

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

29 | facsimile copies of injunctions in the same manner as
 30 | certified copies; providing an effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

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34 | Section 1. Subsection (4) of section 30.231, Florida
 35 | Statutes, is amended to read:

36 | 30.231 Sheriffs' fees for service of summons, subpoenas,
 37 | and executions.--

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

44 | Section 2. Subsection (1) of section 48.021, Florida
 45 | Statutes, is amended to read:

46 | 48.021 Process; by whom served.--

47 | (1) All process shall be served by the sheriff of the
 48 | county where the person to be served is found, except that
 49 | initial nonenforceable civil process, criminal witness
 50 | subpoenas, and criminal summonses may be served by a special
 51 | process server appointed by the sheriff as provided for in this
 52 | section or by a certified process server as provided for in ss.
 53 | 48.25-48.31. Civil witness subpoenas may be served by any person
 54 | authorized by rules of civil procedure.

55 | Section 3. Subsection (2) of section 56.041, Florida
 56 | Statutes, is amended to read:

57 56.041 Executions; collection and return.--

58 (2) All unsatisfied executions in the hands of the sheriff
 59 docketed before October 1, 2001, or 20 years after the date of
 60 issuance of final judgment upon which the execution was issued
 61 may be returned, to the court issuing the execution, ~~20 years~~
 62 ~~after the date of issuance of final judgment upon which the~~
 63 ~~execution was issued.~~ Upon such return, the clerk of the court
 64 of issuance shall provide a receipt, to the sheriff submitting
 65 the return, acknowledging the return of the unsatisfied
 66 execution.

67 Section 4. Section 56.21, Florida Statutes, is amended to
 68 read:

69 56.21 Execution sales; notice.--Notice of all sales under
 70 execution shall be given by advertisement once each week for 4
 71 successive weeks in a newspaper published in the county in which
 72 the sale is to take place. The time of such notice may be
 73 shortened in the discretion of the court from which the
 74 execution issued, upon affidavit that the property to be sold is
 75 subject to decay and will not sell for its full value if held
 76 until date of sale. On or before the date of the first
 77 publication or posting of the notice of sale, a copy of the
 78 notice of sale shall be furnished by the sheriff by certified
 79 mail to the attorney of record of the judgment debtor, or to the
 80 judgment debtor at the judgment debtor's last known address if
 81 the judgment debtor does not have an attorney of record. Such
 82 copy of the notice of sale shall be mailed even though a default
 83 judgment was entered. When levying upon real or personal
 84 property, a notice of such levy and execution sale and a copy of

85 the affidavit required by s. 56.27(4) shall be sent by the
 86 sheriff to the attorneys of record of all judgment creditors, or
 87 to all judgment creditors who do not have an attorney of record,
 88 who have acquired a judgment lien as provided in s. 55.10(1) and
 89 (2), s. 55.202, or s. 55.204(3), and whose liens have not lapsed
 90 at the time of levy, at the address listed in the judgment lien
 91 certificate, or, if amended, in any amendment to the judgment
 92 lien certificate, and to all secured creditors who have filed
 93 financing statements as provided in part V of chapter 679 in the
 94 name of the judgment debtor reflecting a security interest in
 95 property of the kind to be sold at the execution sale at the
 96 address listed in the financing statement, or, if amended, in
 97 any amendment to the financing statement. Such notice shall be
 98 made in the same manner as notice is made to any judgment debtor
 99 under this section. When levying upon real property, notice of
 100 such levy and execution sale and affidavit required by s.
 101 56.27(4) shall be made to the property owner of record in the
 102 same manner as notice is made to any judgment debtor pursuant to
 103 this section. When selling real or personal property, the sale
 104 date shall not be earlier than 30 days after the date of the
 105 first advertisement.

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

108 56.27 Executions; payment of money collected.--

109 (1) All money received under executions shall be paid, in
 110 the order prescribed, to the following: the sheriff, for costs;
 111 the levying creditor in the amount of \$500 as liquidated
 112 expenses; and ~~if the levy is upon real property, the first~~

113 priority lienholder under s. 55.10(1) and (2), ~~55.10~~, and if the
 114 ~~levy is upon personal property, the first priority lienholder~~
 115 ~~under~~ s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
 116 an affidavit required by subsection (4), or his or her attorney,
 117 in satisfaction of the judgment lien, if ~~provided that~~ the
 118 judgment lien has not lapsed at the time of the levy. The
 119 receipt of the attorney shall be a release of the officer paying
 120 the money to him or her. If ~~When~~ the name of more than one
 121 attorney appears in the court file, the money shall be paid to
 122 the attorney who originally commenced the action or who made the
 123 original defense unless the file shows that another attorney has
 124 been substituted.

125 (2) If ~~When~~ property sold under execution brings more than
 126 the amount needed to satisfy the provisions of subsection (1),
 127 the surplus shall be paid in the order of priority to any
 128 judgment lienholders whose judgment liens have not lapsed.
 129 Priority of liens on personal property shall be based on the
 130 effective date of the judgment lien acquired under s. 55.202, s.
 131 55.204(3), or s. 55.208(2), as set forth in an affidavit
 132 required under subsection (4). Priority of liens on real
 133 property shall be based on the effective date of the judgment
 134 lien acquired under s. 55.10(1) and (2), as set forth in an
 135 affidavit required under subsection (4). If there is a surplus
 136 after all valid judgment liens and execution liens have been
 137 satisfied, the surplus must be paid to the defendant.

138 (4) Before the date of the first publication or posting of
 139 the notice of sale provided for under s. 56.21, at the time of
 140 the levy request to the sheriff, the levying creditor shall

141 deliver to the sheriff an affidavit setting forth the following
 142 as to the judgment debtor:

143 (a) For a personal property levy, an attestation by that
 144 the levying creditor or the creditor's attorney of record that
 145 he or she has reviewed the database or judgment lien records
 146 established in accordance with ss. 55.201-55.209 and that the
 147 information contained in the affidavit based on that review is
 148 true and correct. For a real property levy in accordance with s.
 149 55.10(1) and (2), an attestation by the levying creditor or his
 150 or her attorney of record that he or she has reviewed the
 151 records of the clerk of court of the county where the property
 152 is situated, or that he or she has performed a title search, and
 153 that the information contained in the affidavit based on that
 154 review or title search is true and correct.†

155 (b) The information required under s. 55.203(1) and (2)
 156 for each judgment lien certificate indexed under the name of the
 157 judgment debtor as to each judgment creditor; the file number
 158 assigned to the record of the original and, if any, the second
 159 judgment lien; and the date of filing for each judgment lien
 160 certificate under s. 55.202 or s. 55.204(3). For real property,
 161 the information contained in the certified copy of recordation
 162 of lien pursuant to s. 55.10(1) and (2) for each lien recorded
 163 on real property.† ~~and~~

164 (c) A statement that the levying creditor either does not
 165 have any other levy in process or, if another levy is in
 166 process, the levying creditor believes in good faith that the
 167 total value of the property under execution does not exceed the
 168 amount of outstanding judgments.

169 Section 6. Paragraph (a) of subsection (8) of section
170 741.30, Florida Statutes, is amended to read:

171 741.30 Domestic violence; injunction; powers and duties of
172 court and clerk; petition; notice and hearing; temporary
173 injunction; issuance of injunction; statewide verification
174 system; enforcement.--

175 (8)(a)1. The clerk of the court shall furnish a copy of
176 the petition, financial affidavit, Uniform Child Custody
177 Jurisdiction and Enforcement Act affidavit, if any, notice of
178 hearing, and temporary injunction, if any, to the sheriff or a
179 law enforcement agency of the county where the respondent
180 resides or can be found, who shall serve it upon the respondent
181 as soon thereafter as possible on any day of the week and at any
182 time of the day or night. When requested by the sheriff, the
183 clerk of court may transmit a facsimile copy of an injunction
184 that has been certified by the clerk of court, and this
185 facsimile copy may be served in the same manner as a certified
186 copy. Upon receiving a facsimile copy, the sheriff must verify
187 receipt with the sender before attempting to serve it upon the
188 respondent. In addition, if the sheriff is in possession of an
189 injunction for protection that has been certified by the clerk
190 of court, the sheriff may transmit a facsimile copy of that
191 injunction to a law enforcement officer who shall serve it in
192 the same manner as a certified copy. The clerk of the court
193 shall be responsible for furnishing to the sheriff such
194 information on the respondent's physical description and
195 location as is required by the department to comply with the
196 verification procedures set forth in this section.

197 Notwithstanding any other provision of law to the contrary, the
198 chief judge of each circuit, in consultation with the
199 appropriate sheriff, may authorize a law enforcement agency
200 within the jurisdiction to effect service. A law enforcement
201 agency serving injunctions pursuant to this section shall use
202 service and verification procedures consistent with those of the
203 sheriff.

204 2. When an injunction is issued, if the petitioner
205 requests the assistance of a law enforcement agency, the court
206 may order that an officer from the appropriate law enforcement
207 agency accompany the petitioner and assist in placing the
208 petitioner in possession of the dwelling or residence, or
209 otherwise assist in the execution or service of the injunction.
210 A law enforcement officer shall accept a copy of an injunction
211 for protection against domestic violence, certified by the clerk
212 of the court, from the petitioner and immediately serve it upon
213 a respondent who has been located but not yet served.

214 3. All orders issued, changed, continued, extended, or
215 vacated subsequent to the original service of documents
216 enumerated under subparagraph 1., shall be certified by the
217 clerk of the court and delivered to the parties at the time of
218 the entry of the order. The parties may acknowledge receipt of
219 such order in writing on the face of the original order. In the
220 event a party fails or refuses to acknowledge the receipt of a
221 certified copy of an order, the clerk shall note on the original
222 order that service was effected. If delivery at the hearing is
223 not possible, the clerk shall mail certified copies of the order
224 to the parties at the last known address of each party. Service

225 by mail is complete upon mailing. When an order is served
 226 pursuant to this subsection, the clerk shall prepare a written
 227 certification to be placed in the court file specifying the
 228 time, date, and method of service and shall notify the sheriff.

229
 230 If the respondent has been served previously with the temporary
 231 injunction and has failed to appear at the initial hearing on
 232 the temporary injunction, any subsequent petition for injunction
 233 seeking an extension of time may be served on the respondent by
 234 the clerk of the court by certified mail in lieu of personal
 235 service by a law enforcement officer.

236 Section 7. Paragraph (a) of subsection (8) of section
 237 784.046, Florida Statutes, is amended to read:

238 784.046 Action by victim of repeat violence, sexual
 239 violence, or dating violence for protective injunction; powers
 240 and duties of court and clerk of court; filing and form of
 241 petition; notice and hearing; temporary injunction; issuance;
 242 statewide verification system; enforcement.--

243 (8)(a)1. The clerk of the court shall furnish a copy of
 244 the petition, notice of hearing, and temporary injunction, if
 245 any, to the sheriff or a law enforcement agency of the county
 246 where the respondent resides or can be found, who shall serve it
 247 upon the respondent as soon thereafter as possible on any day of
 248 the week and at any time of the day or night. When requested by
 249 the sheriff, the clerk of court may transmit a facsimile copy of
 250 an injunction that has been certified by the clerk of court, and
 251 this facsimile copy may be served in the same manner as a
 252 certified copy. Upon receiving a facsimile copy, the sheriff

253 must verify receipt with the sender before attempting to serve
254 it upon the respondent. In addition, if the sheriff is in
255 possession of an injunction for protection that has been
256 certified by the clerk of court, the sheriff may transmit a
257 facsimile copy of that injunction to a law enforcement officer
258 who shall serve it in the same manner as a certified copy. The
259 clerk of the court shall be responsible for furnishing to the
260 sheriff such information on the respondent's physical
261 description and location as is required by the department to
262 comply with the verification procedures set forth in this
263 section. Notwithstanding any other provision of law to the
264 contrary, the chief judge of each circuit, in consultation with
265 the appropriate sheriff, may authorize a law enforcement agency
266 within the chief judge's jurisdiction to effect this type of
267 service and to receive a portion of the service fee. No person
268 shall be authorized or permitted to serve or execute an
269 injunction issued under this section unless the person is a law
270 enforcement officer as defined in chapter 943.

271 2. When an injunction is issued, if the petitioner
272 requests the assistance of a law enforcement agency, the court
273 may order that an officer from the appropriate law enforcement
274 agency accompany the petitioner and assist in the execution or
275 service of the injunction. A law enforcement officer shall
276 accept a copy of an injunction for protection against repeat
277 violence, sexual violence, or dating violence, certified by the
278 clerk of the court, from the petitioner and immediately serve it
279 upon a respondent who has been located but not yet served.

280 Section 8. This act shall take effect July 1, 2007.