

Senate Bill 491

By: Senators Cowser of the 46th, Harp of the 29th, Crosby of the 13th and Hamrick of the 30th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 10 of Title 9 of the Official Code of Georgia Annotated,
2 relating to personal jurisdiction over nonresidents, so as to change provisions relating to the
3 grounds for exercise of personal jurisdiction over nonresidents involved in domestic relation
4 cases; to amend Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
5 relating to commencement and service of civil actions, so as to revise provisions relating to
6 service of process; to provide for certification of persons authorized to serve process
7 throughout the state; to provide for service upon persons residing in gated and secured
8 communities; to provide for filing the return of service; to change certain provisions relating
9 to process in civil practice; to provide for certification of certified process servers authorized
10 to serve process throughout the state; to provide for qualifications, procedures, and other
11 matters with respect to such certification; to regulate the professional conduct of certified
12 process servers; to define the crime of impersonating a process server and provide for
13 punishment; to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Article 4 of Chapter 10 of Title 9 of the Official Code of Georgia Annotated, relating to
17 personal jurisdiction over nonresidents, is amended by revising Code Section 9-10-91,
18 relating to the grounds for exercise of personal jurisdiction over nonresidents, as follows:

19 "9-10-91.

20 A court of this state may exercise personal jurisdiction over any nonresident or his or her
21 executor or administrator, as to a cause of action arising from any of the acts, omissions,
22 ownership, use, or possession enumerated in this Code section, in the same manner as if
23 he or she were a resident of ~~the~~ this state, if in person or through an agent, he or she:

24 (1) Transacts any business within this state;

25 (2) Commits a tortious act or omission within this state, except as to a cause of action for
26 defamation of character arising from the act;

27 (3) Commits a tortious injury in this state caused by an act or omission outside this state
 28 if the tort-feasor regularly does or solicits business, or engages in any other persistent
 29 course of conduct, or derives substantial revenue from goods used or consumed or
 30 services rendered in this state;

31 (4) Owns, uses, or possesses any real property situated within this state; or

32 (5) With respect to proceedings for ~~alimony, child support, or division of property in~~
 33 ~~connection with an action for divorce~~ divorce, separate maintenance, annulment, or other
 34 domestic relations action or with respect to an independent action for support of
 35 dependents, maintains a matrimonial domicile in this state at the time of the
 36 commencement of this action or, if the defendant resided in this state preceding the
 37 commencement of the action, whether cohabiting during that time or not, notwithstanding
 38 the subsequent departure of one of the original parties from this state and as to all
 39 obligations arising from alimony, child support, apportionment of debt, or real or
 40 personal property orders or agreements, if one party to the marital relationship continues
 41 to reside in this state. This paragraph shall not change the residency requirement for
 42 filing an action for divorce.

43 (6) Has been subject to the exercise of jurisdiction of a court of this state which has
 44 resulted in an order of alimony, child custody, child support, equitable apportionment of
 45 debt, or equitable division of property, notwithstanding the subsequent departure of one
 46 of the original parties from this state, if the action involves modification of such order and
 47 the moving party resides in this state, or if the action involves enforcement of such order
 48 notwithstanding the domicile of the moving party."

49 SECTION 2.

50 Article 2 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
 51 commencement and service of civil actions, is amended in Code Section 9-11-4, relating to
 52 service of process, by revising subsection (c) as follows:

53 "(c) Summons — By whom served. Process shall be served by ~~the~~:

54 (1) The sheriff of the county where the action is brought or where the defendant is found;
 55 or by such sheriff's deputy, ~~or by the~~;

56 (2) The marshal or sheriff of the court; or by such official's deputy, ~~or by any~~;

57 (3) Any citizen of the United States specially appointed by the court for that purpose, ~~or~~
 58 ~~by someone~~;

59 (4) A person who is not a party and is not younger than 18 years of age and has been
 60 appointed as a permanent process server by the court in which the action is brought; or

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

64 Where the service of process is made outside of the United States, after an order of
 65 publication, it may be served either by any citizen of the United States or by any resident
 66 of the country, territory, colony, or province who is specially appointed by the court for
 67 that purpose. When service is to be made within this state, the person making such service
 68 shall make the service within five days from the time of receiving the summons and
 69 complaint; but failure to make service within the five-day period will not invalidate a later
 70 service."

71 **SECTION 3.**

72 Said article is further amended in subsection (f) of said Code section by adding a new
 73 paragraph to read as follows:

74 "(4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

75 (A) As used in this paragraph, the term 'gated and secured communities' means
 76 multiple residential or commercial properties, such as houses, condominiums, offices,
 77 or apartments, where access to the multiple residential or commercial properties is
 78 restricted by a gate, security device, or security attendant that restricts public entrance
 79 onto the property; provided, however, that a single residence, farm, or commercial
 80 property with its own fence or gate shall not be included in this definition.

81 (B) Any person authorized to serve process shall be granted access to gated and
 82 secured communities for a reasonable period of time during reasonable hours for the
 83 purpose of performing lawful service of process upon:

84 (i) Identifying to the guard or managing agent the person, persons, entity, or entities
 85 to be served;

86 (ii) Displaying a current driver's license or other government issued identification
 87 which contains a photograph; and

88 (iii) Displaying evidence of current appointment as a process server pursuant to this
 89 Code section.

90 (C) Any person authorized to serve process shall promptly leave gated and secured
 91 communities upon perfecting service of process or upon a determination that process
 92 cannot be effected at that time."

93 **SECTION 4.**

94 Said article is further amended in said Code section by revising subsection (h) as follows:

95 "*(h) Return.* The person serving the process shall make ~~proof of service thereof to the~~
 96 ~~court promptly and, in any event, within the time during which the person served must~~
 97 ~~respond to the process~~ proof of such service with the court in the county in which the action
 98 is pending within five business days of the service date. If the proof of service is not filed
 99 within five business days, the time for the party served to answer the process shall not
 100 begin to run until such proof of service is filed. Proof of service shall be as follows:

101 (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate
 102 of the sheriff, marshal, or deputy;

103 (2) If by any other proper person, such person's affidavit;

104 (3) In case of publication, the certificate of the clerk of court certifying to the publication
 105 and mailing; or

106 (4) The written admission or acknowledgment of service by the defendant.

107 In the case of service otherwise than by publication, the certificate or affidavit shall state
 108 the date, place, and manner of service. Failure to make proof of service shall not affect the
 109 validity of the service."

110 **SECTION 5.**

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

112 "9-11-4.1.

113 (a) Certified process servers. A person at least 18 years of age who files with a sheriff of
 114 any county of this state an application stating that the movant complies with this Code
 115 section and any procedures and requirements set forth in any rules or regulations
 116 promulgated by the Judicial Council of Georgia regarding this Code section shall, absent
 117 good cause shown, be certified as a process server. Such certification shall be effective for
 118 a period of three years or until such approval is withdrawn by a superior court judge upon
 119 good cause shown, whichever shall first occur. Such certified process server shall be
 120 entitled to serve in such capacity for any court of the state, anywhere within the state,
 121 provided that the sheriff of the county for which process is to be served allows such servers
 122 to serve process in such county.

123 (b) Certification procedures.

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

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

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

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

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

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

140 (2) A sheriff of any county of this state shall review the application, test score, criminal
141 record check, and such other information or documentation as required by that sheriff and
142 determine whether the applicant shall be approved for certification and authorized to act
143 as a process server in this state.

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

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

161 (d) *Fees.* The sheriff shall collect a fee of \$80.00 for processing the application required
162 by this Code section.

163 (e) *Registry.* The sheriff shall forward \$30.00 of each fee received to the Georgia Sheriffs'
164 Association. The Georgia Sheriffs' Association shall maintain a registry of certified
165 process servers.

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

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

172 (h) Notice to sheriff. (1) Prior to the first time that a certified process server serves
 173 process in any county he or she shall file with the sheriff of the county a written notice,
 174 in such form as shall be prescribed by the Georgia Sheriffs' Association, of his or her
 175 intent to serve process in that county. Such notice shall only be accepted by a sheriff who
 176 allows certified process servers to serve process in his or her county. Such notice shall
 177 be effective for a period of one year; and a new notice shall be filed before the certified
 178 process server again serves process in that county after expiration of the one-year period.

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

182 (i) Credentials. A sheriff of any county of this state shall at the time of certification
 183 provide credentials in the form of an identification card to each certified process server.
 184 The identification card shall be designed to clearly distinguish it from any form of
 185 credentials issued to certified peace officers and will not be in the shape or form of a law
 186 enforcement badge. A certified process server shall display his or her credentials at all
 187 times while engaged in the service of process.

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

191 (k) Sunset and legislative review. This Code section shall be repealed effective July 1,
 192 2015, unless continued in effect by the General Assembly prior to that date. At its 2013
 193 regular session the General Assembly shall review this Code section to determine whether
 194 it should be continued in effect."

195 **SECTION 6.**

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