

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1268

INTRODUCER: Criminal Justice Committee and Senator Detert

SUBJECT: Service of Process

DATE: April 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1268 amends the service of process laws as follows:

- Provides that a fee of \$40 will be charged by the sheriff for each summons served.
- Provides that execution must be accompanied by an affidavit containing a statement directing distribution of proceeds of public sale.
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale.
- Requires that the party requesting service of process or the process server file the return-of-service form.
- Provides for changes to service of process on certain businesses.
- Adds a first degree misdemeanor penalty for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.

This bill substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 48.081, and 56.27.

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the defendant is located.¹ The sheriff may appoint special process servers who meet specified statutory minimum requirements.² The chief judge of the circuit court may establish an approved list of certified process servers.³ Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.⁴ Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.⁵

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas are made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.⁶ Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.⁷

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge \$40 for docketing and indexing each writ of execution, regardless of the number of persons involved. It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.⁸

Service on Employees and Businesses

Section 48.031, F.S., provides that employers "shall permit" service of process on employees in a private area designated by the employer. Substitute service may only be made on a person in

¹ Section 48.021, F.S.

² *Id.*

³ Section 48.27, F.S.

⁴ *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).

⁵ Section 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

⁶ Sections 48.031(1), (3), F.S.

⁷ Sections 48.29 and 48.031(5), F.S.

⁸ *See* s. 30.321, F.S.

charge of a business when the owner is absent after two or more attempts at service. The person making service of process files a return with the court to show service has been made.

Service on Corporations

Section 48.081, F.S., provides that service of process on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon another officer, and in their absence, a director. If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service of process may be made in accordance with s. 48.031, F.S.

Sheriff's Fees for Service

Section 30.231, F.S., provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee.

Sheriff Sales in Execution of Judgments

Sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.⁹ There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid.

III. Effect of Proposed Changes:

Service on Employees and Businesses

The bill creates a first degree misdemeanor for employers and their agents, or other employees who fail to permit service of process on employees in a private area designated by the employer.¹⁰ The bill provides that a sole proprietorship may be served by serving the person on the first attempt even if the owner is temporarily absent from the office. The bill adds that the person requesting service may also file the return-of-service form.

Service on Corporations

The bill deletes "provided" from s. 48.081, F.S., which results in permitting a process server to serve process at any address where the registered agent, president, vice president, or other head of the corporation is located.

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., allowing the sheriff to charge \$40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.¹¹

⁹ See s. 30.30, F.S.

¹⁰ A first degree misdemeanor is punishable by up to one year in county jail and/or a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

¹¹ For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the same person in two capacities. Therefore, that person would be served twice with the complaint.

Sheriff Sales in Execution of Judgments

The bill amends s. 56.27, F.S., by providing that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale. Additionally, it provides that the sheriff is not liable for damages in the event of a wrongful levy and/or payout.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an impact on local jails to the extent that the bill's misdemeanor offense results in persons being sentenced to jail.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2013:

- Deletes the provisions relating to service of process on a limited liability company, involuntary examinations, injunctions, and warrantless arrests.
- Permits a process server to serve process at any address where the registered agent, president, vice president, or other head of a corporation is located.

- B. **Amendments:**

None.