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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/16/2008	.	
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	.	

1 The Committee on Criminal Justice (Bennett) recommended the
2 following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete line(s) 79-184

6 and insert:

7 Section 4. Section 56.21, Florida Statutes, is amended to
8 read:

9 56.21 Execution sales; notice.--Notice of all sales under
10 execution shall be given by advertisement once each week for 4
11 successive weeks in a newspaper published in the county in which
12 the sale is to take place. The time of such notice may be
13 shortened in the discretion of the court from which the execution
14 issued, upon affidavit that the property to be sold is subject to
15 decay and will not sell for its full value if held until date of
16 sale. On or before the date of the first publication or posting
17 of the notice of sale, a copy of the notice of sale shall be



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18 | furnished by the sheriff by certified mail to the attorney of
19 | record of the judgment debtor, or to the judgment debtor at the
20 | judgment debtor's last known address if the judgment debtor does
21 | not have an attorney of record. Such copy of the notice of sale
22 | shall be mailed even though a default judgment was entered. When
23 | levying upon real or personal property, a notice of such levy and
24 | execution sale and a copy of the affidavit required by s.
25 | 56.27(4) shall be sent by the sheriff to the attorneys of record
26 | of all judgment creditors and other lienholders, or to all
27 | judgment creditors and other lienholders who do not have an
28 | attorney of record, who have acquired a ~~judgment~~ lien as provided
29 | in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3), or s. 695.01,
30 | and whose liens have not lapsed at the time of levy, at the
31 | address listed in the judgment lien certificate or other recorded
32 | liens, or, if amended, in any amendment thereto ~~to the judgment~~
33 | ~~lien certificate~~, and to all secured creditors who have filed
34 | financing statements as provided in part V of chapter 679 in the
35 | name of the judgment debtor reflecting a security interest in
36 | property of the kind to be sold at the execution sale at the
37 | address listed in the financing statement, or, if amended, in any
38 | amendment to the financing statement. Such notice shall be made
39 | in the same manner as notice is made to any judgment debtor under
40 | this section. When levying upon real property, notice of such
41 | levy and execution sale and affidavit required by s. 56.27(4)
42 | shall be made to the property owner of record in the same manner
43 | as notice is made to any judgment debtor pursuant to this section
44 | and shall be made to each person holding a mortgage or other lien
45 | against the real property as disclosed by the affidavit. When
46 | selling real or personal property, the sale date shall not be
47 | earlier than 30 days after the date of the first advertisement.



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

50 56.27 Executions; payment of money collected.--

51 (1) All money received under executions shall be paid, in
52 the order prescribed, to the following: the sheriff, for costs;
53 the levying creditor in the amount of \$500 as liquidated
54 expenses; ~~and if the levy is upon real property, the first~~
55 ~~priority lienholder under s. 55.10(1) and (2), s. 55.10; and if~~
56 ~~the levy is upon personal property, the first priority lienholder~~
57 ~~under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in~~
58 an affidavit required by subsection (4), or his or her attorney,
59 in satisfaction of the judgment lien, ~~if provided that the~~
60 judgment lien has not lapsed at the time of the levy. The receipt
61 of the attorney shall be a release of the officer paying the
62 money to him or her. ~~If~~ ~~When~~ the name of more than one attorney
63 appears in the court file, the money shall be paid to the
64 attorney who originally commenced the action or who made the
65 original defense unless the file shows that another attorney has
66 been substituted.

67 (2) ~~(a)~~ ~~If~~ ~~When~~ property sold under execution brings more
68 than the amount needed to satisfy the provisions of subsection
69 (1), the surplus shall be paid in the order of priority to any
70 judgment lienholders whose judgment liens have not lapsed, unless
71 the affidavit required by subsection (4) discloses that the
72 property is also subject to any recorded mortgage, financing
73 statement, tax warrant or other lien, other than a judgment lien,
74 that is junior in priority to the levying creditor's judgment
75 lien. For the purpose of the sheriff's distribution of the
76 surplus to judgment lienholders under this paragraph, priority of
77 judgment liens on personal property shall be based on the



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78 effective date of the judgment lien acquired under s. 55.202, s.
79 55.204(3), or s. 55.208(2), and priority of judgment liens on
80 real property shall be based on the effective date of the
81 judgment lien acquired under s. 55.10(1) and (2), as set forth in
82 an affidavit required under subsection (4). If there is a surplus
83 after all valid judgment liens and execution liens have been
84 satisfied under this paragraph, the surplus must be paid to the
85 owner of the property sold ~~defendant~~.

86 (b) If the affidavit required by subsection (4) discloses
87 that the property is also subject to any recorded mortgage,
88 financing statement, tax warrant or other lien, other than a
89 judgment lien, that is junior in priority to the levying
90 creditor's judgment lien, any surplus from the sale of the
91 property shall be paid over to the registry of the court from
92 which the execution issued for further proceedings to determine
93 the priority in which such surplus shall be distributed among
94 judgment lienholders, other lienholders, and the owner of the
95 property sold.

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

101 (a) For a personal property levy, an attestation by that
102 the levying creditor or the creditor's attorney of record that he
103 or she has reviewed the database or judgment lien records
104 established in accordance with ss. 55.201-55.209 and that the
105 information contained in the affidavit based on that review is
106 true and correct. For a real property levy in accordance with s.
107 55.10(1) and (2), an attestation by the levying creditor or his



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108 or her attorney of record that he or she has reviewed the records
109 of the clerk of court of the county where the property is
110 situated, or that he or she has performed a title search, and
111 that the information contained in the affidavit, including a
112 disclosure of all judgment liens, mortgages, financing
113 statements, tax warrants and other liens against the real
114 property, based on that review or title search is true and
115 correct.

116 (b) The information required under s. 55.203(1) and (2) for
117 each judgment lien certificate indexed under the name of the
118 judgment debtor as to each judgment creditor; the file number
119 assigned to the record of the original and, if any, the second
120 judgment lien; and the date of filing for each judgment lien
121 certificate under s. 55.202 or s. 55.204(3). For each judgment
122 lien recorded on real property, the information contained in the
123 certified copy of recordation of lien pursuant to s. 55.10(1) and
124 (2), and for each other lien recorded on real property, the name
125 and address of the lienholder as shown in the copy of the
126 recorded lien disclosed by the title search. ~~and~~

127 (c) A statement that the levying creditor either does not
128 have any other levy in process or, if another levy is in process,
129 the levying creditor believes in good faith that the total value
130 of the property under execution does not exceed the amount of
131 outstanding judgments.

132
133 ===== T I T L E A M E N D M E N T =====

134 And the title is amended as follows:

135 Delete line(s) 15-24

136 and insert:

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138 | the sheriff to furnish to the judgment debtor or
139 | lienholder or the debtor's or lienholder's attorney of
140 | record a copy of the notice of sale, notice of levy, and
141 | affidavit within a specified period before execution of a
142 | sale or levy; amending s. 56.27, F.S.; requiring that
143 | priority of liens on real property be based on the
144 | effective date of the judgment lien for a specified
145 | purpose, unless an affidavit discloses that the property
146 | is subject to a recorded mortgage, financing statement,
147 | tax warrant or other lien that is junior in priority to
148 | the judgment lien; requiring a levying creditor to deliver
149 | the affidavit to the sheriff at the time of the levy
150 | request setting forth certain information and
151 | attestations; amending ss. 741.30 and 784.046, F.S.,