

By Senator Margolis

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1 A bill to be entitled
2 An act relating to the jurisdiction of the courts;
3 amending s. 48.081, F.S.; authorizing a person to
4 serve process on the Secretary of State if other
5 representatives of a corporation cannot be served;
6 amending s. 48.151, F.S.; requiring that process
7 served on the Secretary of State on behalf of a
8 defendant corporation be accompanied by a fee, an
9 affidavit detailing other attempts to serve the
10 corporation and known addresses of representatives of
11 the corporation, and multiple copies of the process;
12 requiring that the Secretary of State mail a copy of
13 the process to representatives of the defendant
14 corporation; requiring that the Secretary of State
15 provide a notice of service to the plaintiff or
16 plaintiff's attorney; requiring the Secretary of State
17 to explain the reasons for rejecting the service of
18 process; amending s. 48.193, F.S.; including as an
19 additional basis for subjecting a person to the
20 jurisdiction of the courts of this state the basis for
21 jurisdiction provisions which state that a person
22 submits to the jurisdiction of the courts of this
23 state by entering into a contract that designates the
24 law of this state as the law governing the contract
25 and that contains a provision by which such person
26 agrees to submit to the jurisdiction of the courts of
27 this state; amending s. 55.502, F.S.; revising the
28 definition of the term "foreign judgment" for purposes
29 of the Florida Enforcement of Foreign Judgments Act;

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30 amending s. 684.0019, F.S.; clarifying that an
31 arbitral tribunal receiving a request for an interim
32 measure to preserve evidence in a dispute governed by
33 the Florida International Commercial Arbitration Act
34 need only consider to the extent appropriate the
35 potential harm that may occur if the measure is not
36 awarded or the possibility that the requesting party
37 will succeed on the merits of the claim; amending s.
38 684.0026, F.S.; correcting a cross-reference in the
39 Florida International Commercial Arbitration Act;
40 amending s. 685.101, F.S.; deleting a restriction on
41 the jurisdiction of the courts of this state to
42 transactions bearing a substantial relation to this
43 state; revising application dates of provisions
44 relating to the jurisdiction of the courts; amending
45 s. 685.102, F.S.; revising application dates of
46 provisions relating to the jurisdiction of the courts;
47 providing an effective date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Section 48.081, Florida Statutes, is amended to
52 read:

53 48.081 Service on corporation.—

54 (1) Process against any private corporation, domestic or
55 foreign, may be served:

56 (a) On the president or vice president, or other head of
57 the corporation;

58 (b) In the absence of any person described in paragraph

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59 (a), on the cashier, treasurer, secretary, or general manager;

60 (c) In the absence of any person described in paragraph (a)
61 or paragraph (b), on any director; ~~or~~

62 (d) In the absence of any person described in paragraph
63 (a), paragraph (b), or paragraph (c), on any officer or business
64 agent residing in the state; or

65 (e) In the absence of any person described in paragraph
66 (a), paragraph (b), paragraph (c), or paragraph (d), in the case
67 of a domestic corporation or a registered foreign corporation,
68 on the Secretary of State pursuant to s. 48.151.

69 (2) If a foreign corporation has none of the foregoing
70 officers or agents in this state, service may be made on any
71 agent transacting business for it in this state.

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

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

84 (4) This section does not apply to service of process on
85 insurance companies.

86 (5) When a corporation engages in substantial and not
87 isolated activities within this state, or has a business office

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88 within the state and is actually engaged in the transaction of
89 business therefrom, service upon any officer or business agent
90 while on corporate business within this state may personally be
91 made, pursuant to this section, and it is not necessary in such
92 case that the action, suit, or proceeding against the
93 corporation shall have arisen out of any transaction or
94 operation connected with or incidental to the business being
95 transacted within the state.

96 Section 2. Section 48.151, Florida Statutes, is amended to
97 read:

98 48.151 Service on statutory agents for certain persons.—

99 (1) When any law designates a public officer, board,
100 agency, or commission as the agent for service of process on any
101 person, firm, or corporation, service of process thereunder
102 shall be made by leaving two copies of the process with the
103 public officer, board, agency, or commission or in the office
104 thereof, or by mailing said copies to the public officer, board,
105 agency, or commission. The public officer, board, agency, or
106 commission so served shall file one copy in his or her or its
107 records and promptly send the other copy, by registered or
108 certified mail, to the person to be served as shown by his or
109 her or its records. Proof of service on the public officer,
110 board, agency, or commission shall be by a notice accepting the
111 process which shall be issued by the public officer, board,
112 agency, or commission promptly after service and filed in the
113 court issuing the process. The notice accepting service shall
114 state the date upon which the copy of the process was mailed by
115 the public officer, board, agency, or commission to the person
116 being served and the time for pleading prescribed by the rules

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117 of procedure shall run from this date. The service is valid
118 service for all purposes on the person for whom the public
119 officer, board, agency, or commission is statutory agent for
120 service of process.

121 (2) This section does not apply to substituted service of
122 process on nonresidents.

123 (3) The Chief Financial Officer or his or her assistant or
124 deputy or another person in charge of the office is the agent
125 for service of process on all insurers applying for authority to
126 transact insurance in this state, all licensed nonresident
127 insurance agents, all nonresident disability insurance agents
128 licensed pursuant to s. 626.835, any unauthorized insurer under
129 s. 626.906 or s. 626.937, domestic reciprocal insurers,
130 fraternal benefit societies under chapter 632, warranty
131 associations under chapter 634, prepaid limited health service
132 organizations under chapter 636, and persons required to file
133 statements under s. 628.461.

134 (4) The Director of the Office of Financial Regulation of
135 the Financial Services Commission is the agent for service of
136 process for any issuer as defined in s. 517.021, or any dealer,
137 investment adviser, or associated person registered with that
138 office, for any violation of any provision of chapter 517.

139 (5) The Secretary of State is the agent for service of
140 process for any retailer, dealer or vendor who has failed to
141 designate an agent for service of process as required under s.
142 212.151 for violations of chapter 212.

143 (6) (a) In addition to the requirements of subsection (1),
144 service on the Secretary of State pursuant to s. 48.081(1) (e)
145 must:

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146 1. Be accompanied by fee of \$10.

147 2. Include a sworn affidavit of the plaintiff or
148 plaintiff's attorney setting forth the identity of the plaintiff
149 and defendant to whom the process relates.

150 a. The affidavit must show that a diligent search and
151 inquiry have been made to discover the whereabouts of the
152 persons upon whom service of process would bind the defendant
153 corporation; identify any process servers, private
154 investigators, or computerized search methods used; and explain
155 the reasons for concluding that all of the persons are absent
156 from or cannot be found within the state.

157 b. The plaintiff or plaintiff's attorney shall also state
158 in the affidavit the registered agent's address, the address of
159 the principal place of business and, if different, the last
160 known address of which the plaintiff or plaintiff's attorney is
161 aware. Instead of the two copies required by subsection (1), the
162 plaintiff or plaintiff's attorney shall provide two copies of
163 process for each address listed in the affidavit for the
164 defendant being served, plus an additional copy for filing.

165 (b)1. The Secretary of State shall review the process and
166 affidavit upon service. If the secretary determines that the
167 requirements of this subsection are met by the process and
168 affidavit submitted, the secretary shall mail a copy of the
169 process to:

170 a. The defendant corporation as provided in subsection (1).

171 b. The registered address of the defendant corporation by
172 regular mail.

173 c. The defendant corporation at additional addresses listed
174 on the accompanying affidavit by regular mail and registered or

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175 certified mail.

176 2. The secretary shall send a notice of service to the
177 plaintiff or plaintiff's attorney for filing with the court from
178 which the process originated.

179 3. If the secretary determines that the requirements of
180 this subsection have not been met, the secretary shall return
181 the entire submission to the plaintiff or plaintiff's attorney
182 with an explanation of the reasons for return.

183 Section 3. Subsection (1) of section 48.193, Florida
184 Statutes, is amended to read:

185 48.193 Acts subjecting person to jurisdiction of courts of
186 state.—

187 (1) Any person, whether or not a citizen or resident of
188 this state, who personally or through an agent does any of the
189 acts enumerated in this subsection thereby submits himself or
190 herself and, if he or she is a natural person, his or her
191 personal representative to the jurisdiction of the courts of
192 this state for any cause of action arising from ~~the doing of~~ any
193 of the following acts:

194 (a) Operating, conducting, engaging in, or carrying on a
195 business or business venture in this state or having an office
196 or agency in this state.

197 (b) Committing a tortious act within this state.

198 (c) Owning, using, possessing, or holding a mortgage or
199 other lien on any real property within this state.

200 (d) Contracting to insure any person, property, or risk
201 located within this state at the time of contracting.

202 (e) With respect to a proceeding for alimony, child
203 support, or division of property in connection with an action to

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204 dissolve a marriage or with respect to an independent action for
205 support of dependents, maintaining a matrimonial domicile in
206 this state at the time of the commencement of this action or, if
207 the defendant resided in this state preceding the commencement
208 of the action, whether cohabiting during that time or not. This
209 paragraph does not change the residency requirement for filing
210 an action for dissolution of marriage.

211 (f) Causing injury to persons or property within this state
212 arising out of an act or omission by the defendant outside this
213 state, if, at or about the time of the injury, either:

214 1. The defendant was engaged in solicitation or service
215 activities within this state; or

216 2. Products, materials, or things processed, serviced, or
217 manufactured by the defendant anywhere were used or consumed
218 within this state in the ordinary course of commerce, trade, or
219 use.

220 (g) Breaching a contract in this state by failing to
221 perform acts required by the contract to be performed in this
222 state.

223 (h) With respect to a proceeding for paternity, engaging in
224 the act of sexual intercourse within this state with respect to
225 which a child may have been conceived.

226 (i) Entering into a contract that complies with s. 685.102.

227 Section 4. Subsection (1) of section 55.502, Florida
228 Statutes, is amended to read:

229 55.502 Construction of act.—

230 (1) As used in ss. 55.501-55.509, the term "foreign
231 judgment" means any judgment, decree, or order of a court which
232 ~~of any other state or of the United States if such judgment,~~

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233 ~~decree, or order~~ is entitled to full faith and credit in this
234 state.

235 Section 5. Section 684.0019, Florida Statutes, is amended
236 to read:

237 684.0019 Conditions for granting interim measures.—

238 (1) The party requesting an interim measure under s.
239 684.0018 must satisfy the arbitral tribunal that:

240 (a) Harm not adequately reparable by an award of damages is
241 likely to result if the measure is not ordered, and such harm
242 substantially outweighs the harm that is likely to result to the
243 party against whom the measure is directed if the measure is
244 granted; and

245 (b) A reasonable possibility exists that the requesting
246 party will succeed on the merits of the claim. The determination
247 on this possibility does not affect the discretion of the
248 arbitral tribunal in making any subsequent determination.

249 (2) With regard to a request for an interim measure under
250 s. 684.0018(4) ~~s. 684.0018~~, the requirements in subsection (1)
251 apply only to the extent the arbitral tribunal considers
252 appropriate.

253 Section 6. Section 684.0026, Florida Statutes, is amended
254 to read:

255 684.0026 Recognition and enforcement.—

256 (1) An interim measure issued by an arbitral tribunal shall
257 be recognized as binding and, unless otherwise provided by the
258 arbitral tribunal, enforced upon application to the competent
259 court, irrespective of the country in which it was issued,
260 subject to s. 684.0027 ~~s. 684.0019(1)~~.

261 (2) The party who is seeking or has obtained recognition or

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262 enforcement of an interim measure shall promptly inform the
263 court of the termination, suspension, or modification of the
264 interim measure.

265 (3) The court where recognition or enforcement is sought
266 may, if it considers it proper, order the requesting party to
267 provide appropriate security if the arbitral tribunal has not
268 already made a determination with respect to security or if such
269 a decision is necessary to protect the rights of third parties.

270 Section 7. Section 685.101, Florida Statutes, is amended to
271 read:

272 685.101 Choice of law.—

273 (1) The parties to any contract, agreement, or undertaking,
274 contingent or otherwise, in consideration of or relating to any
275 obligation arising out of a transaction involving in the
276 aggregate at least ~~not less than~~ \$250,000, the equivalent
277 thereof in any foreign currency, or services or tangible or
278 intangible property, or both, of equivalent value, including a
279 transaction otherwise covered by s. 671.105(1), may, to the
280 extent permitted under the United States Constitution, agree
281 that the law of this state will govern such contract, agreement,
282 or undertaking, the effect thereof and their rights and duties
283 thereunder, in whole or in part, whether or not such contract,
284 agreement, or undertaking bears any relation to this state.

285 (2) This section does not apply to any contract, agreement,
286 or undertaking:

287 ~~(a) Regarding any transaction which does not bear a~~
288 ~~substantial or reasonable relation to this state in which every~~
289 ~~party is either or a combination of:~~

290 ~~1. A resident and citizen of the United States, but not of~~

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291 ~~this state; or~~
 292 ~~2. Incorporated or organized under the laws of another~~
 293 ~~state and does not maintain a place of business in this state;~~
 294 (a) ~~(b)~~ For labor or employment;
 295 (b) ~~(c)~~ Relating to any transaction for personal, family, or
 296 household purposes, unless such contract, agreement, or
 297 undertaking concerns a trust at least one trustee of which
 298 resides or transacts business as a trustee in this state, in
 299 which case this section applies;
 300 (c) ~~(d)~~ To the extent provided to the contrary in s.
 301 671.105(2); or
 302 (d) ~~(e)~~ To the extent such contract, agreement, or
 303 undertaking is otherwise covered or affected by s. 655.55.
 304 (3) This section does not limit or deny the enforcement of
 305 any provision respecting choice of law in any other contract,
 306 agreement, or undertaking.
 307 (4) This section applies to:
 308 ~~(a)~~ contracts entered into on or after July 1, 2011 ~~June~~
 309 ~~27, 1989; and~~
 310 ~~(b) Contracts entered into prior to June 27, 1989, if an~~
 311 ~~action or proceeding relating to such contract is commenced on~~
 312 ~~or after June 27, 1989.~~
 313 Section 8. Section 685.102, Florida Statutes, is amended to
 314 read:
 315 685.102 Jurisdiction.—
 316 (1) Notwithstanding any law that limits the right of a
 317 person to maintain an action or proceeding, any person may, to
 318 the extent permitted under the United States Constitution,
 319 maintain in this state an action or proceeding against any

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320 person or other entity residing or located outside this state,
321 if the action or proceeding arises out of or relates to any
322 contract, agreement, or undertaking for which a choice of the
323 law of this state, in whole or in part, has been made consistent
324 with ~~pursuant to~~ s. 685.101 and which contains a provision by
325 which such person or other entity residing or located outside
326 this state agrees to submit to the jurisdiction of the courts of
327 this state.

328 (2) This section does not affect the jurisdiction of the
329 courts of this state over any action or proceeding arising out
330 of or relating to any other contract, agreement, or undertaking.

331 (3) This section applies to:

332 ~~(a)~~ Contracts entered into on or after July 1, 2011 ~~June~~
333 ~~27, 1989;~~ and

334 ~~(b)~~ ~~Contracts entered into prior to June 27, 1989, if an~~
335 ~~action or proceeding relating to such contract is commenced on~~
336 ~~or after June 27, 1989.~~

337 Section 9. This act shall take effect July 1, 2011.