

CHAPTER 98-410

Committee Substitute for House Bill No. 935

An act relating to legal process; amending s. 48.031, F.S., relating to service upon a sole proprietorship; providing that substitute service may be made upon person in charge of the business at the time of service, under specified circumstances; amending s. 48.183, F.S.; providing for service of process in an action for possession of residential premises; amending s. 48.27, F.S.; providing for application and fee for inclusion on list of certified process servers; authorizing certain service when a civil action has been filed in a circuit or county court in the state; amending s. 55.03, F.S., relating to docketing and indexing of civil process generally; revising provisions relating to rate of interest; providing an exception from certain docketing and indexing or collection requirements when rate of interest is not on the face of the process, writ, judgment, or decree; amending s. 56.27, F.S., relating to payment to execution creditor of money collected; providing for payment to a junior writ of certain surplus moneys collected; amending s. 56.28, F.S.; requiring written demand by plaintiff as a condition for officer's liability to pay over within 10 days certain moneys collected; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 48.031, Florida Statutes, is amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(2)

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge ~~manager~~ of the business at the time of service if ~~two~~ one or more attempts to serve the owner have been made at the place of business.

Section 2. Subsection (1) of section 48.183, Florida Statutes, is amended to read:

48.183 Service of process in action for possession of premises.—

(1) In an action for possession of residential premises ~~under s. 83.59~~ or nonresidential premises, if the tenant cannot be found in the county or there is no person 15 years of age or older residing at the tenant's usual place of abode in the county after at least two attempts to obtain service as provided above in this subsection, summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons. The minimum time delay between the two attempts to obtain service shall be 6 hours. Nothing herein shall be construed as prohibiting service of process on a tenant as is otherwise provided on defendants in civil cases.

Section 3. Section 48.27, Florida Statutes, is amended to read:

48.27 Certified process servers.—

(1) The chief judge of each judicial circuit may establish an approved list of natural persons designated as certified process servers. The chief judge may periodically add to such list the names of those natural persons who have met the requirements for certification provided for in s. 48.29. Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge of a judicial circuit. The chief judge shall prescribe appropriate forms for application for inclusion on the list of certified process servers. A reasonable fee for the processing of any such application must be charged.

(2) 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 circuit. 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.

(3) Nothing herein shall be interpreted to exclude a sheriff or deputy or other person appointed by the sheriff pursuant to s. 48.021 from serving process or to exclude a person from appointment by individual motion and order to serve process in any civil action in accordance with Rule 1.070(b) of the Florida Rules of Civil Procedure.

Section 4. Section 55.03, Florida Statutes, is amended to read:

55.03 Judgments; rate of interest, generally.—

(1) On December 1 of each year beginning December 1, 1994, the Comptroller of the State of Florida shall set the rate of interest that shall be payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate. The Comptroller shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming year. The initial interest rate established by the Comptroller shall take effect on January 1, 1995, and the interest rate established by the Comptroller in subsequent years shall take effect on January 1 of each following year. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Comptroller for time periods after January 1, 1995, for which interest is due. Nothing contained herein shall affect a rate of interest established by written contract or obligation.

(2) Any judgment for money damages or order for a judicial sale and any process or, writ, judgment, or decree which is directed to a sheriff for the sheriffs of the state to be dealt with as execution shall bear, on its the face of the process, writ, judgment, or decree, the rate of interest that is payable

on which it shall accrue from the date of the judgment until payment. The rate of interest stated in the judgment accrues on the judgment until it is paid.

(3) The interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid.

(4) A sheriff shall not be required to docket and index or collect on any process, writ, judgment, or decree, described in subsection (2), and entered after the effective date of this act, unless such process, writ, judgment, or decree indicates the rate of interest. For purposes of this subsection, if the process, writ, judgment, or decree refers to the statutory rate of interest described in subsection (1), such reference shall be deemed to indicate the rate of interest.

Section 5. Section 56.27, Florida Statutes, is amended to read:

56.27 Executions; payment to execution creditor of money collected.—All money received under executions shall be paid to the party in whose favor the execution was issued or his or her attorney. The receipt of the attorney shall be a release of the officer paying the money to him or her. 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. When property sold under execution brings more than the amount of the execution, the surplus ~~must shall~~ be paid to the defendant or, if there is another writ against the defendant docketed and indexed with the sheriff, the surplus must be paid to the junior writ without a delay.

Section 6. Section 56.28, Florida Statutes, is amended to read:

56.28 Executions; failure of officer to pay over moneys collected.—If any officer collecting money under execution ~~fails shall fail or refuses refuse~~ to pay it over within 30 days after it ~~has shall have~~ been received by him or her, or within 10 days after demand ~~made~~ by the plaintiff or his or her attorney of record made in writing and delivered during regular business hours to the civil process bureau, the officer ~~is shall be~~ liable to pay the same and 20 percent damages, to be recovered by motion in court.

Section 7. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval June 17, 1998.

Filed in Office Secretary of State June 11, 1998.