

The Senate Judiciary Committee offered the following substitute to HB 29:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the
2 "Civil Practice Act," so as to provide for electronic service of pleadings subsequent to the
3 original complaint; to provide for presumptions regarding service of pleadings by e-mail on
4 an attorney; to provide for a stay of discovery when a motion to dismiss is filed; to provide
5 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Civil
10 Practice Act," is amended by revising subsection (b) of Code Section 9-11-5, relating to
11 service and filing of pleadings subsequent to the original complaint and other papers, as
12 follows:

13 "(b) *Same — How made.* Whenever under this chapter service is required or permitted to
14 be made upon a party represented by an attorney, the service shall be made upon the
15 attorney unless service upon the party ~~himself~~ is ordered by the court. Service upon the
16 attorney or upon a party shall be made by delivering a copy to ~~him~~ the person to be served
17 or by mailing it to ~~him~~ the person to be served at ~~his~~ the person's last known address or, if
18 no address is known, by leaving it with the clerk of the court. As used in this Code section,
19 the term 'delivery of a copy' means handing it to the ~~attorney or to the party,~~ person to be
20 served or leaving it at ~~his~~ the person to be served's office with ~~his clerk or other~~ a person
21 in charge thereof or, if ~~the~~ such office is closed or the person to be served has no office,
22 leaving it at ~~his~~ the person to be served's dwelling house or usual place of abode with some
23 person of suitable age and discretion ~~then~~ residing therein. 'Delivery of a copy' also means
24 transmitting a copy via e-mail in portable document format (PDF) to the person to be
25 served using all e-mail addresses provided pursuant to subsection (f) of this Code section
26 and showing in the subject line of the e-mail message the words 'STATUTORY

27 ELECTRONIC SERVICE' in capital letters. Service by mail is complete upon mailing.
 28 Proof of service may be made by certificate of an attorney or of his or her employee, by
 29 written admission, by affidavit, or by other proof satisfactory to the court. Failure to make
 30 proof of service shall not affect the validity of service."

31 **SECTION 2.**

32 Said chapter is further amended by adding a new subsection to Code Section 9-11-5, relating
 33 to commencement of action and service, to read as follows:

34 "(f) Electronic service of pleadings.

35 (1) A person to be served may consent to being served with pleadings electronically by:

36 (A) Filing a notice of consent to electronic service and including the person to be
 37 served's e-mail address or addresses in such pleading; or

38 (B) Including the person to be served's e-mail address or addresses in or below the
 39 signature block of the complaint or answer, as applicable to the person to be served.

40 (2) A person to be served may rescind his or her election to be served with pleadings
 41 electronically by filing and serving a notice of such rescission.

42 (3) If a person to be served agrees to electronic service of pleadings, such person to be
 43 served bears the responsibility of providing notice of any change in his or her e-mail
 44 address or addresses.

45 (4) If electronic service of a pleading is made upon a party who is represented by an
 46 attorney, and such attorney certifies to the court that he or she did not receive such
 47 pleading, it shall be presumed that such pleading was not received unless the serving
 48 party disputes the assertion of nonservice, in which case the court shall decide the issue
 49 of service of such electronic pleading."

50 **SECTION 3.**

51 Said chapter is further amended by revising subsection (e) of Code Section 9-11-6, relating
 52 to time, as follows:

53 "(e) Additional time after service by mail or e-mail. Whenever a party has the right or is
 54 required to do some act or take some proceedings within a prescribed period after the
 55 service of a notice or other paper, other than process, upon him or her, and the notice or
 56 paper is served upon ~~him~~ the party by mail or e-mail, three days shall be added to the
 57 prescribed period."

58 **SECTION 4.**

59 Said chapter is further amended by adding a new subsection to Code Section 9-11-12,
 60 relating to answers, defenses, and objections in civil practice, to read as follows:

61 "(j)(1) Stay of discovery. If a party files a motion to dismiss before or at the time of filing
 62 an answer and pursuant to the provisions of this Code section, discovery shall be stayed
 63 for 120 days after the filing of such motion or until the ruling of the court on such motion,
 64 whichever is sooner; provided, however, that such stay may be extended:
 65 (A) By the court on its own motion;
 66 (B) By agreement of the parties, filed with the court; or
 67 (C) By order of the court upon motion of a party to extend such stay for good cause.
 68 (2) The filing of a motion to dismiss against less than all counts alleged shall only stay
 69 discovery related to the challenged claims.
 70 (3) Discovery shall be extended for the duration of the stay of discovery imposed by this
 71 subsection.
 72 (4) Upon a showing of good cause, a court may grant a motion for expedited discovery
 73 while the motion to dismiss is pending. Good cause may include, but shall not be limited
 74 to, discovery needed because a witness will be unavailable during the discovery period
 75 or because a party is seeking an interlocutory injunction.
 76 (5) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of
 77 subsection (b) of this Code section, limited discovery needed to respond to such defenses
 78 shall be permitted until the court rules on such motion.
 79 (6) The provisions of this subsection shall not modify or affect the provisions of
 80 paragraph (2) of subsection (f) of Code Section 9-11-23.
 81 (7) The court shall decide any motion to dismiss which results in the imposition of a stay
 82 of discovery pursuant to this subsection during the time period in which such stay exists."

83

SECTION 5.

- 84 (a) Sections 1 through 3 of this Act shall become effective on January 1, 2010.
 85 (b) Section 4 of this Act shall become effective on July 1, 2009, and shall apply to motions
 86 to dismiss filed after July 1, 2009.
 87 (c) Sections 5 and 6 of this Act shall become effective on July 1, 2009.

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SECTION 6.

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