

By the Committees on Criminal Justice; Judiciary; and Senator
Crist

591-2355-07

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

1 violence or sexual abuse; authorizing clerks of
2 court to transmit facsimile copies of
3 previously certified injunctions to sheriffs
4 upon request; requiring sheriffs to verify
5 receipt of facsimile copies of injunctions with
6 clerks of court before attempting service;
7 authorizing law enforcement officers to serve
8 facsimile copies of injunctions in the same
9 manner as certified copies; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsections (1) and (4) of section 30.231,
15 Florida Statutes, are amended to read:

16 30.231 Sheriffs' fees for service of summons,
17 subpoenas, and executions.--

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

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

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

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

- 1 (d) Executions:
- 2 1. ~~Forty Twenty~~ dollars for docketing and indexing
- 3 each writ of execution, regardless of the number of persons
- 4 involved.
- 5 2. Fifty dollars for each levy.
- 6 a. A levy is considered made when any property or any
- 7 portion of the property listed or unlisted in the instructions
- 8 for levy is seized, or upon demand of the sheriff the writ is
- 9 satisfied by the defendant in lieu of seizure. Seizure
- 10 requires that the sheriff take actual possession, if
- 11 practicable, or, alternatively, constructive possession of the
- 12 property by order of the court.
- 13 b. When the instructions are for levy upon real
- 14 property, a levy fee is required for each parcel described in
- 15 the instructions.
- 16 c. When the instructions are for levy based upon
- 17 personal property, one fee is allowed, unless the property is
- 18 seized at different locations, conditional upon all of the
- 19 items being advertised collectively and the sale being held at
- 20 a single location. However, if the property seized cannot be
- 21 sold at one location during the same sale as advertised, but
- 22 requires separate sales at different locations, the sheriff is
- 23 then authorized to impose a levy fee for the property and sale
- 24 at each location.
- 25 3. ~~Forty Twenty~~ dollars for advertisement of sale
- 26 under process.
- 27 4. ~~Forty Twenty~~ dollars for each sale under process.
- 28 5. ~~Forty Twenty~~ dollars for each deed, bill of sale,
- 29 or satisfaction of judgment.
- 30 (e) The State of Florida or any of its agencies, when
- 31 appearing as appellant or petitioner, is exempt from the

1 increase in fees for docketing and service of process
2 effective July 1, 2007.

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

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

11 48.021 Process; by whom served.--

12 (1) All process shall be served by the sheriff of the
13 county where the person to be served is found, except initial
14 nonenforceable civil process, criminal witness subpoenas, and
15 criminal summonses may be served by a special process server
16 appointed by the sheriff as provided for in this section or by
17 a certified process server as provided for in ss. 48.25-48.31.
18 Civil witness subpoenas may be served by any person authorized
19 by rules of civil procedure.

20 Section 3. Subsection (2) of section 56.041, Florida
21 Statutes, is amended to read:

22 56.041 Executions; collection and return.--

23 (2) All unsatisfied executions in the hands of the
24 sheriff docketed before October 1, 2001, or 20 years after the
25 date of issuance of final judgment upon which the execution
26 was issued may be returned, to the court issuing the
27 execution, ~~20 years after the date of issuance of final~~
28 ~~judgment upon which the execution was issued.~~ Upon such
29 return, the clerk of the court of issuance shall provide a
30 receipt, to the sheriff submitting the return, acknowledging
31 the return of the unsatisfied execution.

1 Section 4. Section 56.21, Florida Statutes, is amended
2 to read:

3 56.21 Execution sales; notice.--Notice of all sales
4 under execution shall be given by advertisement once each week
5 for 4 successive weeks in a newspaper published in the county
6 in which the sale is to take place. The time of such notice
7 may be shortened in the discretion of the court from which the
8 execution issued, upon affidavit that the property to be sold
9 is subject to decay and will not sell for its full value if
10 held until date of sale. On or before the date of the first
11 publication or posting of the notice of sale, a copy of the
12 notice of sale shall be furnished by the sheriff by certified
13 mail to the attorney of record of the judgment debtor, or to
14 the judgment debtor at the judgment debtor's last known
15 address if the judgment debtor does not have an attorney of
16 record. Such copy of the notice of sale shall be mailed even
17 though a default judgment was entered. When levying upon real
18 or personal property, a notice of such levy and execution sale
19 and a copy of the affidavit required by s. 56.27(4) shall be
20 sent by the sheriff to the attorneys of record of all judgment
21 creditors, or to all judgment creditors who do not have an
22 attorney of record, who have acquired a judgment lien as
23 provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),
24 and whose liens have not lapsed at the time of levy, at the
25 address listed in the judgment lien certificate, or, if
26 amended, in any amendment to the judgment lien certificate,
27 and to all secured creditors who have filed financing
28 statements as provided in part V of chapter 679 in the name of
29 the judgment debtor reflecting a security interest in property
30 of the kind to be sold at the execution sale at the address
31 listed in the financing statement, or, if amended, in any

1 amendment to the financing statement. Such notice shall be
2 made in the same manner as notice is made to any judgment
3 debtor under this section. When levying upon real property,
4 notice of such levy and execution sale and affidavit required
5 by s. 56.27(4) shall be made to the property owner of record
6 in the same manner as notice is made to any judgment debtor
7 pursuant to this section. When selling real or personal
8 property, the sale date shall not be earlier than 30 days
9 after the date of the first advertisement.

10 Section 5. Subsections (1), (2), and (4) of section
11 56.27, Florida Statutes, are amended to read:

12 56.27 Executions; payment of money collected.--

13 (1) All money received under executions shall be paid,
14 in the order prescribed, to the following: the sheriff, for
15 costs; the levying creditor in the amount of \$500 as
16 liquidated expenses; and ~~if the levy is upon real property,~~
17 ~~the first~~ priority lienholder under s. 55.10(1) and (2), ~~s.~~
18 ~~55.10; and if the levy is upon personal property, the first~~
19 ~~priority lienholder under s. 55.202, s. 55.204(3), or s.~~
20 55.208(2), as set forth in an affidavit required by subsection
21 (4), or his or her attorney, in satisfaction of the judgment
22 lien, if ~~provided that~~ the judgment lien has not lapsed at the
23 time of the levy. The receipt of the attorney shall be a
24 release of the officer paying the money to him or her. If ~~When~~
25 the name of more than one attorney appears in the court file,
26 the money shall be paid to the attorney who originally
27 commenced the action or who made the original defense unless
28 the file shows that another attorney has been substituted.

29 (2) If ~~When~~ property sold under execution brings more
30 than the amount needed to satisfy the provisions of subsection
31 (1), the surplus shall be paid in the order of priority to any

1 judgment lienholders whose judgment liens have not lapsed.
2 Priority of liens on personal property shall be based on the
3 effective date of the judgment lien acquired under s. 55.202,
4 s. 55.204(3), or s. 55.208(2), as set forth in an affidavit
5 required under subsection (4). Priority of liens on real
6 property shall be based on the effective date of the judgment
7 lien acquired under s. 55.10(1) and (2), as set forth in an
8 affidavit required under subsection (4). If there is a surplus
9 after all valid judgment liens and execution liens have been
10 satisfied, the surplus must be paid to the defendant.

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

16 (a) For a personal property levy, an attestation by
17 ~~that~~ the levying creditor or the creditor's attorney of record
18 that he or she has reviewed the database or judgment lien
19 records established in accordance with ss. 55.201-55.209 and
20 that the information contained in the affidavit based on that
21 review is true and correct. For real property levy in
22 accordance with s. 55.10(1) and (2), an attestation by the
23 levying creditor or his or her attorney of record that he or
24 she has reviewed the records of the clerk of court of the
25 county where the property is situated, or that he or she has
26 performed a title search, and that the information contained
27 in the affidavit based on that review or title search is true
28 and correct.†

29 (b) The information required under s. 55.203(1) and
30 (2) for each judgment lien certificate indexed under the name
31 of the judgment debtor as to each judgment creditor; the file

1 number assigned to the record of the original and, if any, the
2 second judgment lien; and the date of filing for each judgment
3 lien certificate under s. 55.202 or s. 55.204(3). For real
4 property, the information contained in the certified copy of
5 recordation of lien pursuant to s. 55.10(1) and (2) for each
6 lien recorded on real property. ~~and~~

7 (c) A statement that the levying creditor either does
8 not have any other levy in process or, if another levy is in
9 process, the levying creditor believes in good faith that the
10 total value of the property under execution does not exceed
11 the amount of outstanding judgments.

12 Section 6. Paragraph (a) of subsection (8) of section
13 741.30, Florida Statutes, is amended to read:

14 741.30 Domestic violence; injunction; powers and
15 duties of court and clerk; petition; notice and hearing;
16 temporary injunction; issuance of injunction; statewide
17 verification system; enforcement.--

18 (8)(a)1. The clerk of the court shall furnish a copy
19 of the petition, financial affidavit, Uniform Child Custody
20 Jurisdiction and Enforcement Act affidavit, if any, notice of
21 hearing, and temporary injunction, if any, to the sheriff or a
22 law enforcement agency of the county where the respondent
23 resides or can be found, who shall serve it upon the
24 respondent as soon thereafter as possible on any day of the
25 week and at any time of the day or night. When requested by
26 the sheriff, the clerk of court may transmit a facsimile copy
27 of an injunction that has been certified by the clerk of
28 court, and this facsimile copy may be served in the same
29 manner as a certified copy. Upon receiving a facsimile copy,
30 the sheriff must verify receipt with the sender before
31 attempting to serve it upon the respondent. In addition, if

1 the sheriff is in possession of an injunction for protection
2 that has been certified by the clerk of court, the sheriff may
3 transmit a facsimile copy of that injunction to a law
4 enforcement officer who shall serve it in the same manner as a
5 certified copy. The clerk of the court shall be responsible
6 for furnishing to the sheriff such information on the
7 respondent's physical description and location as is required
8 by the department to comply with the verification procedures
9 set forth in this section. Notwithstanding any other provision
10 of law to the contrary, the chief judge of each circuit, in
11 consultation with the appropriate sheriff, may authorize a law
12 enforcement agency within the jurisdiction to effect service.
13 A law enforcement agency serving injunctions pursuant to this
14 section shall use service and verification procedures
15 consistent with those of the sheriff.

16 2. When an injunction is issued, if the petitioner
17 requests the assistance of a law enforcement agency, the court
18 may order that an officer from the appropriate law enforcement
19 agency accompany the petitioner and assist in placing the
20 petitioner in possession of the dwelling or residence, or
21 otherwise assist in the execution or service of the
22 injunction. A law enforcement officer shall accept a copy of
23 an injunction for protection against domestic violence,
24 certified by the clerk of the court, from the petitioner and
25 immediately serve it upon a respondent who has been located
26 but not yet served.

27 3. All orders issued, changed, continued, extended, or
28 vacated subsequent to the original service of documents
29 enumerated under subparagraph 1., shall be certified by the
30 clerk of the court and delivered to the parties at the time of
31 the entry of the order. The parties may acknowledge receipt

1 of such order in writing on the face of the original order.
2 In the event a party fails or refuses to acknowledge the
3 receipt of a certified copy of an order, the clerk shall note
4 on the original order that service was effected. If delivery
5 at the hearing is not possible, the clerk shall mail certified
6 copies of the order to the parties at the last known address
7 of each party. Service by mail is complete upon mailing.
8 When an order is served pursuant to this subsection, the clerk
9 shall prepare a written certification to be placed in the
10 court file specifying the time, date, and method of service
11 and shall notify the sheriff.

12
13 If the respondent has been served previously with the
14 temporary injunction and has failed to appear at the initial
15 hearing on the temporary injunction, any subsequent petition
16 for injunction seeking an extension of time may be served on
17 the respondent by the clerk of the court by certified mail in
18 lieu of personal service by a law enforcement officer.

19 Section 7. Paragraph (a) of subsection (8) of section
20 784.046, Florida Statutes, is amended to read:

21 784.046 Action by victim of repeat violence, sexual
22 violence, or dating violence for protective injunction; powers
23 and duties of court and clerk of court; filing and form of
24 petition; notice and hearing; temporary injunction; issuance;
25 statewide verification system; enforcement.--

26 (8)(a)1. The clerk of the court shall furnish a copy
27 of the petition, notice of hearing, and temporary injunction,
28 if any, to the sheriff or a law enforcement agency of the
29 county where the respondent resides or can be found, who shall
30 serve it upon the respondent as soon thereafter as possible on
31 any day of the week and at any time of the day or night. When

1 requested by the sheriff, the clerk of court may transmit a
2 facsimile copy of an injunction that has been certified by the
3 clerk of court, and this facsimile copy may be served in the
4 same manner as a certified copy. Upon receiving a facsimile
5 copy, the sheriff must verify receipt with the sender before
6 attempting to serve it upon the respondent. In addition, if
7 the sheriff is in possession of an injunction for protection
8 that has been certified by the clerk of court, the sheriff may
9 transmit a facsimile copy of that injunction to a law
10 enforcement officer who shall serve it in the same manner as a
11 certified copy. The clerk of the court shall be responsible
12 for furnishing to the sheriff such information on the
13 respondent's physical description and location as is required
14 by the department to comply with the verification procedures
15 set forth in this section. Notwithstanding any other provision
16 of law to the contrary, the chief judge of each circuit, in
17 consultation with the appropriate sheriff, may authorize a law
18 enforcement agency within the chief judge's jurisdiction to
19 effect this type of service and to receive a portion of the
20 service fee. No person shall be authorized or permitted to
21 serve or execute an injunction issued under this section
22 unless the person is a law enforcement officer as defined in
23 chapter 943.

24 2. When an injunction is issued, if the petitioner
25 requests the assistance of a law enforcement agency, the court
26 may order that an officer from the appropriate law enforcement
27 agency accompany the petitioner and assist in the execution or
28 service of the injunction. A law enforcement officer shall
29 accept a copy of an injunction for protection against repeat
30 violence, sexual violence, or dating violence, certified by
31 the clerk of the court, from the petitioner and immediately

1 | serve it upon a respondent who has been located but not yet
2 | served.

3 | Section 8. This act shall take effect July 1, 2007.
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5 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 | COMMITTEE SUBSTITUTE FOR
7 | CS/SB 1712

8 | The Committee Substitute exempts the State of Florida or its
9 | agencies from paying the increased fees for service of process
10 | approved in the bill.

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