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CS/CS/HB 91, Engrossed 1

2019 Legislature

1
2 An act relating to judicial process; amending s.
3 48.23, F.S.; providing that a person who acquires for
4 value a lien on property during the course of
5 specified legal actions takes such lien free of claims
6 in certain circumstances; revising provisions relating
7 to time requirements for intervention in certain
8 proceedings; specifying the effect of a valid,
9 recorded notice of lis pendens in certain
10 circumstances involving a judicial sale; providing
11 applicability; amending s. 48.021, F.S.; revising
12 authority of special process servers; revising a
13 cross-reference; requiring that civil witness
14 subpoenas be served by certain persons; amending s.
15 48.031, F.S.; revising requirements for substituted
16 service on the spouse of the person to be served;
17 revising requirements for documenting service of
18 process; conforming terminology; amending s. 48.062,
19 F.S.; revising requirements for service on limited
20 liability companies; amending s. 48.194, F.S.;
21 revising provisions specifying who may serve process
22 outside of the state; revising requirements for
23 documenting that service has been properly made
24 outside the state; amending s. 48.21, F.S.; revising
25 requirements for return-of-service forms; authorizing

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

26 | certain persons to electronically sign return-of-
 27 | service forms; amending s. 316.29545, F.S.; exempting
 28 | certified process servers from certain window
 29 | suncreening restrictions; providing an effective
 30 | date.

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

33 |
 34 | Section 1. Paragraphs (b) and (d) of subsection (1) of
 35 | section 48.23, Florida Statutes, are amended to read:

36 | 48.23 Lis pendens.—

37 | (1)

38 | (b)1. An action that is filed for specific performance or
 39 | that is not based on a duly recorded instrument has no effect,
 40 | except as between the parties to the proceeding, on the title
 41 | to, or on any lien upon, the real or personal property unless a
 42 | notice of lis pendens has been recorded and has not expired or
 43 | been withdrawn or discharged.

44 | 2. Any person acquiring for value an interest in, or lien
 45 | upon, the real or personal property during the pendency of an
 46 | action described in subparagraph 1., other than a party to the
 47 | proceeding or the legal successor by operation of law, or
 48 | personal representative, heir, or devisee of a deceased party to
 49 | the proceeding, shall take such interest or lien exempt from all
 50 | claims against the property that were filed in such action by

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

51 | the party who failed to record a notice of lis pendens or whose
52 | notice expired or was withdrawn or discharged, and from any
53 | judgment entered in the proceeding, notwithstanding the
54 | provisions of s. 695.01, as if such person had no actual or
55 | constructive notice of the proceeding or of the claims made
56 | therein or the documents forming the causes of action against
57 | the property in the proceeding.

58 | (d) Except for the interest of persons in possession or
59 | easements of use, the recording of such notice of lis pendens,
60 | provided that during the pendency of the proceeding it has not
61 | expired pursuant to subsection (2) or been withdrawn or
62 | discharged, constitutes a bar to the enforcement against the
63 | property described in the notice of all interests and liens,
64 | including, but not limited to, federal tax liens and levies,
65 | unrecorded at the time of recording the notice unless the holder
66 | of any such unrecorded interest or lien moves to intervene
67 | ~~intervenes~~ in such proceedings within 30 days after the
68 | recording of the notice and the court ultimately grants the
69 | motion. If the holder of any such unrecorded interest or lien
70 | does not intervene in the proceedings and if such proceedings
71 | are prosecuted to a judicial sale of the property described in
72 | the notice, the property shall be forever discharged from all
73 | such unrecorded interests and liens. A valid recorded notice of
74 | lis pendens of such proceedings prosecuted to a judicial sale
75 | remains in effect through the recording of any instrument

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

76 | transferring title to the property pursuant to the final
77 | judgment unless it expires, is withdrawn, or it is otherwise
78 | discharged. If the notice of lis pendens expires or is withdrawn
79 | or discharged, the expiration, withdrawal, or discharge of the
80 | notice does not affect the validity of any unrecorded interest
81 | or lien.

82 | Section 2. The changes made by this act to s. 48.23,
83 | Florida Statutes, are intended to clarify existing law and shall
84 | apply to actions pending on the effective date of this act.

85 | Section 3. Subsection (1) of section 48.021, Florida
86 | Statutes, is amended to read:

87 | 48.021 Process; by whom served.—

88 | (1) All process shall be served by the sheriff of the
89 | county where the person to be served is found, except ~~initial~~
90 | nonenforceable civil process, criminal witness subpoenas, and
91 | criminal summonses may be served by a special process server
92 | appointed by the sheriff as provided ~~for~~ in this section or by a
93 | certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25-~~
94 | ~~48.31~~. Civil witness subpoenas shall ~~may~~ be served by any person
95 | authorized by rules of civil procedure.

96 | Section 4. Subsections (2) and (5) and paragraph (a) of
97 | subsection (6) of section 48.031, Florida Statutes, are amended
98 | to read:

99 | 48.031 Service of process generally; service of witness
100 | subpoenas.—

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

101 (2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the
102 spouse of the person to be served may be made at any place in a
103 ~~the~~ county by an individual authorized under s. 48.021 or s.
104 48.27 to serve process in that county, if the cause of action is
105 not an adversarial ~~adversary~~ proceeding between the spouse and
106 the person to be served, if the spouse requests such service or
107 the spouse is also a party to the action, and if the spouse and
108 person to be served reside ~~are residing~~ together in the same
109 dwelling, regardless of whether such dwelling is located in the
110 county where substituted service is made.

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

117 (5) A person serving process shall place, on the first
118 page only of at least one of the processes served, the date and
119 time of service, his or her initials or signature, and, if
120 applicable, his or her identification number ~~and initials for~~
121 ~~all service of process. The person serving process shall list on~~
122 ~~the return-of-service form all initial pleadings delivered and~~
123 ~~served along with the process.~~ The person requesting service or
124 the person authorized to serve the process shall file the
125 return-of-service form with the court.

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

126 (6) (a) If the only address for a person to be served which
 127 is discoverable through public records is a private mailbox, a
 128 virtual office, or an executive office or mini suite,
 129 substituted ~~substitute~~ service may be made by leaving a copy of
 130 the process with the person in charge of the private mailbox,
 131 virtual office, or executive office or mini suite, but only if
 132 the process server determines that the person to be served
 133 maintains a mailbox, a virtual office, or an executive office or
 134 mini suite at that location.

135 Section 5. Subsection (4) of section 48.062, Florida
 136 Statutes, is amended to read:

137 48.062 Service on a limited liability company.—

138 (4) If the address ~~provided~~ for the registered agent,
 139 member, or manager is a residence, a ~~or~~ private mailbox, a
 140 virtual office, or an executive office or mini suite, service on
 141 the domestic or foreign limited liability company, ~~domestic or~~
 142 ~~foreign,~~ may be made by serving the registered agent, member, or
 143 manager in accordance with s. 48.031.

144 Section 6. Subsection (1) of section 48.194, Florida
 145 Statutes, is amended to read:

146 48.194 Personal service outside state.—

147 (1) Except as otherwise provided herein, service of
 148 process on persons outside of this state shall be made in the
 149 same manner as service within this state by any person ~~officer~~
 150 authorized to serve process in the state where the person is

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

151 served. No order of court is required. ~~A~~ An affidavit of the
 152 ~~officer shall be filed, stating the time, manner, and place of~~
 153 ~~service.~~ The court may consider the return-of-service form
 154 described in s. 48.21 ~~affidavit~~, or any other competent
 155 evidence, in determining whether service has been properly made.
 156 Service of process on persons outside the United States may be
 157 required to conform to the provisions of the Hague Convention on
 158 the Service Abroad of Judicial and Extrajudicial Documents in
 159 Civil or Commercial Matters.

160 Section 7. Subsection (1) of section 48.21, Florida
 161 Statutes, is amended to read:

162 48.21 Return of execution of process.—

163 (1) Each person who effects service of process shall note
 164 on a return-of-service form attached thereto, the date and time
 165 when it comes to hand, the date and time when it is served, the
 166 manner of service, the name of the person on whom it was served,
 167 and, if the person is served in a representative capacity, the
 168 position occupied by the person. The return-of-service form must
 169 list all pleadings and documents served and be signed by the
 170 person who effects the service of process. However, a person who
 171 is authorized under this chapter to serve process and ~~employed~~
 172 ~~by a sheriff~~ who effects such ~~the~~ service of process may sign
 173 the return-of-service form using an electronic signature
 174 ~~certified by the sheriff.~~

175 Section 8. Section 316.29545, Florida Statutes, is amended

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

176 to read:

177 316.29545 Window suncreening exclusions; medical
 178 exemption; certain law enforcement vehicles, process server
 179 vehicles, and private investigative service vehicles exempt.-

180 (1) The department shall issue medical exemption
 181 certificates to persons who are afflicted with Lupus, any
 182 autoimmune disease, or other medical conditions which require a
 183 limited exposure to light, which certificates shall entitle the
 184 person to whom the certificate is issued to have suncreening
 185 material on the windshield, side windows, and windows behind the
 186 driver which is in violation of the requirements of ss.

187 316.2951-316.2957. The department shall consult with the Medical
 188 Advisory Board established in s. 322.125 for guidance with
 189 respect to the autoimmune diseases and other medical conditions
 190 which shall be included on the form of the medical certificate
 191 authorized by this section. At a minimum, the medical exemption
 192 certificate shall include a vehicle description with the make,
 193 model, year, vehicle identification number, medical exemption
 194 decal number issued for the vehicle, and the name of the person
 195 or persons who are the registered owners of the vehicle. A
 196 medical exemption certificate shall be nontransferable and shall
 197 become null and void upon the sale or transfer of the vehicle
 198 identified on the certificate.

199 (2) The department shall exempt all law enforcement
 200 vehicles used in undercover or canine operations from the window

ENROLLED

CS/CS/HB 91, Engrossed 1

2019 Legislature

201 | suncreening requirements of ss. 316.2951-316.2957.

202 | (3) The department shall exempt from the window
203 | sunscreening restrictions of ss. 316.2953, 316.2954, and
204 | 316.2956 vehicles that are owned or leased by process servers
205 | certified pursuant to s. 48.29 or by private investigators or
206 | private investigative agencies licensed under chapter 493.

207 | (4) The department may charge a fee in an amount
208 | sufficient to defray the expenses of issuing a medical exemption
209 | certificate as described in subsection (1).

210 | (5) The department is authorized to promulgate rules for
211 | the implementation of this section.

212 | Section 9. This act shall take effect upon becoming a law.