

1 A bill to be entitled
2 An act relating to delivery of written legal
3 notice; amending s. 48.031, F.S.; deleting the
4 requirement to use certified mail in service of
5 a subpoena on a witness in specified cases;
6 prohibiting a finding of contempt for failure
7 to appear in response to a subpoena that is not
8 delivered by certified mail; allowing the
9 posting of a criminal witness subpoena under
10 specified conditions; requiring the placement
11 of certain information on the copy of the
12 process served; providing for alternative
13 methods of service under certain circumstances;
14 amending s. 48.081, F.S.; providing alternative
15 methods of service on a corporation; amending
16 s. 48.21, F.S.; requiring servers of process to
17 provide certain information on the return of
18 service; amending s. 48.29, F.S.; revising the
19 requirement that certified process servers
20 provide certain information on the face of the
21 process served; amending s. 83.13, F.S.;
22 authorizing the party who had a distress writ
23 issued to deliver the writ to a sheriff in
24 another county; amending s. 624.307, F.S.;
25 allowing the Chief Financial Officer, when
26 serving as the attorney to receive service of
27 all legal process for certain regulated
28 persons, to send the process by any verifiable
29 means to the person last designated by the
30 regulated person to receive the process,
31 instead of requiring the process to be sent by

1 registered or certified mail; amending s.
 2 832.07, F.S.; providing for alternative method
 3 of notice sent by the holder to the maker or
 4 drawer of a check, draft, or order, payment of
 5 which is refused because of lack of funds or
 6 credit; amending s. 409.257, F.S.; revising a
 7 provision for service of witness subpoenas, to
 8 conform; providing an effective date.
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10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (3) of section 48.031, Florida
 13 Statutes, is amended, and subsections (5) and (6) are added to
 14 that section, to read:

15 48.031 Service of process generally; service of
 16 witness subpoenas.--

17 (3)(a) The service of process of witness subpoenas,
 18 whether in criminal cases or civil actions, shall ~~is to~~ be
 19 made as provided in subsection (1). However, service of a
 20 subpoena on a witness in a criminal traffic case, a
 21 misdemeanor case, or a second degree or third degree felony
 22 may be made by ~~certified~~ United States mail directed to the
 23 witness at the last known address, and the such service must
 24 be mailed at least 7 days prior to the date of the witness's
 25 required appearance. Failure of a witness to appear in
 26 response to a subpoena served by United States mail that is
 27 not certified may not be grounds for finding the witness in
 28 contempt of court.

29 (b) A criminal witness subpoena may be posted by a
 30 person authorized to serve process at the witness's residence
 31 if three attempts to serve the subpoena, made at different

1 times of the day or night on different dates, have failed. The
2 subpoena must be posted at least 5 days prior to the date of
3 the witness's required appearance.

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

7 (6) If the only address for a person to be served,
8 which is discoverable through public records, is a private
9 mailbox, substitute service may be made by leaving a copy of
10 the process with the person in charge of the private mailbox,
11 but only if the process server determines that the person to
12 be served maintains a mailbox at that location.

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

15 48.081 Service on corporation.--

16 (3)(a) As an alternative to all of the foregoing,
17 process may be served on the agent designated by the
18 corporation under s. 48.091. However, if service cannot be
19 made on a registered agent because of failure to comply with
20 s. 48.091, service of process shall be permitted on any
21 employee at the corporation's principal place of business or
22 on any employee of the registered agent.

23 (b) If the address provided for the registered agent,
24 officer, director, or principal place of business is a
25 residence or private mailbox, service on the corporation may
26 be made by serving the registered agent, officer, or director
27 in accordance with s. 48.031.

28 Section 3. Section 48.21, Florida Statutes, is amended
29 to read:

30 48.21 Return of execution of process.--Each person who
31 effects service of process ~~All officers to whom process is~~

1 ~~directed~~ shall note on it, ~~or on~~ a return-of-service form
2 attached thereto, the date and time when it comes to hand, the
3 date and time when it is served ~~executed~~, the manner of
4 service execution, the name of the person on whom it was
5 served ~~executed~~ and, if the ~~such~~ person is served in a
6 representative capacity, the position occupied by the person.
7 A failure to state the foregoing facts invalidates the
8 service, but the return is amendable to state the truth at any
9 time on application to the court from which the process
10 issued. On amendment, service is as effective as if the
11 return had originally stated the omitted facts. A failure to
12 state all the facts in the return shall subject the person
13 effecting service ~~officer so failing~~ to a fine not exceeding
14 \$10, in the court's discretion.

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

17 48.29 Certification of process servers.--

18 (6) A certified process server shall place the
19 information provided in s. 48.031(5) on the copy served.

20 ~~(a) A certified process server shall place on the face~~
21 ~~of any process served by him or her, his or her printed name,~~
22 ~~signature, and identification number, and words stating that~~
23 ~~he or she is a certified process server in the circuit wherein~~
24 ~~he or she is serving the process. In addition, the certified~~
25 ~~process server shall endorse on the original process, and on~~
26 ~~all copies served, the date and hour of service.~~

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

30 Section 5. Section 83.13, Florida Statutes, is amended
31 to read:

1 83.13 Levy of writ.--The sheriff shall execute the
 2 writ by service on defendant and, upon the order of the court,
 3 by levy on property distrainable for rent or advances, if
 4 found in the sheriff's jurisdiction. If the property is ~~not so~~
 5 ~~found but is~~ in another jurisdiction, the party who had the
 6 writ issued ~~sheriff~~ shall deliver the writ to the ~~proper~~
 7 sheriff in the other jurisdiction; and that ~~the other~~ sheriff
 8 shall execute the writ, upon order of the court, by levying on
 9 the property and delivering it to the sheriff of the county in
 10 which the action is pending, to be disposed of according to
 11 law, unless he or she is ordered by the court from which the
 12 writ emanated to hold the property and dispose of it in his or
 13 her jurisdiction according to law. If the plaintiff shows by a
 14 sworn statement that the defendant cannot be found within the
 15 state, the levy on the property suffices as service on the
 16 defendant.

17 Section 6. Subsection (8) is added to section 624.307,
 18 Florida Statutes, to read:

19 624.307 General powers; duties.--

20 (8) Upon receiving service of legal process issued in
 21 any civil action or proceeding in this state against any
 22 regulated person required to appoint the Chief Financial
 23 Officer as its attorney to receive service of all legal
 24 process, the Chief Financial Officer, as attorney, may, in
 25 lieu of sending the process by registered or certified mail,
 26 send the process by any other verifiable means to the person
 27 last designated by the regulated person to receive the
 28 process.

29 Section 7. Subsection (1) of section 832.07, Florida
 30 Statutes, is amended to read:

31 832.07 Prima facie evidence of intent; identity.--

1 (1) INTENT.--

2 (a) In any prosecution or action under this chapter,
 3 the making, drawing, uttering, or delivery of a check, draft,
 4 or order, payment of which is refused by the drawee because of
 5 lack of funds or credit, shall be prima facie evidence of
 6 intent to defraud or knowledge of insufficient funds in, or
 7 credit with, such bank, banking institution, trust company, or
 8 other depository, unless such maker or drawer, or someone for
 9 him or her, shall have paid the holder thereof the amount due
 10 thereon, together with a service charge not to exceed the
 11 service fees authorized under s. 832.08(5) or an amount of up
 12 to 5 percent of the face amount of the check, whichever is
 13 greater, within 15 ~~7~~ days after ~~receiving~~ written notice has
 14 been sent to the address printed on the check or given at the
 15 time of issuance that such check, draft, or order has not been
 16 paid to the holder thereof, and bank fees incurred by the
 17 holder. In the event of legal action for recovery, the maker
 18 or drawer may be additionally liable for court costs and
 19 reasonable attorney's fees. Notice mailed by certified or
 20 registered mail, evidenced by return receipt, or by
 21 first-class mail, evidenced by an affidavit of service of
 22 mail, to the address printed on the check or given at the time
 23 of issuance shall be deemed sufficient and equivalent to
 24 notice having been received by the maker or drawer, whether
 25 such notice shall be returned undelivered or not. The form of
 26 such notice shall be substantially as follows:

27
 28 "You are hereby notified that a check, numbered _____,
 29 in the face amount of \$_____, issued by you on
 30 ... (date) ..., drawn upon ... (name of bank) ..., and
 31 payable to _____, has been dishonored. Pursuant to Florida

1 law, you have 15 ~~7~~ days from the date ~~receipt~~ of this notice
2 to tender payment of the full amount of such check plus a
3 service charge of \$25, if the face value does not exceed \$50,
4 \$30, if the face value exceeds \$50 but does not exceed \$300,
5 \$40, if the face value exceeds \$300, or an amount of up to 5
6 percent of the face amount of the check, whichever is greater,
7 the total amount due being \$_____ and _____ cents. Unless this
8 amount is paid in full within the time specified above, the
9 holder of such check may turn over the dishonored check and
10 all other available information relating to this incident to
11 the state attorney for criminal prosecution. You may be
12 additionally liable in a civil action for triple the amount of
13 the check, but in no case less than \$50, together with the
14 amount of the check, a service charge, court costs, reasonable
15 attorney fees, and incurred bank fees, as provided in s.
16 68.065."

17
18 Subsequent persons receiving a check, draft, or order from the
19 original payee or a successor endorsee have the same rights
20 that the original payee has against the maker of the
21 instrument, provided such subsequent persons give notice in a
22 substantially similar form to that provided above. Subsequent
23 persons providing such notice shall be immune from civil
24 liability for the giving of such notice and for proceeding
25 under the forms of such notice, so long as the maker of the
26 instrument has the same defenses against these subsequent
27 persons as against the original payee. However, the remedies
28 available under this section may be exercised only by one
29 party in interest.

30 (b) When a check is drawn on a bank in which the maker
31 or drawer has no account or a closed account, it shall be

1 presumed that such check was issued with intent to defraud,
2 and the notice requirement set forth in this section shall be
3 waived.

4 Section 8. Section 409.257, Florida Statutes, is
5 amended to read:

6 409.257 Service of process.--The service of initial
7 process and orders in lawsuits filed by the department, under
8 this act, shall be served by the sheriff in the county where
9 the person to be served may be found. The sheriff shall be
10 reimbursed at the prevailing rate of federal financial
11 participation for service of process and orders as allowed by
12 law. The sheriff shall bill the department monthly as provided
13 for in s. 30.51(2). In addition, process and orders may be
14 served or executed by authorized agents of the department at
15 the department's discretion; provided that the agent of the
16 department does not take any action against personal property,
17 real property, or persons. Notices and other intermediate
18 process, except witness subpoenas, shall be served by the
19 department as provided for in the Florida Rules of Civil
20 Procedure. Witness subpoenas shall be served by the department
21 by United States ~~certified~~ mail as provided for in s.
22 48.031(3).

23 Section 9. This act shall take effect July 1, 2004.
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