

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Seiler offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

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

7 48.021 Process; by whom served.--

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

Amendment No.

16 Section 2. Subsection (2) of section 48.27, Florida
17 Statutes, is amended to read:

18 48.27 Certified process servers.--

19 (2) (a) The addition of a person's name to the list
20 authorizes him or her to serve initial nonenforceable civil
21 process on a person found within the circuit where the process
22 server is certified when a civil action has been filed against
23 such person in the circuit court or in a county court in the
24 state. Upon filing an action in circuit or county court, a
25 person may select from the list for the circuit where the
26 process is to be served one or more certified process servers to
27 serve initial nonenforceable civil process.

28 (b) The addition of a person's name to the list authorizes
29 him or her to serve criminal witness subpoenas and criminal
30 summonses on a person found within the circuit where the process
31 server is certified. The state in any proceeding or
32 investigation by a grand jury or any party in a criminal action,
33 prosecution, or proceeding may select from the list for the
34 circuit where the process is to be served one or more certified
35 process servers to serve the subpoena or summons.

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

38 56.041 Executions; collection and return.--

39 (2) All unsatisfied executions in the hands of the sheriff
40 docketed before October 1, 2001, or 20 years after the date of
41 issuance of final judgment upon which the execution was issued
42 may be returned, to the court issuing the execution, 20 years
43 after the date of issuance of final judgment upon which the

764281

5/2/2008 3:56 PM

Amendment No.

44 ~~execution was issued.~~ Upon such return, the clerk of the court
45 of issuance shall provide a receipt, to the sheriff submitting
46 the return, acknowledging the return of the unsatisfied
47 execution.

48 Section 4. Section 56.21, Florida Statutes, is amended to
49 read:

50 56.21 Execution sales; notice.--Notice of all sales under
51 execution shall be given by advertisement once each week for 4
52 successive weeks in a newspaper published in the county in which
53 the sale is to take place. The time of such notice may be
54 shortened in the discretion of the court from which the
55 execution issued, upon affidavit that the property to be sold is
56 subject to decay and will not sell for its full value if held
57 until date of sale. On or before the date of the first
58 publication or posting of the notice of sale, a copy of the
59 notice of sale shall be furnished by the sheriff by certified
60 mail to the attorney of record of the judgment debtor, or to the
61 judgment debtor at the judgment debtor's last known address if
62 the judgment debtor does not have an attorney of record. Such
63 copy of the notice of sale shall be mailed even though a default
64 judgment was entered. When levying upon real or personal
65 property, a notice of such levy and execution sale and a copy of
66 the affidavit required by s. 56.27(4) shall be sent by the
67 sheriff to the attorneys of record of all judgment creditors, or
68 to all judgment creditors who do not have an attorney of record,
69 who have acquired a judgment lien as provided in s. 55.10(1) and
70 (2), s. 55.202, or s. 55.204(3), and whose liens have not lapsed
71 at the time of levy, at the address listed in the judgment lien

764281

5/2/2008 3:56 PM

HOUSE AMENDMENT

Bill No. CS/SB 300

Amendment No.

72 certificate, or, if amended, in any amendment to the judgment
73 lien certificate, and to all secured creditors who have filed
74 financing statements as provided in part V of chapter 679 in the
75 name of the judgment debtor reflecting a security interest in
76 property of the kind to be sold at the execution sale at the
77 address listed in the financing statement, or, if amended, in
78 any amendment to the financing statement. Such notice shall be
79 made in the same manner as notice is made to any judgment debtor
80 under this section. When levying upon real property, notice of
81 such levy and execution sale and affidavit required by s.
82 56.27(4) shall be made to the property owner of record in the
83 same manner as notice is made to any judgment debtor pursuant to
84 this section. When selling real or personal property, the sale
85 date shall not be earlier than 30 days after the date of the
86 first advertisement.

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

89 56.27 Executions; payment of money collected.--

90 (1) All money received under executions shall be paid, in
91 the order prescribed, to the following: the sheriff, for costs;
92 the levying creditor in the amount of \$500 as liquidated
93 expenses; ~~and if the levy is upon real property, the first~~
94 ~~priority lienholder under s. 55.10(1) and (2), s. 55.10, and if~~
95 ~~the levy is upon personal property, the first priority~~
96 ~~lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as~~
97 set forth in an affidavit required by subsection (4), or his or
98 her attorney, in satisfaction of the judgment lien, if provided
99 ~~that~~ the judgment lien has not lapsed at the time of the levy.

764281

5/2/2008 3:56 PM

Amendment No.

100 The receipt of the attorney shall be a release of the officer
101 paying the money to him or her. If ~~When~~ the name of more than
102 one attorney appears in the court file, the money shall be paid
103 to the attorney who originally commenced the action or who made
104 the original defense unless the file shows that another attorney
105 has been substituted.

106 (2) If ~~When~~ property sold under execution brings more than
107 the amount needed to satisfy the provisions of subsection (1),
108 the surplus shall be paid in the order of priority to any
109 judgment lienholders whose judgment liens have not lapsed. For
110 the purpose of the sheriff's distribution of the surplus to
111 judgment lienholders under this subsection:

112 (a) Priority of liens on personal property shall be based
113 on the effective date of the judgment lien acquired under s.
114 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an
115 affidavit required under subsection (4).

116 (b) Priority of liens on real property shall be based on
117 the effective date of the judgment lien acquired under s.
118 55.10(1) and (2), as set forth in an affidavit required under
119 subsection (4).

120
121 If there is a surplus after all valid judgment liens and
122 execution liens have been satisfied, the surplus must be paid to
123 the owner of the property sold ~~defendant~~.

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

764281

5/2/2008 3:56 PM

Amendment No.

127 deliver to the sheriff an affidavit setting forth all of the
128 following as to the judgment debtor:

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

141 (b) The information required under s. 55.203(1) and (2)
142 for each judgment lien certificate indexed under the name of the
143 judgment debtor as to each judgment creditor; the file number
144 assigned to the record of the original and, if any, the second
145 judgment lien; and the date of filing for each judgment lien
146 certificate under s. 55.202 or s. 55.204(3). For real property,
147 the information contained in the certified copy of recordation
148 of lien pursuant to s. 55.10(1) and (2) for each lien recorded
149 on real property.† ~~and~~

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

764281

5/2/2008 3:56 PM

Amendment No.

155 Section 6. Paragraph (a) of subsection (8) of section
156 741.30, Florida Statutes, is amended to read:

157 741.30 Domestic violence; injunction; powers and duties of
158 court and clerk; petition; notice and hearing; temporary
159 injunction; issuance of injunction; statewide verification
160 system; enforcement.--

161 (8)(a)1. The clerk of the court shall furnish a copy of
162 the petition, financial affidavit, Uniform Child Custody
163 Jurisdiction and Enforcement Act affidavit, if any, notice of
164 hearing, and temporary injunction, if any, to the sheriff or a
165 law enforcement agency of the county where the respondent
166 resides or can be found, who shall serve it upon the respondent
167 as soon thereafter as possible on any day of the week and at any
168 time of the day or night. When requested by the sheriff, the
169 clerk of court may transmit a facsimile copy of an injunction
170 that has been certified by the clerk of court, and this
171 facsimile copy may be served in the same manner as a certified
172 copy. Upon receiving such a facsimile copy, the sheriff must
173 verify receipt with the sender before attempting to serve it
174 upon the respondent. In addition, if the sheriff is in
175 possession of an injunction for protection that has been
176 certified by the clerk of court, the sheriff may transmit a
177 facsimile copy of that injunction to a law enforcement officer
178 who shall serve it in the same manner as a certified copy. The
179 clerk of the court shall be responsible for furnishing to the
180 sheriff such information on the respondent's physical
181 description and location as is required by the department to
182 comply with the verification procedures set forth in this

764281

5/2/2008 3:56 PM

Amendment No.

183 section. Notwithstanding any other provision of law to the
184 contrary, the chief judge of each circuit, in consultation with
185 the appropriate sheriff, may authorize a law enforcement agency
186 within the jurisdiction to effect service. A law enforcement
187 agency serving injunctions pursuant to this section shall use
188 service and verification procedures consistent with those of the
189 sheriff.

190 2. When an injunction is issued, if the petitioner
191 requests the assistance of a law enforcement agency, the court
192 may order that an officer from the appropriate law enforcement
193 agency accompany the petitioner and assist in placing the
194 petitioner in possession of the dwelling or residence, or
195 otherwise assist in the execution or service of the injunction.
196 A law enforcement officer shall accept a copy of an injunction
197 for protection against domestic violence, certified by the clerk
198 of the court, from the petitioner and immediately serve it upon
199 a respondent 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
203 clerk of the court and delivered to the parties at the time of
204 the entry of the order. The parties may acknowledge receipt of
205 such order in writing on the face of the original order. In the
206 event 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

764281

5/2/2008 3:56 PM

Amendment No.

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
214 time, 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
218 the 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 7. 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
230 the petition, notice of hearing, and temporary injunction, if
231 any, to the sheriff or a law enforcement agency of the county
232 where the respondent resides or can be found, who shall serve it
233 upon the respondent as soon thereafter as possible on any day of
234 the week and at any time of the day or night. When requested by
235 the sheriff, the clerk of court may transmit a facsimile copy of
236 an 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

764281

5/2/2008 3:56 PM

Amendment No.

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

257 2. When an injunction is issued, if the petitioner
258 requests the assistance of a law enforcement agency, the court
259 may order that an officer from the appropriate law enforcement
260 agency accompany the petitioner and assist in the execution or
261 service of the injunction. A law enforcement officer shall
262 accept a copy of an injunction for protection against repeat
263 violence, sexual violence, or dating violence, certified by the
264 clerk of the court, from the petitioner and immediately serve it
265 upon a respondent who has been located but not yet served.

266 Section 8. This act shall take effect July 1, 2008.

764281

5/2/2008 3:56 PM

Amendment No.

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T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to service of process; amending s. 48.021, F.S.; providing that criminal witness subpoenas and criminal summonses may be served by a special process server appointed by the local sheriff or by a certified process server; amending s. 48.27, F.S.; providing for selection of authorized certified process servers to serve such subpoenas and summonses; amending s. 56.041, F.S.; providing that all unsatisfied executions in the possession of the sheriff docketed before October 1, 2001, may be returned to the issuing court; amending s. 56.21, F.S.; requiring the submission of an affidavit before levying a judgment upon real property; requiring the sheriff to furnish to the judgment debtor or the debtor's attorney of record a copy of the notice of sale, notice of levy, and affidavit within a specified period before execution of a sale or levy; amending s. 56.27, F.S.; requiring that priority of liens on real property be based on the effective date of the judgment lien for a specified purpose; requiring a levying creditor to deliver to the sheriff at the time of the levy request an affidavit setting forth certain information and attestations;

HOUSE AMENDMENT

Bill No. CS/SB 300

Amendment No.

295 amending ss. 741.30 and 784.046, F.S., relating to service
296 of process in cases of domestic violence or sexual abuse;
297 authorizing clerks of court to transmit facsimile copies
298 of previously certified injunctions to sheriffs upon
299 request; requiring sheriffs to verify receipt of facsimile
300 copies of injunctions with clerks of court before
301 attempting service; authorizing law enforcement officers
302 to serve facsimile copies of injunctions in the same
303 manner as certified copies; providing an effective date.

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764281

5/2/2008 3:56 PM