

The House Special Committee on Civil Justice Reform offers the following substitute to HB 912:

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 when
4 a nonparty is not served with an objection and the nonparty produces records, the nonparty
5 shall be immune from civil or criminal liability for disclosing confidential information; to
6 change certain provisions relating to confidentiality; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 *"(c) Applicability to nonparties.*

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

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

1 upon the person whose records are sought by certified mail or statutory overnight
 2 delivery, return receipt requested, or, if known, that person's counsel, and upon all other
 3 parties of record, ~~and in compliance with Code Section 9-11-5;~~ where such a request to
 4 ~~such~~ a nonparty seeks the records of a person who is not a party, a copy of the request
 5 shall be served upon ~~all parties of record,~~ the person whose records are sought, ~~and, by~~
 6 certified mail or statutory overnight delivery, return receipt requested, or, if known, that
 7 person's counsel by certified mail or statutory overnight delivery, return receipt
 8 requested, and upon all parties of record in compliance with Code Section 9-11-5; or,
 9 upon notice, the party desiring such discovery may proceed by taking the deposition of
 10 the person, firm, or corporation on oral examination or upon written questions under
 11 Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records
 12 are sought may file an objection with the court in which the action is pending within 20
 13 days of service of the request and shall serve a copy of such objection on the nonparty to
 14 whom the request is directed, who shall not furnish the requested materials until further
 15 order of the court, and on all other parties to the action. Upon the filing of such objection,
 16 the party desiring such discovery may move for an order under subsection (a) of Code
 17 Section 9-11-37 to compel discovery and, if he or she shall make a showing of good
 18 cause to support his or her motion, discovery shall be allowed. If no objection is filed
 19 within ~~ten~~ 20 days of service of the request, the nonparty to whom the request is directed
 20 shall promptly comply therewith.

21 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this
 22 subsection or a subpoena requesting records from a nonparty pursuant to Code Section
 23 9-11-45, when the nonparty to whom the discovery request is made is not served with an
 24 objection and the nonparty produces the requested records, the nonparty shall be immune
 25 from civil or criminal liability or damages notwithstanding that the produced documents
 26 contained confidential or privileged information.

27 (d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the
 28 confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment
 29 records, 37-4-125 concerning mental retardation treatment records, ~~and~~ 37-7-166
 30 concerning alcohol and drug treatment records, 24-9-40.1 concerning the confidential
 31 nature of AIDS information, and 24-9-47 concerning the disclosure of AIDS information;
 32 provided, however, that a person's failure to object to the production of documents as set
 33 forth in paragraph (2) of subsection (c) of this Code section shall waive any right of
 34 recovery for damages as to the nonparty for disclosure of the requested documents."

35 SECTION 2.

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