

FIRST REGULAR SESSION

SENATE BILL NO. 538

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1526S.011

AN ACT

To repeal sections 534.070, 534.090, 534.355, and 535.030, RSMo, and to enact in lieu thereof four new sections relating to landlord and tenant law.

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

Section A. Sections 534.070, 534.090, 534.355, and 535.030, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 534.070, 534.090, 534.355, and 535.030, to read as follows:

534.070. 1. When complaint to the circuit court of the proper county shall be made in writing, signed by the party aggrieved, his agent or attorney, and sworn to, specifying the lands, tenements or other possessions so forcibly entered and detained, or unlawfully detained, and by whom and when done, it shall be the duty of the clerk of the court to issue a summons directed to the sheriff or proper officer of the county, commanding him to summon the person against whom the complaint shall have been made to appear, at a day in such summons to be specified.

2. A court date shall be assigned at the time the summons is issued. The court date shall be for a day certain which is not more than **[twenty-one] ten** business days from the date the summons is issued unless, at the time the case is filed, the plaintiff or plaintiff's attorney consents in writing to a later date.

534.090. 1. Such summons shall be served as in other civil cases at least **[four] two** days before the court date specified in such summons.

2. If the summons in such action cannot be served in the ordinary manner as provided by law, it shall be the duty of the judge before whom the proceeding is commenced, at the request of the plaintiff, to make an order directing that notices shall be set up for **[ten] five**

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

business days on the premises in question and in one public place in the county where the defendant was believed to dwell, informing the defendant of the commencement of the proceedings against the defendant and to make an order directing that a copy of the summons be delivered to the defendant at the defendant's last known address by certified mail, return receipt requested, delivered to addressee only. On proof of the notice and of the mailing of the notice by certified mail by affidavit of some competent witness, 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 where the defendant is in default no money judgment shall be granted the plaintiff under the order of publication and certified mail procedure set forth in this section. If such summons is returned executed, then the judge shall set the case on the next available court date.

534.355. In an action pursuant to chapter 441, RSMo, chapter 524, RSMo, chapter 535, RSMo, or this chapter, the court in entering a judgment for possession of the premises, at the request of the prevailing party, may order the sheriff or appropriate officer to deliver possession of the premises to the prevailing party within fifteen days of the date the judgment becomes final. Said order may be withdrawn at the request of the prevailing party. **order to expedite the delivery of possession of the premises to the proper party, a party may request a writ of possession or writ of restitution at any time prior to the entry of the judgment. Execution upon such writ, however, shall not lie until after the judgment becomes final.**

535.030. 1. Such summons shall be served as in other civil cases at least [four] **two** days before the court date in the summons. The summons shall include a court date which shall not be more than [twenty-one] **ten** 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 clerk of the court 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] **five business** 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 at least [ten] **five business** 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 or her 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 clerk of 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.

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