

By Senator Crist

12-00280-08

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

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30 clerks of court before attempting service; authorizing law
31 enforcement officers to serve facsimile copies of
32 injunctions in the same manner as certified copies;
33 providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Subsections (1) and (4) of section 30.231,
38 Florida Statutes, are amended to read:

39 30.231 Sheriffs' fees for service of summons, subpoenas,
40 and executions.--

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

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

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

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

54 (d) Executions:

55 1. Forty ~~Twenty~~ dollars for docketing and indexing each
56 writ of execution, regardless of the number of persons involved.

57 2. Fifty dollars for each levy.

58 a. A levy is considered made when any property or any

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59 | portion of the property listed or unlisted in the instructions
60 | for levy is seized, or upon demand of the sheriff the writ is
61 | satisfied by the defendant in lieu of seizure. Seizure requires
62 | that the sheriff take actual possession, if practicable, or,
63 | alternatively, constructive possession of the property by order
64 | of the court.

65 | b. When the instructions are for levy upon real property, a
66 | levy fee is required for each parcel described in the
67 | instructions.

68 | c. When the instructions are for levy based upon personal
69 | property, one fee is allowed, unless the property is seized at
70 | different locations, conditional upon all of the items being
71 | advertised collectively and the sale being held at a single
72 | location. However, if the property seized cannot be sold at one
73 | location during the same sale as advertised, but requires
74 | separate sales at different locations, the sheriff is then
75 | authorized to impose a levy fee for the property and sale at each
76 | location.

77 | 3. Forty ~~Twenty~~ dollars for advertisement of sale under
78 | process.

79 | 4. Forty ~~Twenty~~ dollars for each sale under process.

80 | 5. Forty ~~Twenty~~ dollars for each deed, bill of sale, or
81 | satisfaction of judgment.

82 | (e) The State of Florida or any of its agencies, when
83 | appearing as appellant or petitioner, is exempt from the increase
84 | in fees for docketing and service of process effective July 1,
85 | 2008.

86 | (4) All fees collected under paragraphs (1) (a), (b), (c),
87 | and (d) shall be nonrefundable and shall be earned when each

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88 original request or service of process is made, ~~and no additional~~
89 ~~fees shall be required for alias and pluries documents when~~
90 ~~service was not effected on the original document in that county~~
91 ~~by that sheriff.~~

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

94 48.021 Process; by whom served.--

95 (1) All process shall be served by the sheriff of the
96 county where the person to be served is found, except initial
97 nonenforceable civil process, criminal witness subpoenas, and
98 criminal summonses may be served by a special process server
99 appointed by the sheriff as provided for in this section or by a
100 certified process server as provided for in ss. 48.25-48.31.
101 Civil witness subpoenas may be served by any person authorized by
102 rules of civil procedure.

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

105 56.041 Executions; collection and return.--

106 (2) All unsatisfied executions in the hands of the sheriff
107 docketed before October 1, 2001, or 20 years after the date of
108 issuance of final judgment upon which the execution was issued
109 ~~may be returned, to the court issuing the execution, 20 years~~
110 ~~after the date of issuance of final judgment upon which the~~
111 ~~execution was issued.~~ Upon such return, the clerk of the court
112 of issuance shall provide a receipt, to the sheriff submitting
113 the return, acknowledging the return of the unsatisfied
114 execution.

115 Section 4. Section 56.21, Florida Statutes, is amended to
116 read:

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117 56.21 Execution sales; notice.--Notice of all sales under
118 execution shall be given by advertisement once each week for 4
119 successive weeks in a newspaper published in the county in which
120 the sale is to take place. The time of such notice may be
121 shortened in the discretion of the court from which the execution
122 issued, upon affidavit that the property to be sold is subject to
123 decay and will not sell for its full value if held until date of
124 sale. On or before the date of the first publication or posting
125 of the notice of sale, a copy of the notice of sale shall be
126 furnished by the sheriff by certified mail to the attorney of
127 record of the judgment debtor, or to the judgment debtor at the
128 judgment debtor's last known address if the judgment debtor does
129 not have an attorney of record. Such copy of the notice of sale
130 shall be mailed even though a default judgment was entered. When
131 levying upon real or personal property, a notice of such levy and
132 execution sale and a copy of the affidavit required by s.
133 56.27(4) shall be sent by the sheriff to the attorneys of record
134 of all judgment creditors, or to all judgment creditors who do
135 not have an attorney of record, who have acquired a judgment lien
136 as provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3),
137 and whose liens have not lapsed at the time of levy, at the
138 address listed in the judgment lien certificate, or, if amended,
139 in any amendment to the judgment lien certificate, and to all
140 secured creditors who have filed financing statements as provided
141 in part V of chapter 679 in the name of the judgment debtor
142 reflecting a security interest in property of the kind to be sold
143 at the execution sale at the address listed in the financing
144 statement, or, if amended, in any amendment to the financing
145 statement. Such notice shall be made in the same manner as notice

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146 is made to any judgment debtor under this section. When levying
147 upon real property, notice of such levy and execution sale and
148 affidavit required by s. 56.27(4) shall be made to the property
149 owner of record in the same manner as notice is made to any
150 judgment debtor pursuant to this section. When selling real or
151 personal property, the sale date shall not be earlier than 30
152 days after the date of the first advertisement.

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

155 56.27 Executions; payment of money collected.--

156 (1) All money received under executions shall be paid, in
157 the order prescribed, to the following: the sheriff, for costs;
158 the levying creditor in the amount of \$500 as liquidated
159 expenses; and if the levy is upon real property, the first
160 priority lienholder under s. 55.10(1) and (2), s. 55.10; and if
161 the levy is upon personal property, the first priority lienholder
162 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
163 an affidavit required by subsection (4), or his or her attorney,
164 in satisfaction of the judgment lien, ~~if provided that~~ the
165 judgment lien has not lapsed at the time of the levy. The receipt
166 of the attorney shall be a release of the officer paying the
167 money to him or her. ~~If~~ When the name of more than one attorney
168 appears in the court file, the money shall be paid to the
169 attorney who originally commenced the action or who made the
170 original defense unless the file shows that another attorney has
171 been substituted.

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

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175 judgment lienholders whose judgment liens have not lapsed.
176 Priority of liens on personal property shall be based on the
177 effective date of the judgment lien acquired under s. 55.202, s.
178 55.204(3), or s. 55.208(2), as set forth in an affidavit required
179 under subsection (4). Priority of liens on real property shall be
180 based on the effective date of the judgment lien acquired under
181 s. 55.10(1) and (2), as set forth in an affidavit required under
182 subsection (4). If there is a surplus after all valid judgment
183 liens and execution liens have been satisfied, the surplus must
184 be paid to the defendant.

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

190 (a) For a personal property levy, an attestation by ~~that~~
191 the levying creditor or the creditor's attorney of record that he
192 or she has reviewed the database or judgment lien records
193 established in accordance with ss. 55.201-55.209 and that the
194 information contained in the affidavit based on that review is
195 true and correct. For real property levy in accordance with s.
196 55.10(1) and (2), an attestation by the levying creditor or his
197 or her attorney of record that he or she has reviewed the records
198 of the clerk of court of the county where the property is
199 situated, or that he or she has performed a title search, and
200 that the information contained in the affidavit based on that
201 review or title search is true and correct.†

202 (b) The information required under s. 55.203(1) and (2) for
203 each judgment lien certificate indexed under the name of the

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204 judgment debtor as to each judgment creditor; the file number
205 assigned to the record of the original and, if any, the second
206 judgment lien; and the date of filing for each judgment lien
207 certificate under s. 55.202 or s. 55.204(3). For real property,
208 the information contained in the certified copy of recordation of
209 lien pursuant to s. 55.10(1) and (2) for each lien recorded on
210 real property. ~~and~~

211 (c) A statement that the levying creditor either does not
212 have any other levy in process or, if another levy is in process,
213 the levying creditor believes in good faith that the total value
214 of the property under execution does not exceed the amount of
215 outstanding judgments.

216 Section 6. Paragraph (a) of subsection (8) of section
217 741.30, Florida Statutes, is amended to read:

218 741.30 Domestic violence; injunction; powers and duties of
219 court and clerk; petition; notice and hearing; temporary
220 injunction; issuance of injunction; statewide verification
221 system; enforcement.--

222 (8)(a)1. The clerk of the court shall furnish a copy of the
223 petition, financial affidavit, Uniform Child Custody Jurisdiction
224 and Enforcement Act affidavit, if any, notice of hearing, and
225 temporary injunction, if any, to the sheriff or a law enforcement
226 agency of the county where the respondent resides or can be
227 found, who shall serve it upon the respondent as soon thereafter
228 as possible on any day of the week and at any time of the day or
229 night. When requested by the sheriff, the clerk of court may
230 transmit a facsimile copy of an injunction that has been
231 certified by the clerk of court, and this facsimile copy may be
232 served in the same manner as a certified copy. Upon receiving a

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233 facsimile copy, the sheriff must verify receipt with the sender
234 before attempting to serve it upon the respondent. In addition,
235 if the sheriff is in possession of an injunction for protection
236 that has been certified by the clerk of court, the sheriff may
237 transmit a facsimile copy of that injunction to a law enforcement
238 officer who shall serve it in the same manner as a certified
239 copy. The clerk of the court shall be responsible for furnishing
240 to the sheriff such information on the respondent's physical
241 description and location as is required by the department to
242 comply with the verification procedures set forth in this
243 section. Notwithstanding any other provision of law to the
244 contrary, the chief judge of each circuit, in consultation with
245 the appropriate sheriff, may authorize a law enforcement agency
246 within the jurisdiction to effect service. A law enforcement
247 agency serving injunctions pursuant to this section shall use
248 service and verification procedures consistent with those of the
249 sheriff.

250 2. When an injunction is issued, if the petitioner requests
251 the assistance of a law enforcement agency, the court may order
252 that an officer from the appropriate law enforcement agency
253 accompany the petitioner and assist in placing the petitioner in
254 possession of the dwelling or residence, or otherwise assist in
255 the execution or service of the injunction. A law enforcement
256 officer shall accept a copy of an injunction for protection
257 against domestic violence, certified by the clerk of the court,
258 from the petitioner and immediately serve it upon a respondent
259 who has been located but not yet served.

260 3. All orders issued, changed, continued, extended, or
261 vacated subsequent to the original service of documents

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262 enumerated under subparagraph 1., shall be certified by the clerk
263 of the court and delivered to the parties at the time of the
264 entry of the order. The parties may acknowledge receipt of such
265 order in writing on the face of the original order. In the event
266 a party fails or refuses to acknowledge the receipt of a
267 certified copy of an order, the clerk shall note on the original
268 order that service was effected. If delivery at the hearing is
269 not possible, the clerk shall mail certified copies of the order
270 to the parties at the last known address of each party. Service
271 by mail is complete upon mailing. When an order is served
272 pursuant to this subsection, the clerk shall prepare a written
273 certification to be placed in the court file specifying the time,
274 date, and method of service and shall notify the sheriff.

275

276 If the respondent has been served previously with the temporary
277 injunction and has failed to appear at the initial hearing on the
278 temporary injunction, any subsequent petition for injunction
279 seeking an extension of time may be served on the respondent by
280 the clerk of the court by certified mail in lieu of personal
281 service by a law enforcement officer.

282 Section 7. Paragraph (a) of subsection (8) of section
283 784.046, Florida Statutes, is amended to read:

284 784.046 Action by victim of repeat violence, sexual
285 violence, or dating violence for protective injunction; powers
286 and duties of court and clerk of court; filing and form of
287 petition; notice and hearing; temporary injunction; issuance;
288 statewide verification system; enforcement.--

289 (8)(a)1. The clerk of the court shall furnish a copy of the
290 petition, notice of hearing, and temporary injunction, if any, to

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291 | the sheriff or a law enforcement agency of the county where the
292 | respondent resides or can be found, who shall serve it upon the
293 | respondent as soon thereafter as possible on any day of the week
294 | and at any time of the day or night. When requested by the
295 | sheriff, the clerk of court may transmit a facsimile copy of an
296 | injunction that has been certified by the clerk of court, and
297 | this facsimile copy may be served in the same manner as a
298 | certified copy. Upon receiving a facsimile copy, the sheriff must
299 | verify receipt with the sender before attempting to serve it upon
300 | the respondent. In addition, if the sheriff is in possession of
301 | an injunction for protection that has been certified by the clerk
302 | of court, the sheriff may transmit a facsimile copy of that
303 | injunction to a law enforcement officer who shall serve it in the
304 | same manner as a certified copy. The clerk of the court shall be
305 | responsible for furnishing to the sheriff such information on the
306 | respondent's physical description and location as is required by
307 | the department to comply with the verification procedures set
308 | forth in this section. Notwithstanding any other provision of law
309 | to the contrary, the chief judge of each circuit, in consultation
310 | with the appropriate sheriff, may authorize a law enforcement
311 | agency within the chief judge's jurisdiction to effect this type
312 | of service and to receive a portion of the service fee. No person
313 | shall be authorized or permitted to serve or execute an
314 | injunction issued under this section unless the person is a law
315 | enforcement officer as defined in chapter 943.

316 | 2. When an injunction is issued, if the petitioner requests
317 | the assistance of a law enforcement agency, the court may order
318 | that an officer from the appropriate law enforcement agency
319 | accompany the petitioner and assist in the execution or service

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320 | of the injunction. A law enforcement officer shall accept a copy
321 | of an injunction for protection against repeat violence, sexual
322 | violence, or dating violence, certified by the clerk of the
323 | court, from the petitioner and immediately serve it upon a
324 | respondent who has been located but not yet served.

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