

House Bill 545 (RULES COMMITTEE SUBSTITUTE)

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, 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 for the purpose of performing
 48 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 SECTION 3.

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

57 "(h) Return. The person serving the process shall make proof of service thereof to the
 58 court promptly and, in any event, within the time during which the person served must
 59 respond to the process proof of such service with the court in the county in which the action
 60 is pending within five business days of the service date. If the proof of service is not filed

61 within five business days, the time for the party served to answer the process shall not
 62 begin to run until such proof of service is filed. Proof of service shall be as follows:

63 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate
 64 of the sheriff, marshal, or deputy;

65 (2) If by any other proper person, such person's affidavit;

66 (3) In case of publication, the certificate of the clerk of court certifying to the publication
 67 and mailing; or

68 (4) The written admission or acknowledgment of service by the defendant.

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

72 **SECTION 4.**

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

74 "9-11-4.1.

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 81 approval is withdrawn by the Administrative Office of the Courts upon good cause shown,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

86 (b) Certification procedures.

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

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

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

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

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

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

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

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

116 (c) *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 (d) *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 (e) *Appeals.* Any disciplinary action of the board may be appealed by the aggrieved
 130 person to the Judicial Council, which shall have the power to review the determination by
 131 the Administrative Office of the Courts.

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

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

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

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

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

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

158 (k) Sunset and legislative review. This Code section shall be repealed effective July 1,
 159 2015, unless continued in effect by the General Assembly prior to that date. At its 2013
 160 regular session the General Assembly shall review this Code section to determine whether
 161 it should be continued in effect; and the Administrative Office of the Courts shall make a
 162 report to the General Assembly to assist in that review."

163 **SECTION 5.**

164 This Act shall become effective on July 1, 2010.

165 **SECTION 6.**

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