

House Bill 885

By: Representatives Levitas of the 82nd, Lunsford of the 110th, Willard of the 49th, Maddox of the 127th, Ramsey of the 72nd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to civil proceedings in magistrate courts, so as to provide for applicability of the "Georgia Civil Practice Act" under certain circumstances; to change provisions relating to service of process; to provide for service of process by publication in certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to civil proceedings in magistrate courts, is amended by revising Code Section 15-10-42, relating to Civil Practice Act inapplicable to magistrate courts, as follows:

"15-10-42.

Except as provided in Code Sections 15-10-43 and 15-10-50, proceedings ~~Proceedings~~ in the magistrate court shall not be subject to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' but such proceedings may be subject to such Act if application of such Act will achieve substantial justice between the parties according to the rules of substantive law and will serve the interests of justice."

SECTION 2.

Said article is further amended by revising subsections (b) and (g) of Code Section 15-10-43, relating to a statement of claim in civil proceeding in magistrate court, service of process, answer to claim, default judgment, opening of default, and relief in magistrate court, as follows:

"(b)(1) Service of process within the county shall be made by serving ~~A copy of the verified statement of claim shall be served on the defendant personally~~ with a verified statement of claim, or by leaving a copy thereof at the defendant's dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or by

delivering a copy of the claim to an agent authorized by appointment or by law to receive service of process, and such service shall be sufficient. ~~Service of said process shall be made within the county as provided in this Code section.~~

(2) Service of process outside the county shall be by second original as provided in Code Section 9-10-72. Said service shall be made by any official or person authorized by law to serve process in the superior court, by a constable, or by any person sui juris who is not a party to, or otherwise interested in, the action, who is specially appointed by the judge of said court for that purpose. When the claim and notice are served by a private individual, such individual shall make proof of service by affidavit, showing the time and place of such service on the defendant.

(3) When the defendant cannot, after due diligence, be found within this state, or conceals himself or herself to avoid the service of process, and the fact shall appear, by affidavit, to the satisfaction of the judge or clerk of the court, and it shall appear, either by affidavit or by a verified statement of claim, that a claim exists against such defendant and that he or she is a necessary or proper party to the action, the judge or clerk may grant an order that the service of process be made by the publication of summons, and the provisions of paragraph (1) of subsection (f) of Code Section 9-11-4 shall be followed for such service."

~~"(g) Notwithstanding the provisions of Code Section 15-10-42, the~~ The magistrate court may grant relief from a judgment under the same circumstances as the state court may grant such relief. Requests for relief from judgments pursuant to this Code section in the magistrate court shall be by filing a written motion which sets forth the issues with reasonable specificity. The procedure shall then be the same as in other cases except the court may assess costs as seem just."

SECTION 3.

Said article is further amended by revising subsection (g) of Code Section 15-10-50, relating to propounding of interrogatories to judgment debtor, form, contempt, and authorized discovery procedures, as follows:

~~"(g) Notwithstanding the provisions of Code Section 15-10-42, the~~ The judgment creditor or a successor in interest when that interest appears of record may, in addition to any other process or remedy provided by law, utilize the discovery provisions set forth in Code Section 9-11-69."

SECTION 4.

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