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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. 48.27, F.S., to
11 conform; providing for selection of authorized certified
12 process servers to serve such subpoenas and summonses;
13 amending s. 56.041, F.S.; providing that all unsatisfied
14 executions in the possession of the sheriff docketed
15 before October 1, 2001, may be returned to the issuing
16 court; amending s. 56.21, F.S.; requiring the submission
17 of an affidavit before levying a judgment upon real
18 property; requiring the sheriff to furnish to the judgment
19 debtor or lienholder or the debtor's or lienholder's
20 attorney of record a copy of the notice of sale, notice of
21 levy, and affidavit with a specified period before
22 execution of a sale or levy; amending s. 56.27, F.S.;
23 requiring that priority of liens on real property be based
24 on the effective date of the judgment lien for a specified
25 purpose, unless an affidavit discloses that the property
26 is subject to a recorded mortgage, financing statement,
27 tax warrant or other lien that is junior in priority to
28 the judgment lien; requiring a levying creditor to deliver
29 the affidavit to the sheriff at the time of the levy

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30 request setting forth certain information and
31 attestations; requiring certain information to be
32 contained in the certified copy of recordation of lien;
33 amending ss. 741.30 and 784.046, F.S., relating to service
34 of process in cases of domestic violence or sexual abuse;
35 authorizing clerks of court to transmit facsimile copies
36 of previously certified injunctions to sheriffs upon
37 request; requiring sheriffs to verify receipt of facsimile
38 copies of injunctions with clerks of court before
39 attempting service; authorizing law enforcement officers
40 to serve facsimile copies of injunctions in the same
41 manner as certified copies; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Subsections (1) and (4) of section 30.231,
46 Florida Statutes, are amended to read:

47 30.231 Sheriffs' fees for service of summons, subpoenas,
48 and executions.--

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

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

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

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59 paragraph (a).

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

62 (d) Executions:

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

65 2. Fifty dollars for each levy.

66 a. A levy is considered made when any property or any
67 portion of the property listed or unlisted in the instructions
68 for levy is seized, or upon demand of the sheriff the writ is
69 satisfied by the defendant in lieu of seizure. Seizure requires
70 that the sheriff take actual possession, if practicable, or,
71 alternatively, constructive possession of the property by order
72 of the court.

73 b. When the instructions are for levy upon real property, a
74 levy fee is required for each parcel described in the
75 instructions.

76 c. When the instructions are for levy based upon personal
77 property, one fee is allowed, unless the property is seized at
78 different locations, conditional upon all of the items being
79 advertised collectively and the sale being held at a single
80 location. However, if the property seized cannot be sold at one
81 location during the same sale as advertised, but requires
82 separate sales at different locations, the sheriff is then
83 authorized to impose a levy fee for the property and sale at each
84 location.

85 3. Forty ~~Twenty~~ dollars for advertisement of sale under
86 process.

87 4. Forty ~~Twenty~~ dollars for each sale under process.

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88 5. ~~Forty~~ Twenty dollars for each deed, bill of sale, or
89 satisfaction of judgment.

90
91 Fees under this subsection chargeable to the State of Florida or
92 its agencies shall be those fees that were effective under this
93 subsection on June 30, 2008.

94 (4) All fees collected under paragraphs (1)(a), (b), (c),
95 and (d) shall be nonrefundable and shall be earned when each
96 original request or service of process is made, ~~and no additional~~
97 ~~fees shall be required for alias and pluries documents when~~
98 ~~service was not effected on the original document in that county~~
99 ~~by that sheriff.~~

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

102 48.021 Process; by whom served.--

103 (1) All process shall be served by the sheriff of the
104 county where the person to be served is found, except initial
105 nonenforceable civil process, criminal witness subpoenas, and
106 criminal summonses may be served by a special process server
107 appointed by the sheriff as provided for in this section or by a
108 certified process server as provided for in ss. 48.25-48.31.
109 Civil witness subpoenas may be served by any person authorized by
110 rules of civil procedure.

111 Section 3. Subsection (2) of section 48.27, Florida
112 Statutes, is amended to read:

113 48.27 Certified process servers.--

114 (2) (a) The addition of a person's name to the list
115 authorizes him or her to serve initial nonenforceable civil
116 process on a person found within the circuit where the process

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117 server is certified when a civil action has been filed against
118 such person in the circuit court or in a county court in the
119 state. Upon filing an action in circuit or county court, a person
120 may select from the list for the circuit where the process is to
121 be served one or more certified process servers to serve initial
122 nonenforceable civil process.

123 (b) The addition of a person's name to the list authorizes
124 him or her to serve criminal witness subpoenas and criminal
125 summonses on a person found within the circuit where the process
126 server is certified. The state in any proceeding or investigation
127 by a grand jury or any party in a criminal action, prosecution,
128 or proceeding may select from the list for the circuit where the
129 process is to be served one or more certified process servers to
130 serve the subpoena or summons.

131 Section 4. Subsection (2) of section 56.041, Florida
132 Statutes, is amended to read:

133 56.041 Executions; collection and return.--

134 (2) All unsatisfied executions in the hands of the sheriff
135 docketed before October 1, 2001, or 20 years after the date of
136 issuance of final judgment upon which the execution was issued
137 ~~may be returned, to the court issuing the execution, 20 years~~
138 ~~after the date of issuance of final judgment upon which the~~
139 ~~execution was issued.~~ Upon such return, the clerk of the court of
140 issuance shall provide a receipt, to the sheriff submitting the
141 return, acknowledging the return of the unsatisfied execution.

142 Section 5. Section 56.21, Florida Statutes, is amended to
143 read:

144 56.21 Execution sales; notice.--Notice of all sales under
145 execution shall be given by advertisement once each week for 4

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146 successive weeks in a newspaper published in the county in which
147 the sale is to take place. The time of such notice may be
148 shortened in the discretion of the court from which the execution
149 issued, upon affidavit that the property to be sold is subject to
150 decay and will not sell for its full value if held until date of
151 sale. On or before the date of the first publication or posting
152 of the notice of sale, a copy of the notice of sale shall be
153 furnished by the sheriff by certified mail to the attorney of
154 record of the judgment debtor, or to the judgment debtor at the
155 judgment debtor's last known address if the judgment debtor does
156 not have an attorney of record. Such copy of the notice of sale
157 shall be mailed even though a default judgment was entered. When
158 levying upon real or personal property, a notice of such levy and
159 execution sale and a copy of the affidavit required by s.
160 56.27(4) shall be sent by the sheriff to the attorneys of record
161 of all judgment creditors and other lienholders, or to all
162 judgment creditors and other lienholders who do not have an
163 attorney of record, who have acquired a ~~judgment~~ lien as provided
164 in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3), or s. 695.01,
165 and whose liens have not lapsed at the time of levy, at the
166 address listed in the judgment lien certificate or other recorded
167 liens, or, if amended, in any amendment thereto ~~to the judgment~~
168 ~~lien certificate~~, and to all secured creditors who have filed
169 financing statements as provided in part V of chapter 679 in the
170 name of the judgment debtor reflecting a security interest in
171 property of the kind to be sold at the execution sale at the
172 address listed in the financing statement, or, if amended, in any
173 amendment to the financing statement. Such notice shall be made
174 in the same manner as notice is made to any judgment debtor under

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175 this section. When levying upon real property, notice of such
176 levy and execution sale and affidavit required by s. 56.27(4)
177 shall be made to the property owner of record in the same manner
178 as notice is made to any judgment debtor pursuant to this
179 section, and shall be made to each other person holding a
180 mortgage or other lien against the real property as disclosed by
181 the affidavit. When selling real or personal property, the sale
182 date shall not be earlier than 30 days after the date of the
183 first advertisement.

184 Section 6. Subsections (1), (2), and (4) of section 56.27,
185 Florida Statutes, are amended to read:

186 56.27 Executions; payment of money collected.--

187 (1) All money received under executions shall be paid, in
188 the order prescribed, to the following: the sheriff, for costs;
189 the levying creditor in the amount of \$500 as liquidated
190 expenses; and if the levy is upon real property, the first
191 priority lienholder under s. 55.10(1) and (2), s. 55.10; and if
192 the levy is upon personal property, the first priority lienholder
193 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in
194 an affidavit required by subsection (4), or his or her attorney,
195 in satisfaction of the judgment lien, ~~if provided that~~ the
196 judgment lien has not lapsed at the time of the levy. The receipt
197 of the attorney shall be a release of the officer paying the
198 money to him or her. ~~If when~~ the name of more than one attorney
199 appears in the court file, the money shall be paid to the
200 attorney who originally commenced the action or who made the
201 original defense unless the file shows that another attorney has
202 been substituted.

203 (2) (a) ~~If when~~ property sold under execution brings more

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204 than the amount needed to satisfy the provisions of subsection
205 (1), the surplus shall be paid in the order of priority to any
206 judgment lienholders whose judgment liens have not lapsed, unless
207 the affidavit required by subsection (4) discloses that the
208 property is also subject to any recorded mortgage, financing
209 statement, tax warrant, or other lien, other than a judgment
210 lien, that is junior in priority to the levying creditor's
211 judgment lien. For the purpose of the sheriff's distribution of
212 the surplus to judgment lienholders under this paragraph,
213 priority of judgment liens on personal property shall be based on
214 the effective date of the judgment lien acquired under s. 55.202,
215 s. 55.204(3), or s. 55.208(2), and priority of judgment liens on
216 real property shall be based on the effective date of the
217 judgment lien acquired under s. 55.10(1) and (2), as set forth in
218 an affidavit required under subsection (4). If there is a surplus
219 after all valid judgment liens and execution liens have been
220 satisfied under this paragraph, the surplus must be paid to the
221 owner of the property sold ~~defendant~~.

222 (b) If the affidavit required by subsection (4) discloses
223 that the property is also subject to any recorded mortgage,
224 financing statement, tax warrant, or other lien, other than a
225 judgment lien, that is junior in priority to the levying
226 creditor's judgment lien, any surplus from the sale of the
227 property shall be paid over to the registry of the court from
228 which the execution issued for further proceedings to determine
229 the priority in which such surplus shall be distributed among
230 judgment lienholders, other lienholders, and the owner of the
231 property sold.

232 (4) Before the date of the first publication or posting of

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233 the notice of sale provided for under s. 56.21, at the time of
234 the levy request to the sheriff, the levying creditor shall
235 deliver to the sheriff an affidavit setting forth all of the
236 following as to the judgment debtor:

237 (a) For a personal property levy, an attestation by that
238 the levying creditor or the creditor's attorney of record that he
239 or she has reviewed the database or judgment lien records
240 established in accordance with ss. 55.201-55.209 and that the
241 information contained in the affidavit based on that review is
242 true and correct. For a real property levy in accordance with s.
243 55.10(1) and (2), an attestation by the levying creditor or his
244 or her attorney of record that he or she has reviewed the records
245 of the clerk of court of the county where the property is
246 situated, or that he or she has performed a title search, and
247 that the information contained in the affidavit, including a
248 disclosure of all judgment liens, mortgages, financing
249 statements, tax warrants, and other liens against the real
250 property, based on that review or title search is true and
251 correct.

252 (b) The information required under s. 55.203(1) and (2) for
253 each judgment lien certificate indexed under the name of the
254 judgment debtor as to each judgment creditor; the file number
255 assigned to the record of the original and, if any, the second
256 judgment lien; and the date of filing for each judgment lien
257 certificate under s. 55.202 or s. 55.204(3). For each judgment
258 lien recorded on real property, the information contained in the
259 certified copy of recordation of lien pursuant to s. 55.10(1) and
260 (2), and for each other lien recorded on real property, the name
261 and address of the lienholder as shown in the copy of the

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262 recorded lien disclosed by the title search.; ~~and~~

263 (c) A statement that the levying creditor either does not
264 have any other levy in process or, if another levy is in process,
265 the levying creditor believes in good faith that the total value
266 of the property under execution does not exceed the amount of
267 outstanding judgments.

268 Section 7. Paragraph (a) of subsection (8) of section
269 741.30, Florida Statutes, is amended to read:

270 741.30 Domestic violence; injunction; powers and duties of
271 court and clerk; petition; notice and hearing; temporary
272 injunction; issuance of injunction; statewide verification
273 system; enforcement.--

274 (8) (a) 1. The clerk of the court shall furnish a copy of the
275 petition, financial affidavit, Uniform Child Custody Jurisdiction
276 and Enforcement Act affidavit, if any, notice of hearing, and
277 temporary injunction, if any, to the sheriff or a law enforcement
278 agency of the county where the respondent resides or can be
279 found, who shall serve it upon the respondent as soon thereafter
280 as possible on any day of the week and at any time of the day or
281 night. When requested by the sheriff, the clerk of court may
282 transmit a facsimile copy of an injunction that has been
283 certified by the clerk of court, and this facsimile copy may be
284 served in the same manner as a certified copy. Upon receiving a
285 facsimile copy, the sheriff must verify receipt with the sender
286 before attempting to serve it upon the respondent. In addition,
287 if the sheriff is in possession of an injunction for protection
288 that has been certified by the clerk of court, the sheriff may
289 transmit a facsimile copy of that injunction to a law enforcement
290 officer who shall serve it in the same manner as a certified

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291 copy. The clerk of the court shall be responsible for furnishing
292 to the sheriff such information on the respondent's physical
293 description and location as is required by the department to
294 comply with the verification procedures set forth in this
295 section. Notwithstanding any other provision of law to the
296 contrary, the chief judge of each circuit, in consultation with
297 the appropriate sheriff, may authorize a law enforcement agency
298 within the jurisdiction to effect service. A law enforcement
299 agency serving injunctions pursuant to this section shall use
300 service and verification procedures consistent with those of the
301 sheriff.

302 2. When an injunction is issued, if the petitioner requests
303 the assistance of a law enforcement agency, the court may order
304 that an officer from the appropriate law enforcement agency
305 accompany the petitioner and assist in placing the petitioner in
306 possession of the dwelling or residence, or otherwise assist in
307 the execution or service of the injunction. A law enforcement
308 officer shall accept a copy of an injunction for protection
309 against domestic violence, certified by the clerk of the court,
310 from the petitioner and immediately serve it upon a respondent
311 who has been located but not yet served.

312 3. All orders issued, changed, continued, extended, or
313 vacated subsequent to the original service of documents
314 enumerated under subparagraph 1., shall be certified by the clerk
315 of the court and delivered to the parties at the time of the
316 entry of the order. The parties may acknowledge receipt of such
317 order in writing on the face of the original order. In the event
318 a party fails or refuses to acknowledge the receipt of a
319 certified copy of an order, the clerk shall note on the original

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320 order that service was effected. If delivery at the hearing is
321 not possible, the clerk shall mail certified copies of the order
322 to the parties at the last known address of each party. Service
323 by mail is complete upon mailing. When an order is served
324 pursuant to this subsection, the clerk shall prepare a written
325 certification to be placed in the court file specifying the time,
326 date, and method of service and shall notify the sheriff.

327
328 If the respondent has been served previously with the temporary
329 injunction and has failed to appear at the initial hearing on the
330 temporary injunction, any subsequent petition for injunction
331 seeking an extension of time may be served on the respondent by
332 the clerk of the court by certified mail in lieu of personal
333 service by a law enforcement officer.

334 Section 8. Paragraph (a) of subsection (8) of section
335 784.046, Florida Statutes, is amended to read:

336 784.046 Action by victim of repeat violence, sexual
337 violence, or dating violence for protective injunction; powers
338 and duties of court and clerk of court; filing and form of
339 petition; notice and hearing; temporary injunction; issuance;
340 statewide verification system; enforcement.--

341 (8) (a) 1. The clerk of the court shall furnish a copy of the
342 petition, notice of hearing, and temporary injunction, if any, to
343 the sheriff or a law enforcement agency of the county where the
344 respondent resides or can be found, who shall serve it upon the
345 respondent as soon thereafter as possible on any day of the week
346 and at any time of the day or night. When requested by the
347 sheriff, the clerk of court may transmit a facsimile copy of an
348 injunction that has been certified by the clerk of court, and

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349 this facsimile copy may be served in the same manner as a
350 certified copy. Upon receiving a facsimile copy, the sheriff must
351 verify receipt with the sender before attempting to serve it upon
352 the respondent. In addition, if the sheriff is in possession of
353 an injunction for protection that has been certified by the clerk
354 of court, the sheriff may transmit a facsimile copy of that
355 injunction to a law enforcement officer who shall serve it in the
356 same manner as a certified copy. The clerk of the court shall be
357 responsible for furnishing to the sheriff such information on the
358 respondent's physical description and location as is required by
359 the department to comply with the verification procedures set
360 forth in this section. Notwithstanding any other provision of law
361 to the contrary, the chief judge of each circuit, in consultation
362 with the appropriate sheriff, may authorize a law enforcement
363 agency within the chief judge's jurisdiction to effect this type
364 of service and to receive a portion of the service fee. No person
365 shall be authorized or permitted to serve or execute an
366 injunction issued under this section unless the person is a law
367 enforcement officer as defined in chapter 943.

368 2. When an injunction is issued, if the petitioner requests
369 the assistance of a law enforcement agency, the court may order
370 that an officer from the appropriate law enforcement agency
371 accompany the petitioner and assist in the execution or service
372 of the injunction. A law enforcement officer shall accept a copy
373 of an injunction for protection against repeat violence, sexual
374 violence, or dating violence, certified by the clerk of the
375 court, from the petitioner and immediately serve it upon a
376 respondent who has been located but not yet served.

377 Section 9. This act shall take effect July 1, 2008.