

HB 0493

2004

A bill to be entitled

An act relating to service of process; amending s. 48.031, F.S.; deleting the requirement to use certified mail in service of a subpoena on a witness in specified types of cases; allowing the posting of a criminal witness subpoena under specified conditions; requiring the placement of certain information on the copy of the process served; requiring that process servers be admitted to gated communities; providing for alternative methods of service under certain circumstances; amending s. 48.081, F.S.; providing alternative methods of service on a corporation; amending s. 48.21, F.S.; requiring servers of process to provide certain information on the return of service; amending s. 48.29, F.S.; deleting the requirement that certified process servers provide certain information on the face of any process served; amending s. 83.13, F.S.; requiring the party who had a distress writ issued to deliver the writ to a sheriff in another county under certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 48.031, Florida Statutes, is amended, and subsections (5), (6), and (7) are added to said section, to read:

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

(3)(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall ~~is to~~ be made

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30 as provided in subsection (1). However, service of a subpoena on
 31 a witness in a criminal traffic case, a misdemeanor case, or a
 32 second degree or third degree felony may be made by ~~certified~~
 33 United States mail directed to the witness at the last known
 34 address, and the ~~such~~ service must be mailed at least 7 days
 35 prior to the date of the witness's required appearance.

36 (b) After three attempts have been made at different times
 37 of the day or night to serve a criminal witness subpoena at the
 38 witness's residence, a criminal witness subpoena may be posted
 39 at a conspicuous location at the witness's residence. The
 40 posting must be done at least 5 days before the date of the
 41 witness's required appearance.

42 (5) On all service of process, the person effecting
 43 service shall place on the copy served the date and time of
 44 service and his or her identification number and initials.

45 (6) Notwithstanding any other provision of law, any person
 46 authorized to serve process shall be granted access to a gated
 47 community for the purpose of performing lawful service of
 48 process. When the gated community is staffed by a guard or other
 49 security personnel, the person authorized to serve process shall
 50 advise the guard of the person or persons to be served and show
 51 current authorization to serve process. Such authorization may
 52 include:

53 (a) A law enforcement badge;

54 (b) Photo identification showing current registration as a
 55 process server; or

56 (c) A copy of a court order along with photo
 57 identification.

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58 (7) When the only address available through public records
 59 of the person or business to be served is a private mailbox, and
 60 the person serving process has otherwise made a reasonable
 61 investigation as to the location of the person to be served,
 62 substitute service may be made by leaving a copy of the process
 63 with the person apparently in charge of the private mailbox,
 64 only after determining that the person or business to be served
 65 maintains a mailbox at that location.

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

68 48.081 Service on corporation.--

69 (3)(a) As an alternative to all of the foregoing, process
 70 may be served on the agent designated by the corporation under
 71 s. 48.091. However, if service cannot be made on a registered
 72 agent because of failure to comply with s. 48.091, service of
 73 process shall be permitted on any employee at the corporation's
 74 principal place of business or on any employee of the registered
 75 agent.

76 (b) When the address provided for the registered agent,
 77 officer, director, or principal place of business is a residence
 78 or private mailbox, service on the corporation may be made by
 79 serving the registered agent, officer, or director in accordance
 80 with s. 48.031.

81 Section 3. Section 48.21, Florida Statutes, is amended to
 82 read:

83 48.21 Return of execution of process.--All persons who
 84 effect service of process ~~officers to whom process is directed~~
 85 shall note ~~on it, or~~ on a return-of-service form attached
 86 thereto, the date and time when it comes to hand, the date and

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87 time when it is served ~~executed~~, the manner of service
 88 ~~execution~~, the name of the person on whom it was served ~~executed~~
 89 and if such person is served in a representative capacity, the
 90 position occupied by the person. A failure to state the
 91 foregoing facts invalidates the service, but the return is
 92 amendable to state the truth at any time on application to the
 93 court from which the process issued. On amendment, service is as
 94 effective as if the return had originally stated the omitted
 95 facts. A failure to state all the facts in the return shall
 96 subject the person effecting service ~~officer so failing~~ to a
 97 fine not exceeding \$10, in the court's discretion.

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

100 48.29 Certification of process servers.--

101 ~~(6)(a) A certified process server shall place on the face~~
 102 ~~of any process served by him or her, his or her printed name,~~
 103 ~~signature, and identification number, and words stating that he~~
 104 ~~or she is a certified process server in the circuit wherein he~~
 105 ~~or she is serving the process. In addition, the certified~~
 106 ~~process server shall endorse on the original process, and on all~~
 107 ~~copies served, the date and hour of service.~~

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

111 Section 5. Section 83.13, Florida Statutes, is amended to
 112 read:

113 83.13 Levy of writ.--The sheriff shall execute the writ by
 114 service on defendant and, upon the order of the court, by levy
 115 on property distrainable for rent or advances, if found in the

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116 sheriff's jurisdiction. If the property is not ~~se~~ found but is
117 in another jurisdiction, the party who had the writ issued
118 ~~sheriff~~ shall deliver the writ to the proper sheriff in the
119 other jurisdiction; and the other sheriff shall execute the
120 writ, upon order of the court, by levying on the property and
121 delivering it to the sheriff of the county in which the action
122 is pending, to be disposed of according to law, unless he or she
123 is ordered by the court from which the writ emanated to hold the
124 property and dispose of it in his or her jurisdiction according
125 to law. If the plaintiff shows by a sworn statement that the
126 defendant cannot be found within the state, the levy on the
127 property suffices as service on the defendant.

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