

Senate Bill 113

By: Senators Jones of the 10th, Stone of the 23rd, Ramsey, Sr. of the 43rd, Chance of the 16th, Jackson of the 2nd and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process, so as to change provisions relating to personal service of a summons on a corporation and foreign corporation under certain circumstances; to provide for a definition; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process, is amended by revising subsection (e) as follows:

"(e) **Summons — Personal service.** Except for cases in which the defendant has waived service, the summons and complaint shall be served together. The plaintiff shall furnish the clerk of the court with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1)(A) If the action is against a corporation incorporated or domesticated under the laws of this state or a foreign corporation authorized to transact business in this state, to the president or other officer of the corporation, ~~secretary, cashier, or a~~ managing agent, ~~or other agent~~ thereof, provided that when for any reason service cannot be had in such manner, the Secretary of State shall be an agent of such corporation or foreign corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him or her or with any other person or persons designated by the Secretary of State to receive such service a copy of such process, notice, or demand, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. The plaintiff or the plaintiff's attorney shall certify in writing to the Secretary of State that he or she has forwarded by registered mail or statutory overnight delivery such process, service, or demand to the last registered office or registered agent listed on the records of the Secretary of State, that service cannot be effected at such office,

and that it therefore appears that the corporation or foreign corporation has failed either to maintain a registered office or to appoint a registered agent in this state. Further, if it ~~shall~~ appear appears from such certification that there is a last known address of a known officer of the corporation or foreign corporation outside ~~the~~ this state, the plaintiff shall, in addition to and after such service upon the Secretary of State, mail or cause to be mailed to the known officer at the address by registered or certified mail or statutory overnight delivery a copy of the summons and a copy of the complaint. Any such service by certification to the Secretary of State shall be answerable not more than 30 days from the date the Secretary of State receives such certification;

(B) As used in this paragraph, the term 'managing agent' means a person employed by a corporation or a foreign corporation who:

(i) Has express authority to accept service of process on behalf of such corporation or foreign corporation;

(ii) Has authority to bind such corporation or foreign corporation; or

(iii) Has operational or supervisory authority of a site or facility in this state where such corporation or foreign corporation conducts business;

(2)(A) If the action is against a foreign corporation or a nonresident individual, partnership, joint-stock company, or association; doing business and having a managing ~~or other agent, cashier, or secretary~~ within this state, to such agent, ~~cashier, or secretary~~ or to an agent designated for service of process;

(B) As used in this paragraph, the term 'managing agent' means a person employed by a foreign corporation or a nonresident individual, partnership, joint-stock company, or association doing business in this state who:

(i) Has express authority to accept service of process on behalf of such entity;

(ii) Has authority to bind such entity; or

(iii) Has operational or supervisory authority of a site or facility in this state where such entity conducts business;

(3) If against a minor, to the minor, personally, and also to such minor's father, mother, guardian, or duly appointed guardian ad litem unless the minor is married, in which case service shall not be made on the minor's father, mother, or guardian;

(4) If against a person residing within this state who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs and for whom a guardian has been appointed, to the person and also to such person's guardian and, if there is no guardian appointed, then to his or her duly appointed guardian ad litem;

(5) If against a county, municipality, city, or town, to the chairman of the board of commissioners, president of the council of trustees, mayor or city manager of the city, or to an agent authorized by appointment to receive service of process. If against any other

public body or organization subject to an action, to the chief executive officer or clerk thereof;

(6) If the principal sum involved is less than \$200.00 and if reasonable efforts have been made to obtain personal service by attempting to find some person residing at the most notorious place of abode of the defendant, then by securely attaching the service copy of the complaint in a conspicuously marked and waterproof packet to the upper part of the door of the abode and on the same day mailing by certified or registered mail or statutory overnight delivery an additional copy to the defendant at his or her last known address, if any, and making an entry of this action on the return of service; or

(7) In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process."

SECTION 2.

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