

By Senator Burt

16-392-98

1 A bill to be entitled
2 An act relating to legal process; amending s.
3 48.031, F.S., relating to service upon a sole
4 proprietorship; providing that substitute
5 service may be made upon person in charge of
6 the business at the time of service, under
7 specified circumstances; amending s. 48.183,
8 F.S.; providing for service of process in an
9 action for possession of residential premises;
10 amending s. 48.27, F.S.; providing for
11 application and fee for inclusion on list of
12 certified process servers; authorizing certain
13 service when a civil action has been filed in a
14 circuit or county court in the state; amending
15 s. 55.03, F.S., relating to docketing and
16 indexing of civil process generally; revising
17 provisions relating to rate of interest;
18 providing an exception from certain docketing
19 and indexing or collection requirements when
20 rate of interest is not on the face of the
21 process, writ, judgment, or decree; amending s.
22 56.27, F.S., relating to payment to execution
23 creditor of money collected; providing for
24 payment to a junior writ of certain surplus
25 moneys collected; amending s. 56.28, F.S.;
26 requiring written demand by plaintiff as a
27 condition for officer's liability to pay over
28 within 10 days certain moneys collected;
29 providing an effective date.

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

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

3 48.031 Service of process generally; service of
4 witness subpoenas.--

5 (2)

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

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

14 48.183 Service of process in action for possession of
15 premises.--

16 (1) In an action for possession of residential
17 premises ~~under s. 83.59~~ or nonresidential premises, if the
18 tenant cannot be found in the county or there is no person 15
19 years of age or older residing at the tenant's usual place of
20 abode in the county after at least two attempts to obtain
21 service as provided above in this subsection, summons may be
22 served by attaching a copy to a conspicuous place on the
23 property described in the complaint or summons. The minimum
24 time delay between the two attempts to obtain service shall be
25 6 hours. Nothing herein shall be construed as prohibiting
26 service of process on a tenant as is otherwise provided on
27 defendants in civil cases.

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

30 48.27 Certified process servers.--

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1 (1) The chief judge of each judicial circuit may
2 establish an approved list of natural persons designated as
3 certified process servers. The chief judge may periodically
4 add to such list the names of those natural persons who have
5 met the requirements for certification provided for in s.
6 48.29. Each person whose name has been added to the approved
7 list is subject to annual recertification and reappointment by
8 the chief judge of a judicial circuit. The chief judge shall
9 prescribe appropriate forms for application for inclusion on
10 the list of certified process servers. A reasonable fee for
11 the processing of any such application must be charged.

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

21 (3) Nothing herein shall be interpreted to exclude a
22 sheriff or deputy or other person appointed by the sheriff
23 pursuant to s. 48.021 from serving process or to exclude a
24 person from appointment by individual motion and order to
25 serve process in any civil action in accordance with Rule
26 1.070(b) of the Florida Rules of Civil Procedure.

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

29 55.03 Judgments; rate of interest, generally.--

30 (1) On December 1 of each year beginning December 1,
31 1994, the Comptroller of the State of Florida shall set the

1 rate of interest that shall be payable on judgments or decrees
2 for the year beginning January 1 by averaging the discount
3 rate of the Federal Reserve Bank of New York for the preceding
4 year, then adding 500 basis points to the averaged federal
5 discount rate. The Comptroller shall inform the clerk of the
6 courts and chief judge for each judicial circuit of the rate
7 that has been established for the upcoming year. The initial
8 interest rate established by the Comptroller shall take effect
9 on January 1, 1995, and the interest rate established by the
10 Comptroller in subsequent years shall take effect on January 1
11 of each following year. Judgments obtained on or after January
12 1, 1995, shall use the previous statutory rate for time
13 periods before January 1, 1995, for which interest is due and
14 shall apply the rate set by the Comptroller for time periods
15 after January 1, 1995, for which interest is due.

16 Notwithstanding the provisions of this paragraph, if a ~~Nothing~~
17 ~~contained herein shall affect a rate of interest established~~
18 ~~by written contract or obligation sued upon establishes a rate~~
19 ~~of interest, such rate of interest is the rate of interest~~
20 ~~payable on the judgment.~~

21 (2) Any judgment for money damages or order for a
22 judicial sale and any process or writ, judgment, or decree
23 which is directed to a sheriff for the sheriffs of the state
24 to be dealt with as execution shall bear, on ~~its~~ the face of
25 the process, writ, judgment, or decree, the rate of interest
26 that is payable on which it shall accrue from the date of the
27 judgment until payment. The rate of interest stated in the
28 judgment accrues on the judgment until it is paid.

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

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

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

12 56.27 Executions; payment to execution creditor of
13 money collected.--All money received under executions shall be
14 paid to the party in whose favor the execution was issued or
15 his or her attorney. The receipt of the attorney shall be a
16 release of the officer paying the money to him or her. When
17 the name of more than one attorney appears in the court file,
18 the money shall be paid to the attorney who originally
19 commenced the action or who made the original defense unless
20 the file shows that another attorney has been substituted.
21 When property sold under execution brings more than the amount
22 of the execution, the surplus must ~~shall~~ be paid to the
23 defendant or, if there is another writ against the defendant
24 docketed and indexed with the sheriff, the surplus must be
25 paid to the junior writ without a delay.

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

28 56.28 Executions; failure of officer to pay over
29 moneys collected.--If any officer collecting money under
30 execution fails ~~shall fail~~ or refuses ~~refuse~~ to pay it over
31 within 30 days after it has ~~shall have~~ been received by him or

1 her, or within 10 days after demand ~~made~~ by the plaintiff or
2 his or her attorney of record made in writing and delivered
3 during regular business hours to the civil process bureau, the
4 officer is ~~shall be~~ liable to pay the same and 20 percent
5 damages, to be recovered by motion in court.

6 Section 7. This act shall take effect October 1, 1998.

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9 SENATE SUMMARY

10 Provides for substitute service of process upon a person
11 in charge of a business at the time of service when the
12 business is a sole proprietorship. Provides for service
13 of process in an action for possession of residential
14 premises. Provides for application and fee for inclusion
15 on list of certified process servers. Authorizes certain
16 service when a civil action has been filed in a circuit
17 or county court in the state. Revises provisions
18 relating to rate of interest on judgments. Provides an
19 exception from certain docketing and indexing or
20 collection requirements when the rate of interest is not
21 on the face of the process, writ, judgment, or decree.
22 Provides for payment to execution creditor of money
23 collected. Provides for payment to a junior writ of
24 certain surplus moneys collected. Requires written
25 demand by plaintiff as a condition for officer's
26 liability to pay over within 10 days certain moneys
27 collected.
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