

By the Committee on Criminal Justice; and Senator Crist

307-963-04

1 A bill to be entitled
2 An act relating to service of process; amending
3 s. 48.031, F.S.; deleting the requirement to
4 use certified mail in service of a subpoena on
5 a witness in specified cases; prohibiting a
6 finding of contempt for failure to appear in
7 response to a subpoena that is not certified;
8 allowing the posting of a criminal witness
9 subpoena under specified conditions; requiring
10 the placement of certain information on the
11 copy of the process served; providing for
12 alternative methods of service under certain
13 circumstances; amending s. 48.081, F.S.;
14 providing alternative methods of service on a
15 corporation; amending s. 48.21, F.S.; requiring
16 servers of process to provide certain
17 information on the return of service; amending
18 s. 48.29, F.S.; deleting the requirement that
19 certified process servers provide certain
20 information on the face of any process served;
21 amending s. 83.13, F.S.; authorizing the party
22 who had a distress writ issued to deliver the
23 writ to a sheriff in another county; providing
24 an effective date.

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

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28 Section 1. Subsection (3) of section 48.031, Florida
29 Statutes, is amended, and subsections (5) and (6) are added to
30 that section, to read:

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1 48.031 Service of process generally; service of
2 witness subpoenas.--

3 (3)(a) The service of process of witness subpoenas,
4 whether in criminal cases or civil actions, shall is to be
5 made as provided in subsection (1). However, service of a
6 subpoena on a witness in a criminal traffic case, a
7 misdemeanor case, or a second degree or third degree felony
8 may be made by ~~certified~~ United States mail directed to the
9 witness at the last known address, and ~~the~~ ~~such~~ service must
10 be mailed at least 7 days prior to the date of the witness's
11 required appearance. ~~Failure of a witness to appear in~~
12 ~~response to a subpoena served by United States mail that is~~
13 ~~not certified may not be grounds for finding the witness in~~
14 ~~contempt of court.~~

15 (b) A criminal witness subpoena may be posted at the
16 witness's residence if three attempts to serve the subpoena,
17 made at different times of the day or night on different
18 dates, have failed. The subpoena must be posted at least 5
19 days prior to the date of the witness's required appearance.

20 (5) A person serving process shall place on the copy
21 served, the date and time of service and his or her
22 identification number and initials for all service of process.

23 (6) If the only address for a person to be served,
24 which is discoverable through public records, is a private
25 mailbox, substitute service may be made by leaving a copy of
26 the process with the person in charge of the private mailbox,
27 but only if the process server determines that the person to
28 be served maintains a mailbox at that location.

29 Section 2. Subsection (3) of section 48.081, Florida
30 Statutes, is amended to read:

31 48.081 Service on corporation.--

1 (3)(a) As an alternative to all of the foregoing,
2 process may be served on the agent designated by the
3 corporation under s. 48.091. However, if service cannot be
4 made on a registered agent because of failure to comply with
5 s. 48.091, service of process shall be permitted on any
6 employee at the corporation's principal place of business or
7 on any employee of the registered agent.

8 (b) If the address provided for the registered agent,
9 officer, director, or principal place of business is a
10 residence or private mailbox, service on the corporation may
11 be made by serving the registered agent, officer, or director
12 in accordance with s. 48.031.

13 Section 3. Section 48.21, Florida Statutes, is amended
14 to read:

15 48.21 Return of execution of process.--Each person who
16 effects service of process ~~All officers to whom process is~~
17 ~~directed~~ shall note on it, ~~or on~~ a return-of-service form
18 attached thereto, the date and time when it comes to hand, the
19 date and time when it is served ~~executed~~, the manner of
20 service ~~execution~~, the name of the person on whom it was
21 served ~~executed~~ and, if the ~~such~~ person is served in a
22 representative capacity, the position occupied by the person.
23 A failure to state the foregoing facts invalidates the
24 service, but the return is amendable to state the truth at any
25 time on application to the court from which the process
26 issued. On amendment, service is as effective as if the
27 return had originally stated the omitted facts. A failure to
28 state all the facts in the return shall subject the person
29 effecting service ~~officer so failing~~ to a fine not exceeding
30 \$10, in the court's discretion.

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1 Section 4. Subsection (6) of section 48.29, Florida
2 Statutes, is amended to read:

3 48.29 Certification of process servers.--

4 ~~(6)(a) A certified process server shall place on the~~
5 ~~face of any process served by him or her, his or her printed~~
6 ~~name, signature, and identification number, and words stating~~
7 ~~that he or she is a certified process server in the circuit~~
8 ~~wherein he or she is serving the process. In addition, the~~
9 ~~certified process server shall endorse on the original~~
10 ~~process, and on all copies served, the date and hour of~~
11 ~~service.~~

12 ~~(b)~~ Return of service shall be made by a certified
13 process server on a form which has been reviewed and approved
14 by the court.

15 Section 5. Section 83.13, Florida Statutes, is amended
16 to read:

17 83.13 Levy of writ.--The sheriff shall execute the
18 writ by service on defendant and, upon the order of the court,
19 by levy on property distrainable for rent or advances, if
20 found in the sheriff's jurisdiction. If the property is ~~not so~~
21 ~~found but is~~ in another jurisdiction, the party who had the
22 writ issued ~~sheriff~~ shall deliver the writ to the proper
23 sheriff in the other jurisdiction; and that ~~the other~~ sheriff
24 shall execute the writ, upon order of the court, by levying on
25 the property and delivering it to the sheriff of the county in
26 which the action is pending, to be disposed of according to
27 law, unless he or she is ordered by the court from which the
28 writ emanated to hold the property and dispose of it in his or
29 her jurisdiction according to law. If the plaintiff shows by a
30 sworn statement that the defendant cannot be found within the

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1 state, the levy on the property suffices as service on the
2 defendant.

3 Section 6. This act shall take effect July 1, 2004.

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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 222

- 8 - Section 1 of the CS adds a provision that a witness may
9 not be held in contempt of court for failing to appear in
10 response to a subpoena that is served by uncertified
11 mail. It also specifies that three unsuccessful attempts
12 at service must be made on different dates before a
13 criminal witness subpoena can be served by posting.
14 Section 48.031(5), F.S., is created to require the person
15 serving process to put certain information on the copy
16 that is served. Section 48.031(6), F.S., is created to
17 allow service on the person in charge of a private
18 mailbox if the only address for the person to be served
19 is a private mailbox.
- 20 - Section 2 of the CS amends s. 48.081(3)(a), F.S.,
21 regarding alternate service if service cannot be made on
22 a corporation's registered agent because of a failure to
23 comply with s. 48.091, F.S. It restricts service on an
24 employee of the corporation to those located at the
25 principal place of business, but allows service on any
26 employee of the registered agent. This section also
27 creates s. 48.081(3)(b), F.S., to allow service in
28 accordance with s. 48.031, F.S., if the address for a
29 corporation's registered agent, officer, director, or
30 place of business is a residence or a private mailbox.
- 31 - Section 3 of the CS broadens the language of s. 48.21,
F.S., to refer to "the person who effects service of
process" rather than "officers to whom process is
directed." It refers to "service" rather than "execution"
of process, and requires the use of a return-of-service
form and notation of both date and time of receipt and
service. This will make the information included in a
return-of-service uniform regardless of whether the
process is served by a sheriff's deputy, a certified
process server, or another person appointed by the court.
- Section 4 of the CS deletes s. 48.29(6)(a), F.S., to
eliminate the requirement for certified process servers
to annotate certain information on the face of the
original and any served copies of the process. Certified
process servers would be required to make annotations
pursuant to s. 48.21, F.S., which is amended by Section 3
of the CS.