

House Bill 284

By: Representatives Powell of the 171st, Willard of the 49th, Weldon of the 3rd, Lindsey of the 54th, Jacobs of the 80th, 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 of action and service, so as to change provisions relating to the
3 procedure involved with certified process servers; to provide for procedure; to change
4 provisions relating to process; to provide for related matters; to repeal conflicting laws; and
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
9 commencement of action and service, is amended by revising paragraph (5) of subsection (c)
10 of Code Section 9-11-4, relating to process, as follows:

11 "(5) A certified process server under Code Section 9-11-4.1, ~~provided that the sheriff of~~
12 ~~the county for which process is to be served allows such servers to serve process in such~~
13 ~~county."~~

14 **SECTION 2.**

15 Said article is further amended by revising Code Section 9-11-4.1, relating to certified
16 process servers, as follows:

17 "9-11-4.1.

18 (a) **Certified process servers.** A person at least 18 years of age who files with a ~~sheriff~~
19 ~~of any county of this state~~ the Administrative Office of the Courts an application stating
20 that ~~the movant complies~~ he or she has complied with this Code section and any procedures
21 and requirements set forth in any rules or regulations promulgated by the Judicial Council
22 of Georgia regarding this Code section shall, absent good cause shown, be certified as a
23 process server. Such certification shall be effective for a period of three years or until such
24 approval is withdrawn by a superior court judge upon good cause shown, whichever shall
25 first occur. The certification of a process server may be revoked or suspended by a

26 superior court judge for cause at any time. If a complaint has been filed by a peace officer
 27 or citizen alleging serious misconduct by a certified process server, a judge may suspend
 28 the process server's certification for up to five business days while the matter is considered
 29 by the judge. A process server shall be entitled to be heard and present evidence to rebut
 30 the suspension or withdrawal of his or her certification. A person ~~Such~~ certified as a
 31 process server pursuant to this Code section shall be entitled to serve in such capacity for
 32 any court of the state, anywhere within the state, ~~provided that the sheriff of the county for~~
 33 ~~which process is to be served allows such servers to serve process in such county.~~

34 **(b) Certification procedures.**

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

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

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

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

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

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

51 (2) The Administrative Office of the Courts ~~A sheriff of any county of this state~~ shall
 52 review the application, test score, criminal record check, and such other information or
 53 documentation as required by ~~that sheriff~~ the Administrative Office of the Courts and
 54 determine whether the applicant shall be approved for certification and authorized to act
 55 as a process server in this state.

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

63 (c) **Renewal and revocation of certification.** A certified process server shall be required
64 to renew his or her certification every three years. Any certified process server failing to
65 renew his or her certification shall no longer be approved to serve as a certified process
66 server. At the time of renewal, the certified process server shall provide evidence that he
67 or she has completed three annual five-hour courses of continuing education which courses
68 have been approved by the Administrative Office of the Courts and has undergone an
69 updated criminal record check. ~~The certification of a process server may be revoked or~~
70 ~~suspended by a superior court judge for cause at any time. If a complaint has been filed~~
71 ~~by a sheriff alleging serious misconduct by the process server, such judge may suspend the~~
72 ~~certification for up to five business days while the matter is considered by the judge.~~

73 (d) **Fees.** ~~The sheriff~~ Administrative Office of the Courts shall collect a fee of \$80.00 for
74 processing the application required by this Code section.

75 (e) **Registry.** ~~The sheriff~~ Administrative Office of the Courts shall forward \$30.00 of each
76 fee received to the Georgia Sheriffs' Association. The Georgia Sheriffs' Association shall
77 maintain a registry of certified process servers.

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

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

84 (h) **Notice to sheriff.**

85 (1) Prior to the first time that a certified process server serves process in any county he
86 or she shall file with the sheriff of the county a written notice, in such form as shall be
87 prescribed by the Georgia Sheriffs' Association, of his or her intent to serve process in
88 that county. ~~Such notice shall only be accepted by a sheriff who allows certified process~~
89 ~~servers to serve process in his or her county.~~ Such notice shall be effective for a the
90 period of one year his or her certification by the Administrative Office of the Courts; and
91 a new notice shall be filed before the certified process server again serves process in that
92 county after expiration of the one-year period certification term.

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

96 (i) **Credentials.** ~~A sheriff of any county of this state~~ The Administrative Office of the
97 Courts shall at the time of certification provide credentials in the form of an identification
98 card to each certified process server. The identification card shall be designed to clearly
99 distinguish it from any form of credentials issued to certified peace officers and ~~with~~ shall

100 not be in the shape or form of a law enforcement badge. A certified process server shall
101 display his or her credentials at all times while engaged in the service of process.

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

105 (k) **Sunset and legislative review.** This Code section shall be repealed effective July 1,
106 ~~2015~~ 2016, unless continued in effect by the General Assembly prior to that date. At its
107 ~~2013~~ 2014 regular session the General Assembly shall review this Code section to
108 determine whether it should be continued in effect."

109 **SECTION 3.**

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