

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to delivery of writs, notice, and service
7 of process; amending s. 48.031, F.S.; deleting the
8 requirement to use certified mail in service of a subpoena
9 on a witness in specified cases; prohibiting a finding of
10 contempt for failure to appear in response to a subpoena
11 that is not delivered by certified mail; allowing the
12 posting of a criminal witness subpoena under specified
13 conditions; requiring the placement of certain information
14 on the copy of the process served; providing for
15 alternative methods of service under certain
16 circumstances; amending s. 48.081, F.S.; providing
17 alternative methods of service on a corporation; amending
18 s. 48.21, F.S.; requiring servers of process to provide
19 certain information on the return of service; amending s.
20 48.29, F.S.; revising the requirement that certified
21 process servers provide certain information on the face of
22 the process served; amending s. 83.13, F.S.; authorizing
23 the party who had a distress writ issued to deliver the

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24 writ to a sheriff in another county; amending s. 832.07,
 25 F.S.; providing for alternative method of notice sent by
 26 the holder to the maker or drawer of a check, draft, or
 27 order, payment of which is refused because of lack of
 28 funds or credit; amending s. 409.257, F.S.; revising a
 29 provision for service of witness subpoenas, to conform;
 30 providing an effective date.

31

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

33

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

37 48.031 Service of process generally; service of witness
 38 subpoenas.--

39 (3)(a) The service of process of witness subpoenas,
 40 whether in criminal cases or civil actions, shall ~~is to~~ be made
 41 as provided in subsection (1). However, service of a subpoena on
 42 a witness in a criminal traffic case, a misdemeanor case, or a
 43 second degree or third degree felony may be made by ~~certified~~
 44 United States mail directed to the witness at the last known
 45 address, and the such service must be mailed at least 7 days
 46 prior to the date of the witness's required appearance. Failure
 47 of a witness to appear in response to a subpoena served by
 48 United States mail that is not certified may not be grounds for
 49 finding the witness in contempt of court.

50 (b) A criminal witness subpoena may be posted by a person
 51 authorized to serve process at the witness's residence if three

52 attempts to serve the subpoena, made at different times of the
 53 day or night on different dates, have failed. The subpoena must
 54 be posted at least 5 days prior to the date of the witness's
 55 required appearance.

56 (5) A person serving process shall place on the copy
 57 served the date and time of service and his or her
 58 identification number and initials for all services of process.

59 (6) If the only address for a person to be served, which
 60 is discoverable through public records, is a private mailbox,
 61 substitute service may be made by leaving a copy of the process
 62 with the person in charge of the private mailbox, but only if
 63 the process server determines that the person to be served
 64 maintains a mailbox at that location.

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

67 48.081 Service on corporation.--

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

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

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

82 48.21 Return of execution of process.--Each person who
83 effects service of process ~~All officers to whom process is~~
84 ~~directed~~ shall note ~~on it, or~~ on a return-of-service form
85 attached thereto, the date and time when it comes to hand, the
86 date and time when it is served ~~executed~~, the manner of service
87 ~~execution~~, the name of the person on whom it was served,
88 ~~executed~~ and, if the ~~such~~ person is served in a representative
89 capacity, the position occupied by the person. A failure to
90 state the foregoing facts invalidates the service, but the
91 return is amendable to state the truth at any time on
92 application to the court from which the process issued. On
93 amendment, service is as effective as if the return had
94 originally stated the omitted facts. A failure to state all the
95 facts in the return shall subject the person effecting service
96 ~~officer so failing~~ to a fine not exceeding \$10, in the court's
97 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 the
102 information provided in s. 48.031(5) on the copy served ~~on the~~
103 ~~face of any process served by him or her, his or her printed~~
104 ~~name, signature, and identification number, and words stating~~
105 ~~that he or she is a certified process server in the circuit~~
106 ~~wherein he or she is serving the process. In addition, the~~

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107 | ~~certified process server shall endorse on the original process,~~
 108 | ~~and on all copies served, the date and hour of service.~~

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

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

114 | 83.13 Levy of writ.--The sheriff shall execute the writ by
 115 | service on defendant and, upon the order of the court, by levy
 116 | on property distrainable for rent or advances, if found in the
 117 | sheriff's jurisdiction. If the property is ~~not so found but is~~
 118 | in another jurisdiction, the party who had the writ issued
 119 | ~~sheriff~~ shall deliver the writ to the ~~proper~~ sheriff in the
 120 | other jurisdiction; and that ~~the other~~ sheriff shall execute the
 121 | writ, upon order of the court, by levying on the property and
 122 | delivering it to the sheriff of the county in which the action
 123 | is pending, to be disposed of according to law, unless he or she
 124 | is ordered by the court from which the writ emanated to hold the
 125 | property and dispose of it in his or her jurisdiction according
 126 | to law. If the plaintiff shows by a sworn statement that the
 127 | defendant cannot be found within the state, the levy on the
 128 | property suffices as service on the defendant.

129 | Section 6. Subsection (1) of section 832.07, Florida
 130 | Statutes, is amended to read:

131 | 832.07 Prima facie evidence of intent; identity.--

132 | (1) INTENT.--

133 | (a) In any prosecution or action under this chapter, the
 134 | making, drawing, uttering, or delivery of a check, draft, or

135 | order, payment of which is refused by the drawee because of lack
 136 | of funds or credit, shall be prima facie evidence of intent to
 137 | defraud or knowledge of insufficient funds in, or credit with,
 138 | such bank, banking institution, trust company, or other
 139 | depository, unless such maker or drawer, or someone for him or
 140 | her, shall have paid the holder thereof the amount due thereon,
 141 | together with a service charge not to exceed the service fees
 142 | authorized under s. 832.08(5) or an amount of up to 5 percent of
 143 | the face amount of the check, whichever is greater, within 7
 144 | days after receiving written notice that such check, draft, or
 145 | order has not been paid to the holder thereof, and bank fees
 146 | incurred by the holder. In the event of legal action for
 147 | recovery, the maker or drawer may be additionally liable for
 148 | court costs and reasonable attorney's fees. Notice mailed by
 149 | certified or registered mail, evidenced by return receipt, or by
 150 | first-class mail, evidenced by an affidavit of service of mail,
 151 | to the address printed on the check or given at the time of
 152 | issuance, or, if more accurate information is available, to the
 153 | maker or drawer's last known address, shall be deemed sufficient
 154 | and equivalent to notice having been received by the maker or
 155 | drawer, whether such notice shall be returned undelivered or
 156 | not. The form of such notice shall be substantially as follows:

157 |
 158 | "You are hereby notified that a check, numbered _____, in
 159 | the face amount of \$_____, issued by you on ... (date) ...,
 160 | drawn upon ... (name of bank) ..., and payable to _____, has
 161 | been dishonored. Pursuant to Florida law, you have 7 days from
 162 | receipt of this notice to tender payment of the full amount of

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163 such check plus a service charge of \$25, if the face value does
 164 not exceed \$50, \$30, if the face value exceeds \$50 but does not
 165 exceed \$300, \$40, if the face value exceeds \$300, or an amount
 166 of up to 5 percent of the face amount of the check, whichever is
 167 greater, the total amount due being \$_____ and _____ cents.
 168 Unless this amount is paid in full within the time specified
 169 above, the holder of such check may turn over the dishonored
 170 check and all other available information relating to this
 171 incident to the state attorney for criminal prosecution. You may
 172 be additionally liable in a civil action for triple the amount
 173 of the check, but in no case less than \$50, together with the
 174 amount of the check, a service charge, court costs, reasonable
 175 attorney fees, and incurred bank fees, as provided in s.
 176 68.065."

177
 178 Subsequent persons receiving a check, draft, or order from the
 179 original payee or a successor endorsee have the same rights that
 180 the original payee has against the maker of the instrument,
 181 provided such subsequent persons give notice in a substantially
 182 similar form to that provided above. Subsequent persons
 183 providing such notice shall be immune from civil liability for
 184 the giving of such notice and for proceeding under the forms of
 185 such notice, so long as the maker of the instrument has the same
 186 defenses against these subsequent persons as against the
 187 original payee. However, the remedies available under this
 188 section may be exercised only by one party in interest.

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

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191 that such check was issued with intent to defraud, and the
192 notice requirement set forth in this section shall be waived.

193 Section 7. Section 409.257, Florida Statutes, is amended
194 to read:

195 409.257 Service of process.--The service of initial
196 process and orders in lawsuits filed by the department, under
197 this act, shall be served by the sheriff in the county where the
198 person to be served may be found. The sheriff shall be
199 reimbursed at the prevailing rate of federal financial
200 participation for service of process and orders as allowed by
201 law. The sheriff shall bill the department monthly as provided
202 for in s. 30.51(2). In addition, process and orders may be
203 served or executed by authorized agents of the department at the
204 department's discretion; provided that the agent of the
205 department does not take any action against personal property,
206 real property, or persons. Notices and other intermediate
207 process, except witness subpoenas, shall be served by the
208 department as provided for in the Florida Rules of Civil
209 Procedure. Witness subpoenas shall be served by the department
210 by United States ~~certified~~ mail as provided for in s. 48.031(3).

211 Section 8. This act shall take effect July 1, 2004.