

Committee Substitute for Senate Bill No. 222

An act relating to delivery of written legal notice; amending s. 48.031, F.S.; deleting the requirement to use certified mail in service of a subpoena on a witness in specified cases; prohibiting a finding of contempt for failure to appear in response to a subpoena that is not delivered by certified mail; allowing the posting of a criminal witness subpoena under specified conditions; requiring the placement of certain information on the copy of the process served; providing for alternative methods of service under certain circumstances; amending s. 48.081, F.S.; providing alternative methods of service on a corporation; amending s. 48.21, F.S.; requiring servers of process to provide certain information on the return of service; amending s. 48.29, F.S.; revising the requirement that certified process servers provide certain information on the face of the process served; amending s. 83.13, F.S.; authorizing the party who had a distress writ issued to deliver the writ to a sheriff in another county; amending s. 624.307, F.S.; allowing the Chief Financial Officer, when serving as the attorney to receive service of all legal process for certain regulated persons, to send the process by any verifiable means to the person last designated by the regulated person to receive the process, instead of requiring the process to be sent by registered or certified mail; amending s. 832.07, F.S.; providing for alternative method of notice sent by the holder to the maker or drawer of a check, draft, or order, payment of which is refused because of lack of funds or credit; amending s. 409.257, F.S.; revising a provision for service of witness subpoenas, to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 48.031, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

48.031 Service of process generally; service of witness subpoenas.—

(3)(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall ~~is to~~ be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by ~~certified~~ United States mail directed to the witness at the last known address, and ~~the~~ such service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. The subpoena must be posted at least 5 days prior to the date of the witness's required appearance.

(5) A person serving process shall place on the copy served, the date and time of service and his or her identification number and initials for all service of process.

(6) If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

Section 2. Subsection (3) of section 48.081, Florida Statutes, is amended to read:

48.081 Service on corporation.—

(3)(a) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent.

(b) If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer, or director in accordance with s. 48.031.

Section 3. Section 48.21, Florida Statutes, is amended to read:

48.21 Return of execution of process.—~~Each person who effects service of process~~ All officers to whom process is directed shall note on it, or on a return-of-service form attached thereto, the date and time when it comes to hand, the date and time when it is served executed, the manner of service execution, the name of the person on whom it was served executed and, if the such person is served in a representative capacity, the position occupied by the person. A failure to state the foregoing facts invalidates the service, but the return is amendable to state the truth at any time on application to the court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts. A failure to state all the facts in the return shall subject the person effecting service officer ~~so failing~~ to a fine not exceeding \$10, in the court's discretion.

Section 4. Subsection (6) of section 48.29, Florida Statutes, is amended to read:

48.29 Certification of process servers.—

(6) A certified process server shall place the information provided in s. 48.031(5) on the copy served.

~~(a) A certified process server shall place on the face of any process served by him or her, his or her printed name, signature, and identification number, and words stating that he or she is a certified process server in the circuit wherein he or she is serving the process. In addition, the certified~~

process server shall endorse on the original process, and on all copies served, the date and hour of service.

(b) Return of service shall be made by a certified process server on a form which has been reviewed and approved by the court.

Section 5. Section 83.13, Florida Statutes, is amended to read:

83.13 Levy of writ.—The sheriff shall execute the writ by service on defendant and, upon the order of the court, by levy on property distrainable for rent or advances, if found in the sheriff's jurisdiction. If the property is ~~not so found but is in another jurisdiction, the party who had the writ issued~~ sheriff shall deliver the writ to the proper sheriff in the other jurisdiction; and ~~that the other sheriff shall execute the writ, upon order of the court, by levying on the property and delivering it to the sheriff of the county in which the action is pending, to be disposed of according to law, unless he or she is ordered by the court from which the writ emanated to hold the property and dispose of it in his or her jurisdiction according to law. If the plaintiff shows by a sworn statement that the defendant cannot be found within the state, the levy on the property suffices as service on the defendant.~~

Section 6. Subsection (8) is added to section 624.307, Florida Statutes, to read:

624.307 General powers; duties.—

(8) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the Chief Financial Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process by any other verifiable means to the person last designated by the regulated person to receive the process.

Section 7. Subsection (1) of section 832.07, Florida Statutes, is amended to read:

832.07 Prima facie evidence of intent; identity.—

(1) INTENT.—

(a) In any prosecution or action under this chapter, the making, drawing, uttering, or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless such maker or drawer, or someone for him or her, shall have paid the holder thereof the amount due thereon, together with a service charge not to exceed the service fees authorized under s. 832.08(5) or an amount of up to 5 percent of the face amount of the check, whichever is greater, within ~~15~~ 7 days after ~~receiving written notice has been sent to the address printed on the check or given at the time of issuance~~ that such check, draft, or order has not been paid to the holder thereof, and bank fees incurred by the holder. In the event

of legal action for recovery, the maker or drawer may be additionally liable for court costs and reasonable attorney's fees. Notice mailed by certified or registered mail, evidenced by return receipt, or by first-class mail, evidenced by an affidavit of service of mail, to the address printed on the check or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, numbered ..., in the face amount of \$...., issued by you on ...(date)..., drawn upon ...(name of bank)..., and payable to ..., has been dishonored. Pursuant to Florida law, you have 15 7 days from the date receipt of this notice to tender payment of the full amount of such check plus a service charge of \$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or an amount of up to 5 percent of the face amount of the check, whichever is greater, the total amount due being \$.... and cents. Unless this amount is paid in full within the time specified above, the holder of such check may turn over the dishonored check and all other available information relating to this incident to the state attorney for criminal prosecution. You may be additionally liable in a civil action for triple the amount of the check, but in no case less than \$50, together with the amount of the check, a service charge, court costs, reasonable attorney fees, and incurred bank fees, as provided in s. 68.065."

Subsequent persons receiving a check, draft, or order from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, provided such subsequent persons give notice in a substantially similar form to that provided above. Subsequent persons providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against these subsequent persons as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(b) When a check is drawn on a bank in which the maker or drawer has no account or a closed account, it shall be presumed that such check was issued with intent to defraud, and the notice requirement set forth in this section shall be waived.

Section 8. Section 409.257, Florida Statutes, is amended to read:

409.257 Service of process.—The service of initial process and orders in lawsuits filed by the department, under this act, shall be served by the sheriff in the county where the person to be served may be found. The sheriff shall be reimbursed at the prevailing rate of federal financial participation for service of process and orders as allowed by law. The sheriff shall bill the department monthly as provided for in s. 30.51(2). In addition, process and orders may be served or executed by authorized agents of the department at the department's discretion; provided that the agent of the department does not take any action against personal property, real property, or persons. Notices and other intermediate process, except witness subpoenas,

shall be served by the department as provided for in the Florida Rules of Civil Procedure. Witness subpoenas shall be served by the department by United States certified mail as provided for in s. 48.031(3).

Section 9. This act shall take effect July 1, 2004.

Approved by the Governor June 10, 2004.

Filed in Office Secretary of State June 10, 2004.