

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 513 Delivery of Notices
SPONSOR(S): Civil Justice Subcommittee, Altman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee	21 Y, 0 N	Mathews	Kramer

SUMMARY ANALYSIS

Section 1.01, Florida Statutes, provides definitions that apply throughout the entirety of the Florida Statutes. As such, when reading any section of the Florida Statutes, the defined terms under s. 1.01, F.S., carry the meaning listed under s. 1.01, F.S., context permitting. Section 1.01(11), F.S., provides that the term “registered mail” includes certified mail with return receipt requested. The term “registered mail,” along with “certified mail,” and “return receipt requested,” are used frequently throughout the Florida Statutes. Generally, registered mail contemplates an extra service by the United States Postal Service (USPS) which allows the sender to confirm that a document or piece of mail has been successfully delivered to the intended recipient.

CS/HB 513 amends the definition of “registered mail” under s. 1.01(11), F.S., to clarify the definition. The bill expands the types of delivery services that may be used in compliance with statutory mailing requirements in Florida.

The bill expands the definition of “registered mail” to include any delivery service by the USPS or a private delivery service that is regularly engaged in the delivery of documents which provides proof of mailing or shipping and proof of delivery. Under the bill, proof of delivery must be established by a receipt that is signed by the addressee or other responsible person at the delivery address indicated. The bill also defines the term “return receipt requested” to include a delivery confirmation service by the United States Postal Service or a private delivery service that is regularly engaged in the mailing or shipping of documents and that confirms delivery by receipt that is signed by the addressee.

The bill provides that the amendments made to the definition of registered mail are remedial in nature and apply retroactively.

The bill may have a positive fiscal impact on the cost for sending items via certified mail or with return receipt requested. The bill may result in a decrease in the reliance on the USPS in favor of other private delivery services. As such, the USPS may see a decrease in revenue associated the reduction in use of its services.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 1.01, Florida Statutes, provides definitions that apply throughout the entirety of the Florida Statutes. As such, when reading any section of the Florida Statutes, the defined terms under s. 1.01, F.S., carry the meaning listed under s. 1.01, F.S.,¹ as long as the context permits. Section 1.01(11), F.S., provides that the term “registered mail” includes certified mail with return receipt requested.² The inclusion of “registered mail” under s. 1.01, F.S., is significant: the term “registered mail,” along with “certified mail,” and “return receipt requested,” are used frequently throughout the Florida Statutes. Generally, registered mail contemplates an extra service by the United States Postal Service (USPS) which allows the sender to confirm that a document or piece of mail has been successfully delivered to the intended recipient.

Certified Mail and Extra Services

In addition to traditional mail services, the USPS offers extra services to senders to ensure that the mail sent is delivered. “Certified mail”³ provides the sender with a mailing receipt as confirmation that an item was sent (Form 3800/Receipt for Certified Mail).⁴ When opting to send a document via certified mail, the sender must attach a mailing receipt (Form 3800) when mailing the item. The certified mail service assigns a unique identifier to the mail piece and provides electronic verification of delivery or attempted delivery. As such, the sender is able to confirm that his or her mail did not get lost or remain stationary at any midpoint post office or station, but successfully made it to its destination.

Certified mail service may also be combined with “return receipt service” to provide the sender proof of signature, with the option of receiving the return receipt by mail or electronically.⁵ Mailing an item via certified mail through USPS requires an additional fee of \$4.35.⁶ Certified mail with restricted delivery or with adult signature required costs a fee of \$11.45.⁷

The image shows two USPS forms. The left form is a green 'Domestic Return Receipt' (PS Form 3811) with a large 'SAMPLE' watermark. It is divided into two sections: 'SENDER: COMPLETE THIS SECTION' and 'COMPLETE THIS SECTION ON DELIVERY'. The sender section includes instructions to complete items 1, 2, and 3, and to print name and address on the reverse. The delivery section includes fields for signature, recipient name, date of delivery, and service type (e.g., Certified Mail, Registered Mail, Priority Mail Express). The right form is a white 'Certified Mail' label (PS Form 3800) with a large 'SAMPLE' watermark. It features a USPS tracking number (9590 9401 0000 5191 0000 12), a barcode, and a box for the sender to print their name, address, and ZIP+4®.

¹ S. 1.01, F.S.

² S. 1.01(11), F.S.

³ “Certified mail” and “registered mail” are registered trademarks owned by the USPS. See USPS, *Trademarks*, https://about.usps.com/strategic-planning/cs09/CSPO_09_001.htm#:~:text=The%20following%20are%20among%20the,First%2DClass%E2%84%A2%2C%20First%2D (last visited Jan. 19, 2024).

⁴ USPS, *Certified Mail the Basics*, <https://faq.usps.com/s/article/Certified-Mail-The-Basics#whatiscm> (last visited Jan. 19, 2024).

⁵ *Id.*

⁶ USPS, *Price List: Certified Mail*, https://pe.usps.com/text/dmm300/Notice123.htm?_gl=1*1w0dt0*_gcl_au*MTE5MjUxMzMyMNC4xNzA1NjxMjM2*_ga*OTEyOTQ4Nzc5LjE3MDU2OTEyMzY.*_ga_3NXP3C8S9V*MTcwNTY5MTIzNS4xLjEuMTcwNTY5MjM0My4wLjAuMA..#_c191 (last visited Jan. 19, 2024).

⁷ *Id.*

⁸ USPS, *Return Receipt the Basics*, https://faq.usps.com/s/article/Return-Receipt-The-Basics#Green_Card (last visited Jan. 19, 2024).

Historically, when a sender mailed an item with return receipt requested, he or she would attach a return receipt (Form 3811, more commonly referred to as a green card) pictured above. The green card would be returned to the sender with the recipient's signature on it confirming the delivery of the mail piece. However, on July 1, 2020, the USPS revised its Mailing Standards in various sections to reflect the elimination of the return receipt option for merchandise service.⁹ As such, the traditional green card return service is no longer available in certain parts of the country.

Reliance on the U.S. Postal Service

Throughout Florida law, the term "registered mail" is used to require that proper notice is given to the right individuals. A few examples include the following:

- To initiate a suit against the state, two copies of the process must be sent via registered or certified mail to the Attorney General.¹⁰
- A subpoena may be served on the subject person in the manner required for service of process in the state or by certified mail showing receipt by the addressee.¹¹
- A landlord who intends to retain a renter's security deposit must send written notice of such by certified mail to the tenant's last known mailing address.¹²

The Florida Statutes do not specifically require registered mail or return receipt requested mail to be sent via the USPS as opposed to a private commercial carrier. This is because s. 1.01(11), F.S., states that "registered mail" includes certified mail with return receipt requested. Thus, a litigant, attorney, business owner, or other individual following the statutes to ensure proper notice of a lawsuit is sent may be unsure whether another commercial mail carrier may be used. As such, it has been common practice to use the USPS and its certified mail and return receipt requested services as a safe harbor, given the statutory ambiguity.

For example, in a situation where a litigant has delivered a required notice to an opposing party via Federal Express with signature confirmation required, the basic purpose of registered mail requirements, which is to ensure that the recipient actually received the notice on a date certain, has arguably been accomplished. On the other hand, based upon the language in the statute specifically referring to "certified mail with return receipt requested," the opposing party could argue that the definition of registered mail only contemplates delivery via the USPS, not Federal Express. Accordingly, the opposing party could argue that the delivery of the notice via Federal Express does not comply with statutory requirements and is therefore invalid.

This dynamic exists against the backdrop of a changing landscape of the USPS and an effort for USPS practices to evolve to accommodate improvements in technology. The USPS's elimination of return receipts for merchandise services signal a trend towards an increased use of technology and a decrease in physical paper receipt practices. Although the USPS has not yet eliminated return receipts for other kinds of domestic mail such as legal documents, it could choose to do so in the future.

Effect of Proposed Changes

CS/HB 513 amends the definition of "registered mail" under s. 1.01(11), F.S., to clarify the definition. The bill expands the types of delivery services that may be used in compliance with statutory mailing requirements in Florida.

The bill amends the definition of "registered mail" to include any delivery service by the USPS or a private delivery service that is regularly engaged in the delivery of documents which provides proof of mailing or shipping and proof of delivery. Under the bill, proof of delivery must be established by a receipt that is signed by the addressee or other responsible person at the delivery address indicated.

⁹ USPS, *Postal Bulletin 22546: Policies, Procedures, and Forms Updates*, at 15, May 21, 2020, https://about.usps.com/postal-bulletin/2020/pb22546/html/updt_002.htm (last visited Jan. 19, 2024).

¹⁰ S. 48.121, F.S.

¹¹ S. 68.0831(2)(a), F.S.

¹² S. 83.49(3)(a), F.S.

The bill adds subsection (20) to s. 1.01, F.S., to define the term “return receipt requested” to include a delivery confirmation service by the USPS or a private delivery service that is regularly engaged in the mailing or shipping of documents and that confirms delivery by bill that is signed by the addressee or another responsible person at the delivery address. The bill eliminates the current ambiguity as to whether delivery services other than USPS may be utilized and allows other reputable carriers like Federal Express and UPS to satisfy the definition’s requirements. The bill provides greater flexibility to a person seeking to comply with the Florida Statutes when choosing how to handle his or her legally-sensitive mail.

The bill provides that the amendments made to the definition of registered mail are remedial in nature and apply retroactively.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 1.01, F.S., relating to definitions.

Section 2: Provides for retroactive application.

Section 3: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The explicit expansion of delivery services available to comply with Florida law may result in an increase in revenue for private delivery services.

Further, the switch from hard copy receipts for certified mail or mail sent “return receipt requested” to the acceptance of an electronic signature confirmation may have a positive fiscal impact on the cost for sending items via certified mail or with return receipt requested.

D. FISCAL COMMENTS:

The bill may result in a decrease in the reliance on the USPS in favor of other private delivery services. As such, the USPS may see a decrease in revenue associated the reduction in use of its services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

A retroactive law is a law “that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect.”¹³ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature. A purely procedural or remedial law may apply retroactively, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.¹⁴

The bill provides that the amendment to s. 1.01, F.S., is remedial in nature and applies retroactively. Whether the Legislature’s retroactive modification of the definition is procedural, remedial, or substantive, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By adding this definition to s. 1.01, F.S., relating to definitions of terms, it becomes applicable to every affected definition within the Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Civil Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Revised the definition of “registered mail” to also include any delivery service by the USPS or a private delivery service that is regularly engaged in the delivery of documents which provides proof of mailing and proof of delivery.
- Provided that the definition of “return receipt requested” includes a delivery confirmation service by the USPS or a private delivery service meeting the same requirements as provided for “registered mail.”

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

¹³ Congressional Research Service, *Retroactive Legislation: A Primer for Congress*, Aug. 15, 2019, <https://sgp.fas.org/crs/misc/IF11293.pdf> (last visited Jan. 19, 2024).

¹⁴ *State Farm Mutual Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).