

Senate Bill 135

By: Senators Bethel of the 54th, McKoon of the 29th, Cowser of the 46th, Jones II of the 22nd, Thompson of the 5th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-11-4.1 of the Official Code of Georgia Annotated, relating to
2 certified process servers, so as to repeal the sunset and legislative review provisions; to
3 amend Article 2 of Chapter 6 of Title 15 and Code Section 50-18-72 of the Official Code of
4 Georgia Annotated, relating to the clerks of superior courts and when public disclosure is not
5 required, respectively, so as to provide for the protection and disclosure of records held by
6 the clerk of superior court; to provide for procedure for disclosure; to change provisions
7 relating to back-up records; to provide for related matters; to provide for effective dates; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

12 Code Section 9-11-4.1 of the Official Code of Georgia Annotated, relating to certified
13 process servers, is amended by revising subsection (k) as follows:

14 ~~"(k) **Sunset and legislative review.** This Code section shall be repealed effective July 1,~~
15 ~~2015, unless continued in effect by the General Assembly prior to that date. At its 2013~~
16 ~~regular session the General Assembly shall review this Code section to determine whether~~
17 ~~it should be continued in effect."~~

PART II

SECTION 2-1.

20 Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to the
21 clerks of superior courts, is amended by adding a new Code section to read as follows:

22 "15-6-60.1.

23 (a) As the county constitutional officer elected by citizens of his or her county to protect
24 and preserve their court and land records, the clerk of superior court is the sole custodian
25 of all original filed records that the clerk is required by law to retain in his or her office or
26 permitted to store and archive in another location as provided by Code Section 15-6-86.

27 (b) Regardless of the methodology, system, or location used by the clerk of superior court
28 for filing, recording, archiving, and storing records, any request for access to or copies of
29 records, including requests made pursuant to Article 4 of Chapter 18 of Title 50 for access
30 to or copies of any record filed, recorded, or retained by a clerk of superior court, shall be
31 made to the clerk of superior court.

32 (c) The clerk of superior court may contract with any person or entity or any governmental
33 department, agency, authority, or entity for the purpose of archiving or storing electronic
34 records of the clerk's office. When the clerk executes a contract for such purpose, such
35 service provider shall not provide access to or copies of any records without the express
36 written approval of the clerk of superior court.

37 (d) Any person or entity or any governmental department, agency, authority, or entity that
38 provides storage or archiving services for records for which the clerk of superior court is
39 custodian shall relinquish possession of all such records and any copies thereof and return
40 such records and copies to the clerk upon request of the clerk. This subsection shall not
41 apply to records provided by the clerk of the superior court to the Georgia Superior Court
42 Clerks' Cooperative Authority pursuant to laws requiring transmittal of records of the
43 clerk's office to such authority.

44 (e) Records that the clerk of superior court is required by law or rules and regulations to
45 provide to other governmental departments, agencies, authorities, and entities to enable
46 such departments, agencies, authorities, and entities to perform their duties or to support
47 the functions assigned to such departments, agencies, authorities, and entities shall not be
48 used for any purpose other than the performance of such duties or functions.

49 (f) Records provided by the clerk of superior court to the Georgia Superior Court Clerks'
50 Cooperative Authority shall be used by the authority only for the performance of its
51 statutory duties, including providing online access to such records.

52 (g) Nothing in this Code section shall be construed to require or otherwise affect the
53 appropriation of public funds by a local governing authority to a clerk of superior court."

54 **SECTION 2-2.**

55 Said article is further amended by revising Code Section 15-6-62.1, relating to back-up
56 records, as follows:

57 "15-6-62.1.

58 (a) As used in this Code section, the term:

59 (1) 'Authority' means the Georgia Superior Court Clerks' Cooperative Authority.

60 ~~(1)(2) 'Back-up record' means a paper or microfilm~~ an electronic copy of any record of
 61 the proceedings relating to any civil action or criminal case which that a clerk of superior
 62 court is required to ~~make~~ create pursuant to Code Section Sections 15-6-61 and 15-6-62.

63 ~~(2) 'Council' means The Council of Superior Court Clerks created by Code Section~~
 64 ~~15-6-50.2.~~

65 ~~(3) 'Division' means the Georgia Division of Archives and History.~~

66 (b) ~~Except as provided in subsection (d) of this Code section, a~~ A clerk of a superior court
 67 electing to record ~~proceedings~~ in digital format as ~~provided in subsection (a) of Code~~
 68 ~~Section 15-6-62~~ any record of which he or she is the custodian shall maintain a back-up
 69 records and must do so record in at least one of two ways: either by

70 (1) By the clerk permanently retaining the back-up records himself or herself or by
 71 submitting the digitally formatted records to and having them permanently archived by
 72 the division record on the clerk's secure file server, either controlled and operated by the
 73 clerk or personnel employed by the clerk or provided for the exclusive benefit of the
 74 clerk's office through a contractual relationship between the clerk and a public or private
 75 entity for such purpose; and

76 (2) By the clerk submitting all digitally formatted records that the clerk is statutorily
 77 authorized and required to archive with the authority for permanent archiving, as set forth
 78 in subsection (c) of this Code section.

79 (c) ~~If a clerk of a superior court elects to submit the digitally formatted records to and have~~
 80 ~~them permanently archived by the division pursuant to subsection (b) of this Code section,~~
 81 ~~the clerk shall submit such records at least once every six months and in a format~~
 82 ~~acceptable to the division and the council. Upon receipt, the division shall convert the~~
 83 ~~digitally formatted records to microfilm and shall permanently maintain them in that~~
 84 ~~format. If requested by the clerk of a superior court, the division shall make a copy of~~
 85 ~~these microfilm records available for purchase by the clerk at a fee not to exceed the cost~~
 86 ~~of producing the copies. The clerk of superior court shall submit the clerk's records to the~~
 87 ~~authority in a format acceptable to the authority at least monthly, but not later than the~~
 88 ~~fifteenth day following the last day of each month. Upon receipt of such records, the~~
 89 ~~authority shall permanently and securely maintain such records. Excluding records to~~
 90 ~~which the authority is required by law to provide online access, the authority shall not~~
 91 ~~provide access to or copies of records maintained by it to any person requesting such~~
 92 ~~records without the express written approval of the clerk of superior court who originally~~

93 maintained such records. All requests for access to such records shall be made to such
 94 clerk.
 95 ~~(d) If at any time the division certifies to the council that the division is not capable of~~
 96 ~~creating the microfilm records from the digitally formatted records and permanently~~
 97 ~~maintaining them as set forth in this Code section, then a clerk of superior court shall~~
 98 ~~permanently maintain the back-up records himself or herself and shall continue to do so~~
 99 ~~until the division certifies that it is capable of creating and permanently maintaining them."~~

100 **SECTION 2-3.**

101 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
 102 disclosure is not required, is amended in subsection (a) by striking "or" at the end of
 103 paragraph (47), by replacing the period at the end of paragraph (48) with "; or", and by
 104 adding a new paragraph to read as follows:

105 "(49) Held by the Georgia Superior Court Clerks' Cooperative Authority or any other
 106 public or private entity for and on behalf of a clerk of superior court; provided, however,
 107 that such records may be obtained from a clerk of superior court unless otherwise
 108 exempted from disclosure."

109 **PART III**

110 **SECTION 3-1.**

111 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon
 112 its approval by the Governor or upon its becoming law without such approval.
 113 (b) Part II of this Act shall become effective on July 1, 2015.

114 **SECTION 3-2.**

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