

CHAMBER ACTION

1 The Committee on Appropriations 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. 624.307,
 25 F.S.; allowing the Chief Financial Officer, when serving
 26 as the attorney to receive service of all legal process
 27 for certain regulated persons, to send the process by any
 28 verifiable means to the person last designated by the
 29 regulated person to receive the process, instead of
 30 requiring the process to be sent by registered or
 31 certified mail; amending s. 832.07, F.S.; providing for
 32 alternative method of notice sent by the holder to the
 33 maker or drawer of a check, draft, or order, payment of
 34 which is refused because of lack of funds or credit;
 35 amending s. 409.257, F.S.; revising a provision for
 36 service of witness subpoenas, to conform; providing an
 37 effective date.

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

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

44 48.031 Service of process generally; service of witness
 45 subpoenas.--

46 (3)(a) The service of process of witness subpoenas,
 47 whether in criminal cases or civil actions, shall ~~is to~~ be made
 48 as provided in subsection (1). However, service of a subpoena on
 49 a witness in a criminal traffic case, a misdemeanor case, or a
 50 second degree or third degree felony may be made by ~~certified~~
 51 United States mail directed to the witness at the last known

52 | address, and the ~~such~~ service must be mailed at least 7 days
 53 | prior to the date of the witness's required appearance. Failure
 54 | of a witness to appear in response to a subpoena served by
 55 | United States mail that is not certified may not be grounds for
 56 | finding the witness in contempt of court.

57 | (b) A criminal witness subpoena may be posted by a person
 58 | authorized to serve process at the witness's residence if three
 59 | attempts to serve the subpoena, made at different times of the
 60 | day or night on different dates, have failed. The subpoena must
 61 | be posted at least 5 days prior to the date of the witness's
 62 | required appearance.

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

66 | (6) If the only address for a person to be served, which
 67 | is discoverable through public records, is a private mailbox,
 68 | substitute service may be made by leaving a copy of the process
 69 | with the person in charge of the private mailbox, but only if
 70 | the process server determines that the person to be served
 71 | maintains a mailbox at that location.

72 | Section 2. Subsection (3) of section 48.081, Florida
 73 | Statutes, is amended to read:

74 | 48.081 Service on corporation.--

75 | (3)(a) As an alternative to all of the foregoing, process
 76 | may be served on the agent designated by the corporation under
 77 | s. 48.091. However, if service cannot be made on a registered
 78 | agent because of failure to comply with s. 48.091, service of
 79 | process shall be permitted on any employee at the corporation's

80 principal place of business or on any employee of the registered
81 agent.

82 (b) If the address provided for the registered agent,
83 officer, director, or principal place of business is a residence
84 or private mailbox, service on the corporation may be made by
85 serving the registered agent, officer, or director in accordance
86 with s. 48.031.

87 Section 3. Section 48.21, Florida Statutes, is amended to
88 read:

89 48.21 Return of execution of process.--Each person who
90 effects service of process ~~All officers to whom process is~~
91 ~~directed~~ shall note ~~on it, or~~ on a return-of-service form
92 attached thereto, the date and time when it comes to hand, the
93 date and time when it is served ~~executed~~, the manner of service
94 ~~execution~~, the name of the person on whom it was served,
95 ~~executed~~ and, if the ~~such~~ person is served in a representative
96 capacity, the position occupied by the person. A failure to
97 state the foregoing facts invalidates the service, but the
98 return is amendable to state the truth at any time on
99 application to the court from which the process issued. On
100 amendment, service is as effective as if the return had
101 originally stated the omitted facts. A failure to state all the
102 facts in the return shall subject the person effecting service
103 ~~officer so failing~~ to a fine not exceeding \$10, in the court's
104 discretion.

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

107 48.29 Certification of process servers.--

108 (6)(a) A certified process server shall place the
 109 information provided in s. 48.031(5) on the copy served ~~on the~~
 110 ~~face of any process served by him or her, his or her printed~~
 111 ~~name, signature, and identification number, and words stating~~
 112 ~~that he or she is a certified process server in the circuit~~
 113 ~~wherein he or she is serving the process. In addition, the~~
 114 ~~certified process server shall endorse on the original process,~~
 115 ~~and on all copies served, the date and hour of service.~~

116 (b) Return of service shall be made by a certified process
 117 server on a form which has been reviewed and approved by the
 118 court.

119 Section 5. Section 83.13, Florida Statutes, is amended to
 120 read:

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

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

138 624.307 General powers; duties.--

139 (8) Upon receiving service of legal process issued in any
140 civil action or proceeding in this state against any regulated
141 person required to appoint the Chief Financial Officer as its
142 attorney to receive service of all legal process, the Chief
143 Financial Officer, as attorney, may, in lieu of sending the
144 process by registered or certified mail, send the process by any
145 other verifiable means to the person last designated by the
146 regulated person to receive the process.

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

149 832.07 Prima facie evidence of intent; identity.--

150 (1) INTENT.--

151 (a) In any prosecution or action under this chapter, the
152 making, drawing, uttering, or delivery of a check, draft, or
153 order, payment of which is refused by the drawee because of lack
154 of funds or credit, shall be prima facie evidence of intent to
155 defraud or knowledge of insufficient funds in, or credit with,
156 such bank, banking institution, trust company, or other
157 depository, unless such maker or drawer, or someone for him or
158 her, shall have paid the holder thereof the amount due thereon,
159 together with a service charge not to exceed the service fees
160 authorized under s. 832.08(5) or an amount of up to 5 percent of
161 the face amount of the check, whichever is greater, within 15 7
162 days after ~~receiving~~ written notice has been sent to the address
163 printed on the check or given at the time of issuance that such

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164 check, draft, or order has not been paid to the holder thereof,
 165 and bank fees incurred by the holder. In the event of legal
 166 action for recovery, the maker or drawer may be additionally
 167 liable for court costs and reasonable attorney's fees. Notice
 168 mailed by certified or registered mail, evidenced by return
 169 receipt, or by first-class mail, evidenced by an affidavit of
 170 service of mail, to the address printed on the check or given at
 171 the time of issuance shall be deemed sufficient and equivalent
 172 to notice having been received by the maker or drawer, whether
 173 such notice shall be returned undelivered or not. The form of
 174 such notice shall be substantially as follows:

175
 176 "You are hereby notified that a check, numbered _____, in
 177 the face amount of \$_____, issued by you on ... (date) ...,
 178 drawn upon ... (name of bank) ..., and payable to _____, has
 179 been dishonored. Pursuant to Florida law, you have 15 7 days
 180 from the date ~~receipt~~ of this notice to tender payment of the
 181 full amount of such check plus a service charge of \$25, if the
 182 face value does not exceed \$50, \$30, if the face value exceeds
 183 \$50 but does not exceed \$300, \$40, if the face value exceeds
 184 \$300, or an amount of up to 5 percent of the face amount of the
 185 check, whichever is greater, the total amount due being \$_____
 186 and _____ cents. Unless this amount is paid in full within the
 187 time specified above, the holder of such check may turn over the
 188 dishonored check and all other available information relating to
 189 this incident to the state attorney for criminal prosecution.
 190 You may be additionally liable in a civil action for triple the
 191 amount of the check, but in no case less than \$50, together with

192 | the amount of the check, a service charge, court costs,
 193 | reasonable attorney fees, and incurred bank fees, as provided in
 194 | s. 68.065."

195 |
 196 | Subsequent persons receiving a check, draft, or order from the
 197 | original payee or a successor endorsee have the same rights that
 198 | the original payee has against the maker of the instrument,
 199 | provided such subsequent persons give notice in a substantially
 200 | similar form to that provided above. Subsequent persons
 201 | providing such notice shall be immune from civil liability for
 202 | the giving of such notice and for proceeding under the forms of
 203 | such notice, so long as the maker of the instrument has the same
 204 | defenses against these subsequent persons as against the
 205 | original payee. However, the remedies available under this
 206 | section may be exercised only by one party in interest.

207 | (b) When a check is drawn on a bank in which the maker or
 208 | drawer has no account or a closed account, it shall be presumed
 209 | that such check was issued with intent to defraud, and the
 210 | notice requirement set forth in this section shall be waived.

211 | Section 8. Section 409.257, Florida Statutes, is amended
 212 | to read:

213 | 409.257 Service of process.--The service of initial
 214 | process and orders in lawsuits filed by the department, under
 215 | this act, shall be served by the sheriff in the county where the
 216 | person to be served may be found. The sheriff shall be
 217 | reimbursed at the prevailing rate of federal financial
 218 | participation for service of process and orders as allowed by
 219 | law. The sheriff shall bill the department monthly as provided

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220 for in s. 30.51(2). In addition, process and orders may be
221 served or executed by authorized agents of the department at the
222 department's discretion; provided that the agent of the
223 department does not take any action against personal property,
224 real property, or persons. Notices and other intermediate
225 process, except witness subpoenas, shall be served by the
226 department as provided for in the Florida Rules of Civil
227 Procedure. Witness subpoenas shall be served by the department
228 by United States ~~certified~~ mail as provided for in s. 48.031(3).

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