

By the Committee on Judiciary and Senator Burt

308-1884-98

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 two ~~one~~ or more attempts to serve the owner have been made at  
11 the 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 any ~~the~~ circuit court or in any ~~a~~ county court  
17 in the state ~~circuit~~. Upon filing an action in circuit or  
18 county court, a person may select from the list for the  
19 circuit where the process is to be served one or more  
20 certified process servers to serve initial nonenforceable  
21 civil process.

22           (3) Nothing herein shall be interpreted to exclude a  
23 sheriff or deputy or other person appointed by the sheriff  
24 pursuant to s. 48.021 from serving process or to exclude a  
25 person from appointment by individual motion and order to  
26 serve process in any civil action in accordance with Rule  
27 1.070(b) of the Florida Rules of Civil Procedure.

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

30           55.03 Judgments; rate of interest, generally.--  
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1           (1) On December 1 of each year beginning December 1,  
2 1994, the Comptroller of the State of Florida shall set the  
3 rate of interest that shall be payable on judgments or decrees  
4 for the year beginning January 1 by averaging the discount  
5 rate of the Federal Reserve Bank of New York for the preceding  
6 year, then adding 500 basis points to the averaged federal  
7 discount rate. The Comptroller shall inform the clerk of the  
8 courts and chief judge for each judicial circuit of the rate  
9 that has been established for the upcoming year. The initial  
10 interest rate established by the Comptroller shall take effect  
11 on January 1, 1995, and the interest rate established by the  
12 Comptroller in subsequent years shall take effect on January 1  
13 of each following year. Judgments obtained on or after January  
14 1, 1995, shall use the previous statutory rate for time  
15 periods before January 1, 1995, for which interest is due and  
16 shall apply the rate set by the Comptroller for time periods  
17 after January 1, 1995, for which interest is due. Nothing  
18 contained herein shall affect a rate of interest established  
19 by written contract or obligation.

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

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

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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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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9 COMMITTEE SUBSTITUTE FOR  
10 Senate Bill 1244

11 The Committee Substitute for Senate Bill 1244 deletes the  
12 proposed changes to contractual interest rates on judgments  
13 and requires that two attempts, instead of one, be made to  
14 serve the owner of a business prior to substitute service on  
15 the business manager.  
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