

The Senate Special Judiciary Committee offered the following substitute to HB 912:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 9-11-34 and Chapter 33 of Title 31 of the Official Code of Georgia  
2 Annotated, relating to production of documents and things and entry upon land for inspection  
3 and other purposes and health records, so as to provide for production of certain documents  
4 including health records; to change certain provisions relating to applicability to nonparties;  
5 to provide that when a nonparty is not served with an objection and the nonparty produces  
6 records, the nonparty shall be immune from regulatory, civil, or criminal liability for  
7 disclosing confidential information; to change certain provisions relating to confidentiality;  
8 to change certain provisions relating to furnishing a copy of records to patient, provider, or  
9 other authorized person; to provide for compliance with the federal Health Insurance  
10 Portability and Accountability Act of 1996; to provide for a time period in which records  
11 shall be produced in response to a valid request; to provide for related matters; to repeal  
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

14 Code Section 9-11-34 of the Official Code of Georgia Annotated, relating to production of  
15 documents and things and entry upon land for inspection and other purposes, is amended by  
16 striking subsections (c) and (d) and inserting in lieu thereof the following:  
17

18 *"(c) Applicability to nonparties.*

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

1 motion. The party making a request under this Code section shall, upon request from any  
 2 other party to the action, make all reasonable efforts to cause all information produced  
 3 in response to the nonparty request to be made available to all parties. A reasonable  
 4 document copying charge may be required.

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

29 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this  
 30 subsection or a subpoena requesting records from a nonparty pursuant to Code Section  
 31 9-11-45, when the nonparty to whom the discovery request is made is not served with an  
 32 objection and the nonparty produces the requested records, the nonparty shall be immune  
 33 from regulatory, civil, or criminal liability or damages notwithstanding that the produced  
 34 documents contained confidential or privileged information.

35 (d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the  
 36 confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment  
 37 records, 37-4-125 concerning mental retardation treatment records, ~~and~~ 37-7-166

1 concerning alcohol and drug treatment records, 24-9-40.1 concerning the confidential  
 2 nature of AIDS information, and 24-9-47 concerning the disclosure of AIDS information;  
 3 provided, however, that a person's failure to object to the production of documents as set  
 4 forth in paragraph (2) of subsection (c) of this Code section shall waive any right of  
 5 recovery for damages as to the nonparty for disclosure of the requested documents."

## 6 SECTION 2.

7 Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to health records,  
 8 is amended by striking subsections (a) and (b) of Code Section 31-33-2, relating to furnishing  
 9 a copy of records to patient, provider, or other authorized person, and inserting in its place  
 10 the following:

11 "(a)(1)(A) A provider having custody and control of any evaluation, diagnosis,  
 12 prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item  
 13 for a period of not less than ten years from the date such item was created.

14 (B) The requirements of subparagraph (A) of this paragraph shall not apply to:

15 (i) An individual provider who has retired from or sold his or her professional  
 16 practice if such provider has notified the patient of such retirement or sale and offered  
 17 to provide such items in the patient's record or copies thereof to another provider of  
 18 the patient's choice and, if the patient so requests, to the patient; or

19 (ii) A hospital which is an institution as defined in subparagraph (B) of paragraph (1)  
 20 of Code Section 31-7-1, which shall retain patient records in accordance with rules  
 21 and regulations for hospitals as issued by the department pursuant to Code Section  
 22 31-7-2.

23 (2) Upon written request from the patient or a person authorized to have access to the  
 24 patient's record under a health care power of attorney for such patient, the provider  
 25 having custody and control of the patient's record shall furnish a complete and current  
 26 copy of that record, in accordance with the provisions of this Code section. If the patient  
 27 is deceased, such request may be made by ~~a person authorized immediately prior to the~~  
 28 ~~decedent's death to have access to the patient's record under a health care power of~~  
 29 ~~attorney for such patient; the executor, temporary executor, administrator, or temporary~~  
 30 ~~administrator for the decedent's estate; or any survivor, as defined by Code Sections~~  
 31 ~~51-4-2, 51-4-4, and 51-4-5:~~ the following persons:

32 (A) The executor, administrator, or temporary administrator for the decedent's estate  
 33 if such person has been appointed;

34 (B) If an executor, administrator, or temporary administrator for the decedent's estate  
 35 has not been appointed, by the surviving spouse;

36 (C) If there is no surviving spouse, by any surviving child;

1 (D) If there is no surviving child, any parent.

2 (b) Any record requested under subsection (a) of this Code section shall, within 30 days  
3 of the receipt of a request for records be furnished ~~within a reasonable period of time~~ to the  
4 patient, any other provider designated by the patient, any person authorized by paragraph  
5 (2) of subsection (a) of this Code section to request a patient's or deceased patient's  
6 medical records, or any other person designated by the patient. Such record request shall  
7 be accompanied by:

8 (1) An authorization in compliance with the federal Health Insurance Portability and  
9 Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations  
10 implementing such act; and

11 (2) A signed written authorization as specified in subsection (d) of this Code Section."

12 **SECTION 3.**

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