

House Bill 912

By: Representative Fleming of the 117th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-11-34 of the Official Code of Georgia Annotated, relating to
2 production of documents and things and entry upon land for inspection and other purposes,
3 so as to change certain provisions relating to applicability to nonparties; to provide that
4 silence may act as a waiver under certain circumstances; to change certain provisions relating
5 to confidentiality; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 9-11-34 of the Official Code of Georgia Annotated, relating to production of
10 documents and things and entry upon land for inspection and other purposes, is amended by
11 striking subsections (c) and (d) and, and inserting in lieu thereof the following:

12 *"(c) Applicability to nonparties.*

13 (1) This Code section shall also be applicable with respect to discovery against persons,
14 firms, or corporations who are not parties, in which event a copy of the request shall be
15 served upon all parties of record; or, upon notice, the party desiring such discovery may
16 proceed by taking the deposition of the person, firm, or corporation on oral examination
17 or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty or any
18 party may file an objection as provided in subsection (b) of this Code section. If the party
19 desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37
20 to compel discovery, he or she shall make a showing of good cause to support his or her
21 motion.

22 (2) This Code section shall also be applicable with respect to discovery against a
23 nonparty who is a practitioner of the healing arts or a hospital or health care facility,
24 including those operated by an agency or bureau of the state or other governmental unit.
25 Where such a request is directed to such a nonparty, a copy of the request shall be served
26 upon all parties of record, and where such a request to such a nonparty seeks the records

1 of a person who is not a party, a copy of the request shall be served upon all parties of
 2 record, the person whose records are sought, and, if known, that person's counsel; or,
 3 upon notice, the party desiring such discovery may proceed by taking the deposition of
 4 the person, firm, or corporation on oral examination or upon written questions under
 5 Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records
 6 are sought may file an objection with the court in which the action is pending and shall
 7 serve a copy of such objection on the nonparty to whom the request is directed, who shall
 8 not furnish the requested materials until further order of the court, and on all other parties
 9 to the action. Upon the filing of such objection, the party desiring such discovery may
 10 move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and,
 11 if he or she shall make a showing of good cause to support his or her motion, discovery
 12 shall be allowed. If no objection is filed and served on the nonparty within ten days of the
 13 request, the person whose records are sought shall be deemed to have waived any and all
 14 privileges which may have applied to the requested materials, and the nonparty to whom
 15 the request is directed shall promptly comply therewith.

16 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this
 17 subsection or a subpoena requesting records from a nonparty pursuant to Code Section
 18 9-11-45, when the nonparty to whom the discovery request is made is not served with an
 19 objection and the nonparty produces the requested records, the nonparty shall be immune
 20 from civil or criminal liability or damages notwithstanding that the produced documents
 21 contained confidential or privileged information.

22 (d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the
 23 confidentiality provided by Code Sections 37-3-166 concerning mental illness, 37-4-125
 24 concerning mental retardation, and 37-7-166 concerning alcohol and drug treatment;
 25 provided, however, that a person's failure to object to the production of documents as set
 26 forth in paragraph (2) of subsection (c) of this Code section shall waive any and all
 27 privileges that may have applied to the requested documents."

28 SECTION 2.

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