

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 Judiciary

BILL: CS/SB 1104

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1104 amends the procedures for service of process upon a financial institution. The bill allows a financial institution to designate a place or registered agent with the Department of State as the sole location or agent for service of process. The location or agent must be available to receive service of process between 9 a.m. and 5 p.m. on business days, excluding federal and Florida holidays.

If service upon a financial institution cannot be made at the designated central location, or the institution has not designated a registered agent, service may be made upon the officer or director of the financial institution at its principal place of business.

Service of process required or authorized to be made by the Office of Financial Regulation (OFR) may continue to be made through certified mail 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.

II. Present Situation:

Background

In Florida, the Office of Financial Regulation (OFR) is responsible for the regulation of financial institutions chartered and organized under Florida law.¹ The OFR does not regulate national banks or banks that are chartered and regulated in other states. However, states are permitted to regulate the activities of national banks where doing so does not significantly interfere with the national bank's or the national bank regulator's exercise of its powers.² State law will not be upheld if the state prescriptions significantly impair the exercise of authority of the national banks.³ In issuing an order or rule, OFR must consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.⁴

Service of process is the term for the delivery of a summons, writ, or subpoena to the opposing party in a lawsuit.⁵ Service of process generally does not significantly impair the exercise of the authority of national banks, and is not preempted by federal law.⁶ Therefore, state law regulations in regard to service of process upon financial institutions are generally valid. The Florida Statutes govern the manner in which service of process, notice, or demand may be made on a financial institution that transacts business in this state, whether state or nationally chartered.⁷

Process against any financial institution may be served through a number of means. Currently, process may be served by the following methods:

- Personal service on the president or vice president, or other head of the corporation. If the president or vice president is absent, on the cashier, treasurer, secretary, or general manager. If process is still unable to be served on the previous individuals, it may be served on any director; or on any officer or business agent residing in the state.⁸
- Constructive service by publication when personal service on the institution cannot be had.⁹
- Personal service on the chair of the board, the president, any vice president, the secretary, or the treasurer, or the registered agent of the corporation at the registered office of the corporation in this state; or service on any other address in this state that is the principal office of the corporation.¹⁰

¹ See section 20.121(3)(a)2, F.S.

² *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007).

³ *Watters v. Wachovia Bank, N.A.*, 550 U.S. at 12 (citing *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 32-34 (1996) (holding federal law permitting national banks to sell insurance in small towns preempted state statute prohibiting banks from selling most types of insurance); *Franklin Nat. Bank of Franklin Square v. New York*, 347 U.S. 373, 377-79 (1954) (stating local restrictions preempted because they burdened exercise of national banks' incidental power to advertise)).

⁴ Section 655.061, F.S.; 5 Fla. Jur 2d Banks and Lending Institutions § 60.

⁵ Black's Law Dictionary (10th ed. 2014) (defining the term "service of process").

⁶ See 12 CFR 34.4(a)(1) (applying state law service of process to real estate loans).

⁷ See section 655.0201, F.S.

⁸ Section 48.081, F.S.

⁹ Section 49.011, F.S.

¹⁰ Section 607.0504, F.S.

Any financial institution is allowed, but is not required, to designate a registered agent as the financial institution's agent for service of process, notice, or demand required to be served on the financial institution.¹¹ If service cannot be made through a registered agent, service may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business.

The previously mentioned methods are not the only means, nor necessarily the required means, of serving process on a financial institution.¹²

Insufficient Service of Process

In *Bank of America, N.A. v. Bornstein*, the Fourth District Court of Appeal found insufficient service of process upon a financial institution.¹³ In that case, the appellee sued and obtained a writ of garnishment on Bank of America. The process server served the writ of garnishment at a Bank of America branch in West Palm Beach on a branch teller who stated she was authorized to accept on behalf of the person to whom the process was directed.¹⁴ The Fourth DCA concluded service of process was insufficient because the process server served a bank teller, rather than an officer.¹⁵ To obtain personal jurisdiction over a corporate defendant, a return of process showing service on an inferior officer of a corporation must show that all superior officers designated in the statute were absent when service was attempted.¹⁶ Because appellee served an inferior officer of the financial institution, and did not show that all superior officers were absent when service was attempted, the court found that service of process had been insufficient.

III. Effect of Proposed Changes:

Section 1 creates s. 48.092, F.S., which states that service on a financial institution must be made in accordance with s. 655.0201, F.S.

Section 2 amends s. 655.0201, F.S. to allow a financial institution to designate a place or registered agent within this state as its sole location for service of process. 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 revisions to s. 655.0201, F.S., eliminate the potential for serving a financial institution through constructive notice by publication.

If the financial institution has no registered agent, or service cannot be made at the designated 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 this state.

The bill allows the Office of Financial Regulation to serve process on a financial institution by serving any officer, director, or business agent at its principal place of business or any other

¹¹ Section 655.0201, F.S.

¹² Section 655.0201(4), F.S.

¹³ *Bank of America, N.A. v. Bornstein*, 39 So. 3d 500 (Fla. 4th DCA 2010).

¹⁴ *Bank of America*, 39 So. 3d at 501.

¹⁵ *Bank of America*, 39 So. 3d at 504.

¹⁶ *Bank of America*, 39 So. 3d at 503 (quoting *Nat'l Safety Assocs., Inc. v. Allstate Ins. Co.*, 799 So. 2d 316, 317 (Fla. 2d DCA 2001); accord *Space Coast Credit Union v. The First, F.A.*, 467 So. 2d 737, 739-40 (Fla. 5th DCA 1985)).

branch, office, or place of business in Florida. OFR can continue to serve process via certified mail.

Section 3 states the 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:

As financial institutions are likely the recipients of a large volume of process relating to their customers, allowing a financial institution to specify one place or agent for service of process may help the institution manage and respond to the process in a timely manner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 48.092 of the Florida Statutes.

The 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:

- Removes provisions requiring Department of Financial Services to create a website to list the locations for service of process on financial institutions.
- Adds provisions allowing a financial institution to designate a registered agent or location for service.
- Provides hours when the agent must be available or the location must be open to accept service.
- Allows financial institutions to designate with the Department of State a place or registered agent that is the sole location or agent or service of process.

- B. **Amendments:**

None.