

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; authorizing
6 an additional fee for certain documents; amending s.
7 48.021, F.S.; providing that criminal witness subpoenas
8 and criminal summonses may be served by a special process
9 server appointed by the local sheriff or by a certified
10 process server; amending s. 48.27, F.S.; providing for
11 selection of authorized certified process servers to serve
12 criminal witness subpoenas and criminal 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 the debtor's attorney of record a copy of the
20 notice of sale, notice of levy, and affidavit within a
21 specified period before execution of a sale or levy;
22 amending s. 56.27, F.S.; requiring that priority of liens
23 on real property be based on the effective date of the
24 judgment lien for a specified purpose; requiring a levying
25 creditor to deliver to the sheriff at the time of the levy
26 request an affidavit setting forth certain information and
27 attestations; amending ss. 741.30 and 784.046, F.S.,
28 relating to service of process in cases of domestic

29 | violence or sexual abuse; authorizing clerks of court to
 30 | 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:

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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. An additional
 92 fee of \$40 may be charged, ~~and no additional fees shall be~~
 93 ~~required~~ for alias and pluries documents when service was not
 94 effected on the original document in that county by that
 95 sheriff.

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

98 48.021 Process; by whom served.--

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

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

109 48.27 Certified process servers.--

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

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

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

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

129 56.041 Executions; collection and return.--

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

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

141 56.21 Execution sales; notice.--Notice of all sales under
 142 execution shall be given by advertisement once each week for 4
 143 successive weeks in a newspaper published in the county in which
 144 the sale is to take place. The time of such notice may be
 145 shortened in the discretion of the court from which the
 146 execution issued, upon affidavit that the property to be sold is
 147 subject to decay and will not sell for its full value if held
 148 until date of sale. On or before the date of the first
 149 publication or posting of the notice of sale, a copy of the
 150 notice of sale shall be furnished by the sheriff by certified
 151 mail to the attorney of record of the judgment debtor, or to the
 152 judgment debtor at the judgment debtor's last known address if
 153 the judgment debtor does not have an attorney of record. Such
 154 copy of the notice of sale shall be mailed even though a default
 155 judgment was entered. When levying upon real or personal
 156 property, a notice of such levy and execution sale and a copy of
 157 the affidavit required by s. 56.27(4) shall be sent by the
 158 sheriff to the attorneys of record of all judgment creditors and
 159 other lienholders and,~~or~~ to all judgment creditors and other
 160 lienholders who do not have an attorney of record, who have
 161 acquired a ~~judgment~~ lien as provided in s. 55.10(1) and (2), s.
 162 55.202, or s. 55.204(3), or s. 695.01, and whose liens have not
 163 lapsed at the time of levy, at the address listed in the
 164 judgment lien certificate or other recorded lien, or, if
 165 amended, in any amendment thereto ~~to the judgment lien~~
 166 ~~certificate,~~ and to all secured creditors who have filed
 167 financing statements as provided in part V of chapter 679 in the
 168 name of the judgment debtor reflecting a security interest in

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

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

184 56.27 Executions; payment of money collected.--

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

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197 one attorney appears in the court file, the money shall be paid
198 to the attorney who originally commenced the action or who made
199 the original defense unless the file shows that another attorney
200 has been substituted.

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

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

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

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

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

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

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

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

265 Section 7. Paragraph (a) of subsection (8) of section
 266 741.30, Florida Statutes, is amended to read:

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

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

281 facsimile copy may be served in the same manner as a certified
282 copy. Upon receiving a facsimile copy, the sheriff must verify
283 receipt with the sender before attempting to serve it upon the
284 respondent. In addition, if the sheriff is in possession of an
285 injunction for protection that has been certified by the clerk
286 of court, the sheriff may transmit a facsimile copy of that
287 injunction to a law enforcement officer who shall serve it in
288 the same manner as a certified copy. The clerk of the court
289 shall be responsible for furnishing to the sheriff such
290 information on the respondent's physical description and
291 location as is required by the department to comply with the
292 verification procedures set forth in this section.
293 Notwithstanding any other provision of law to the contrary, the
294 chief judge of each circuit, in consultation with the
295 appropriate sheriff, may authorize a law enforcement agency
296 within the jurisdiction to effect service. A law enforcement
297 agency serving injunctions pursuant to this section shall use
298 service and verification procedures consistent with those of the
299 sheriff.

300 2. When an injunction is issued, if the petitioner
301 requests the assistance of a law enforcement agency, the court
302 may order that an officer from the appropriate law enforcement
303 agency accompany the petitioner and assist in placing the
304 petitioner in possession of the dwelling or residence, or
305 otherwise assist in the execution or service of the injunction.
306 A law enforcement officer shall accept a copy of an injunction
307 for protection against domestic violence, certified by the clerk
308 of the court, from the petitioner and immediately serve it upon

309 a respondent who has been located but not yet served.

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

325

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

332 Section 8. Paragraph (a) of subsection (8) of section
333 784.046, Florida Statutes, is amended to read:

334 784.046 Action by victim of repeat violence, sexual
335 violence, or dating violence for protective injunction; dating

336 violence investigations, notice to victims, and reporting;
337 pretrial release violations.--

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

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364 injunction issued under this section unless the person is a law
365 enforcement officer as defined in chapter 943.

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

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