

The House Committee on Judiciary offers the following substitute to SB 561:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 10 of the Official Code of Georgia Annotated, relating to  
2 electronic records and signatures, so as change provisions relating to the legal effect of  
3 electronic records and signatures; to change provisions relating to notarized documents; to  
4 amend Code Section 15-10-53 of the Official Code of Georgia Annotated, relating to filing  
5 documents by electronic means, so as to correct a cross-reference; to provide for related  
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 12 of Title 10 of the Official Code of Georgia Annotated, relating to electronic  
10 records and signatures, is amended by striking Code Section 10-12-4, relating to the legal  
11 effect of electronic records and signatures, and inserting in lieu thereof a new Code Section  
12 10-12-4 to read as follows:

13 "10-12-4.

14 (a) Records and signatures shall not be denied legal effect or validity solely on the grounds  
15 that they are electronic.

16 (b) In any legal proceeding, an electronic record or electronic signature shall not be  
17 inadmissible as evidence solely on the basis that it is electronic.

18 (c) When a rule of law requires a writing, an electronic record satisfies that rule of law.

19 (d) When a rule of law requires a signature, an electronic signature satisfies that rule of  
20 law.

21 (e) When a rule of law requires an original record or signature, an electronic record or  
22 electronic signature shall satisfy such rule of law.

23 (f) Nothing in this Code section shall prevent a party from contesting an electronic record  
24 or signature on the basis of fraud.

1 (g) Nothing in this Code section shall relieve any party to a legal proceeding from  
 2 complying with applicable rules of evidence requiring authentication or identification of  
 3 a record or signature as a condition precedent to its admission into evidence.

4 (h) Where the authenticity or the integrity of an electronic record or signature is challenged  
 5 in a court of law, the proponent of the electronic record or signature shall have the burden  
 6 of proving that the electronic record or signature is authentic.

7 (i) Notwithstanding ~~the preceding~~ subsections (a) through (h) of this Code section, the  
 8 legal validity, effect, and admissibility of electronic records and electronic signatures shall  
 9 be limited as follows:

10 (1) Each department, agency, authority, or instrumentality of the state or its political  
 11 subdivisions shall determine how and the extent to which it will create, send, receive,  
 12 store, recognize, accept, be bound by, or otherwise use electronic records or electronic  
 13 signatures. Nothing in this chapter shall be construed to require any department, agency,  
 14 authority, or instrumentality of the state or its political subdivisions to create, send,  
 15 receive, store, recognize, accept, be bound by, or otherwise use electronic records or  
 16 electronic signatures;

17 (2) A consumer shall not be required to create, send, receive, recognize, accept, be bound  
 18 by, or otherwise use electronic records or electronic signatures without such consumer's  
 19 consent. This paragraph shall apply to natural persons when engaged in transactions  
 20 involving money, property, or services primarily used for household purposes; and

21 (3) The provisions of this Code section shall not apply to any rule of law governing the  
 22 creation or execution of a will or testamentary or donative trust, living will, or health care  
 23 power of attorney, or to any record that serves as a unique and transferable physical token  
 24 of rights and obligations, including, without limitation, negotiable instruments and  
 25 instruments of title wherein possession of the instrument is deemed to confer title.

26 ~~(j) Any rule of law which requires a notary shall be deemed satisfied by the secure  
 27 electronic signature of such notary.~~

28 ~~(k)~~ Even when a statute, regulation, or other rule of law specifies a particular type of  
 29 record other than an electronic record or a particular type of signature other than an  
 30 electronic signature, this chapter shall control to permit the use of electronic records and  
 31 electronic signatures in the circumstances otherwise governed by such statute, regulation,  
 32 or other rule of law, unless such statute, regulation, or other rule of law expressly refers to  
 33 and limits the application of this chapter.

34 (k) Whenever the law requires a record to be notarized and such record is created,  
 35 transmitted, received, or stored as an electronic record as permitted under this Code  
 36 section, then the notary public may sign and affix a seal to such record using electronic

1 means and may verify the identity of the signer using electronic means and may verify the  
 2 identity of the signer using electronic means.

3 (l) Whenever the law requires the presentation or filing of a record of a transaction  
 4 between nongovernmental persons for recording or other purposes pursuant to paragraph  
 5 (l) of subsection (i) of this Code section and the department, agency, authority, or  
 6 instrumentality of the state or its political subdivision which acts as the registrar of such  
 7 record determines that it will accept the presentation or filing of electronic records, then  
 8 it shall do so in a manner that does not substantially impair competition between different  
 9 vendors of the same or different technologies used by the nongovernmental persons to  
 10 create, transmit, receive, or store the record.

11 (m) Whenever the law requires the presentation or filing of a tangible original of a record  
 12 for recording or other purposes and the original of such record has been created,  
 13 transmitted, received, or stored as an electronic record as permitted under this Code  
 14 section, then the presentation or filing of a printed copy of such electronic record in lieu  
 15 of the original shall satisfy that rule of law. Any department, agency, authority, or  
 16 instrumentality of the state or its political subdivision which acts as the registrar of such  
 17 record may require the presenter or filer of a printed copy of an electronic record to certify  
 18 its authenticity."

19 **SECTION 2.**

20 Code Section 15-10-53 of the Official Code of Georgia Annotated, relating to filing  
 21 documents by electronic means, is amended by striking paragraph (1) of subsection (d) and  
 22 inserting in lieu thereof the following:

23 "(1) As provided in subsection ~~(j)~~ (k) of Code Section 10-12-4;"

24 **SECTION 3.**

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