

House Bill 785

By: Representatives Gullett of the 19th, Jones of the 25th, Rogers of the 10th, Reeves of the 34th, and Washburn of the 141st

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 clerks of superior courts, so as to provide for electronic notarizations and remote
3 online notarizations; to revise the powers of the Georgia Superior Court Clerks' Cooperative
4 Authority; to provide that the Georgia Superior Court Clerks' Cooperative Authority shall
5 provide rules and regulations for electronic notarizations and remote online notarizations; to
6 amend Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating
7 to general provisions regarding notaries public, so as to provide for procedures and
8 requirements for electronic notarizations and remote online notarizations; to provide
9 definitions; to provide for electronic journaling; to provide for rules and regulations; to
10 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to
15 clerks of superior courts, is amended by revising paragraphs (8) and (9) and by adding a new
16 paragraph to subsection (d) of Code Section 15-6-94, relating to the Georgia Superior Court
17 Clerks' Cooperative Authority, as follows:

18 "(8) To exercise any power granted by the laws of this state to public or private
19 corporations which is not in conflict with the public purpose of the authority; and
20 (9) To provide rules and regulations for electronic notarization and remote online
21 notarization pursuant to Article 1 of Chapter 17 of Title 45; and
22 ~~(9)~~(10) To do all things necessary or convenient to carry out the powers conferred by this
23 Code section and to carry out such duties and activities as are specifically imposed upon
24 the authority by law."

25 **SECTION 2.**

26 Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating to
 27 general provisions regarding notaries public, is amended by revising Code Section 45-17-1,
 28 relating to definitions, as follows:

29 "45-17-1.

30 As used in this article, the term:

31 (1) 'Attesting' and 'attestation' are synonymous and mean the notarial act of witnessing
 32 or attesting a signature or execution of a deed or other written instrument, where such
 33 notarial act does not involve the taking of an acknowledgment, the administering of an
 34 oath or affirmation, the taking of a verification, or the certification of a copy.

35 (2) 'Credential analysis' means a process or service operating according to criteria
 36 approved by the Georgia Superior Court Clerks' Cooperative Authority through which
 37 a third person affirms the validity of a government-issued identification credential
 38 through review of public or proprietary data sources.

39 (3) 'Electronic' means relating to technology having electrical, digital, magnetic,
 40 wireless, optical, electromagnetic, or similar capabilities.

41 (4) 'Electronic document' means information that is created, generated, sent,
 42 communicated, received, or stored by electronic means.

43 (5) 'Electronic journal' means a record kept by the notary to track and document every
 44 notarial act performed, as provided by subsection (a) of Code Section 45-17-8.5.

45 (6) 'Electronic notarization' means a notary's notarization of electronic records that
 46 include the notary's and the document signer's electronic signatures.

47 (7) 'Electronic record' means information that is created, generated, sent, communicated,
 48 received, or stored by electronic means.

49 (8) 'Electronic seal' means information within a notarized electronic document that
 50 confirms the remote notary public's name, jurisdiction, and commission expiration date
 51 and generally corresponds to information in notary seals used on paper documents.

52 (9) 'Electronic signature' means an electronic sound, symbol, or process attached to or
 53 logically associated with an electronic record and executed or adopted by a person with
 54 the intent to sign the electronic document.

55 ~~(2)~~(10) 'Notarial act' means any act that a notary public is authorized by law to perform
 56 and includes, without limitation, attestation, the taking of an acknowledgment, the
 57 administration of an oath or affirmation, the taking of a verification upon an oath or
 58 affirmation, and the certification of a copy.

59 ~~(3)~~(11) 'Notarial certificate' means the notary's documentation of a notarial act.

60 (12) 'Notary' and 'notary public' mean a person who has been appointed by a superior
 61 court clerk pursuant to Code Section 45-17-2.3.

- 62 (13) 'Principal' means a person:
 63 (A) Whose electronic signature is notarized in a remote online notarization; or
 64 (B) Who is making an oath or affirmation or an acknowledgment other than in the
 65 capacity of a witness for the remote online notarization.
- 66 (14) 'Remote notarization' means a notarial act performed by means of two-way video
 67 and audio conference technology that meets the standards adopted under this article.
- 68 (15) 'Remote notary public' means a notary public who has complied with the rules and
 69 regulations adopted by the Georgia Superior Court Clerks' Cooperative Authority to
 70 perform remote electronic notarizations under this article.
- 71 (16) 'Remote online notarial certificate' is the electronic form of an acknowledgment,
 72 jurat, verification on oath or affirmation, or verification of witness or attestation that is
 73 completed by a notary performing a remote online notarization and:
 74 (A) Contains the online notary public's electronic signature, electronic seal, title, and
 75 commission expiration date;
 76 (B) Contains other required information concerning the date and place of the remote
 77 online notarization;
 78 (C) Otherwise conforms to the requirements for an acknowledgment, jurat, verification
 79 on oath or affirmation, or verification of witness or attestation under the laws of this
 80 state; and
 81 (D) Indicates that the person making the acknowledgment or oath or affirmation
 82 appeared remotely online.
- 83 (17) 'Remote presentation' means transmission to the remote notary public through
 84 communication technology of an image of a government-issued identification credential
 85 that is of sufficient quality to enable the remote notary public to:
 86 (A) Identify the individual seeking the remote notary public's services; and
 87 (B) Perform credential analysis."

88 **SECTION 3.**

89 Said article is further amended by revising Code Section 45-17-6, relating to seal of office,
 90 as follows:

91 "45-17-6.

- 92 (a)(1) For the authentication of his or her notarial acts, each notary public ~~must provide~~
 93 ~~a seal of office, which seal shall have for its impression his name, the words 'Notary~~
 94 ~~Public,' the name of the state, and the county of his residence; or it shall have for its~~
 95 ~~impression his name and the words 'Notary Public, Georgia, State at Large.'~~ Notaries
 96 ~~commissioned or renewing their commission after July 1, 1985, shall provide a seal of~~
 97 office which shall have for its impression the notary's name, the words 'Notary Public,'

98 the name of the state, and the county of ~~his~~ the notary's appointment. The embossment
 99 of notarial certificates by the notary's seal shall be authorized but not necessary; and the
 100 use of an electronic seal for purposes of electronic notarization or remote online
 101 notarization or a rubber or other type stamp shall, for other purposes, be sufficient for
 102 imprinting the notary's seal on notarial certificates. A scrawl shall not be a sufficient
 103 notary seal. An official notarial act must be documented by the notary's seal.

104 (2) No document executed prior to July 1, 1986, which would otherwise be eligible for
 105 recording in the real property records maintained by any clerk of superior court or
 106 constitute record notice or actual notice of any matter to any person shall be ineligible for
 107 recording or fail to constitute such notice because of noncompliance with the requirement
 108 that the document contain a notary seal.

109 (b) It shall be unlawful for any person, firm, or corporation to supply a notary public seal
 110 to any person unless the person has presented the duplicate original of the certificate
 111 commissioning the person as a notary public. It shall be unlawful for any person to order
 112 or obtain a notary public seal unless such person is commissioned as a notary public."

113 **SECTION 4.**

114 Said article is further amended by revising subsection (a) of Code Section 45-17-8.1, relating
 115 to signature and date of notarial act, as follows:

116 "(a) Except as otherwise provided in this Code section, in documenting a notarial act, a
 117 notary public shall sign on the notarial certification, electronically in the case of electronic
 118 notarization or remote online notarization or by hand in ink in all other cases, only and
 119 exactly the name indicated on the notary's commission and shall record on the notarial
 120 certification the exact date of the notarial act."

121 **SECTION 5.**

122 Said article is further amended by adding new Code sections to read as follows:

123 "45-17-8.3.

124 (a) The Georgia Superior Court Clerks' Cooperative Authority by rule shall develop and
 125 maintain standards for remote notarization in accordance with this article, including, but
 126 not limited to, standards for credential analysis and identity proofing.

127 (b) The Georgia Superior Court Clerks' Cooperative Authority may confer with any
 128 appropriate state agency on matters relating to equipment, security, and technological
 129 aspects of the remote notarization standards.

130 (c) The rules provided for under subsection (a) of this Code section shall be adopted no
 131 later than January 1, 2021, and may thereafter be modified, amended, or supplemented.

132 45-17-8.4.

133 (a) A person qualifies to be appointed as a remote notary public by meeting the
 134 qualifications set by the Georgia Superior Court Clerks' Cooperative Authority.

135 (b) A remote notary public:

136 (1) Is a notary public for purposes of subsection (a) of this Code section and is subject
 137 to the same extent as a notary public appointed and commissioned under this Code
 138 section;

139 (2) May perform a remote notarization authorized under subsection (a) of this Code
 140 section; and

141 (3) Shall not perform a notarial act by electronic or remote online notarization if the
 142 notarial act is pursuant to a law governing the creation and execution of wills, codicils,
 143 or express trusts.

144 45-17-8.5.

145 (a) A remote notary public shall keep a secure electronic record of electronic documents
 146 notarized by the remote notary public. The electronic record must contain for each remote
 147 notarization:

148 (1) The date and time of the notarization;

149 (2) The type of notarial act;

150 (3) The type, the title, or a description of the electronic document or proceeding;

151 (4) The printed name and address of each principal involved in the transaction or
 152 proceeding;

153 (5) Evidence of identity of each principal involved in the transaction or proceeding in the
 154 form of:

155 (A) A statement that the person is personally known to the remote notary public;

156 (B) A notation of the type of identification document provided to the remote notary
 157 public;

158 (C) A record of the identity verification made, if applicable; or

159 (D) The following:

160 (i) The printed name and address of each credible witness swearing to or affirming
 161 the person's identity; and

162 (ii) For each credible witness not personally known to the remote notary public, a
 163 description of the type of identification documents provided to the remote notary
 164 public;

165 (6) A recording of any video and audio conference that is the basis for satisfactory
 166 evidence of identity and a notation of the type of identification presented as evidence; and

167 (7) The fee, if any, charged for the notarization.

- 168 (b) The remote notary public shall take reasonable steps to:
 169 (1) Ensure the integrity, security, and authenticity of remote notarizations;
 170 (2) Maintain a backup for the electronic record required by subsection (a) of this Code
 171 section; and
 172 (3) Protect the backup record from unauthorized use.
 173 (c) The filing office shall not refuse to record a tangible copy of an electronic record on
 174 the ground that it does not bear the original signature of a party if a notary public or other
 175 officer before whom it was executed certifies that the tangible copy is an accurate copy of
 176 the electronic record.
 177 (d) The electronic record required by subsection (a) of this Code section shall be
 178 maintained for at least five years after the date of the transaction or proceeding.

179 45-17-8.6.

180 A remote notary public physically located in this state may perform electronic notarization
 181 or remote notarization using electronic communication technology in accordance with this
 182 Code section and rules and regulations adopted by the Georgia Superior Court Clerks'
 183 Authority for a remotely located person who is physically located:

- 184 (1) In this state;
 185 (2) Outside this state but within the United States; or
 186 (3) Outside the United States if:
 187 (A) The remote online notary public has no actual knowledge that the act of making
 188 the statement or signing the record is prohibited in the jurisdiction in which the person
 189 is located; and
 190 (B) The person placing his or her electronic signature on the electronic record confirms
 191 to the remote notary public that the requested remote notarial act and the electronic
 192 record:
 193 (i) Are part of or pertain to a matter that is to be filed with or is currently before a
 194 court, governmental entity, or other entity in the United States;
 195 (ii) Relate to property located in the United States; or
 196 (iii) Relate to a transaction that is substantively connected to the United States.

197 45-17-8.7.

- 198 (a) A remote notary public shall take reasonable steps to ensure that any registered device
 199 used to create an electronic signature is current and has not been revoked or terminated by
 200 the device's issuing or registering authority.
 201 (b) The duties of the remote notary public are to:

202 (1) Keep the remote notary public's electronic record, electronic signature, and electronic
 203 seal secure and under his or her exclusive control;
 204 (2) Not allow another person to use his or her electronic record, electronic signature, or
 205 electronic seal. A remote notary public may use the remote notary public's electronic
 206 signature only for performing electronic notarization or remote notarization;
 207 (3) Attach his or her electronic signature and seal to the electronic notarial certificate of
 208 an electronic document in a manner that is conducive to independent verification and
 209 renders evident any subsequent change or modification to the electronic document; and
 210 (4) Immediately notify an appropriate law enforcement agency and appointing clerk of
 211 superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority,
 212 of the theft or vandalism of the notary's electronic record, electronic signature, or
 213 electronic seal. A remote notary public shall immediately notify the appointing clerk of
 214 superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority,
 215 if his or her electronic record, electronic signature, or electronic seal has been lost or used
 216 by another person.

217 45-17-8.8.

218 (a) A remote notary public may perform a remote notarization authorized under this article
 219 that meets the requirements of this article and rules adopted under this article regardless of
 220 whether the principal is physically located in this state at the time of the remote
 221 notarization.

222 (b) In performing a remote notarization, a remote notary public shall verify the identity of
 223 a person creating an electronic signature at the time that the signature is taken by using
 224 communication technology that meets the requirements of this article and the rules adopted
 225 under this article. Identity may be verified by:

226 (1) The remote notary public's personal knowledge of the person creating the electronic
 227 signature; or

228 (2) Each of the following:

229 (A) Remote presentation by the person creating the electronic signature of a
 230 government-issued identification credential, including a passport or driver's license, that
 231 contains the signature and a photograph of the person;

232 (B) Credential analysis; and

233 (C) Identity proofing.

234 (c) The remote notary public shall take reasonable steps to ensure that the communication
 235 technology used in a remote online notarization is secure from unauthorized interception.

236 (d) The remote notarial certificate for a remote notarization shall state that the person
 237 making the acknowledgment or making the oath appeared remotely online.

238 (e) A remote notarial act meeting the requirements of this Code section satisfies the
 239 requirement of any law of this state relating to a notarial act that requires a principal to
 240 appear or personally appear before a notary or that the notarial act be performed in the
 241 presence of a notary, except for a notarial act pursuant to a law governing the creation and
 242 execution of wills, codicils, or express trusts.

243 45-17-8.9.

244 (a) A remote notary public or the remote notary public's employer may charge a fee for
 245 performance of remote notarization in an amount not to exceed \$25.00 per remote
 246 notarization.

247 (b) Except as provided by subsection (c) of this Code section, a remote notary public
 248 whose commission terminates shall destroy or delete the coding, disk, certificate, card,
 249 software, or password that enables electronic affixation of the remote notary public's
 250 official electronic signature or seal.

251 (c) A person who, without authorization, knowingly obtains, conceals, damages, destroys,
 252 or deletes the certificate, disk, coding, card, program, software, or hardware enabling a
 253 remote notary public to affix an official electronic signature or seal shall upon conviction
 254 be guilty of a misdemeanor and punished pursuant to Code Section 45-17-20."

255 **SECTION 6.**

256 Said article is further amended by revising Code Section 45-17-9, relating to where notarial
 257 acts may be exercised, as follows:

258 "45-17-9.

259 Notarial acts may be exercised in or from any county in ~~the~~ this state."

260 **SECTION 7.**

261 Said article is further amended by revising Code Section 45-17-17, relating to resignation of
 262 commission, return of papers, and destruction of seal, as follows:

263 "45-17-17.

264 A person who wishes to resign a notarial commission shall send a signed letter of
 265 resignation to the appointing clerk of superior court, with a copy to the Georgia Superior
 266 Court Clerks' Cooperative Authority, and all papers of appointment. The resigning notary
 267 public shall destroy or delete the official notarial seal."

268 **SECTION 8.**

269 This Act shall become effective upon its approval by the Governor or upon its becoming law
 270 without such approval.

271

SECTION 9.

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