

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 Commerce and Tourism

BILL: CS/SB 1062

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Service of Process

DATE: January 28, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1062 amends laws governing service of process. The term “service of process” refers to the manner of delivery of legal notice to an individual or entity which provides notice of a pending legal action. The bill:

- Details and standardizes the manner and priority of forms of service of process as related to different forms of business entities as appropriate to the form and structure of the entities;
- Prioritizes service of process on the registered agent of an entity;
- Clarifies procedures for substituted service of process by delivery to the Secretary of State;
- Creates the authority of a trial court to allow any effective alternative means of service of process where an entity cannot be served with process by conventional means;
- Creates a framework for service of process on an individual or entity in a foreign country, to include any form of process recognized under that country’s laws;
- Creates procedures for service of process for removal of an unknown party in possession of rented real property;
- Provides that service of a medical negligence pre-suit notice starts to toll the statute of limitations from the date of mailing rather than the date of receipt, and broadens the forms of such delivery to allow commercial delivery services or use of a certified process server;
- Broadens statutes on service of process by registered or certified mail to also allow delivery by a commercial delivery service; and
- Allows the Department of State to accept substituted service of process by electronic means.

This bill does not appear to have a fiscal impact on state or local governments.

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

II. Present Situation:

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against them. Delivery of that notice is referred to as “service of process.” Adequate service of process is also required to summon a witness for testimony or for production of evidence. Centuries ago, service of process was only trusted to the county sheriff. Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly apprised of a lawsuit or a requirement to produce evidence.

The traditional and best form of service of process on a competent adult is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by youth. Procedures need to be established for determining how to serve process on an entity in a manner likely to have it noticed by management for a timely response. A large body of law has been devoted to the allowable methods for service of process.

The Secretary of State is involved in many aspects of service of process. The Secretary is head of the Department of State, which handles the administrative duties of the Secretary. The Division of Corporations, under the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the related top-level individuals of the entity. Every current entity must appoint a registered agent, a person within the state who is authorized by the entity to accept service of process directed to the entity. In some instances, substituted service of process may be made on the Secretary of State.

III. Effect of Proposed Changes:

Service of Process on a General Partnership (Section 2)

A general partnership is a form of business where two or more individuals jointly engage in an enterprise. The assets of the partnership are subject to creditor claims, and every partner is jointly and severally liable for the debts of the partnership. Currently, service on any partner, or on a registered agent if one is named, is deemed service on the partnership, making the assets of the partnership available to the plaintiff. Individual partners are personally liable for partnership debts if partnership assets are exhausted, but must be served with process as an individual in order for his or her non-partnership assets to be subject to creditor claims.¹ A general partnership may, but is not required to, register with the Department of State and name a registered agent for

¹ Sections 48.061(1), 620.8306, and 620.8307, F.S.

service of process.² A general partnership may designate an employee to accept service of process during regular business hours.³

The bill provides that, after one attempt at service of process on any partner, registered agent, or designated employee, a partnership may be served by delivery of process to a person in charge of the partnership during regular business hours.

Service of Process on a Limited Liability Partnership (Section 2)

A partnership may elect to be a limited liability partnership by registration with the Secretary of State. The assets of the partnership are subject to creditor claims, but the non-partnership assets of all of the individual partners are not subject to creditor claims.⁴ Current statutes do not specifically address service of process on a limited liability partnership, current law on general partnerships therefore applies.

The bill specifies the manner of service of process on a limited liability partnership. Process must first be attempted on the registered agent. If service on the registered agent fails, process may be made on any partner. If no partner is available during regular business hours, any partner may designate an employee to accept service of process. If service on a partner or designated employee fails, process may be served on the person in charge of the partnership during regular business hours. If all of these fail, process may be served upon the Secretary of State or by any other method approved by court order.

Service of Process on a Limited Partnership (Sections 2, 28, 29, 30, 31, 32, 33)

A limited partnership has two classes of partners, limited partners and general partners. The limited partnership must have at least one of each. A limited partnership formed in the state or doing business in the state must register with the Secretary of State. The assets of the limited partnership are subject to creditor claims, as are the assets of a general partner, but the non-partnership assets of any limited partner are not subject to creditor claims.⁵ Service of process on a limited partnership is by service on the registered agent. If service cannot be made against the registered agent, substituted service may be made on the Secretary of State.⁶

The bill provides that service of process on a domestic limited partnership must first be attempted by delivery to the registered agent. If that service fails, service may be on any general partner of the limited partnership. If that fails, service may be made on the Secretary of State or by any other method approved by court order.

The bill also provides that a notice or demand required to be delivered to the limited partnership which is not service of process may be delivered to any general partner, the registered agent, or to any other address that is the principal place of business in this state.

² Section 620.8105, F.S.

³ Section 48.061(1), F.S. This designation is internal to the partnership.

⁴ Section 620.8306(3), F.S.

⁵ Section 620.1404(1), F.S. *See also* s. 620.1303, F.S.

⁶ Section 620.1117, F.S.

Service of Process on a Limited Liability Company (Sections 3, 17, 19 and 20)

A limited liability company is a form of business entity that is formed by enactment of an operating agreement and registration with the Secretary of State. Like a corporation, individual investors are not liable for entity debts. Service of process on a limited liability company may be on the registered agent. If service on the registered agent fails, process may be served on any member of a member-managed limited liability company or any manager of a manager-managed limited liability company. If these fail, substituted service may be on the Secretary of State.⁷

The bill keeps the registered agent first and the Secretary of State as a last resort, and provides that any other person listed publicly in the company's latest annual report, as most recently amended, as an additional alternative to any manager of a manager-managed limited liability company or any member of a member-managed limited liability company. As a last resort, the bill adds any other method approved by court order as an alternative to service on the Secretary of State.

To cancel its certificate of authority to transact business in the state, a foreign limited liability company must in part furnish the Secretary of State with an address that can be used should the company be served with substitute process through the Secretary of State,⁸ and must commit to keeping the address on file current.⁹ The bill adds a requirement to furnish and update, as necessary, an email address.

Business entities may have authority to convert from one form of entity to another. Where the converting entity is a registered limited liability company and the converted entity is any form of foreign entity that is not registered in Florida, the entity must give the Secretary of State a mailing address that can be used should the entity be served with substitute process through the Secretary of State.¹⁰ The bill adds a requirement to furnish an email address with the mailing address.

Service of Process on a Corporation (Sections 5, 21, 22, 23, 24, 25, 26, and 27)

A corporation is a form of business entity in which investors purchase shares of stock in the corporation and vote for a board of directors to manage the entity. Shareholders are generally not liable for the debts of the corporation. Service of process on a corporation is by delivery to the president, vice president, or any other head of the corporation. In the absence of a president or other head of the corporation, service may be made on the cashier, treasurer, secretary, or general manager. In the absence of any of the foregoing, service may be made on any director of the corporation. In the absence of any of the foregoing, service may be made on any officer or business agent residing in the state. If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state. As an alternative to all of the foregoing, process may be served on the registered agent.¹¹ Also as an

⁷ Section 605.0117, F.S.

⁸ Section 605.0910(1)(f), F.S.

⁹ Section 605.0910(1)(g), F.S.

¹⁰ Section 605.1045(2)(f), F.S.

¹¹ Section 48.081, F.S. This section does not apply to a corporation that is an insurance company. Service on an insurance company is not affected by this bill.

alternative, should all of the foregoing fail, service may be by delivery to any employee of the corporation at the principal place of business or any employee of the registered agent.

The bill requires that the first attempt at service of process be delivery to the registered agent. If service on the registered agent fails, service may be by delivery to the chair of the board of directors, the president, any vice president, the secretary, the treasurer, or any other person listed on the most recent corporate filing with the Secretary of State. If service on these fail, service may be by substituted service on the Secretary of State or by any other method approved by court order. The bill repeals the duty to go down the hierarchy of officers and repeals the “any employee” option.

To cancel its certificate of authority to transact business in the state, a foreign corporation must in part furnish the Secretary of State with an address that can be used should the corporation be served with substitute process through the Secretary of State,¹² and must commit to update the mailing address in the future.¹³ The bill adds a requirement to furnish an email address as a part of the withdrawal, and requires a corporation to also commit to future updates to the email address.

Alternative Use of Commercial Delivery Services (Sections 4, 10, and 15)

Various forms of service of process require that a copy of the papers served also be furnished to the person affected by mailing through the United States Postal Service. In the following statutes, the bill adds that delivery by a commercial firm regularly engaged in the business of document or package delivery is an alternative to U.S. postal delivery:

- Service of process on agents of nonresidents (natural persons or partnerships) doing business in the state;¹⁴
- Substituted service of process by service on the Secretary of State; and¹⁵
- Presuit service of a notice of intent to file a medical negligence action.¹⁶

Offices of Registered Agents (Section 6)

A registered agent for a corporation is required to be open daily from 10 a.m. to noon, except for weekends and holidays, and must post a sign listing the corporations that the registered agent serves.¹⁷ No statute governs operating hours or signs of a registered agent for other forms of business entity.

The bill adds all forms of a business entity to the statute governing registered agents, allows a registered agent to be open at times in addition to the 10 a.m. to noon requirement, repeals the sign requirement, specifies that service on a registered agent may be by delivery to any employee of the registered agent, and codifies the commonly understood duty of a registered agent to

¹² Section 607.1520(1)(f), F.S. (for-profit corporations); s. 617.1520(2)(d), F.S. (not-for-profit corporations).

¹³ Section 607.1520(1)(g), F.S. (for-profit corporations); s. 617.1520(2)(e), F.S. (not-for-profit corporations).

¹⁴ Section 48.071, F.S.

¹⁵ Section 48.161, F.S.

¹⁶ Section 766.106(2)(a), F.S.

¹⁷ Section 48.091, F.S.

promptly forward the process and any related papers to the responsible person in the business entity.

Service on a Dissolved Entity (Section 7)

Service of process on a dissolved corporation is the same as service of process on an active corporation.¹⁸ The statutes do not address service of process on other forms of a business entity after dissolution of the entity.

The bill confirms that service on a dissolved corporation is the same as an active corporation as such is amended by the bill. Additionally, the bill adds that service on a dissolved corporation may also be delivered to an existing court-appointed trustee, custodian, or receiver, and adds that the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic for-profit corporation. The bill provides that service on a dissolved limited liability company is the same as an active limited liability company. Process may be delivered to a court-appointed liquidator, trustee, or receiver of a dissolved limited liability company, and the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic limited liability company. Finally, the bill adds that service on a dissolved limited partnership is the same as service on an active limited partnership.

Court-Ordered Alternative Means of Service of Process (Section 8)

Current law on service of process specifies the manner of service of process for various entities and situations, but gives no flexibility for unique circumstances. The bill provides flexibility where, despite due diligence, the party has been unable to personally serve process on any of the following forms of business entity:

- A domestic or foreign corporation;
- A domestic or foreign general partnership, including a limited liability partnership;
- A domestic or foreign limited partnership, including a limited liability limited partnership; or
- A domestic or foreign limited liability company.

In situations where the entity cannot otherwise be served, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity actual notice of the suit. Such other manners of service may include service electronically by email or other technology.

Procedures for Substituted Service through the Secretary of State (Sections 1 and 10)

Several statutes on service of process refer to substituted service of process by service on the Secretary of State. This is generally only available where attempts at personal service have failed. Substituted service on the Secretary of State is effectuated by either hand delivery or by certified mail addressed to the Secretary of State, together with a fee of \$8.75. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail.¹⁹ Case law interpreting the statute requires that a party using substituted service

¹⁸ Section 48.101, F.S.

¹⁹ Section 48.161, F.S.

on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,²⁰ which may be notice through a known email.²¹ When using substituted service on the Secretary of State, the bill:

- Allows the Secretary of State to agree to receive service of process electronically;
- Repeals the \$8.75 fee payable to the Secretary of State;
- Expands the options for delivery by adding the option to use a commercial firm regularly engaged in the business of document or package delivery as an alternative to mailing;
- Requires that the party send a copy by e-mail or other electronic means if the parties have recently and regularly used any of those means of communication;
- Requires that the party send a copy by mail or commercial delivery of the process to the last known address of the party being served;
- Requires the party to file with the court proof of delivery from the post office or commercial service, unless the party being served is actively refusing or rejecting delivery;
- Requires the party to file an affidavit showing due diligence in the search for the party being served and the need for substituted service, together with any return receipt or other proof of mailing or delivery, within 40 days after delivery to the Secretary of State. The court may extend the 40 days; and
- Establishes that the date of service of substituted process is the date of delivery to the Secretary of State. The Secretary of State must maintain a record of each process delivered.

The bill also defines the due diligence necessary before resorting to substituted service on a natural person as:

- Diligent inquiry and an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;
- Reasonable use of the knowledge at the party's command, including knowledge obtained by the diligent inquiry; and
- An appropriate number of attempts to serve the party, taking into account the particular circumstances.

In making the determination as to whether the party effectuating service on a natural person used due diligence, the bill creates a rebuttable presumption that the serving party exercised due diligence by making three good faith attempts to serve the other party at each location where and during the hours when such party is likely to be found, using reasonably available resources to the party seeking to secure service of process.

Authorization for Substituted Service on Nonresidents and Foreign Business Entities Doing Business in the State or Who Are Concealing Their Whereabouts (Section 11)

Current law provides that a nonresident individual or entity doing business in the state is presumed to have appointed the Secretary of State to accept service of process. This also applies

²⁰ *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).

²¹ *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

to any person who was a resident of the state but who has left the state and to a person who is concealing his or her whereabouts.²²

The bill repeals the application of this section to former residents, as service on them is provided in statutes allowing for service outside of the state. If a nonresident business entity has properly registered with the Department of State, the bill requires that service of process first be attempted by delivery to the registered agent, then to the entity officials as appropriate to the form of entity, and only after failing in all such attempts, by substituted service on the Secretary of State.

Service on Unknown Parties in Possession of Rental Property (Section 12)

Landlord-tenant eviction requires two attempts at personal service on a tenant at least six hours apart. If the tenant is not found after the second attempt, the process must be conspicuously posted on the rental property and a copy mailed to the tenant by the clerk.²³ It is unclear whether this procedure applies where an unknown person is discovered to be living in the rental unit.

The bill creates a new section of law limited to service of process on an unknown person in possession of real property. The clerk of court is required to issue a summons in the name of “Unknown Party in Possession.” The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend.²⁴ On each attempt the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the 5 days for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry discovers the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the clerk may issue a writ of possession against an unknown person and the sheriff may remove any person on the property.

Personal Service Outside of Florida (Sections 13 and 14)

Service on persons outside the state is effective if made in the manner required for in-state process, except that it must be served by a person authorized under that jurisdiction’s law to serve process.²⁵ The statute mentions that service outside of the United States may be subject to treaty, but does not require compliance. The bill limits application of this section to service within the other 49 states and within U.S. territories and commonwealths, and creates a new section governing service of Florida process upon a person or entity in a foreign country.

The bill provides that service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, by any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in

²² Section 48.181, F.S.

²³ Section 48.183, F.S.

²⁴ In general, service of process may not be made on a Sunday. Section 48.20, F.S.

²⁵ Section 48.194, F.S.

Civil or Commercial Matters. If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, service of process may be made by any method reasonably calculated to give actual notice of the proceedings. Reasonable methods are those prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction, those directed by the foreign authority in response to a letter rogatory or letter of request, or unless prohibited by the foreign country's law, by delivering a copy of the summons and of the complaint to the individual personally or by using any form of mail which the clerk addresses and sends to the party, which requires a signed receipt. Pursuant to motion and order by the court, service of process may be by other means, including electronically by email or other technology, if the party seeking service shows such form of service is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement.

Presuit Notice in Medical Negligence Action (Section 15)

Before filing a medical negligence action, an injured patient must first deliver to each prospective defendant a notice of intent to file the action. This notice starts a 90-day presuit investigation period. The notice also tolls the running of the statute of limitations. The notice must be delivered by certified mail, return receipt requested.²⁶ While many laws on service of process by mail provide that the date of service is the day of mailing, this statute has been interpreted to mean that the date of service is the day that the prospective defendant received the mailing.²⁷

The bill expands the methods of service of the presuit notice to allow United States mail service with a tracking number, use of an interstate commercial mail carrier or delivery service, or service by a certified process server as if it were from a court. The bill also specifies that delivery to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service of the presuit notice was made. If the question of proper service is made, the court must conduct an evidentiary hearing. The bill also provides that tolling of the statute of limitations begins on the date of mailing or the date of the first attempt at service by the certified process server, tolling applies to all defendants, and the 90-day investigation period starts upon delivery of the notice rather than upon mailing.

Miscellaneous (Sections 9, 16, and 18)

The bill amends ss. 48.151, 495.145, and 605.09091, F.S., respectively, to make conforming changes to provisions made by the bill.

Effective Date

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

²⁶ Section 766.106(2), F.S.

²⁷ *Boyd v. Becker*, 627 So. 2d 481 (Fla.1993); *Bove v. Naples, LLC*, 196 So. 3d 411 (Fla. 2nd DCA 2016) (case dismissed where notice was mailed one day before statute of limitations ran and received several days after).

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.16, 48.061, 48.062, 48.071, 48.081, 48.091, 48.101, 48.151, 48.161, 48.181, 48.194, 766.106, 495.145,

605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919.

This bill creates the following sections of the Florida Statutes: 48.102, 48.184, and 48.197.

IX. Additional Information:

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

CS by Judiciary on January 11, 2022:

The committee substitute removes references to service or notice by social media, limits the new criteria for due diligence to only apply the criteria to service of process on an individual, makes technical amendments to section of bill regarding service of process on an unnamed occupant of a rental property and allows posting on any attempt, and adds a duty of a foreign corporation to keep its email address on file with the Secretary of State current to match the same change made by the bill to partnerships and limited liability companies.

- B. **Amendments:**

None.