

By Senator Oelrich

14-02781-08

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

14-02781-08

20081730__

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31 Be It Enacted by the Legislature of the State of Florida:

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33 Section 1. Subsection (1) of section 48.021, Florida
34 Statutes, is amended to read:

35 48.021 Process; by whom served.--

36 (1) All process shall be served by the sheriff of the
37 county where the person to be served is found, except that
38 initial nonenforceable civil process, criminal witness subpoenas,
39 and criminal summonses may be served by a special process server
40 appointed by the sheriff as provided for in this section or by a
41 certified process server as provided for in ss. 48.25-48.31.
42 Civil witness subpoenas may be served by any person authorized by
43 rules of civil procedure.

44 Section 2. Subsection (2) of section 56.041, Florida
45 Statutes, is amended to read:

46 56.041 Executions; collection and return.--

47 (2) All unsatisfied executions in the hands of the sheriff
48 docketed before October 1, 2001, or 20 years after the date of
49 issuance of final judgment upon which the execution was issued
50 may be returned, to the court issuing the execution, ~~20 years~~
51 ~~after the date of issuance of final judgment upon which the~~
52 ~~execution was issued.~~ Upon such return, the clerk of the court of
53 issuance shall provide a receipt, to the sheriff submitting the
54 return, acknowledging the return of the unsatisfied execution.

55 Section 3. Section 56.21, Florida Statutes, is amended to
56 read:

57 56.21 Execution sales; notice.--Notice of all sales under
58 execution shall be given by advertisement once each week for 4

14-02781-08

20081730__

59 successive weeks in a newspaper published in the county in which
60 the sale is to take place. The time of such notice may be
61 shortened in the discretion of the court from which the execution
62 issued, upon affidavit that the property to be sold is subject to
63 decay and will not sell for its full value if held until date of
64 sale. On or before the date of the first publication or posting
65 of the notice of sale, a copy of the notice of sale shall be
66 furnished by the sheriff by certified mail to the attorney of
67 record of the judgment debtor, or to the judgment debtor at the
68 judgment debtor's last known address if the judgment debtor does
69 not have an attorney of record. Such copy of the notice of sale
70 shall be mailed even though a default judgment was entered. When
71 levying upon real or personal property, a notice of such levy and
72 execution sale and a copy of the affidavit required by s.
73 56.27(4) shall be sent by the sheriff to the attorneys of record
74 of all judgment creditors, or to all judgment creditors who do
75 not have an attorney of record, who have acquired a judgment lien
76 as provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),
77 and whose liens have not lapsed at the time of levy, at the
78 address listed in the judgment lien certificate, or, if amended,
79 in any amendment to the judgment lien certificate, and to all
80 secured creditors who have filed financing statements as provided
81 in part V of chapter 679 in the name of the judgment debtor
82 reflecting a security interest in property of the kind to be sold
83 at the execution sale at the address listed in the financing
84 statement, or, if amended, in any amendment to the financing
85 statement. Such notice shall be made in the same manner as notice
86 is made to any judgment debtor under this section. When levying
87 upon real property, notice of such levy and execution sale and

14-02781-08

20081730__

88 affidavit required by s. 56.27(4) shall be made to the property
89 owner of record in the same manner as notice is made to any
90 judgment debtor pursuant to this section. When selling real or
91 personal property, the sale date shall not be earlier than 30
92 days after the date of the first advertisement.

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

95 56.27 Executions; payment of money collected.--

96 (1) All money received under executions shall be paid, in
97 the order prescribed, to the following: the sheriff, for costs;
98 the levying creditor in the amount of \$500 as liquidated
99 expenses; and if the levy is upon real property, the first
100 priority lienholder under s. 55.10(1) and (2), s. 55.10; and if
101 the levy is upon personal property, the first priority lienholder
102 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
103 an affidavit required by subsection (4), or his or her attorney,
104 in satisfaction of the judgment lien, ~~if provided that~~ the
105 judgment lien has not lapsed at the time of the levy. The receipt
106 of the attorney shall be a release of the officer paying the
107 money to him or her. ~~If when~~ the name of more than one attorney
108 appears in the court file, the money shall be paid to the
109 attorney who originally commenced the action or who made the
110 original defense unless the file shows that another attorney has
111 been substituted.

112 (2) If when property sold under execution brings more than
113 the amount needed to satisfy the provisions of subsection (1),
114 the surplus shall be paid in the order of priority to any
115 judgment lienholders whose judgment liens have not lapsed.
116 Priority of liens on personal property shall be based on the

14-02781-08

20081730__

117 effective date of the judgment lien acquired under s. 55.202, s.
118 55.204(3), or s. 55.208(2), as set forth in an affidavit required
119 under subsection (4). Priority of liens on real property shall be
120 based on the effective date of the judgment lien acquired under
121 s. 55.10(1) and (2), as set forth in an affidavit required under
122 subsection (4). If there is a surplus after all valid judgment
123 liens and execution liens have been satisfied, the surplus must
124 be paid to the defendant.

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

130 (a) For a personal property levy, an attestation by ~~that~~
131 the levying creditor or the creditor's attorney of record that he
132 or she has reviewed the database or judgment lien records
133 established in accordance with ss. 55.201-55.209 and that the
134 information contained in the affidavit based on that review is
135 true and correct. For real property levy in accordance with s.
136 55.10(1) and (2), an attestation by the levying creditor or his
137 or her attorney of record that he or she has reviewed the records
138 of the clerk of court of the county where the property is
139 situated, or that he or she has performed a title search, and
140 that the information contained in the affidavit based on that
141 review or title search is true and correct.†

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

14-02781-08

20081730__

146 judgment lien; and the date of filing for each judgment lien
147 certificate under s. 55.202 or s. 55.204(3). For real property,
148 the information contained in the certified copy of recordation of
149 lien pursuant to s. 55.10(1) and (2) for each lien recorded on
150 real property. ~~and~~

151 (c) A statement that the levying creditor either does not
152 have any other levy in process or, if another levy is in process,
153 the levying creditor believes in good faith that the total value
154 of the property under execution does not exceed the amount of
155 outstanding judgments.

156 Section 5. Paragraph (a) of subsection (8) of section
157 741.30, Florida Statutes, is amended to read:

158 741.30 Domestic violence; injunction; powers and duties of
159 court and clerk; petition; notice and hearing; temporary
160 injunction; issuance of injunction; statewide verification
161 system; enforcement.--

162 (8)(a)1. The clerk of the court shall furnish a copy of the
163 petition, financial affidavit, Uniform Child Custody Jurisdiction
164 and Enforcement Act affidavit, if any, notice of hearing, and
165 temporary injunction, if any, to the sheriff or a law enforcement
166 agency of the county where the respondent resides or can be
167 found, who shall serve it upon the respondent as soon thereafter
168 as possible on any day of the week and at any time of the day or
169 night. When requested by the sheriff, the clerk of court may
170 transmit a facsimile copy of an injunction that has been
171 certified by the clerk of court, and this facsimile copy may be
172 served in the same manner as a certified copy. Upon receiving
173 such a facsimile copy, the sheriff must verify receipt with the
174 sender before attempting to serve it upon the respondent. In

14-02781-08

20081730__

175 addition, if the sheriff is in possession of an injunction for
176 protection that has been certified by the clerk of court, the
177 sheriff may transmit a facsimile copy of that injunction to a law
178 enforcement officer who shall serve it in the same manner as a
179 certified copy. The clerk of the court shall be responsible for
180 furnishing to the sheriff such information on the respondent's
181 physical description and location as is required by the
182 department to comply with the verification procedures set forth
183 in this section. Notwithstanding any other provision of law to
184 the contrary, the chief judge of each circuit, in consultation
185 with the appropriate sheriff, may authorize a law enforcement
186 agency within the jurisdiction to effect service. A law
187 enforcement agency serving injunctions pursuant to this section
188 shall use service and verification procedures consistent with
189 those of the sheriff.

190 2. When an injunction is issued, if the petitioner requests
191 the assistance of a law enforcement agency, the court may order
192 that an officer from the appropriate law enforcement agency
193 accompany the petitioner and assist in placing the petitioner in
194 possession of the dwelling or residence, or otherwise assist in
195 the execution or service of the injunction. A law enforcement
196 officer shall accept a copy of an injunction for protection
197 against domestic violence, certified by the clerk of the court,
198 from the petitioner and immediately serve it upon a respondent
199 who has been located but not yet served.

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

14-02781-08

20081730__

204 entry of the order. The parties may acknowledge receipt of such
205 order in writing on the face of the original order. In the event
206 a party fails or refuses to acknowledge the receipt of a
207 certified copy of an order, the clerk shall note on the original
208 order that service was effected. If delivery at the hearing is
209 not possible, the clerk shall mail certified copies of the order
210 to the parties at the last known address of each party. Service
211 by mail is complete upon mailing. When an order is served
212 pursuant to this subsection, the clerk shall prepare a written
213 certification to be placed in the court file specifying the time,
214 date, and method of service and shall notify the sheriff.

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216 If the respondent has been served previously with the temporary
217 injunction and has failed to appear at the initial hearing on the
218 temporary injunction, any subsequent petition for injunction
219 seeking an extension of time may be served on the respondent by
220 the clerk of the court by certified mail in lieu of personal
221 service by a law enforcement officer.

222 Section 6. Paragraph (a) of subsection (8) of section
223 784.046, Florida Statutes, is amended to read:

224 784.046 Action by victim of repeat violence, sexual
225 violence, or dating violence for protective injunction; powers
226 and duties of court and clerk of court; filing and form of
227 petition; notice and hearing; temporary injunction; issuance;
228 statewide verification system; enforcement.--

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

14-02781-08

20081730__

233 respondent as soon thereafter as possible on any day of the week
234 and at any time of the day or night. When requested by the
235 sheriff, the clerk of court may transmit a facsimile copy of an
236 injunction that has been certified by the clerk of court, and
237 this facsimile copy may be served in the same manner as a
238 certified copy. Upon receiving such a facsimile copy, the sheriff
239 must verify receipt with the sender before attempting to serve it
240 upon the respondent. In addition, if the sheriff is in possession
241 of an injunction for protection that has been certified by the
242 clerk of court, the sheriff may transmit a facsimile copy of that
243 injunction to a law enforcement officer who shall serve it in the
244 same manner as a certified copy. The clerk of the court shall be
245 responsible for furnishing to the sheriff such information on the
246 respondent's physical description and location as is required by
247 the department to comply with the verification procedures set
248 forth in this section. Notwithstanding any other provision of law
249 to the contrary, the chief judge of each circuit, in consultation
250 with the appropriate sheriff, may authorize a law enforcement
251 agency within the chief judge's jurisdiction to effect this type
252 of service and to receive a portion of the service fee. No person
253 shall be authorized or permitted to serve or execute an
254 injunction issued under this section unless the person is a law
255 enforcement officer as defined in chapter 943.

256 2. When an injunction is issued, if the petitioner requests
257 the assistance of a law enforcement agency, the court may order
258 that an officer from the appropriate law enforcement agency
259 accompany the petitioner and assist in the execution or service
260 of the injunction. A law enforcement officer shall accept a copy
261 of an injunction for protection against repeat violence, sexual

14-02781-08

20081730__

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

265 | Section 7. This act shall take effect October 1, 2008.