

FIRST REGULAR SESSION

SENATE BILL NO. 268

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Read 1st time January 10, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0991S.011

AN ACT

To repeal sections 196.790, 426.220, 426.230, 429.360, 487.030, 534.350, 534.360, 534.380, 535.030, 535.110 and 541.020, RSMo 2000, relating to judicial procedures, and to enact in lieu thereof twelve new sections relating to the same subject, with penalty provisions and an effective date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 196.790, 426.220, 426.230, 429.360, 487.030, 534.350, 534.360, 534.380, 535.030, 535.110 and 541.020, RSMo 2000, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 196.790, 426.220, 426.230, 429.360, 478.036, 534.350, 534.360, 534.380, 535.030, 535.110, 541.020 and 1, to read as follows:

196.790. Every person, firm or corporation who shall violate any of the provisions of sections 196.755 to 196.765, 196.780 and 196.785, shall forfeit and pay to the state of Missouri, for the use of the school fund for every such violation, the sum of fifty dollars and costs of suit, to be recovered by civil action in the name of the state of Missouri on the relation of any person having knowledge of the facts before an associate circuit judge, or circuit judge assigned to hear the cause, of] **in** the city or county where such violation occurs, subject to the right of [an application for trial de novo or] appeal[, as the case may be,] as in other civil cases; and it is further enacted that every person, firm or corporation who shall violate the provisions of sections 196.750 to 196.810, in addition to the civil liability to the state of Missouri [herein] provided **in this section**, shall be deemed guilty of a misdemeanor, and shall for the first offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment not exceeding thirty days, and for each subsequent offense, by a fine of not less than two hundred and fifty dollars nor more

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

426.220. All appeals allowed by virtue of section 426.210 shall be taken and made by the appellant, or someone for him, making and filing an affidavit that the appeal is not taken for vexation or delay, but because affiant believes that appellant is prejudiced by the decision appealed from, and by giving bond to the state of Missouri in such sum as the assignee may require, and with such sureties as he may approve, conditioned that appellant will prosecute his appeal with due diligence, and pay all cost thereon awarded against appellant. If judgment for costs be rendered against appellant, it shall be against him and his sureties on the bond. [In all other respects appeals shall be taken, certified and proceeded with in the same manner as applications for a trial de novo from judgments of associate circuit judges.]

426.230. Upon such appeal being allowed and certified, as in section 426.220 is required, the court shall become possessed of the case, and shall proceed to hear and determine the same, in the same manner as if such case was pending before a circuit judge [on an application for trial de novo from the judgment of an associate circuit judge]; and appeals may be taken from the judgment of the court, in the same manner as appeals are now allowed by law from judgments of circuit judges in this state.

429.360. The process, practice and procedure[, including applications for trial de novo,] in suits to enforce mechanics' liens which are heard by an associate circuit judge without special assignment shall be as nearly as practicable the same as provided in other civil suits heard by associate circuit judges. When a case is specially assigned to an associate circuit judge to hear upon a record, the process, practice and procedure, including appeals, shall be the same as if the case was being heard by a circuit judge.

478.036. 1. A commissioner or deputy commissioner appointed pursuant to sections 66.010, 211.023, 478.003, 478.265, 478.266, 478.267, 478.268, 478.466, 479.500 or 487.020, RSMo, shall prepare written findings and recommendations in any case or proceeding assigned to the commissioner or deputy commissioner. The commissioner or deputy commissioner shall file the written findings and recommendations with a judge exercising authority pursuant to article V of the constitution, together with the papers related to the case. The court may adopt the findings and recommendations of the commissioner, and shall provide written notice of the judgement of the court, by regular first class mail or such other service as directed by the court, to the parties whose case or proceeding was heard by the commissioner and, where appropriate, to the juvenile, the juvenile's custodian, and any other person that the court may direct. Any party receiving such notice may file written objections to the findings and recommendations within fifteen days after mailing thereof, and shall serve copies of such objections on all other parties. If objections are filed, or if the court proposes

action other than the adoption of the report, the court, after a hearing on the objections, unless such hearing is waived by the parties, may sustain the findings and recommendations or may modify or reject the findings and recommendations, in whole or in part, or may receive further evidence, or may return the case or proceeding to the commissioner or deputy commissioner, with instructions.

2. The judge shall rule on any objections filed promptly. If the objections are not ruled on within forty-five days after the objections are filed, the objections are deemed overruled for all purposes.

[487.030. 1. The findings and recommendations of the commissioner shall become the judgment of the court when adopted and confirmed by an order of a circuit or an associate circuit judge. Notice of the findings and recommendations of the commissioner, together with a statement relative to the right to file a motion for rehearing, shall be given to the parties whose case has been heard by the commissioner, and to any other person that the court may direct. This notice may be given at the hearing, or by mail or other service directed by the court.

2. The parties to a cause of action heard by a commissioner are entitled to file with the court a motion for a hearing by a judge of the family court either within fifteen days after receiving notice of the findings of the commissioner at the hearing, or within fifteen days after the mailing, or within fifteen days after other service directed by the court. In cases in which the family court has jurisdiction pursuant to subdivision (1) of subsection 1 of section 211.031, RSMo, the juvenile officer, in addition to the parties listed above, is also entitled to file with the court a motion for a hearing by a judge of the family court within fifteen days after receiving notice of the findings of the commissioner. The judge shall promptly rule on such motion and, in his discretion, may either sustain or deny the motion, and if the motion is sustained, the judge shall set a date for a hearing. If the motion for rehearing is not ruled on within forty-five days after the motion is filed, it is denied for all purposes. In computing the forty-five days, no day shall be counted during which the court lacks power to act because of an order of a superior court.]

534.350. The judge rendering judgment in any such cause may issue execution at any time after judgment, but such execution shall not be levied until after the expiration of the time allowed for the filing of [an application for trial de novo or the taking of] an appeal, except as [in the next succeeding section is] provided.

534.360. If it shall appear to the officer having charge of the execution that the defendant therein is about to remove, conceal or dispose of his property, so as to hinder or delay the levy, the rents and profits, damages and costs may be levied before the expiration of the time allowed for the filing of [an application for a trial de novo or taking] an appeal.

534.380. [Applications for trials de novo and] Appeals shall be allowed and conducted in

the manner provided in chapter 512, RSMo. Application for [a trial de novo or] appeal shall not stay execution for restitution of the premises unless the defendant gives bond within the time for appeal. The bond shall be for the amount of the judgment and with the condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due, pending determination of the [trial de novo or] appeal, subject to the judge's discretion. However, in any case in which the defendant receives a reduction in rent due to a local, state or federal subsidy program, the amount of the bond shall be reduced by the amount of said subsidy. Execution other than for restitution shall be stayed if the defendant files a bond in the proper amount at such time as otherwise provided by law.

535.030. 1. Such summons shall be served as in other civil cases at least four days before the court date in the summons. The summons shall include a court date which shall not be more than twenty-one business days from the date the summons is issued unless at the time of filing the affidavit the plaintiff or plaintiff's attorney consents in writing to a later date.

2. In addition to attempted personal service, the plaintiff may request, and thereupon the judge, before whom the proceeding is commenced, shall make an order directing that the officer, or other person empowered to execute the summons, shall also serve the same by securely affixing a copy of such summons and the complaint in a conspicuous place on the dwelling of the premises in question at least ten days before the court date in such summons, and by also mailing a copy of the summons and complaint to the defendant at the defendant's last known address by ordinary mail and by certified mail, return receipt requested, deliver to addressee only, at least ten days before the court date. If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint, the judge shall at the request of the plaintiff proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure set forth in this section.

3. If the plaintiff does not request service of the original summons by posting and mailing as provided in subsection 2 of this section, and if the officer, or other person empowered to execute the summons, makes return that the defendant is not found, or that the defendant has absconded or vacated the defendant's usual place of abode in this state, the plaintiff may request the issuance of an alias summons and service of the same by posting and mailing in the time and manner provided in subsection 2 of this section. In addition, the plaintiff or an agent of the plaintiff who is at least eighteen years of age may serve the summons by posting and mailing a copy of the summons in the time and manner provided in subsection 2 of this section. Upon proof by affidavit of the posting and of the mailing of a copy of the summons or alias summons and the complaint, the judge shall proceed to hear the case as if there had been personal service, and judgment shall

be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure provided in subsection 2 of this section.

4. On the date judgment is rendered as provided in this section where the defendant is in default, the court shall mail to the defendant at the defendant's last known address by certified mail, with a request for return receipt and with directions to deliver to the addressee only, a notice informing the defendant of the judgment and the date it was entered, and stating that the defendant has ten days from the date of the judgment to file a motion to set aside the judgment [or to file an application for a trial de novo in the circuit court, as the case may be], and that unless the judgment is set aside [or an application for a trial de novo is filed within ten days], the judgment will become final and the defendant will be subject to eviction from the premises without further notice.

535.110. [Applications for trials de novo and] Appeals shall be allowed and conducted in the manner provided in chapter 512, RSMo; but no [application for a trial de novo or] appeal shall stay execution unless the defendant [give] **gives** bond, with security sufficient to secure the payment of all damages, costs and rent then due, and with condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due, pending determination of the [trial de novo or] appeal.

541.020. Except as otherwise provided by law, the circuit courts shall have exclusive original jurisdiction in all cases of felony, misdemeanor and infractions. Except as otherwise provided by law, circuit judges may hear and determine originally all cases of felony, misdemeanor and infractions [and may hear and determine upon a trial de novo cases of misdemeanor and infractions].

Section 1. The provisions of sections 196.790, 426.220, 426.230, 429.360, 534.350, 534.360, 534.380, 535.030 and 535.110, RSMo, shall be applicable to cases filed on and subsequent to January 1, 2002. Any case filed on or prior to December 31, 2001, shall be governed by the practice and procedure relative to trials de novo in effect on December 31, 2001.

Section B. The repeal and reenactment of sections 196.790, 426.220, 426.230, 429.360, 534.350, 534.360, 534.380, 535.030 and 535.110, shall become effective January 1, 2002.