

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.;
11 providing for selection of authorized certified process
12 servers to serve criminal witness subpoenas and criminal
13 summonses; amending s. 56.041, F.S.; providing that all
14 unsatisfied executions in the possession of the sheriff
15 docketed before October 1, 2001, may be returned to the
16 issuing court; amending s. 56.21, F.S.; requiring the
17 submission of an affidavit before levying a judgment upon
18 real property; requiring the sheriff to furnish to the
19 judgment debtor or the debtor's attorney of record a copy
20 of the notice of sale, notice of levy, and affidavit
21 within a specified period before execution of a sale or
22 levy; amending s. 56.27, F.S.; requiring that priority of
23 liens on real property be based on the effective date of
24 the judgment lien for a specified purpose; requiring a
25 levying creditor to deliver to the sheriff at the time of
26 the levy request an affidavit setting forth certain
27 information and attestations; amending ss. 741.30 and
28 784.046, F.S., relating to service of process in cases of

29 domestic violence or sexual abuse; authorizing clerks of
 30 court to transmit facsimile copies of previously certified
 31 injunctions to sheriffs upon request; requiring sheriffs
 32 to verify receipt of facsimile copies of injunctions with
 33 clerks of court before attempting service; authorizing law
 34 enforcement officers to serve facsimile copies of
 35 injunctions in the same manner as certified copies;
 36 providing an effective date.

37

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

39

40 Section 1. Subsections (1) and (4) of section 30.231,
 41 Florida Statutes, are amended to read:

42 30.231 Sheriffs' fees for service of summons, subpoenas,
 43 and executions.--

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

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

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

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

57 (d) Executions:

58 1. Forty ~~Twenty~~ dollars for docketing and indexing each

59 writ of execution, regardless of the number of persons involved.

60 2. Fifty dollars for each levy.

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

62 portion of the property listed or unlisted in the instructions

63 for levy is seized, or upon demand of the sheriff the writ is

64 satisfied by the defendant in lieu of seizure. Seizure requires

65 that the sheriff take actual possession, if practicable, or,

66 alternatively, constructive possession of the property by order

67 of the court.

68 b. When the instructions are for levy upon real property,

69 a levy fee is required for each parcel described in the

70 instructions.

71 c. When the instructions are for levy based upon personal

72 property, one fee is allowed, unless the property is seized at

73 different locations, conditional upon all of the items being

74 advertised collectively and the sale being held at a single

75 location. However, if the property seized cannot be sold at one

76 location during the same sale as advertised, but requires

77 separate sales at different locations, the sheriff is then

78 authorized to impose a levy fee for the property and sale at

79 each location.

80 3. Forty ~~Twenty~~ dollars for advertisement of sale under

81 process.

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

83 5. Forty ~~Twenty~~ dollars for each deed, bill of sale, or

84 satisfaction of judgment.

85
 86 Fees under this subsection chargeable to the State of Florida or
 87 its agencies shall be those fees that were effective under this
 88 subsection on June 30, 2009.

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

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

97 48.021 Process; by whom served.--

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

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

108 48.27 Certified process servers.--

109 (2) (a) The addition of a person's name to the list
 110 authorizes him or her to serve initial nonenforceable civil
 111 process on a person found within the circuit where the process
 112 server is certified when a civil action has been filed against

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113 such person in the circuit court or in a county court in the
 114 state. Upon filing an action in circuit or county court, a
 115 person may select from the list for the circuit where the
 116 process is to be served one or more certified process servers to
 117 serve initial nonenforceable civil process.

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

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

128 56.041 Executions; collection and return.--

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

138 Section 5. Section 56.21, Florida Statutes, is amended to
 139 read:

140 56.21 Execution sales; notice.--Notice of all sales under

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

169 address listed in the financing statement, or, if amended, in
 170 any amendment to the financing statement. Such notice shall be
 171 made in the same manner as notice is made to any judgment debtor
 172 under this section. When levying upon real property, notice of
 173 such levy and execution sale and affidavit required by s.
 174 56.27(4) shall be made to the property owner of record in the
 175 same manner as notice is made to any judgment debtor pursuant to
 176 this section and shall be made to each other person holding a
 177 mortgage or other lien against the real property as disclosed by
 178 the affidavit. When selling real or personal property, the sale
 179 date shall not be earlier than 30 days after the date of the
 180 first advertisement.

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

183 56.27 Executions; payment of money collected.--

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

197 to the attorney who originally commenced the action or who made
 198 the original defense unless the file shows that another attorney
 199 has been substituted.

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

219 (b) If the affidavit required by subsection (4) discloses
 220 that the property is also subject to any recorded mortgage,
 221 financing statement, tax warrant, or other lien, other than a
 222 judgment lien, that is junior in priority to the levying
 223 creditor's judgment lien, any surplus from the sale of the
 224 property shall be paid over to the registry of the court from

225 which the execution issued for further proceedings to determine
 226 the priority in which such surplus shall be distributed among
 227 judgment lienholders, other lienholders, and the owner of the
 228 property sold.

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

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

248 (b) The information required under s. 55.203(1) and (2)
 249 for each judgment lien certificate indexed under the name of the
 250 judgment debtor as to each judgment creditor; the file number
 251 assigned to the record of the original and, if any, the second
 252 judgment lien; and the date of filing for each judgment lien

253 certificate under s. 55.202 or s. 55.204(3). For each judgment
 254 lien recorded on real property, the information contained in the
 255 certified copy of recordation of lien pursuant to s. 55.10(1)
 256 and (2), and for each other lien recorded on real property, the
 257 name and address of the lienholder as shown in the copy of the
 258 recorded lien disclosed by the title search.~~;~~ ~~and~~

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

264 Section 7. Paragraph (a) of subsection (8) of section
 265 741.30, Florida Statutes, is amended to read:

266 741.30 Domestic violence; injunction; powers and duties of
 267 court and clerk; petition; notice and hearing; temporary
 268 injunction; issuance of injunction; statewide verification
 269 system; enforcement.--

270 (8)(a)1. The clerk of the court shall furnish a copy of
 271 the petition, financial affidavit, Uniform Child Custody
 272 Jurisdiction and Enforcement Act affidavit, if any, notice of
 273 hearing, and temporary injunction, if any, to the sheriff or a
 274 law enforcement agency of the county where the respondent
 275 resides or can be found, who shall serve it upon the respondent
 276 as soon thereafter as possible on any day of the week and at any
 277 time of the day or night. When requested by the sheriff, the
 278 clerk of court may transmit a facsimile copy of an injunction
 279 that has been certified by the clerk of court, and this
 280 facsimile copy may be served in the same manner as a certified

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281 copy. Upon receiving a facsimile copy, the sheriff must verify
282 receipt with the sender before attempting to serve it upon the
283 respondent. In addition, if the sheriff is in possession of an
284 injunction for protection that has been certified by the clerk
285 of court, the sheriff may transmit a facsimile copy of that
286 injunction to a law enforcement officer who shall serve it in
287 the same manner as a certified copy. The clerk of the court
288 shall be responsible for furnishing to the sheriff such
289 information on the respondent's physical description and
290 location as is required by the department to comply with the
291 verification procedures set forth in this section.

292 Notwithstanding any other provision of law to the contrary, the
293 chief judge of each circuit, in consultation with the
294 appropriate sheriff, may authorize a law enforcement agency
295 within the jurisdiction to effect service. A law enforcement
296 agency serving injunctions pursuant to this section shall use
297 service and verification procedures consistent with those of the
298 sheriff.

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

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309 3. All orders issued, changed, continued, extended, or
310 vacated subsequent to the original service of documents
311 enumerated under subparagraph 1., shall be certified by the
312 clerk of the court and delivered to the parties at the time of
313 the entry of the order. The parties may acknowledge receipt of
314 such order in writing on the face of the original order. In the
315 event a party fails or refuses to acknowledge the receipt of a
316 certified copy of an order, the clerk shall note on the original
317 order that service was effected. If delivery at the hearing is
318 not possible, the clerk shall mail certified copies of the order
319 to the parties at the last known address of each party. Service
320 by mail is complete upon mailing. When an order is served
321 pursuant to this subsection, the clerk shall prepare a written
322 certification to be placed in the court file specifying the
323 time, date, and method of service and shall notify the sheriff.

324
325 If the respondent has been served previously with the temporary
326 injunction and has failed to appear at the initial hearing on
327 the temporary injunction, any subsequent petition for injunction
328 seeking an extension of time may be served on the respondent by
329 the clerk of the court by certified mail in lieu of personal
330 service by a law enforcement officer.

331 Section 8. Paragraph (a) of subsection (8) of section
332 784.046, Florida Statutes, is amended to read:

333 784.046 Action by victim of repeat violence, sexual
334 violence, or dating violence for protective injunction; dating
335 violence investigations, notice to victims, and reporting;
336 pretrial release violations.--

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337 (8) (a) 1. The clerk of the court shall furnish a copy of
338 the petition, notice of hearing, and temporary injunction, if
339 any, to the sheriff or a law enforcement agency of the county
340 where the respondent resides or can be found, who shall serve it
341 upon the respondent as soon thereafter as possible on any day of
342 the week and at any time of the day or night. When requested by
343 the sheriff, the clerk of court may transmit a facsimile copy of
344 an injunction that has been certified by the clerk of court, and
345 this facsimile copy may be served in the same manner as a
346 certified copy. Upon receiving a facsimile copy, the sheriff
347 must verify receipt with the sender before attempting to serve
348 it upon the respondent. In addition, if the sheriff is in
349 possession of an injunction for protection that has been
350 certified by the clerk of court, the sheriff may transmit a
351 facsimile copy of that injunction to a law enforcement officer
352 who shall serve it in the same manner as a certified copy. The
353 clerk of the court shall be responsible for furnishing to the
354 sheriff such information on the respondent's physical
355 description and location as is required by the department to
356 comply with the verification procedures set forth in this
357 section. Notwithstanding any other provision of law to the
358 contrary, the chief judge of each circuit, in consultation with
359 the appropriate sheriff, may authorize a law enforcement agency
360 within the chief judge's jurisdiction to effect this type of
361 service and to receive a portion of the service fee. No person
362 shall be authorized or permitted to serve or execute an
363 injunction issued under this section unless the person is a law
364 enforcement officer as defined in chapter 943.

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

374 Section 9. This act shall take effect July 1, 2009.