the  
8 property. Except as provided in s. 55.204(2), a judgment  
9 creditor may file only one effective judgment lien certificate  
10 based upon a particular judgment.

11 (3) Except as otherwise provided in s. 55.208, the  
12 priority of a judgment lien acquired in accordance with this  
13 section or s. 55.204(2) is established at the time the  
14 judgment lien is recorded. Such judgment lien is deemed  
15 recorded as of its effective date as provided in this section  
16 or s. 55.204(2).

17 (4) Any reference to the filing of a judgment lien  
18 certificate in ss. 55.201-55.209 shall mean recording of such  
19 document.

20 Section 7. Section 55.203, Florida Statutes, is  
21 created to read:

22 55.203 Judgment lien certificate; content, filing, and  
23 indexing.--

24 (1) An original judgment lien certificate, as provided  
25 in s. 55.202, must include:

26 (a) The legal name of each judgment debtor and, if a  
27 recorded legal entity, the registered name and document filing  
28 number as shown in the records of the Department of State;

29 (b) The last known address and social security number,  
30 except that in cases of default judgment, the social security  
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1 number must be included only if known, or federal employer  
2 identification number of each judgment debtor;

3 (c) The legal name of the judgment creditor and, if a  
4 recorded legal entity, the registered name and document filing  
5 number as shown in the records of the Department of State, and  
6 the name of the judgment creditor's attorney or duly  
7 authorized representative, if any;

8 (d) The address and social security number or federal  
9 employer identification number of the judgment creditor;

10 (e) The identity of the court which entered the  
11 judgment and the case number and the date the written judgment  
12 was entered;

13 (f) The amount due on the money judgment and the  
14 applicable interest rate; and

15 (g) The signature of the judgment creditor or the  
16 judgment creditor's attorney or duly authorized  
17 representative.

18 (2) A second judgment lien certificate, as provided in  
19 s. 55.204(2), must include the information required in  
20 subsection (1) and must state the file number assigned to the  
21 record of the original judgment lien certificate, the money  
22 amount remaining unpaid, and the interest accrued thereon.

23 (3) An amendment, as provided in s. 55.206, or a  
24 correction statement, as provided in s. 55.207, must state the  
25 file number of the judgment lien record to which the amendment  
26 or correction statement relates and must state the action,  
27 change, or statement to be added.

28 (4) The Department of State shall examine, for  
29 compliance with ss. 55.201-55.209, each document submitted for  
30 filing and shall accept or reject the document accordingly.

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1           (a) For each judgment lien certificate filed, the  
2 department shall:

3           1. Create a record;  
4           2. Assign a unique file number to the record;  
5           3. Include the date of filing of the judgment lien  
6 certificate;

7           4. Maintain the record in a database accessible to the  
8 public via electronic means;

9           5. Index the judgment lien certificate according to  
10 the name of each judgment debtor; and

11           6. Index all subsequently filed documents relating to  
12 an original judgment lien certificate in a manner that  
13 associates them to the original judgment lien certificate.

14           (5) The validity of a judgment lien certificate filed  
15 under this section may not be defeated by technical or  
16 clerical errors made in good faith which are not seriously  
17 misleading, nor may any claim of estoppel be based on such  
18 errors.

19           (6) The Department of State shall prescribe mandatory  
20 forms of all documents to be filed under this section.

21           Section 8. Section 55.204, Florida Statutes, is  
22 created to read:

23           55.204 Duration and continuation of judgment lien;  
24 destruction of records.--

25           (1) Except as provided in this section, a judgment  
26 lien acquired under s. 55.202 lapses and becomes invalid 5  
27 years after the date of filing the judgment lien certificate.

28           (2) At any time within 6 months prior to the scheduled  
29 lapse of a judgment lien acquired under s. 55.202, the  
30 judgment creditor may acquire a second judgment lien by filing  
31 a new judgment lien certificate. The second judgment lien

1 becomes effective on the date of lapse of the original  
2 judgment lien or on the date on which the judgment lien  
3 certificate is filed, whichever is later. The second judgment  
4 lien is deemed recorded on its effective date. The second  
5 judgment lien is deemed a new judgment lien and not a  
6 continuation of the original judgment lien. The second  
7 judgment lien permanently lapses and becomes invalid 5 years  
8 after its effective date, and no additional liens based on the  
9 original judgment may be obtained.

10 (3) A judgment lien continues only as to itemized  
11 property for an additional 90 days after lapse of the lien.  
12 Such judgment lien will continue only if:

13 (a) The property had been itemized and its location  
14 described with sufficient particularity in the instructions  
15 for levy;

16 (b) The levy had been delivered to the sheriff prior  
17 to the date of lapse of the lien to permit the sheriff to act;  
18 and

19 (c) The property was located in the county in which  
20 the sheriff has jurisdiction at the time of delivery of the  
21 instruction for levy. Subsequent removal of the property does  
22 not defeat the lien. A court may order continuation of the  
23 lien beyond the 90-day period on a showing that extraordinary  
24 circumstances have prevented levy.

25 (4) The date of lapse of a judgment lien whose  
26 enforceability has been temporarily stayed or enjoined as a  
27 result of any legal or equitable proceeding is tolled until 30  
28 days after the stay or injunction is terminated.

29 (5) The Department of State shall maintain each  
30 judgment lien record and all information contained therein for  
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1 a minimum of 1 year after the judgment lien lapses in  
2 accordance with this section.

3 Section 9. Section 55.205, Florida Statutes, is  
4 created to read:

5 55.205 Effect of judgment lien.--

6 (1) A valid judgment lien gives the judgment creditor  
7 the right to take possession of the property subject to levy  
8 through writ of execution, garnishment, or other judicial  
9 process. A judgment creditor who has not filed a judgment lien  
10 certificate in accordance with s. 55.203 or whose lien has  
11 lapsed may nevertheless take possession of the judgment  
12 debtor's property through such other judicial process. A  
13 judgment creditor proceeding by writ of execution obtains a  
14 lien as of the time of levy and only on the property levied  
15 upon. Except as provided in s. 55.208, such judgment creditor  
16 takes subject to the claims and interest of priority judgment  
17 creditors.

18 (2) A buyer in the ordinary course of business as  
19 defined in s. 671.201(9) takes free of a judgment lien created  
20 under this section even though the buyer knows of its  
21 existence. A valid security interest as defined in chapter 679  
22 in after-acquired property of the judgment debtor which is  
23 perfected prior to the effective date of a judgment lien takes  
24 priority over the judgment lien on the after-acquired  
25 property.

26 Section 10. Section 55.206, Florida Statutes, is  
27 created to read:

28 55.206 Amendment of judgment lien record; termination,  
29 partial release, assignment, continuation, tolling,  
30 correction.--

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1           (1) An amendment to a judgment lien acquired under s.  
2 55.202 may be filed by the judgment creditor of record, which  
3 may provide for:

4           (a) The termination, partial release, or assignment of  
5 the judgment creditor's interest in a judgment lien;

6           (b) The continuation and termination of the  
7 continuation of a judgment lien, as provided in s. 55.204(3);

8           (c) The tolling and termination of the tolling of a  
9 lapse of a judgment lien, as provided in s. 55.204(4); or

10           (d) The correction or change of any other information  
11 provided in the record of a judgment lien.

12           (2) Within 30 days following written demand by a  
13 judgment debtor after the obligation underlying a judgment  
14 lien has been fully or partially released, the judgment  
15 lienholder must send to the judgment debtor a statement  
16 indicating that there is no longer a claim for a lien on the  
17 personal property of the judgment debtor or that the judgment  
18 lien has been partially released and setting forth the value  
19 of the lien remaining unpaid as of the date of the statement.  
20 A statement signed by an assignee must include or be  
21 accompanied by a separate written acknowledgement of  
22 assignment signed by the judgment creditor of record. If the  
23 judgment lienholder fails to send such a statement within 30  
24 days after proper written demand therefor, the judgment  
25 lienholder is liable to the judgment debtor for \$100, and for  
26 any loss, including reasonable attorney's fees, caused by such  
27 failure to the judgment debtor.

28           (3) The judgment debtor, the judgment creditor, or  
29 assignee may file such statement with the Department of State.

30           Section 11. Section 55.207, Florida Statutes, is  
31 created to read:

1           55.207 Correction of judgment lien record.--  
2           (1) A person may file with the Department of State a  
3 correction statement with respect to a judgment lien record,  
4 as provided in s. 55.203, indexed under the person's name if  
5 the person believes that the record is inaccurate or that the  
6 judgment lien certificate was wrongfully filed.  
7           (2) A correction statement must:  
8           (a) State the judgment debtor named and the file  
9 number assigned to the judgment lien record to which the  
10 correction statement relates;  
11           (b) Indicate that it is a correction statement;  
12           (c) Provide the basis for the person's belief that the  
13 judgment lien certificate was wrongfully filed or the record  
14 is inaccurate; and  
15           (d) Indicate the manner in which the person believes  
16 the record should be corrected to cure any inaccuracy.  
17           (3) The filing of a correction statement does not  
18 affect the effectiveness of the judgment lien or other filed  
19 record.  
20           Section 12. Section 55.208, Florida Statutes, is  
21 created to read:  
22           55.208 Effect of recorded judgment lien on writs of  
23 execution previously delivered to a sheriff.--  
24           (1) Any lien created by a writ of execution which has  
25 been delivered to the sheriff of any county prior to October  
26 1, 2001, remains in effect for 2 years thereafter as to any  
27 property of the judgment debtor located in that county before  
28 October 1, 2001, and remaining within that county after that  
29 date. As to any property of the judgment debtor brought into  
30 the county on or after October 1, 2001, such writs create no  
31 lien, inchoate or otherwise.

1           (2) If a judgment creditor who has delivered a writ of  
2 execution to a sheriff in any county prior to October 1, 2001,  
3 properly files a judgment lien certificate with the Department  
4 of State by October 1, 2003, together with a certification by  
5 the sheriff as to the date on which the writ was delivered,  
6 the resulting judgment lien is deemed recorded on the date the  
7 writ was delivered to the sheriff as to all leviable property  
8 of the judgment debtor which is located in that county on  
9 October 1, 2001, and that remains continuously in that county  
10 thereafter. As to all other property of the judgment debtor,  
11 the effective date of the judgment lien is as provided in s.  
12 55.202. The duration of all judgment liens is as provided in  
13 ss. 55.204 and 55.205(3), regardless of the date on which a  
14 lien is determined to have been recorded.

15           (3) If a judgment creditor who has delivered a writ of  
16 execution to a sheriff in any county prior to October 1, 2001,  
17 does not properly file a judgment lien certificate with the  
18 Department of State by October 1, 2003, such writ is  
19 considered to have been abandoned and to be of no effect after  
20 October 1, 2003.

21           Section 13. Section 55.209, Florida Statutes, is  
22 created to read:

23           55.209 Department of State; processing fees,  
24 responsibilities.--

25           (1) The Department of State shall collect the  
26 following nonrefundable processing fees for all documents  
27 filed in accordance with ss. 55.201-55.209:

28           (a) For any judgment lien certificate or other  
29 documents permitted to be filed, \$20.

30           (b) For the certification of any recorded document,  
31 \$10.



1           (c) For copies of judgment lien documents which are  
2 produced by the Department of State, \$1 per page or part  
3 thereof. However, no charge may be collected for copies  
4 provided in an online electronic format via the Internet.

5           (d) For indexing a judgment lien by multiple judgment  
6 debtor names, \$5 per additional name.

7           (e) For each additional facing page attached to a  
8 judgment lien certificate or document permitted to be filed,  
9 \$5.

10           (2) Unless otherwise provided by law, the Department  
11 of State may not conduct any search of the database  
12 established under s. 55.201 to determine the existence of any  
13 judgment lien record or to perform any service other than in  
14 connection with those services for which payment of services  
15 are required under this section. The information maintained in  
16 the database is for public notice purposes only and the  
17 department may make no certification or determination of the  
18 validity of any judgment lien acquired under ss. 55.202 and  
19 55.204.

20           (3) The Department of State shall ensure that the  
21 database information is available and accessible solely for  
22 public use via the Internet or other electronic means. The  
23 department may not permit or provide for the bulk sale or  
24 distribution of such database information in any form.

25           Section 14. Subsection (8) is added to section 55.604,  
26 Florida Statutes, to read:

27           55.604 Recognition and enforcement.--Except as  
28 provided in s. 55.605, a foreign judgment meeting the  
29 requirements of s. 55.603 is conclusive between the parties to  
30 the extent that it grants or denies recovery of a sum of  
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1 money. Procedures for recognition and enforceability of a  
2 foreign judgment shall be as follows:

3 (8) A judgment lien on personal property is acquired  
4 only when a judgment lien certificate satisfying the  
5 requirements of s. 55.203 has been filed with the Department  
6 of State.

7 Section 15. Section 56.09, Florida Statutes, is  
8 amended to read:

9 56.09 Executions against corporations and persons;  
10 generally.--

11 (1) On any judgment against a corporation, plaintiff  
12 may have a writ of an execution levied on the current money as  
13 well as on the goods and chattels, lands and tenements of said  
14 corporation.

15 (2) On any judgment against a person, a plaintiff may  
16 have a writ of execution levied on the person's money in  
17 excess of \$1,000. Such limitation on levy of execution does  
18 not create an exemption, nor does it limit the availability of  
19 any other exemption provided by law. For purposes of this  
20 subsection only, the term "money" means cash, checks, money  
21 orders, and the like. Nothing in this subsection authorizes  
22 the physical search of a person.

23 Section 16. Section 56.21, Florida Statutes, is  
24 amended to read:

25 56.21 Execution sales; notice.--Notice of all sales  
26 under execution shall be given by advertisement once each week  
27 for 4 successive weeks in a newspaper published in the county  
28 in which the sale is to take place. The time of such notice  
29 may be shortened in the discretion of the court from which the  
30 execution issued, upon affidavit that the property to be sold  
31 is subject to decay and will not sell for its full value if

1 held until date of sale. On or before the date of the first  
2 publication or posting of the notice of sale, a copy of the  
3 notice of sale shall be furnished by certified mail to the  
4 attorney of record of the judgment debtor, or to the judgment  
5 debtor at the judgment debtor's last known address if the  
6 judgment debtor does not have an attorney of record. Such copy  
7 of the notice of sale shall be mailed even though a default  
8 judgment was entered. When levying upon personal property, a  
9 notice of such levy and execution sale and a copy of the  
10 affidavit required by s. 56.27(4) shall be made by the levying  
11 creditor to the attorney of record of the judgment creditor or  
12 the judgment creditor who has filed a judgment lien  
13 certificate as provided in s. 55.202 and to all secured  
14 creditors who have filed financing statements as provided in  
15 s. 679.401 in the name of the judgment debtor reflecting a  
16 security interest in property of the kind to be sold at the  
17 execution sale. Such notice shall be made in the same manner  
18 as notice is made to any judgment debtor under this section.  
19 When levying upon real property, notice of such levy and  
20 execution sale shall be made to the property owner of record  
21 in the same manner as notice is made to any judgment debtor  
22 pursuant to this section. When selling real or personal  
23 property, the sale date shall not be earlier than 30 days  
24 after the date of the first advertisement.

25 Section 17. Section 56.27, Florida Statutes, 1998  
26 Supplement, is amended to read:

27 56.27 Executions; payment to ~~execution creditor~~ of  
28 money collected.--

29 (1) All money received under executions shall be paid,  
30 in the order prescribed, to the following: the sheriff for  
31 costs, the levying creditor in the amount of \$500 as

1 liquidated expenses and the judgment lienholder having the  
2 earliest recorded judgment lien acquired under s. 55.202, as  
3 set forth in an affidavit required by s. 56.27(4), or his or  
4 her attorney, in satisfaction of the judgment lien, provided  
5 that the judgment lien has not lapsed at the time of the levy  
6 ~~party in whose favor the execution was issued or his or her~~  
7 ~~attorney.~~ The receipt of the attorney shall be a release of  
8 the officer paying the money to him or her. When the name of  
9 more than one attorney appears in the court file, the money  
10 shall be paid to the attorney who originally commenced the  
11 action or who made the original defense unless the file shows  
12 that another attorney has been substituted.

13 (2) When property sold under execution brings more  
14 than the amount needed to satisfy the provisions of subsection  
15 (1), the surplus shall be paid in the order of priority to any  
16 judgment lienholders whose judgment liens have not lapsed.  
17 Priority shall be based on the effective date of the judgment  
18 lien acquired under s. 55.202, as set forth in an affidavit  
19 required under s. 56.27(4). If there is a surplus after all  
20 valid judgment liens and execution liens have been satisfied  
21 ~~of the execution, the surplus must be paid to the defendant~~  
22 ~~or, if there is another writ against the defendant docketed~~  
23 ~~and indexed with the sheriff, the surplus must be paid to the~~  
24 ~~junior writ.~~

25 (3) The value of the property levied upon shall not be  
26 considered excessive unless the value unreasonably exceeds the  
27 total debt reflected in all unsatisfied judgment liens that  
28 have not lapsed and any unsatisfied lien of the levying  
29 creditor.

30 (4) On or before the date of the first publication or  
31 posting of the notice of sale provided for under s. 56.21, the

1 levying creditor shall file an affidavit setting forth the  
2 following as to the judgment debtor:

3 (a) An attestation that the levying creditor has  
4 reviewed the database or judgment lien records established in  
5 accordance with ss. 55.201-55.209 and that the information  
6 contained in the affidavit based on that review is true and  
7 correct;

8 (b) The information required under ss. 55.203(1) and  
9 55.203(2) for each judgment lien certificate indexed under the  
10 name of the judgment debtor as to each judgment creditor; the  
11 file number assigned to the record of the original and, if  
12 any, the second judgment lien; and the date of filing for each  
13 judgment lien certificate under s. 55.202 or s. 55.204(2); and

14 (c) A statement that the levying creditor either does  
15 not have any other levy in process or, if another levy is in  
16 process, the levying creditor believes in good faith that the  
17 total value of the property under execution does not exceed  
18 the amount of outstanding judgments.

19 (5) A sheriff paying money received under an execution  
20 in accordance with the information contained in the affidavit  
21 under subsection (4) is not liable to anyone for damages  
22 arising from a wrongful levy.

23 Section 18. Subsection (1) of section 56.29, Florida  
24 Statutes, is amended to read:

25 56.29 Proceedings supplementary.--

26 (1) When any person ~~sheriff~~ holds an unsatisfied  
27 execution and has delivered a writ of execution to any  
28 sheriff, the plaintiff in execution may file an affidavit so  
29 stating and that the execution is valid and outstanding and  
30 thereupon is entitled to these proceedings supplementary to  
31 execution.

1           Section 19. Paragraph (a) of subsection (2) of section  
2 61.11, Florida Statutes, is amended to read:

3           61.11 Writs.--

4           (2)(a) When the court issues a writ of bodily  
5 attachment in connection with a court-ordered child support  
6 obligation, the writ or attachment to the writ must include,  
7 at a minimum, such information on the respondent's physical  
8 description and location as is required for entry of the writ  
9 into the Florida Crime Information Center telecommunications  
10 system and authorization for the assessment and collection of  
11 the actual costs associated with the service of the writ and  
12 transportation of the respondent in compliance thereof. In  
13 addition to the purge payment, the respondent shall be  
14 responsible for payment of all court costs, sheriff fees as  
15 provided in s. 30.231, actual costs of detention or  
16 imprisonment, and other related expenses associated with the  
17 service of the writ and transportation of the respondent.~~The~~  
18 ~~writ shall direct that~~ Service and execution of the writ may  
19 be made on any day of the week and any time of the day or  
20 night.

21           Section 20. Section 77.01, Florida Statutes, is  
22 amended to read:

23           77.01 Right to garnishment.--Every person or entity  
24 who has sued to recover a debt or has recovered judgment in  
25 any court against any person or entity, ~~natural or corporate~~,  
26 has a right to a writ of garnishment, in the manner  
27 hereinafter provided, to subject any debt due or any debt  
28 under a negotiable instrument that will become due to  
29 defendant by a third person, and any tangible or intangible  
30 personal property of defendant in the possession or control of  
31 a third person. The officers, agents, and employees of any

1 companies or corporations are third persons in regard to the  
2 companies or corporations, and as such are subject to  
3 garnishment after judgment against the companies or  
4 corporations.

5 Section 21. Section 77.041, Florida Statutes, is  
6 created to read:

7 77.041 Notice to defendant for claim of exemption from  
8 garnishment; procedure for hearing.--

9 (1) Upon application for a writ of garnishment by a  
10 plaintiff, the clerk of the court shall attach to the writ the  
11 following "Notice to Defendant":

12

13 NOTICE TO DEFENDANT OF RIGHT AGAINST GARNISHMENT  
14 OF WAGES, MONEY, AND OTHER PROPERTY

15 The Writ of Garnishment delivered to you with this  
16 Notice means that wages, money, and other property belonging  
17 to you have been garnished to pay a court judgment against  
18 you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES,  
19 MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

20 State and federal laws provide that certain wages,  
21 money, and property, even if deposited in a bank, savings and  
22 loan, or credit union, may not be taken to pay certain types  
23 of court judgments. Such wages, money, and property are exempt  
24 from garnishment. The major exemptions are listed below on the  
25 form for Claim of Exemption and Request for Hearing. This list  
26 does not include all possible exemptions. You should consult a  
27 lawyer for specific advice.

28 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY  
29 FROM BEING GARNISHED, OR TO GET BACK ANYTHING  
30 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR  
31 CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS

1           SET FORTH BELOW AND HAVE THE FORM NOTARIZED.  
2           YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE  
3           WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS  
4           NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU  
5           MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM  
6           TO THE PLAINTIFF AND THE GARNISHEE AT THE  
7           ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.  
8           If you request a hearing, it will be held as soon as  
9           possible after your request is received by the court. The  
10          plaintiff must file any objection within 2 business days, or  
11          alternatively, 7 days if you mailed a copy of the form for  
12          Claim of Exemption and Request for Hearing to the plaintiff.  
13          If the plaintiff files an objection to your Claim of Exemption  
14          and Request for Hearing, the clerk will notify you and the  
15          other parties of the time and date of the hearing. You may  
16          attend the hearing with or without an attorney. If the  
17          plaintiff fails to file an objection, no hearing is required,  
18          the writ of garnishment will be dissolved and your wages,  
19          money, or property will be released.  
20          YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION  
21          IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR  
22          PROPERTY FROM BEING APPLIED TO THE COURT  
23          JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL  
24          ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD  
25          SEE A LAWYER. IF YOU CAN'T AFFORD A PRIVATE  
26          LAWYER, LEGAL SERVICES MAY BE AVAILABLE.  
27          CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE  
28          CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM  
29          IN YOUR AREA.  
30          CLAIM OF EXEMPTION AND REQUEST FOR HEARING  
31



1 I claim exemptions from garnishment under the following  
2 categories as checked:

3 \_\_\_\_\_ 1. Head of family wages. (You must check a  
4 or b below.)

5 \_\_\_\_\_ a. I provide more than one half of the  
6 support for a child or other dependent and  
7 have net earnings of \$500 or less per week.

8 \_\_\_\_\_ b. I provide more than one half of the  
9 support for a child or other dependent, have  
10 net earnings of more than \$500 per week, but  
11 have not agreed in writing to have my wages  
12 garnished.

13 \_\_\_\_\_ 2. Social Security benefits.

14 \_\_\_\_\_ 3. Supplemental Security Income benefits.

15 \_\_\_\_\_ 4. Public assistance (welfare).

16 \_\_\_\_\_ 5. Workers' Compensation.

17 \_\_\_\_\_ 6. Unemployment Compensation.

18 \_\_\_\_\_ 7. Veterans' benefits.

19 \_\_\_\_\_ 8. Retirement benefits.

20 \_\_\_\_\_ 9. Life insurance benefits or cash surrender  
21 value of a life insurance policy.

22 \_\_\_\_\_ 10. Other

23 \_\_\_\_\_ (explain)

24

25 I request a hearing to decide the validity of my claim. Notice  
26 of the hearing should be given to me at:

27

28 Address: \_\_\_\_\_

29

30 Telephone number: \_\_\_\_\_

31

1 The statements made in this request are true to the best of my  
2 knowledge and belief.  
3  
4 \_\_\_\_\_  
5  
6 Defendant's signature  
7  
8 Date \_\_\_\_\_  
9  
10 STATE OF FLORIDA  
11  
12 COUNTY OF  
13  
14 Sworn and subscribed to before me this ..... day of  
15 .....(month and year), by (name of person making  
16 statement).....  
17  
18 Notary Public/Deputy Clerk  
19  
20 Personally Known .....OR Produced Identification  
21 .....  
22 Type of Identification Produced .....  
23 (2) The plaintiff must mail, by first class, a copy of  
24 the writ of garnishment, a copy of the motion for writ of  
25 garnishment, and the "Notice to Defendant" to the defendant's  
26 last known address within 5 business days after the writ is  
27 issued or 3 business days after the writ is served on the  
28 garnishee, whichever is later. However, if such documents are  
29 returned as undeliverable by the post office, or if the last  
30 known address is not discoverable after diligent search, the  
31 plaintiff must mail, by first class, the documents to the

1 defendant at the defendant's place of employment. The  
2 plaintiff shall file in the proceeding a certificate of such  
3 service.

4 (3) Upon the filing by a defendant of a claim of  
5 exemption and request for hearing, a hearing will be held as  
6 soon as is practicable to determine the validity of the  
7 claimed exemptions. If the plaintiff does not file a sworn  
8 written statement that contests the defendant's claim of  
9 exemption within 2 business days, or alternatively 7 business  
10 days, if the claim and request were served by mail, no hearing  
11 is required and the clerk must automatically dissolve the writ  
12 and notify the parties of the dissolution by mail.

13 Section 22. Section 77.055, Florida Statutes, is  
14 amended to read:

15 77.055 Service of garnishee's answer and notice of  
16 right to dissolve writ ~~Notice to defendant and other~~  
17 ~~interested persons.--~~Within 5 days after service of the  
18 garnishee's answer on the plaintiff or after the time period  
19 for the garnishee's answer has expired, the plaintiff shall  
20 serve, by mail, the following documents: ~~a copy of the writ, a~~  
21 copy of the garnishee's answer, and a notice advising, and a  
22 ~~certificate of service. The notice shall advise the recipient~~  
23 ~~that he or she must move to dissolve the writ of garnishment~~  
24 within 20 days after the date indicated on the certificate of  
25 service in the notice if any allegation in the plaintiff's  
26 motion for writ of garnishment is untrue ~~within the time~~  
27 ~~period set forth in s. 77.07(2) or be defaulted and that he or~~  
28 ~~she may have exemptions from the garnishment which must be~~  
29 ~~asserted as a defense. The plaintiff shall serve these~~  
30 documents on the defendant at the defendant's last known  
31 address and any other address disclosed by the garnishee's

1 answer and on any other person disclosed in the garnishee's  
2 answer to have any ownership interest in the deposit, account,  
3 or property controlled by the garnishee. The plaintiff shall  
4 file in the proceeding a certificate of such service.

5 Section 23. Subsection (1) of section 77.06, Florida  
6 Statutes, is amended to read:

7 77.06 Writ; effect.--

8 (1) Service of the writ shall make garnishee liable  
9 for all debts due by him or her to defendant and for any  
10 tangible or intangible personal property of defendant in the  
11 garnishee's possession or control at the time of the service  
12 of the writ or at any time between the service and the time of  
13 the garnishee's answer. Service of the writ creates a lien in  
14 or upon any such debts or property at the time of service or  
15 at the time such debts or property come into the garnishee's  
16 possession or control.

17 Section 24. Section 222.12, Florida Statutes, is  
18 amended to read:

19 222.12 Proceedings for exemption.--Whenever any money  
20 or other thing due for labor or services as aforesaid is  
21 attached by such process, the person to whom the same is due  
22 and owing may make oath before the officer who issued the  
23 process or before a notary public that the money attached is  
24 due for the personal labor and services of such person, and  
25 she or he is the head of a family residing in said state.  
26 When such an affidavit is made, notice of same shall be  
27 forthwith given to the party, or her or his attorney, who sued  
28 out the process, and if the facts set forth in such affidavit  
29 are not denied under oath within 2 business days after the  
30 service of said notice, the process shall be returned, and all  
31 proceedings under the same shall cease. If the facts stated

1 in the affidavit are denied by the party who sued out the  
2 process within the time above set forth and under oath, then  
3 the matter shall be tried by the court from which the writ or  
4 process issued, in like manner as claims to property levied  
5 upon by writ of execution are tried, and the money or thing  
6 attached shall remain subject to the process until released by  
7 the judgment of the court which shall try the issue.

8 Section 25. Subsections (2) and (3) of section  
9 679.301, Florida Statutes, are amended to read:

10 679.301 Persons who take priority over unperfected  
11 security interests; right of "lien creditor."--

12 (2) If the secured party files with respect to a  
13 purchase money security interest before or within 15 days  
14 after the debtor receives possession of the collateral, the  
15 secured party ~~he or she~~ takes priority over the rights of a  
16 transferee in bulk or of a lien creditor ~~which arise between~~  
17 ~~the time the security interest attaches and the time of~~  
18 filing.

19 (3) A "lien creditor" means a creditor who has  
20 acquired a lien on the property involved by attachment, levy,  
21 or the like and includes a judgment lienholder as provided  
22 under ss. 55.202-55.209, an assignee for benefit of creditors  
23 from the time of assignment, and a trustee in bankruptcy from  
24 the date of the filing of the petition or a receiver in equity  
25 from the time of appointment.

26 Section 26. This act shall take effect October 1,  
27 1999, except that sections 5 through 14, and sections 16  
28 through 18 shall take effect October 1, 2001.

29  
30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   SB 294

4 Provides expressly that seizure of property by the sheriff may  
5 be actual or alternatively, constructive.

6 Provides the sheriffs with the option to periodically update  
7 the list of process servers.

8 Clarifies and adds to the proposed statutory framework for  
9 perfecting and establishing priority claims of judgment liens  
10 on personal property through the maintenance of a central  
11 database by the Department of State. Specifically, it:

12           permits a judgment creditor to amend judgment lien  
13 records to reflect the continuation, tolling, partial  
14 release, assignment or correction of a judgment lien;

15           phases-out the sheriff's execution docket as required  
16 under s. 30.17, F.S.;

17           requires a notice of levy, execution and affidavit of  
18 levying creditor to be provided to certain judgment  
19 creditors and secured creditors;

20           provides for the order of distribution of money  
21 collected under execution;

22           requires an affidavit of levying creditor to attest  
23 review of judgment lien database;

24           redefines "lien creditor" to include a judgement  
25 lienholder for personal property as established under  
26 the new provisions.

27 Allows a writ of execution to be made on a person's money in  
28 excess of \$1,000.

29 Clarifies that when a person (rather than a sheriff) holds an  
30 unsatisfied lien, the plaintiff may then file an affidavit to  
31 institute proceedings supplementary.

Expressly provides for the respondent's liability for certain  
costs, fees, and expenses associated with the service of a  
writ of bodily attachment in connection with a child-support  
obligation.

Revises certain garnishment provisions, specifically those  
relating to notice to defendant, claim for persons seeking  
exemptions and a right to a hearing. Allows oaths to be taken  
before a notary public for exemptions, and provides that a  
lien is created upon service of writ of garnishment.

Provides that certain provisions relating to the statutory  
framework for judgment liens on personal property will take  
effect October 1, 2001, whereas other provisions will take  
effect October 1, 1999.