

The Senate Public Safety Committee offered the following substitute to HB 545:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to commencement and service of civil actions, so as to revise provisions relating to
3 service of process; to provide for certification of persons authorized to serve process
4 throughout the state; to provide for service upon persons residing in gated and secured
5 communities; to provide for filing the return of service; to change certain provisions relating
6 to process in civil practice; to provide for certification of certified process servers authorized
7 to serve process throughout the state; to provide for qualifications, procedures, and other
8 matters with respect to such certification; to regulate the professional conduct of certified
9 process servers; to define the crime of impersonating a process server and provide for
10 punishment; to provide for related matters; to provide an effective date; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
15 commencement and service of civil actions, is amended in Code Section 9-11-4, relating to
16 service of process, by revising subsection (c) as follows:

17 "(c) *Summons — By whom served.* Process shall be served by:

18 (1) ~~The~~ the sheriff of the county where the action is brought or where the defendant is
19 found; or by such sheriff's deputy;

20 (2) ~~The~~ , or by the marshal or sheriff of the court; or by such official's deputy;

21 (3) ~~Any~~ , or by any citizen of the United States specially appointed by the court for that
22 purpose;

23 (4) ~~A person~~ , or by someone who is not a party and is not younger than 18 years of age
24 and has been appointed as a permanent process server by the court in which the action is
25 brought; ; or

26 (5) A certified process server under Code Section 9-11-4.1, provided that the sheriff of
 27 the county for which process is to be served allows such servers to serve process in such
 28 county.

29 Where the service of process is made outside of the United States, after an order of
 30 publication, it may be served either by any citizen of the United States or by any resident
 31 of the country, territory, colony, or province who is specially appointed by the court for
 32 that purpose. When service is to be made within this state, the person making such service
 33 shall make the service within five days from the time of receiving the summons and
 34 complaint; but failure to make service within the five-day period will not invalidate a later
 35 service."

36 **SECTION 2.**

37 Said article is further amended in subsection (f) of said Code section by adding a new
 38 paragraph to read as follows:

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

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

46 (B) Any person authorized to serve process shall be granted access to gated and
 47 secured communities for a reasonable period of time during reasonable hours for the
 48 purpose of performing lawful service of process upon:

49 (i) Identifying to the guard or managing agent the person, persons, entity, or entities
 50 to be served;

51 (ii) Displaying a current driver's license or other government issued identification
 52 which contains a photograph; and

53 (iii) Displaying evidence of current appointment as a process server pursuant to this
 54 Code section.

55 (C) Any person authorized to serve process shall promptly leave gated and secured
 56 communities upon perfecting service of process or upon a determination that process
 57 cannot be effected at that time."

58 **SECTION 3.**

59 Said article is further amended in said Code section by revising subsection (h) as follows:

95 (B) Completed a 12 hour course of instruction relating to service of process which
96 course has been approved by the Administrative Office of the Courts in consultation
97 with the Georgia Sheriffs' Association;

98 (C) Passed a test approved by the Administrative Office of the Courts which will
99 measure the applicant's knowledge of state law regarding serving of process and other
100 papers on various entities and persons;

101 (D) Obtained a commercial surety bond or policy of commercial insurance conditioned
102 to protect members of the public and persons employing the certified process server
103 against any damage arising from any actionable misconduct, error, or omission on the
104 part of the applicant while serving as a certified process server; and

105 (E) Is a citizen of the United States.

106 (2) The Administrative Office of the Courts shall review the application, test score,
107 criminal record check, and such other information or documentation as required by that
108 office. Upon review, the office shall make a fitness determination in accordance with
109 standards and procedures promulgated by the Judicial Council of Georgia as to whether
110 the applicant shall be approved for certification and authorized to act as a process server
111 in this state; and the office's determination shall be provided to the applicant in writing.

112 (3) Upon approval the applicant shall complete a written oath as follows: 'I do solemnly
113 swear (or affirm) that I will conduct myself as a process server truly and honestly, justly
114 and uprightly, and according to law; and that I will support the Constitution of the State
115 of Georgia and the Constitution of the United States. I further swear (or affirm) that I
116 will not serve any papers or process in any action where I have a financial or personal
117 interest in the outcome of the matter or where any person to whom I am related by blood
118 or marriage has such an interest.'

119 (c) *Renewal and revocation of certification.* A certified process server shall be required
120 to renew his or her certification every three years in such manner and at such time as
121 required by the Administrative Office of the Courts. Any certified process server failing
122 to renew his or her certification shall no longer be approved to serve as a certified process
123 server. At the time of renewal, the certified process server shall provide evidence that he
124 or she has completed three annual five-hour courses of continuing education which courses
125 have been approved by the Administrative Office of the Courts and has undergone an
126 updated criminal record check. The certification of a process server may be revoked or
127 suspended for cause at any time. The Administrative Office of the Courts shall establish,
128 by rule, procedures for suspending or revoking a certificate. Such rule shall include a
129 procedure for the emergency suspension of a certificate for up to five business days while
130 the Administrative Office of the Courts investigates a complaint filed by a sheriff alleging
131 serious misconduct by the process server.

132 (d) Fees. The Administrative Office of Courts shall establish fees to be charged for the
133 administration of this Code section such that the revenue generated from such fees shall
134 approximate the total direct and indirect costs of administering this Code section.

135 (e) Appeals. Any disciplinary action of the board may be appealed by the aggrieved
136 person to the Judicial Council, which shall have the power to review the determination by
137 the Administrative Office of the Courts.

138 (f) Service by off-duty deputy sheriff. An off-duty deputy sheriff may serve process with
139 the approval of the sheriff by whom he or she is employed and shall be exempt from
140 certification under this Code section.

141 (g) Impersonation of public officer or employee. It shall be unlawful for a certified process
142 server to falsely hold himself or herself out as a peace officer or public officer or employee
143 and any violation shall be punished as provided in Code Section 16-10-23.

144 (h) Notice to sheriff. (1) Prior to the first time that a certified process server serves
145 process in any county he or she shall file with the sheriff of the county a written notice,
146 in such form as shall be prescribed by the Administrative Office of the Courts, of his or
147 her intent to serve process in that county. Such notice shall only be accepted by a sheriff
148 who allows certified process servers to serve process in his or her county. Such notice
149 shall be effective for a period of one year; and a new notice shall be filed before the
150 certified process server again serves process in that county after expiration of the
151 one-year period.

152 (2) The provisions of this subsection shall not apply to a certified process server who was
153 appointed by the court to serve process or who was appointed as a permanent process
154 server by a court.

155 (i) Credentials. The Administrative Office of the Courts shall at the time of certification
156 provide credentials in the form of an identification card to each certified process server.
157 The identification card shall be designed to clearly distinguish it from any form of
158 credentials issued to certified peace officers and will not be in the shape or form of a law
159 enforcement badge. A certified process server shall display his or her credentials at all
160 times while engaged in the service of process.

161 (j) False representation. It shall be unlawful for any person who is not a certified process
162 server to hold himself or herself out as being a certified process server. Any person who
163 violates this subsection shall upon conviction be guilty of a misdemeanor.

164 (k) Sunset and legislative review. This Code section shall be repealed effective July 1,
165 2015, unless continued in effect by the General Assembly prior to that date. At its 2013
166 regular session the General Assembly shall review this Code section to determine whether
167 it should be continued in effect; and the Administrative Office of the Courts shall make a
168 report to the General Assembly to assist in that review."

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SECTION 5.

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This Act shall become effective on July 1, 2010.

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SECTION 6.

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