

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 Community Affairs

BILL: SB 620

INTRODUCER: Senator Detert

SUBJECT: Service of Process

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting

I. Summary:

SB 620 revises the procedures for serving process as follows:

- Authorizes a sheriff to charge a \$40 fee for each summons served instead of a \$40 fee for serving multiple summons at the same time.
- Provides that if a sheriff relies on an affidavit from a levying creditor, the sheriff is immune from liability for the wrongful levy or distribution of the proceeds of an execution sale.
- Requires that the party requesting service of process or the process server file the return-of-service form instead of the person issuing the process.
- Adds a noncriminal violation punishable by a fine of up to \$1,000 for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.
- Permits service of process on a corporation at any address where the registered agent, president, vice president, or other head of the corporation is located.

II. Present Situation:

Service of Process

The sheriff in the county where the person to be served is located is responsible for completing service of process.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

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

¹ Section 48.021, F.S.

² *Id.*

³ Section 48.27, F.S.

for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.⁴ Failure to strictly comply with the statutory terms renders 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 the complaint, petition, or other initial pleading or paper to the person to be served or by leaving the copies at his or her usual place of abode with any resident 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 person issuing the process is obligated to file the return of service form with the court to show that service was made.⁸

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for service of process.⁹ The sheriffs must charge \$40 for recording and serving each summons or writ of execution, except if duplicate process is to be served in the same action on the same person.¹⁰ This may occur, for example, when a defendant is sued both individually and in some representative capacity in the same action. In such an event, two summons are issued and served. Current law precludes the sheriff from charging for service of each summons served in such an event or for serving multiple individuals at the same time.¹¹

Sheriffs may levy upon or seize a person's assets to satisfy a judgment and sell those assets to pay the judgment when they are provided a writ of execution by the court.¹² The judgment creditor must provide an affidavit assuring the sheriff that the judgment debtor has clear title to an asset to be seized.¹³ However, there is no statutory requirement that the parties in interest direct the sheriff how to distribute the proceeds of sale.

Service on Employees and Businesses

Section 48.031, F.S., requires employers to allow a process server to serve an employee in a private area designated by the employer. However, the law does not specify a penalty for an employer who fails to permit such service.

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

⁵ *Vidal* (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint which was served on the debtor rendered the service of the complaint defective).

⁶ Subsections 48.031(1) and (3), F.S.

⁷ Sections 48.29(6) and 48.031(5), F.S.

⁸ Section 48.031(5), F.S.

⁹ Section 30.231(1), F.S.

¹⁰ Section 30.231(1)(a), F.S.

¹¹ *Id.*

¹² See s. 30.30, F.S.

¹³ Section 56.27(4), F.S.

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. Current law states that 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 the general procedures for serving process set forth in s. 48.031, F.S. Current law suggests that the address must be actually given in order to be used in the service of process.

III. Effect of Proposed Changes:

This bill revises the procedures relating to the service of legal process, such as complaints and subpoenas.

Sheriff's Fees for Service (Section 1)

The bill amends s. 30.231, F.S., which currently provides that when serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill deletes this limitation, and allows the sheriff to charge \$40 per process served at the same time in the same cause of action. In effect, the sheriff may be paid multiple fees to serve a single person who is being sued in multiple capacities in one lawsuit.

Service on an Employee of a Business (Section 2)

Existing s. 48.031, F.S., requires an employer to permit service of process on an employee in a private area designated by the employer. The bill creates a noncriminal penalty¹⁴ punishable by a fine of up to \$1,000 for an employer or an agent who fails to comply with this requirement.

Filing the Return of Service (Section 2)

The bill requires either the person requesting service or the person authorized to serve process to file the return of service with the court. Under existing law, the person issuing the process has this responsibility.

Service on a Corporation (Section 3)

Section 48.081(3)(b), F.S., states that if the address *provided* for the registered agent, officer, director, or principal place of business is a residence or private mailbox, then service may be made by serving the registered agent, officer, or director in accordance with s. 48.031, F.S. The bill deletes the word "provided" to clarify that if the address for the registered agent, officer, director, or principal place of business is a residence or private mailbox, then service may be made by serving the registered agent, officer, or director in accordance with the general procedures for serving process, regardless of whether the address was actually provided to the state or not.

¹⁴ A noncriminal violation is any offense punishable by nothing more than a fine, forfeiture, or other civil penalty, and does not constitute a crime. *State v. Knowles*, 625 So. 2d 88, 90 (Fla. 5th DCA 1993).

Sheriff Sales in Execution of Judgments (Section 4)

The bill amends s. 56.27(5), F.S., to provide that a sheriff may rely on an affidavit submitted as required under the section. The bill also provides immunity from liability for the wrongful distribution of the proceeds of an execution sale (in addition to immunity from the wrongful levy, which already exists in statute), if the sheriff paid the money out in accordance with the information in an affidavit from a levying creditor.

The bill creates a new subsection (6) to provide that, if the sheriff is uncertain as to whom to disburse the proceeds of the sale of levied property, the sheriff may apply for instructions from the court that:

- entered the judgment that is the basis of the judgment lien; or
- the appropriate court where the levied property was located at the time of the levy.

The bill requires the sheriff to serve the application for instructions and the notice of hearing on the levying creditor, the judgment debtor, and any other parties identified in the affidavit.

Effective Date (Section 5)

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The sheriff may be paid multiple fees to serve a single person who is being sued in multiple capacities in one lawsuit.

C. Government Sector Impact:

Sheriffs may receive additional fees for serving process in some instances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.