

The Senate Special Judiciary Committee offered the following substitute to SB 41:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to
2 process in civil practice, so as to provide for service upon persons residing in gated and
3 secured communities; to provide for who will serve a summons within certain time frames;
4 to provide for filing the return of service; to provide for state-wide registration of permanent
5 process servers; to change certain provisions relating to process in civil practice; to provide
6 for related matters; to provide an effective date; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process in civil
11 practice, is amended by revising subsection (c) as follows:

12 "(c) *Summons — By whom served.* Within five days from the time a complaint is filed,
13 process ~~Process~~ shall be served by the sheriff of the county where the action is brought or
14 where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of
15 the court, or by such official's deputy, or by any citizen of the United States specially
16 appointed by the court for that purpose; After five days from the time a complaint is filed,
17 a complaint may be served by the sheriff of the county where the action is brought or where
18 the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court,
19 or by such official's deputy, or by any citizen of the United States specially appointed by
20 the court in which the action is brought for that purpose, or by someone who is not a party
21 and is not younger than 18 years of age and has been appointed as a permanent process
22 server pursuant to subsection (m) of this Code section ~~by the court in which the action is~~
23 ~~brought~~. Where the service of process is made outside of the United States, after an order
24 of publication, it may be served either by any citizen of the United States or by any resident
25 of the country, territory, colony, or province who is specially appointed by the court for
26 that purpose. When service is to be made within this state, the person making such service

1 shall make the service within five days from the time of receiving the summons and
 2 complaint; but failure to make service within the five-day period will not invalidate a later
 3 service."

4 SECTION 2.

5 Said Code section is further amended in subsection (f) by adding a new paragraph to read as
 6 follows:

7 "(4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

8 (A) As used in this paragraph, the term 'gated and secured communities' means
 9 multiple residential or commercial properties, such as houses, condominiums, offices,
 10 or apartments, where access to the multiple residential or commercial properties is
 11 restricted by a gate, security device, or security attendant that restricts public entrance
 12 onto the property; provided, however, that a single residence, farm, or commercial
 13 property with its own fence or gate shall not be included in this definition.

14 (B) Any person authorized to serve process shall be granted access to gated and
 15 secured communities for a reasonable period of time for the purpose of performing
 16 lawful service of process upon:

- 17 (i) Identifying to the guard or managing agent the person, persons, entity, or entities
- 18 to be served;
- 19 (ii) Displaying a current driver's license; and
- 20 (iii) Displaying evidence of current appointment as a process server pursuant to
- 21 subsection (m) of this Code section."

22 SECTION 3.

23 Said Code section is further amended by revising subsection (h) as follows:

24 "(h) *Return.* The person serving the process shall ~~make proof of service thereof to the~~
 25 ~~court promptly and, in any event, within the time during which the person served must~~
 26 ~~respond to the process~~ file the proof of such service with the court in the county in which
 27 the action is pending within five business days of the service date. If the proof of service
 28 is not filed, the time for the party served to answer the process will not begin to run until
 29 such proof of service is filed. Proof of service shall be as follows:

- 30 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate
- 31 of the sheriff, marshal, or deputy;
- 32 (2) If by any other proper person, such person's affidavit;
- 33 (3) In case of publication, the certificate of the clerk of court certifying to the publication
- 34 and mailing; or
- 35 (4) The written admission or acknowledgment of service by the defendant.

1 In the case of service otherwise than by publication, the certificate or affidavit shall state
 2 the date, place, and manner of service. Failure to make proof of service shall not affect the
 3 validity of the service."

4 SECTION 4.

5 Said Code section is further amended by adding a new subsection to read as follows:

6 "(m) *State-wide registration of permanent process servers.*

7 (1) A person who files with the clerk of any superior court a motion stating that the
 8 movant has been a bona fide resident of the State of Georgia and engaged in the process
 9 serving industry for at least one year immediately preceding the motion and that the
 10 movant will faithfully serve process in accordance with the law and who otherwise
 11 complies with this Code section and any procedures and requirements set forth in any
 12 rules or regulations promulgated by the Judicial Council of Georgia regarding this
 13 subsection shall, absent good cause shown, be appointed as a permanent process server
 14 by the superior court in the county where the motion is filed, and the clerk of the court
 15 shall ensure the appointment is registered with the Judicial Council of Georgia. Said
 16 registration shall be effective for a period of two years or until such approval is
 17 withdrawn by the court upon good cause shown, whichever shall first occur. The Judicial
 18 Council of Georgia shall maintain a register for this purpose. Such permanent process
 19 server shall be entitled to serve in such capacity for any court of the state, anywhere
 20 within the state.

21 (2) Any person seeking to become a process server with authority to serve process for
 22 any court of the state shall, before being authorized to act as a permanent process server:

23 (A) Undergo a criminal record check by the Administrative Office of the Courts
 24 through the Georgia and National Crime Information Centers;

25 (B) Pass a test to be administered by the Administrative Office of the Courts. The test
 26 will measure the applicant's knowledge of state law regarding serving of process and
 27 other papers on various entities and persons. The Administrative Office of the Courts
 28 shall design said test, promulgate rules and regulations regarding the necessary fee to
 29 cover the cost of the test and the administrative expense for processing the application,
 30 and determine what constitutes passing under this subsection;

31 (C) Be approved by the Judicial Council of Georgia which shall review the application,
 32 test score, criminal record check, and such other information or documentation as
 33 required by the council. Upon review, the council shall make a fitness determination
 34 in accordance with standards and procedures promulgated by the council as to whether
 35 the applicant shall be approved for registration and authorized to act as a process server
 36 in this state; and the council's determination shall be provided to the applicant in

1 writing. A copy of the council's determination shall be submitted with any motion
2 requesting appointment as a permanent process server; and

3 (D) Upon the court granting the applicant's motion, swear under oath, in open court
4 or in chambers before the superior court judge granting the motion: 'I do solemnly
5 swear (or affirm) that I will conduct myself as a process server truly and honestly, justly
6 and uprightly, and according to law; and that I will support the Constitution of the State
7 of Georgia and the Constitution of the United States. I further swear (or affirm) that I
8 will not serve any papers or process in any action where I have a financial or personal
9 interest in the outcome of the matter or where any person to whom I am related by
10 blood or marriage has such an interest.'

11 (3) A permanent process server shall be required to renew his or her registration every
12 two years in a manner and at such time as required by the Judicial Council of Georgia.
13 Any permanent process server failing to renew his or her registration as required by the
14 rules and regulations of the council shall be removed from the council's registry and shall
15 no longer be approved to serve as a permanent process server.

16 (4) A permanent process server may be removed from the registry at any time, in
17 accordance with procedures established by the Administrative Office of the Courts."

18 **SECTION 5.**

19 This Act shall become effective on July 1, 2007.

20 **SECTION 6.**

21 All laws and parts of laws in conflict with this Act are repealed.