

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 Banking and Insurance

BILL: CS/SB 1104

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1104 changes the procedures for service of process on a financial institution. Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. This bill allows a financial institution to designate a place or registered agent located in Florida with the Department of State as its sole location or agent for service of process. The place or agent must be open or the agent must be available to receive service of process between 9 a.m. and 5 p.m. on business days.

If a financial institution has no registered agent or service cannot be made at the designated central location, the bill provides that service may be made to an officer or director of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida.

The bill provides that any service required or authorized to be made by the Office of Financial Regulation (OFR) may be made to any officer, director, or business agent of the financial institution at its principal place of business or any other branch, office, or place of business.

The effective date is January 1, 2017.

II. Present Situation:

The U.S. dual banking system allows financial institutions to become chartered (organized) under either federal or state law. National banks are chartered under federal law. State-chartered banks are chartered under the laws of the state in which the bank is headquartered. Credit unions may also be either state or federally chartered.

In Florida, the OFR, which is administratively housed within the Department of Financial Services, is responsible for the regulation of financial institutions chartered and organized under Florida law and in accordance with the Florida Financial Institutions Codes for safety and soundness.¹ The OFR does not regulate national banks or banks that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida. State service of process laws apply to national banks and are not preempted by federal law.

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 655.0201, F.S., governs the manner in which service of process, notice, or demand may be made on financial institutions that transact business in Florida, whether state or nationally chartered. It provides that process may be served in accordance with chs. 48 (service of process), 49 (constructive service of process), 605 (limited liability companies), or part I of ch. 607 (corporations), F.S. Section 48.081, F.S., sets forth the order of priority of persons within a private corporation, domestic or foreign, who may be properly served:

- President or vice president, or other head of the corporation,
- Cashier, treasurer, secretary, or general manager,
- Any director,
- Any officer or business agent residing in the state.

Every Florida corporation and every foreign corporation qualified to do business in this state must designate a registered agent and registered office which must be kept open and available for receiving process during certain hours and days, in accordance with pt. 1, ch. 607, F.S.² The Financial Institutions Codes require Florida-chartered banks to be formed as a Florida corporation or as a limited liability company (LLC) in certain circumstances.³ Accordingly, s. 655.0201(1), F.S., also allows service of process to be made on financial institutions pursuant to ch. 605, F.S. (Florida Revised Limited Liability Company Act), or part I of ch. 607, F.S. (Florida Business Corporation Act). The LLC Act generally provides that process may be served on the entity's registered agent.⁴

Subsection 655.0201(2), F.S., allows, but does not require, a financial institution to designate a registered agent for service of process. If the financial institution does not have a registered agent, or the registered agent cannot be served with reasonable diligence, subsection

¹ See s. 20.121(3)(a)2, F.S. The Financial Institutions Codes are chapters 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

² See s. 48.091, F.S.

³ See s. 658.16, F.S.

⁴ See ss. 605.0113 and 605.0117, F.S.

655.0201(2), F.S., authorizes service on any executive officer⁵ of the financial institution at its principal place of business in Florida.

If neither of the previously described alternatives is viable, the default alternative is to serve any officer,⁶ director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in this state.⁷

Finally, the statute provides that this section does not prescribe the only means of serving notice or demand on a financial institution.

A recent example of improper service of process on a financial institution in Florida is illustrated in the *Bank of America, N.A. v. Bornstein*⁸ decision from the Fourth District Court of Appeal. The plaintiff served a writ of garnishment on Bank of America through a bank teller at a West Palm Beach branch office, without showing that service was first attempted on the statutorily prescribed superior classes of persons who could have been served. Bank of America moved to quash service under the service of process statutes in the Codes and under ch. 48, F.S., asserting that the bank teller was not authorized to accept service on behalf of the bank. The appellate court concurred with the bank, finding service was improper.

III. Effect of Proposed Changes:

This bill allows a financial institution to designate a place or registered agent within Florida as its central location for service of process with the Department of State. The place or agent must be open or available to receive service on regular business days from at least 9 a.m. to 5 p.m. The agent or location is the sole location for service of process including service for garnishment actions, levy, injunctions, lawsuits, and the attachment of safety deposit boxes.

If the financial institution has no registered agent or service cannot be made at the location, service may be made to any officer or director of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida.

⁵ Section 655.005(1)(g), F.S., defines “executive officer” as “an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a financial institution. The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers, whether or not the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.”

⁶ Section 655.005(1)(r), F.S., defines “officer” as “an individual elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of chair of the board of directors, vice chair of the board of directors, chair of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary of a trust company, or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.”

⁷ See s. 655.0201(3), F.S.

⁸ 39 So.3d 500 (Fla. 4th DCA 2010).

The bill allows service made by the OFR to be made to any officer, director, or business agent at its principal place of business or any other branch, office, or place of business in Florida. OFR can also continue to serve via certified mail pursuant to s. 655.031, F.S.

This bill takes effect January 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector is not known.

C. Government Sector Impact:

The bill allows a financial institution to designate a registered agent or place for service of process with the Department of State. Current law allows a financial institution to designate a registered agent. The impact of registering a location with the Department is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 48.092 of the Florida Statutes.

This bill substantially amends section 655.0201 of the Florida Statutes.

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 Banking and Insurance on February 9, 2016:

The CS removes provisions from the bill requiring the Department of Financial Services to create a website to list the locations for service of process on financial institutions and adds provisions allowing a financial institution to designate a registered agent or location for service and providing hours when the agent must be available or the location must be open to accept service. Instead, the bill allows financial institutions to designate with the Department of State a place or registered agent that is the sole location or agent for service of process.

- B. **Amendments:**

None.