

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 SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated,
2 relating to the clerks of superior courts, so as to provide for the protection and disclosure of
3 records held by the clerk of superior court; to provide for procedure for disclosure; to provide
4 for penalties; to change provisions relating to back-up records; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

10 "15-6-60.1.

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

15 (b) Regardless of the methodology, system, or location used by the clerk of superior court
16 for filing, recording, archiving, and storing records, any request made pursuant to Article
17 4 of Chapter 18 of Title 50 for access to or copies of any record filed, recorded, or retained
18 by a clerk of superior court shall be made to the clerk of superior court.

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

24 (d) Any person, entity, or governmental department, agency, authority, or entity that
25 provides storage or archiving services for records for which the clerk of superior court is
26 custodian shall relinquish possession of all such records and any copies thereof and return
27 such records and copies to the clerk upon request of the clerk. This subsection shall not

28 apply to records provided by the clerk of the superior court to the Georgia Superior Court
 29 Clerks' Cooperative Authority pursuant to laws requiring transmittal of records of the
 30 clerk's office to such authority.

31 (e) Records that the clerk of superior court is required by law or rules and regulations
 32 having the force and effect of law to provide to other government entities, agencies, and
 33 departments for enabling them to perform statutory duties shall not be used for any purpose
 34 other than the performance of such duties.

35 (f) Records provided by the clerk of superior court to the Georgia Superior Court Clerks'
 36 Cooperative Authority shall be used by the authority for the performance of its statutory
 37 duties, including providing online access to such records; provided, however, that such
 38 records shall not be subject to release pursuant to Article 4 of Chapter 18 of Title 50 from
 39 the authority without the express written permission of the clerk of superior court.

40 (g) Any person knowingly and willfully violating subsection (d), (e), or (f) of this Code
 41 section:

42 (1) Shall be guilty of a felony, and upon conviction thereof, shall be punished by
 43 imprisonment for not more than 15 years, a fine not to exceed \$50,000.00, or both; and
 44 (2) May be subject to prosecution pursuant to Code Section 16-9-93."

45 SECTION 2.

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

48 "15-6-62.1.

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

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

51 ~~(1)(2)~~ (2) 'Back-up record' means ~~a paper or microfilm~~ an electronic copy of any record of
 52 ~~the proceedings relating to any civil action or criminal case which that~~ a clerk of superior
 53 court is required to ~~make~~ create pursuant to Code Section Sections 15-6-61 and 15-6-62.

54 (2) 'Council' means ~~The Council of Superior Court Clerks created by Code Section~~
 55 ~~15-6-50.2.~~

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

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

61 (1) By the clerk permanently retaining the back-up records himself or herself or by
 62 submitting the digitally formatted records to and having them permanently archived by
 63 the division record on the clerk's secure file server, either controlled and operated by the

64 clerk or personnel employed by the clerk or provided for the exclusive benefit of the
 65 clerk's office through a contractual relationship between the clerk and a person or agency
 66 of county government for such purpose; and

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

70 ~~(c) If a clerk of a superior court elects to submit the digitally formatted records to and have~~
 71 ~~them permanently archived by the division pursuant to subsection (b) of this Code section,~~
 72 ~~the clerk shall submit such records at least once every six months and in a format~~
 73 ~~acceptable to the division and the council. Upon receipt, the division shall convert the~~
 74 ~~digitally formatted records to microfilm and shall permanently maintain them in that~~
 75 ~~format. If requested by the clerk of a superior court, the division shall make a copy of~~
 76 ~~these microfilm records available for purchase by the clerk at a fee not to exceed the cost~~
 77 ~~of producing the copies. The clerk of superior court shall submit the clerk's records to the~~
 78 ~~authority in a format acceptable to the authority at least monthly, but not later than the~~
 79 ~~fifteenth day following the last day of each month. Upon receipt or such records, the~~
 80 ~~authority shall permanently and securely maintain such records. Notwithstanding Article~~
 81 ~~4 of Chapter 18 of Title 50, and excluding records to which the authority is required by law~~
 82 ~~to provide online access, the authority shall not provide access to or copies of records~~
 83 ~~maintained by it to any person requesting such records without the express written approval~~
 84 ~~of the clerk of superior court who originally maintained such records. All requests for~~
 85 ~~access to such records shall be made to such clerk.~~

86 ~~(d) If at any time the division certifies to the council that the division is not capable of~~
 87 ~~creating the microfilm records from the digitally formatted records and permanently~~
 88 ~~maintaining them as set forth in this Code section, then a clerk of superior court shall~~
 89 ~~permanently maintain the back-up records himself or herself and shall continue to do so~~
 90 ~~until the division certifies that it is capable of creating and permanently maintaining them."~~

91 **SECTION 3.**

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