

House Bill 545

By: Representatives Willard of the 49th, Lindsey of the 54th, Powell of the 171st, Lane of the 167th, Weldon of the 3rd, and others

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 style="text-align:center">**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.

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

34 SECTION 2.

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

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

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

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

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

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

51 (iii) Displaying evidence of current appointment as a process server pursuant to Code
 52 Section 9-11-4.1."

53 SECTION 3.

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

55 "(h) Return. The person serving the process shall ~~make proof of service thereof to the~~
 56 ~~court promptly and, in any event, within the time during which the person served must~~
 57 ~~respond to the process~~ file the proof of such service with the court in the county in which
 58 the action is pending within five business days of the service date. If the proof of service
 59 is not filed within five business days, the time for the party served to answer the process
 60 shall not begin to run until such proof of service is filed. Proof of service shall be as
 61 follows:

- 62 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate
 63 of the sheriff, marshal, or deputy;
- 64 (2) If by any other proper person, such person's affidavit;
- 65 (3) In case of publication, the certificate of the clerk of court certifying to the publication
 66 and mailing; or
- 67 (4) The written admission or acknowledgment of service by the defendant.
- 68 In the case of service otherwise than by publication, the certificate or affidavit shall state
 69 the date, place, and manner of service. Failure to make proof of service shall not affect the
 70 validity of the service."

71 SECTION 4.

72 Said article is further amended by adding a new Code section as follows:

73 "9-11-4.1.

74 (a) Certified process servers. A person at least 18 years of age who files with the
 75 Administrative Office of the Courts an application stating that the movant complies with
 76 this Code section and any procedures and requirements set forth in any rules or regulations
 77 promulgated by the Judicial Council of Georgia regarding this Code section shall, absent
 78 good cause shown, be certified as a process server by the Administrative Office of the
 79 Courts. Such certification shall be effective for a period of three years or until such
 80 approval is withdrawn by the Administrative Office of the Courts upon good cause shown,
 81 whichever shall first occur. Such certified process server shall be entitled to serve in such
 82 capacity for any court of the state, anywhere within the state.

83 (b) Certification procedures.

84 (1) Any person seeking certification under this Code section shall upon applying for
 85 certification present evidence that he or she:

86 (A) Has undergone a criminal record check based on fingerprints and has never been
 87 convicted of a felony or of impersonating a peace officer or other public officer or
 88 employee under Code Section 16-10-23;

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

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

95 (D) Obtained a commercial surety bond or policy of commercial insurance conditioned
 96 to protect members of the public and persons employing the certified process server

97 against any damage arising from any actionable misconduct, error, or omission on the
98 part of the applicant while serving as a certified process server; and
99 (E) Is a citizen of the United States.

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

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

113 (c) A deputy sheriff applying for certification as a process server for the purpose of serving
114 process while off duty shall be exempt from the education and continuing education and
115 criminal record check requirements of this Code section.

116 (d) *Renewal and revocation of certification.* A certified process server shall be required
117 to renew his or her certification every three years in such manner and at such time as
118 required by the Administrative Office of the Courts. Any certified process server failing
119 to renew his or her certification shall no longer be approved to serve as a certified process
120 server. At the time of renewal, the certified process server shall provide evidence that he
121 or she has completed three annual five-hour courses of continuing education which courses
122 have been approved by the Administrative Office of the Courts and has undergone an
123 updated criminal record check. The certification of a process server may be revoked for
124 cause at any time, in accordance with procedures established by the Administrative Office
125 of the Courts.

126 (e) *Fees.* The Administrative Office of Courts shall establish fees to be charged for the
127 administration of this Code section such that the revenue generated from such fees shall
128 approximate the total direct and indirect costs of administering this Code section.

129 (f) *Appeals.* Any appeal from a denial of certification, denial of renewal, or revocation of
130 certification shall be as provided for in Chapter 13 of Title 50, the 'Georgia Administrative
131 Procedure Act.'

132 (g) Carrying firearms.

133 (1) It shall be unlawful for a certified process server to carry a firearm while in the
134 course of serving process unless authorized to carry a firearm by some other provision
135 of law, not including Code Section 16-11-129, relating to licenses to carry a pistol or
136 revolver; and Code Section 16-11-129 shall not authorize a certified process server to
137 carry a firearm while serving process.

138 (2) Any person who violates paragraph (1) of this subsection shall upon conviction be
139 guilty of a misdemeanor.

140 (3) At the time of certification and renewal of certification, a certified process server
141 shall sign an acknowledgment that he or she has read and understands the provisions of
142 this subsection.

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

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

152 (j) Credentials. The Administrative Office of the Courts shall at the time of certification
153 provide credentials in the form of an identification card to each certified process server.
154 The identification card shall be designed to clearly distinguish it from any form of
155 credentials issued to certified peace officers. A certified process server shall display his
156 or her credentials at all times while engaged in the service of process.

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

160 (l) Sunset and legislative review. This Code section shall be repealed effective July 1,
161 2015, unless continued in effect by the General Assembly prior to that date. At its 2013
162 regular session the General Assembly shall review this Code section to determine whether
163 it should be continued in effect; and the Administrative Office of the Courts shall make a
164 report to the General Assembly to assist in that review."

165 **SECTION 5.**

166 This Act shall become effective on July 1, 2009.

167

SECTION 6.

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