

Committee Substitute for Senate Bill No. 412

An act relating to service of process; amending s. 30.231, F.S.; increasing the fees charged by the sheriff in civil cases for service of process; deleting a prohibition on additional fees for certain documents; exempting the state and its agencies from increased fees or additional fees required for alias and pluries; 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 the 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 lienholder, or the debtor's or lienholder'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, unless an affidavit discloses that the property is subject to a recorded mortgage, financing statement, tax warrant, or other lien that is junior in priority to the judgment lien; requiring a levying creditor to deliver the affidavit to the sheriff at the time of the levy request setting forth certain information and attestations; requiring certain information to be contained in the certified copy of recordation of lien; amending ss. 741.30 and 784.046, F.S., relating to service of process in cases of domestic violence or sexual abuse; authorizing clerks of the court to transmit facsimile copies of previously certified injunctions to sheriffs upon request; requiring sheriffs to verify receipt of facsimile copies of injunctions with clerks of the court before attempting service; authorizing law enforcement officers to serve facsimile copies of injunctions in the same manner as certified copies; authorizing a law enforcement officer to arrest a person suspected of violating a condition of pretrial release if the original arrest was for an act of dating violence; amending s. 901.15, F.S.; conforming provisions to changes made by the act; amending s. 939.185, F.S.; revising provisions relating to assessment of additional court costs and surcharges; providing an effective date.

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

Section 1. Subsections (1) and (4) of section 30.231, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

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

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

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

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

(d) Executions:

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

2. Fifty dollars for each levy.

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

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

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

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

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

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

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

(6) Fees under this section chargeable to the state or its agencies shall be those fees that were effective under this section on June 30, 2009.

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

48.021 Process; by whom served.—

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

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

48.27 Certified process servers.—

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

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

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

56.041 Executions; collection and return.—

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

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

56.21 Execution sales; notice.—Notice of all sales under execution shall be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. The time of such notice may be shortened in the discretion of the court from

which the execution issued, upon affidavit that the property to be sold is subject to decay and will not sell for its full value if held until date of sale. On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale shall be furnished by the sheriff by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address if the judgment debtor does not have an attorney of record. Such copy of the notice of sale shall be mailed even though a default judgment was entered. When levying upon real or personal property, a notice of such levy and execution sale and a copy of the affidavit required by s. 56.27(4) shall be sent by the sheriff to the attorneys of record of all judgment creditors and other lienholders, or to all judgment creditors and other lienholders who do not have an attorney of record, who have acquired a judgment lien as provided in s. 55.10(1) and (2), s. 55.202, or s. 55.204(3), or s. 695.01, and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate or other recorded liens, or, if amended, in any amendment thereto to the judgment lien certificate, and to all secured creditors who have filed financing statements as provided in part V of chapter 679 in the name of the judgment debtor reflecting a security interest in property of the kind to be sold at the execution sale at the address listed in the financing statement, or, if amended, in any amendment to the financing statement. Such notice shall be made in the same manner as notice is made to any judgment debtor under this section. When levying upon real property, notice of such levy and execution sale and affidavit required by s. 56.27(4) shall be made to the property owner of record in the same manner as notice is made to any judgment debtor pursuant to this section, and shall be made to each other person holding a mortgage or other lien against the real property as disclosed by the affidavit. When selling real or personal property, the sale date shall not be earlier than 30 days after the date of the first advertisement.

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

56.27 Executions; payment of money collected.—

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

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

liens have not lapsed, unless the affidavit required by subsection (4) discloses that the property is also subject to any recorded mortgage, financing statement, tax warrant, or other lien, other than a judgment lien, which is junior in priority to the levying creditor's judgment lien. For the purpose of the sheriff's distribution of the surplus to judgment lienholders under this paragraph, priority of judgment liens on personal property shall be based on the effective date of the judgment lien acquired under s. 55.202, s. 55.204(3), or s. 55.208(2), and priority of judgment liens on real property shall be based on the effective date of the judgment lien acquired under s. 55.10(1) and (2), as set forth in an affidavit required under subsection (4). If there is a surplus after all valid judgment liens and execution liens have been satisfied under this paragraph, the surplus must be paid to the owner of the property sold defendant.

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

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

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

(b) The information required under s. 55.203(1) and (2) for each judgment lien certificate indexed under the name of the judgment debtor as to each judgment creditor; the file number assigned to the record of the original and, if any, the second judgment lien; and the date of filing for each judgment lien certificate under s. 55.202 or s. 55.204(3). For each judgment lien recorded on real property, the information contained in the certified copy of recordation of lien under s. 55.10(1) and (2), and for each other lien recorded on real property, the name and address of the lienholder as shown in the copy of the recorded lien disclosed by the title search.; and

(c) A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, the levying creditor believes

in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

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

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)(a)1. The clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

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

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is

complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

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

Section 8. Paragraph (a) of subsection (8) and subsection (13) of section 784.046, Florida Statutes, are amended to read:

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

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

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

(13) Whenever a law enforcement officer determines upon probable cause that an act of dating violence has been committed within the jurisdiction,

or that a person has violated a condition of pretrial release as provided in s. 903.047 and the original arrest was for an act of dating violence, the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.

Section 9. Subsection (13) of section 901.15, Florida Statutes, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(13) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in s. 903.047 when the original arrest was for an act of domestic violence as defined in s. 741.28, or when the original arrest was for an act of dating violence as defined in s. 784.046.

Section 10. Paragraph (d) is added to subsection (1) of section 939.185, Florida Statutes, to read:

939.185 Assessment of additional court costs and surcharges.—

(1)

(d) The clerk of court shall cause a certified copy of the court order imposing such costs to be recorded in the public records. Such record shall constitute a lien against the person upon whom the costs are imposed and shall attach as a lien on any real and personal property owned by such person. A lien created under this paragraph does not attach to, or make subject to execution of levy or foreclosure, any real or personal property otherwise exempt under s. 4, Art. X of the State Constitution. A lien created under this paragraph is enforceable in the same manner as provided by law.

Section 11. This act shall take effect July 1, 2009.

Approved by the Governor June 24, 2009.

Filed in Office Secretary of State June 24, 2009.