

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 545 Service of Process

SPONSOR(S): Judiciary Committee and Civil Justice & Property Rights Subcommittee, Beltran

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1062

FINAL HOUSE FLOOR ACTION: 112 Y's

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GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 545 passed the House on March 7, 2022, as CS/CS/SB 1062.

“Process” is used by a court or administrative body to acquire or exercise jurisdiction over a person or property. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. The traditional and preferred form of service of process on a competent adult is by personal delivery to that person.

In Florida, business entities are categorized differently, depending on how each business is created and structured. The procedures for service of process on various types of business entities are not uniform under current law. The required methodology for service of process differs for each business entity, including partnerships, limited partnerships, limited liability companies, foreign corporations, and domestic corporations. A business’s registered agent need be served first only if that business is an LLC.

When a party is unable to personally serve an individual or a business entity’s representative, Florida law allows service of process through substituted service on the Florida Secretary of State, either by personal service or by certified mail.

The bill makes more uniform the method for serving process on business entities, by requiring each entity to identify a registered agent for service of process. The bill expands s. 48.091, F.S., to specifically apply to limited partnerships, limited liability limited partnerships, limited liability companies, and corporations. As such, the bill requires each type of business entity to designate a registered agent and registered office for service of process. The bill repeals the duty to work through the hierarchy of officers and prioritizes service of process on a registered agent. The bill prioritizes service on certain individuals for service on public agencies and officers that do not have a registered agent.

The bill makes other changes to current law to simplify and modernize service of process against business entities and other specified individuals, including authorizing a court to permit service by email or other electronic means in limited situations. Under the bill, if, after due diligence, a party is unable to effectuate service on a corporation, general partnership, or a limited liability company, a court may authorize, upon motion and a showing of such inability to effectuate service, other methods of service consistent with the principles of due process.

The bill may have an insignificant fiscal impact on state government and does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on June 15, 2022, ch. 2022-190, L.O.F., and will become effective on January 2, 2023, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Judicial Service of Process

“Process” is used by a court or administrative body to acquire or exercise jurisdiction over a person or property.¹ There are three primary types of process: original, mesne, and final process. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Mesne process is an intermediate process issued between the original process and the final judgment. Final process is a writ of execution pursuant to a final judgment issued in the subject legal proceeding.

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- Leaving the process at the person’s usual place of abode² with any person residing there who is fifteen years of age or older and informing that person of the contents of the process.³

Service of Process on Business Entities

In Florida, business entities may be categorized differently depending on how each business entity is created and structured. The procedures for service of process on various types of business entities are not uniform under current law. Florida law recognizes the following types of business entities:

- Partnerships, which are entities with two or more persons who co-own a business and share in the profits and losses of the business.⁴
- Limited Partnerships, which are partnerships composed of both general and limited partners where each partner may determine or limit his or her personal liability within the partnership; in limited partnerships, limited partners are not responsible for the partnership’s actions, debts, and obligations.⁵
- General Partnerships, which are partnerships where the rights and responsibilities are divided equally among the partners and each partner may act on behalf of all the other partners.⁶
- Corporations, which are independent legal entities that exist separately from the people who own, control, and manage them; the owners of the corporation have limited liability and the corporation is considered to be its own, separate “person.”⁷
- Limited Liability Companies, which are similar to corporations in that they offer limited personal liability, but do not have the same management requirements and obligatory formalities as a corporation.⁸
- Sole Proprietorships, which are unincorporated businesses owned and operated by one individual with no distinction between the business and the owner.⁹

Partnerships

¹ Black’s Law Dictionary 837 (6th ed. 1995).

² “Usual place of abode” means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).

³ S. 48.031(1)(a), F.S.

⁴ Florida Department of State, *Types of Business Entities/Structures*, <https://dos.myflorida.com/sunbiz/start-business/corporate-structure/> (last visited on Feb. 8, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Process against a partnership may be served on any partner and is valid as if served on each individual partner.¹⁰ If a partner is not available during regular business hours, he or she may designate an employee to accept service on his or her behalf.¹¹ Service must first be attempted upon either a partner or his or her designated employee during regular business hours.¹²

Service against a limited partnership may be served on any general partner or on the designated agent for service of process specified in the certificate of limited partnership.¹³ If a general partner cannot be found in Florida and service cannot be made on the agent because of failure to maintain such an agent or adequately identify such agent, service of process may be made upon the Florida Secretary of State as agent of the limited partnership.¹⁴

Limited Liability Company (LLC)

Service of process against a foreign or domestic LLC must first be made on the LLC's registered agent.¹⁵ If service cannot be made on the registered agent because the LLC has failed to identify such an agent or because the LLC does not have a registered agent, process against the LLC may be served on:

- A member of a member-managed LLC;
- A manager of a manager-managed LLC; or
- An employee designated by the member or manager to accept service on behalf of the LLC.¹⁶

After one attempt to serve the member, manager, or designated employee, process may be served on the person in charge of the LLC during regular business hours.¹⁷ If process is unable to be made after reasonable diligence under the aforementioned methods, service of process may be made by service on the Florida Secretary of State as agent of the LLC.¹⁸

Business entities may sometimes have authority to convert from one form or entity to another, known as conversion. Where the converting entity is a registered LLC and the converted entity is any form of foreign entity that is not recognized in Florida, the entity must give the Florida Secretary of State a mailing address that can be used if the entity is served by substitute service upon the Florida Secretary of State.

In order to cancel its certificate of authority to transact business in Florida, a foreign LLC must, in part, furnish the Florida Secretary of State with an address that can be used should the company be served through substitute process through the Florida Secretary of State and must commit to keeping such record address accurate and current.

Agents of Nonresidents Doing Business in Florida

For any partnership that engages in business in Florida but does not have a principal place of business in Florida, process may be served on the person who is in charge of a business in which the defendant is engaged within Florida at the time of service.¹⁹ A copy of the process with a notice of such service must be sent by registered mail or certified mail to the partnership, and an affidavit of compliance must be filed with the court.²⁰

¹⁰ S. 48.061(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ S. 48.061(2), F.S.

¹⁴ *Id.*

¹⁵ S. 48.062(1), F.S.

¹⁶ S. 48.062(2), F.S.

¹⁷ S. 48.062(2)(c), F.S.

¹⁸ S. 48.062(3), F.S.

¹⁹ S. 48.071, F.S.

²⁰ *Id.*

Corporations

Service on a private corporation may be served on the president or vice president or other head of the corporation.²¹ In the absence of a president or vice president, service may be made on the cashier, treasurer, secretary, or general manager.²² In the absence of a president, vice president, cashier, treasurer, secretary, or general manager, service may be made upon any director of the corporation.²³ If no such person or director is available, service may be made on any officer or business agent residing in Florida.²⁴

Alternatively, process may be served on the corporation's registered agent as designated by the corporation.²⁵ Each Florida corporation and foreign corporation qualified to do business in Florida must designate a registered agent in compliance with ch. 607, F.S.²⁶

In order to cancel its certificate of authority to transact business in Florida, a foreign corporation must, in part, furnish the Florida Secretary of State with an address that can be used should the corporation be served through substitute process through the Florida Secretary of State and must commit to keeping such record address accurate and current.

Lack of Uniformity

Currently, there is not a uniform method for effectuating service on each type of business entity in Florida. For example, a party is only required to first serve a registered agent when the entity being served is a LLC.²⁷

Substituted Service

The Florida Secretary of State, as head of the Florida Department of State, is involved in many aspects of service of process. The Division of Corporations, housed within 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 various officers, leaders, and managers in the entity. In some scenarios involving nonresident business entities, Florida law allows service of process through substituted service on the Florida Secretary of State when a party is unable to personally serve the individual or the business entity's representative.²⁸ 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.²⁹ Case law interpreting the statute requires that a party using substituted service 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,³⁰ which may be noticed through a known email.³¹

Service of Notice of Intent to Initiate Litigation for Medical Negligence

²¹ S. 48.081(1), F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ S. 48.081(3), F.S.

²⁶ S. 48.091(1), F.S.

²⁷ S. 48.062(1), F.S.

²⁸ S. 48.161, F.S.; S. 48.181, F.S.

²⁹ S. 48.161, F.S.

³⁰ *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).

³¹ *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).

Florida law requires a claimant to notify each prospective defendant of his or her intent to initiate litigation for medical negligence. Such notice may only be made by certified mail, return receipt requested.³²

Effect of the Bill

Judicial Service of Process on Business Entities

The bill makes more uniform the methods for serving process on business entities by requiring each business entity to designate a registered agent to accept service of process.

The bill expands s. 48.091, F.S., to specifically apply to limited partnerships, limited liability limited partnerships, and limited liability companies as well as corporations. As such, under the bill, each type of business entity is required to designate a registered agent and registered office for service of process. The bill adds all forms of business entities to the statute governing registered agents and prioritizes service of process upon the registered agent. The bill codifies the duty of a registered agent to promptly forward the process and any related documents to the responsible person within the business entity. Under the bill, when an agent of a nonresident doing business in Florida is served on behalf of the nonresident, the process served is as valid as if it was served personally on the nonresident. However, a copy of such process must be sent to the nonresident person or business and may be sent by certified mail, registered mail, or by a commercial firm regularly engaged in the business of document or package delivery. The party seeking to serve the nonresident is responsible for filing an affidavit of service of such with the court.

Cancellation of Certificates of Authority and Conversion

The bill adds a requirement that a business which cancels its certificate of authority to transact business in Florida must provide an email address along with the required mailing address to the state. Further, the bill requires any business converting from one entity to another to provide an email address along with the other requirements to the state.

Substituted Service

The bill modernizes substituted service upon the Florida Secretary of State, allowing such service to the Secretary electronically or via a commercial courier service such as UPS or Federal Express. When using substituted service on the Secretary of State, the bill:

- Allows the Secretary of State to agree to receive service of process electronically.
- Removes 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 email 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.
- 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.

³² S. 766.106(2), F.S.

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.

The bill authorizes substituted service on the Secretary of State for nonresidents and foreign business entities doing business in Florida or an individual or business concealing its whereabouts. Under the bill, any individual or foreign business concealing its whereabouts is deemed to have appointed the Secretary of State as its agent on whom service of process may be made.

Proof of Return Service

For personal service made on an individual or party in another state or territory within the United States, a return-of-service form must be filed with the court. The return-of-service form, or any other competent evidence, must include the time, manner, and place of service.

Service in Foreign Countries

The bill creates s. 48.197, F.S., providing requirements for the service of process on a party in a foreign country. Service may be made on a party in a foreign country by any internationally agreed upon means of service whereby actual notice of the proceedings is provided. If there is no internationally agreed upon means of service, service may be made as permitted by the foreign country's law for service or as the foreign country directs in response to a letter rogatory or letter of request. Additionally, unless specifically prohibited by the laws of the foreign country, service may be made by delivering a copy of the summons and complaint to the individual or by using any type of mail which the clerk addresses and sends to the party and requires a signed receipt. Service in a foreign country may also be made pursuant to motion and order of the court by alternative means, including electronically by email or other technology.

Service upon a minor or an incompetent person in a foreign country may be made as prescribed by the foreign country's law for service in that country, as the foreign country directs in response to a letter rogatory or letter of request, or pursuant to motion and order of the court by alternative means.

Service by Alternative Means

The bill creates s. 48.102, F.S., which allows the court to authorize service via email or other electronic means, by a person authorized to serve process or by an attorney, in limited cases where traditional methods have been unsuccessful. After the serving party has shown due diligence to locate and effectuate personal service of process on a business entity, the court may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective.

The bill provides that a court, upon motion and a showing of such inability to effectuate service, may authorize other methods of service consistent with the principles of due process. In breach of contract cases, a court may consider authorizing service in the manner provided for in the contractual notice provision of the subject contract.

Service on Public Agencies and Officers

The bill amends s. 48.111(1), F.S., to require service against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county to first be attempted on the registered agent. If the entity does not have a registered agent or if the registered agent cannot be

served after one good faith attempt, service may be on the appropriate representative in the following order of priority:

- The president, mayor, chair, or other head thereof;
- The vice president, vice mayor, or vice chair;
- Any member of the governing board, council, or commission, the manager of the entity, or an in-house attorney for the entity;
- Any employee of the entity at the entity's main office.

Service of Notice of Intent to Initiate Litigation for Medical Negligence

The bill expands the methods by which a claimant may serve notice of intent to initiate medical negligence litigation. A claimant may provide such notice by any of the following:

- United States Postal Service (USPS) certified mail, return receipt requested;
- USPS mail with a tracking number;
- An interstate, commercial mail carrier or delivery service; or
- A person authorized by law to serve process.

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. If service is challenged, it must be challenged in the first response to the complaint. If the court determines that service was properly made and the prospective defendant proves by the greater weight of the evidence that neither they nor a person legally related to the prospective defendant knew or should have known of the service, the court must stay the case for a presuit period pursuant to s. 766.106, F.S. In such situation, the statute of limitations and statute of repose are tolled from the time service was properly made at the prospective defendant's address until the conclusion of the presuit period.

Constructive Service by Publication

The bill amends s. 49.011, F.S., to expand the cases in which service of process by publication is permitted. The bill authorizes constructive service by publication in a paternity case upon the legal mother when there is no legal father established.

Service of Process on Unknown Parties in Possession

The bill creates s. 48.184, F.S., which applies only to actions governed by s. 82.03, s. 83.21, s. 83.59, or s. 723.061, F.S., and only to the extent that those actions seek the removal of unknown parties in possession of real property. The bill permits a landowner or landlord to serve a summons for the removal of persons wrongfully occupying his or her property when such identities are unknown to the landowner or landlord.

The bill allows a summons to be issued for "Unknown Parties in Possession" when filing an eviction or detainer action rather than having to identify the party in question or identifying the parties as "John Doe" and "Jane Doe." 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.³³ 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 deadline 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

³³ In general, service of process may not be made on a Sunday. Section 48.20, F.S.

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 in the property.

Effective Date

The bill will become effective on January 2, 2023, except for the following two provisions, which are effective upon the bill becoming law:

- Section 17, which amends s. 766.106, F.S., relating to service of notice of intent to initiate litigation for medical negligence.
- Section 36, which establishes the effective date of the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes an \$8.75 fee payable to the Secretary of State for substituted service, which may have an insignificant negative fiscal impact on state government.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lower litigation costs for plaintiffs and defendants by streamlining service of process and authorizing additional methods of service such as electronic service, courier service, or interstate delivery services.

D. FISCAL COMMENTS:

None.