

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2796

SPONSOR: Senator Crist

SUBJECT: Service of Process

DATE: April 17, 2003

REVISED: 04/22/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 48.031, F.S., to allow witness subpoenas in criminal traffic cases, misdemeanor cases, and second or third degree felony cases to be served by regular mail. It also permits the posting of any criminal witness subpoena after three unsuccessful attempts to serve the subpoena at the residence of a witness.

The bill also amends s. 83.13, F.S., relating to levy of distress writs in non-residential tenancy cases, to make the party who had the writ issued responsible for delivering the writ to the appropriate county sheriff when the property has been removed from the county where the writ was issued.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 48.031, 83.13.

II. Present Situation:

Section 48.031(3)(a), F.S., provides that service of witness subpoenas in civil or criminal cases is to be made in the same manner as is provided for service of original process. Section 48.031(1), F.S., requires that original process be served by delivering a copy to the person to be served or by leaving copies at his or her usual place of abode with any person who resides there and is at least 15 years of age. The person with whom the process is left must also be informed of its contents. In addition to these methods of service, service of a witness subpoena in a criminal traffic case, misdemeanor case, or second or third degree felony case may be made by certified mail to the witness at his or her last known address, if the subpoena is mailed at least seven days before the date of appearance.

In non-residential tenancy cases, s. 83.12, F.S., provides for issuance of a distress writ to prohibit removal from rented real property of property that is subject to distress for rent or advances. Section 83.13, F.S., provides that the county sheriff is responsible for service and levy on property in accordance with the writ. If the property subject to distress for rent or advances is in another county, the sheriff must deliver the writ to the sheriff of the other county.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 48.031(3), F.S., to allow service of witness subpoenas by regular mail, rather than permitting mail service only by certified mail. This section also creates s. 48.031(3)(b), F.S., to provide that a witness subpoena in a criminal case may be posted after three service attempts at different times of day or night have been made at the witness's residence, as long as this is done at least five days prior to the witness's required appearance. However, the new section does not specify the method or place of posting.

Attorneys are not likely to use service by regular mail or by posting to subpoena critical witnesses in significant cases. The failure of a witness to appear may be cause for the judge to continue a trial, or the party may be forced to proceed without the witness' testimony. *See Martinez v. State*, 799 So.2d 313 (Fla. 2d Dist. 2001).

Failure of a witness to appear pursuant to a witness subpoena may also be cause for the court to hold the witness in contempt, and the court may place a witness in jail as punishment for contempt. In the case of subpoenas that are served by mail, there is a rebuttable presumption that mail properly addressed, stamped and mailed was received by the addressee. *Brown v. Giffen Industr., Inc.*, 281 So.2d 897, 900 (Fla.1973). Whether this presumption is overcome by testimony that the mail was not in fact received is an evidentiary decision that must be made by the judge after weighing the evidence. Clearly, it is more likely that a judge would reject such testimony if there was evidence that the witness had signed for a subpoena sent by certified mail. Similarly, the judge must consider the possibility that a posted subpoena was removed by someone other than the witness if the witness testifies that he or she did not receive the subpoena.

Section 2 of the bill amends s. 83.13, F.S., to provide that the party who sought a distress writ is responsible for delivering it to the sheriff of the appropriate county if the property that is subject to levy is found in another county. This relieves the sheriff of the county where the writ was issued from responsibility for transmitting the writ.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Mailing a certified letter currently costs \$1.93 more than sending a letter by regular mail. The impact of permitting service by regular mail appears to be insignificant for individual litigants, but there may be beneficial savings for commercial litigants who process a significant volume of routine cases. Similarly, the change in the responsibility for delivery of distress writs will probably not result in significant financial impact to individual litigants.

C. Government Sector Impact:

The use of regular mail to serve subpoenas should result in savings to the government. However, the amount of such savings cannot be determined because it is not clear how often service by regular mail will be used or whether there will be any impact upon the appearance of witnesses or the holding of contempt proceedings.

It is not anticipated that there will be a significant financial impact as the result of relieving the county sheriff from responsibility for delivering distress writs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

1 by Criminal Justice:

Changes the effective date from July 1, 2003, to taking effect upon becoming a law.