

The House Committee on Judiciary offers the following substitute to HB 1016:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 10 of Title 15 and Article 2 of Chapter 11 of Title 44 of the  
2 Official Code of Georgia Annotated, relating to general provisions relative to magistrate  
3 courts and proceedings against intruders, respectively, so as to expand existing remedies  
4 regarding the unauthorized possession of real property; to provide for magistrate court  
5 jurisdiction over certain related proceedings; to authorize certain third parties to request  
6 assistance from law enforcement for the expedient removal of a person in unauthorized  
7 possession of real property under certain conditions; to authorize the removal of a person in  
8 unauthorized possession based on such request and conditions; to require that any person  
9 subject to removal or arrest for the unauthorized possession of real property be given three  
10 days to present a counteraffidavit prior to any such removal or arrest; to provide for  
11 legislative findings and intent; to provide for definitions; to make conforming changes; to  
12 provide for an effective date and applicability; to provide for related matters; to repeal  
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1016 (SUB)

- 1 -

15 **SECTION 1.**

16 Article 1 of Chapter 10 of Title 15 of the Official Code of Georgia Annotated, relating to  
 17 general provisions relative to magistrate courts, is amended in Code Section 15-10-2, relating  
 18 to general jurisdiction and authority of magistrate to act, by revising paragraph (19) of  
 19 subsection (a) as follows:

20 "(19) Proceedings against intruders and unlawful squatting as provided in Code Sections  
 21 44-11-30, 44-11-30.1, 44-11-31, 44-11-32, and 44-11-33."

22 **SECTION 2.**

23 Article 2 of Chapter 11 of Title 44 of the Official Code of Georgia Annotated, relating to  
 24 proceedings against intruders, is amended by revising Code Section 44-11-30, relating to  
 25 manner of ejecting intruders, affidavit, ejection by sheriff and other peace officers, and  
 26 counteraffidavit, as follows:

27 "44-11-30.

28 When any person, either by himself or herself, his or her agent, or his or her attorney in  
 29 fact, shall take and subscribe an affidavit in writing before any officer authorized to  
 30 administer an oath setting forth that he or she claims, in good faith, the right of possession  
 31 to ~~the described land or tenement~~ certain real property and that such ~~land or tenement~~ real  
 32 property is in the hands of ~~another~~ a named person who does not in good faith claim a right  
 33 to such possession and yet refuses to abandon ~~the same~~ such real property, it shall be the  
 34 duty of the sheriff, deputy sheriff, constable, marshal, or other individual certified by the  
 35 Georgia Peace Officer Standards and Training Council of the county where the ~~land or~~  
 36 ~~tenement~~ real property is located, upon receiving such affidavit, to exhibit such affidavit  
 37 to the person described as being in possession of such ~~land or tenement~~ real property at  
 38 least three days prior to turning such person out of possession unless the person in  
 39 possession tenders to such sheriff, deputy sheriff, constable, marshal, or other individual  
 40 certified by the Georgia Peace Officer Standards and Training Council a counteraffidavit

41 stating that he or she claims, in good faith, a legal right to the possession of the ~~land or~~  
42 ~~tenement~~ real property. If no such counteraffidavit is tendered, such ~~Such~~ sheriff, deputy  
43 sheriff, constable, marshal, or other individual certified by the Georgia Peace Officer  
44 Standards and Training Council shall turn out such person once three days have elapsed  
45 from the day ~~such~~ the affidavit was exhibited by the sheriff, deputy sheriff, constable,  
46 marshal, or other individual certified by the Georgia Peace Officer Standards and Training  
47 Council."

48 **SECTION 3.**

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

50 "44-11-30.1.

51 (a) As used in this Code section:

52 (1) 'Affected owner' means a unit owner or lot owner of affected property.

53 (2) 'Affected property' means real property within a condominium or property owners'  
54 development that is in the possession of a person, other than a unit owner or lot owner,  
55 who may not have a good faith claim to such possession and yet refuses to abandon such  
56 real property.

57 (3) 'Condominium' shall have the same meaning as set forth in Code Section 44-3-71.

58 (4) 'Condominium association' shall have the same meaning as the term 'association' as  
59 set forth in Code Section 44-3-71.

60 (5) 'Interested third party' means any unit owner or lot owner of real property within the  
61 same condominium or property owners' development as affected property who is not an  
62 affected owner.

63 (6) 'Lot owner' shall have the same meaning as set forth in Code Section 44-3-221.

64 (7) 'Property owners' development' shall have the same meaning as set forth in Code  
65 Section 44-3-221.

66 (8) 'Property owners' development association' shall have the same meaning as the term  
67 'property owners' association' or 'association' as set forth in Code Section 44-3-221.

68 (9) 'Unit owner' shall have the same meaning as set forth in Code Section 44-3-71.

69 (b) The General Assembly finds that the right to exclude others from entering, and to  
70 direct the expedient removal of others in unauthorized possession of, real property within  
71 a condominium or property owners' development is a substantial property right belonging  
72 to both the unit owner or lot owner of the affected property and to any other unit owner or  
73 lot owner of real property located within such condominium or property owners'  
74 development. The General Assembly further finds that existing remedies regarding the  
75 unauthorized possession of real property fail to adequately protect the safety and property  
76 rights of such unit owners and lot owners or to sufficiently deter theft, vandalism, and other  
77 criminal activity. The intent of this Code section is to support the prompt restoration of  
78 possession of real property to the lawful owner and to preserve the safety and property  
79 rights of all unit owners and lot owners within a condominium or property owners'  
80 development while limiting the opportunity for criminal activity.

81 (c) Any interested third party shall have a right to enjoin the unauthorized possession of  
82 any affected property located within such interested third party's condominium or property  
83 owners' development in accordance with the procedures set forth in this Code section.

84 (d) Except as otherwise provided in Code Section 44-11-30 and subject to the  
85 requirements set forth in subsection (e) of this Code section, when an interested third party,  
86 either by himself or herself, his or her agent, or his or her attorney in fact, shall take and  
87 subscribe an affidavit in writing before any officer authorized to administer an oath setting  
88 forth that such owner claims, in good faith and acting based on reasonable certainty, that  
89 certain real property within such interested third party's condominium or property owner's  
90 development is in the hands of a named person who does not in good faith claim a right to  
91 such possession yet and refuses to abandon such real property, it shall be the duty of the  
92 sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia

93 Peace Officer Standards and Training Council of the county where the real property is  
94 located, upon receiving such affidavit, to exhibit such affidavit to the person described as  
95 being in possession of such real property at least three days prior to turning such person out  
96 of possession unless the person in possession tenders to such sheriff, deputy sheriff,  
97 constable, marshal, or other individual certified by the Georgia Peace Officer Standards  
98 and Training Council a counteraffidavit stating that he or she claims, in good faith, a legal  
99 right to the possession of the real property. If no such counteraffidavit is tendered, such  
100 sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia  
101 Peace Officer Standards and Training Council shall turn out such person once three days  
102 have elapsed from the day the affidavit was exhibited by the sheriff, deputy sheriff,  
103 constable, marshal, or other individual certified by the Georgia Peace Officer Standards  
104 and Training Council.

105 (e)(1) Notwithstanding any provision to the contrary in this article, no interested third  
106 party, either by himself or herself, his or her agent, or his or her attorney in fact, shall  
107 initiate the removal procedure set forth in subsection (d) of this Code section unless he  
108 or she has provided at least three days' written notice, sent by certified mail or statutory  
109 overnight delivery, of his or her intent to initiate such removal procedure to the affected  
110 owner at the address or addresses designated by the affected owner to the condominium  
111 association or property owners' development association and to any other address or  
112 addresses for which the interested third party or the condominium association or property  
113 owners' development association might be aware. If the affected owner authorizes the  
114 removal procedure or fails to respond to the notice within the three-day period, the  
115 interested third party seeking to initiate the removal procedure set forth in subsection (d)  
116 of this Code section shall be authorized to proceed with such removal procedure. If the  
117 affected owner denies permission to initiate the removal procedure, the interested third  
118 party shall be barred from proceeding with the removal procedure under subsection (d)  
119 of this Code section.

120 (2) The interested third party seeking to engage in the removal procedure set forth in  
121 subsection (d) of this Code shall work with the condominium association or property  
122 owners' development association to provide the notice required under paragraph (1) of  
123 this subsection. A condominium association or property owners' development association  
124 shall cooperate with an interested third party to provide any notice required under  
125 paragraph (1) of this subsection."

126 **SECTION 4.**

127 Said article is further amended by revising Code Section 44-11-31, relating to sheriff and  
128 other peace officers competent to administer oath to person in possession, as follows:

129 "44-11-31.

130 The sheriff, deputy sheriff, constable, marshal, or other individual certified by the Georgia  
131 Peace Officer Standards and Training Council shall be a competent officer to administer  
132 the oath to the person in possession if he or she desires to tender the counteraffidavit  
133 provided for in Code Section 44-11-30 or Code Section 44-11-30.1."

134 **SECTION 5.**

135 Said article is further amended by revising Code Section 44-11-32, relating to procedure on  
136 submission of counteraffidavit, trial, nonmeritorious submission, and appeal, as follows:

137 "44-11-32.

138 ~~(+)~~(a) If the party in possession submits a counteraffidavit as provided in Code  
139 Section 44-11-30 or Code Section 44-11-30.1, the sheriff, deputy sheriff, constable,  
140 marshal, or other individual certified by the Georgia Peace Officer Standards and Training  
141 Council shall not turn him or her out of possession but shall leave both parties in their  
142 respective positions. In such an event, the sheriff, deputy sheriff, constable, marshal, or  
143 other individual certified by the Georgia Peace Officer Standards and Training Council

144 shall return both affidavits to the office of the clerk of the magistrate court of the county  
145 in which the land is located for a nonjury trial in accordance with the laws of this state.  
146 ~~(2)~~(b) If the party in possession submits any counteraffidavit or other documentation at  
147 trial, upon the magistrate's determination that the affidavit is not meritorious based on the  
148 preponderance of the evidence, the sheriff, deputy sheriff, constable, marshal, or other  
149 individual certified by the Georgia Peace Officer Standards and Training Council shall turn  
150 him or her out of possession to occur as soon as practicable pursuant to a writ of  
151 possession.  
152 ~~(3)~~(c) The court may, as appropriate, award the plaintiff the fair market value rent for the  
153 duration of the party's occupancy, and other monetary relief found appropriate by the court.  
154 A party shall have the right to appeal the decision of such magistrate court and such  
155 decision shall be directly appealable to the Georgia appellate courts and not by de novo  
156 review by the superior court."

157 **SECTION 6.**

158 This Act shall become effective on July 1, 2026, and shall apply to all offenses occurring on  
159 or after such date.

160 **SECTION 7.**

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