

The House Committee on Judiciary offers 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.

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 this**  
52 **Code section."**

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 proof of such service with the court in the county in which the action**  
58 **is pending within five business days of the service date. If the proof of service is not filed**  
59 **within five business days, the time for the party served to answer the process shall not**  
60 **begin to run until such proof of service is filed.** Proof of service shall be as follows:

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

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

## SECTION 4.

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

"9-11-4.1.

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 Such certification shall be effective for a period of three years or until such approval is withdrawn by the Administrative Office of the Courts upon good cause shown, whichever shall first occur.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

**(b) Certification procedures.**

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

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

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

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

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

96       against any damage arising from any actionable misconduct, error, or omission on the  
97       part of the applicant while serving as a certified process server; and

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

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

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

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

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

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

128     (f) *Carrying firearms.*

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

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

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

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

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

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

151     (j) *Credentials.* The Administrative Office of the Courts shall at the time of certification  
152 provide credentials in the form of an identification card to each certified process server.  
153 The identification card shall be designed to clearly distinguish it from any form of  
154 credentials issued to certified peace officers and will not be in the shape or form of a law  
155 enforcement badge. A certified process server shall display his or her credentials at all  
156 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, 2010.

167

**SECTION 6.**

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