

Senate Bill 379

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-11-26 of the Official Code of Georgia Annotated, relating to
2 general provisions governing discovery, so as to provide for a conference of the parties to
3 discuss and plan for discovery in advance of pursuing any actual discovery; to change a
4 provision relating to the sequence and timing of discovery; to provide for related matters; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 9-11-26 of the Official Code of Georgia Annotated, relating to general
9 provisions governing discovery, is amended by revising subsection (d) as follows:

10 "*(d) Sequence and timing of discovery. A party shall not seek discovery from any source*
11 *before the parties have conferred as required by subsection (f) of this Code section, except*
12 *when authorized by court order.* Unless the court, upon motion, for the convenience of
13 parties and witnesses and in the interests of justice, orders otherwise, methods of discovery
14 may be used in any sequence; and the fact that a party is conducting discovery, whether by
15 deposition or otherwise, shall not operate to delay any other party's discovery."

16 **SECTION 2.**

17 Said Code section is further amended by adding a new subsection to read as follows:

18 "*(f) Conference of the parties; planning for discovery.*

19 *(1) CONFERENCE TIMING. Except in a civil action exempted from initial disclosure under*
20 *subparagraph (B) of paragraph (3) of this subsection or when the court orders otherwise,*
21 *the parties shall confer as soon as practicable and in any event at least 21 days before a*
22 *pretrial conference is to be held or a pretrial order is due under subsection (b) of Code*
23 *Section 9-11-16.*

24 *(2) CONFERENCE CONTENT; PARTIES' RESPONSIBILITIES. In conferring, the parties shall*
25 *consider the nature and basis of their claims and defenses and the possibilities for*

26 promptly settling or resolving the case; make or arrange for the disclosures required by
 27 paragraph (3) of this subsection; discuss any issues about preserving discoverable
 28 information; and develop a proposed discovery plan. The attorneys of record and all
 29 unrepresented parties that have appeared in the case are jointly responsible for arranging
 30 the conference, for attempting in good faith to agree on the proposed discovery plan, and
 31 for submitting to the court within 14 days after the conference a written report outlining
 32 the plan.

33 (3) REQUIRED DISCLOSURES.

34 (A) Except as exempted by subparagraph (B) of this paragraph or as otherwise
 35 stipulated or ordered by the court, a party shall, without awaiting a discovery request,
 36 provide to the other parties:

37 (i) The name and, if known, the address and telephone number of each individual
 38 likely to have discoverable information, along with the subjects of that information,
 39 that the disclosing party may use to support its claims or defenses, unless the use
 40 would be solely for impeachment;

41 (ii) A copy, or a description by category and location, of all documents, electronically
 42 stored information, and tangible things that the disclosing party has in its possession,
 43 custody, or control and may use to support its claims or defenses, unless the use
 44 would be solely for impeachment;

45 (iii) A computation of each category of damages claimed by the disclosing party,
 46 who shall also make available for inspection and copying pursuant to Code Section
 47 9-11-34 the documents or other evidentiary material, unless privileged or protected
 48 from disclosure, on which each computation is based, including materials bearing on
 49 the nature and extent of injuries suffered; and

50 (iv) For inspection and copying pursuant to Code Section 9-11-34, any insurance
 51 agreement under which an insurance business may be liable to satisfy all or part of a
 52 possible judgment in the civil action or to indemnify or reimburse for payments made
 53 to satisfy the judgment.

54 (B) The following civil actions shall be exempt from initial disclosure:

55 (i) A civil action for review on an administrative record;

56 (ii) A forfeiture action in rem;

57 (iii) A petition for habeas corpus or any other civil action to challenge a criminal
 58 conviction or sentence;

59 (iv) A civil action brought without an attorney by a person in the custody of this state
 60 or one of its political subdivisions;

61 (v) An action to enforce or quash an administrative summons or subpoena;

62 (vi) An action by this state to recover benefit payments;

- 63 (vii) A civil action ancillary to a civil action in another court; and
 64 (viii) An action to enforce an arbitration award.
- 65 (C) A party shall make the initial disclosures within 14 days after the parties'
 66 conference pursuant to this subsection unless a different time is set by stipulation or
 67 court order or unless a party objects during the conference that initial disclosures are
 68 not appropriate in that civil action and states the objection in the proposed discovery
 69 plan. In ruling on the objection, the court shall determine what disclosures, if any, are
 70 to be made and shall set the time for disclosure.
- 71 (D) A party that is first served or otherwise joined after the conference required by this
 72 subsection shall make its initial disclosures within 30 days after being served or joined,
 73 unless a different time is set by stipulation or court order.
- 74 (E) A party shall make its initial disclosures based on the information then reasonably
 75 available to it. A party shall not be excused from making its disclosures because it has
 76 not fully investigated the case, because it challenges the sufficiency of another party's
 77 disclosures, or because another party has not made its disclosures.
- 78 (4) DISCOVERY PLAN. A discovery plan shall state the parties' views and proposals on:
 79 (A) What changes should be made in the timing, form, or requirement for disclosures
 80 under paragraph (3) of this subsection, including a statement of when initial disclosures
 81 were made or will be made;
 82 (B) The subjects on which discovery may be needed, when discovery should be
 83 completed, and whether discovery should be conducted in phases or be limited to or
 84 focused on particular issues;
 85 (C) Any issues about disclosure or discovery of electronically stored information,
 86 including the form in which it should be produced;
 87 (D) Any issues about claims of privilege or of protection as trial preparation materials,
 88 including, if the parties agree on a procedure to assert these claims after production,
 89 whether to ask the court to include their agreement in an order;
 90 (E) What changes should be made in the limitations on discovery imposed under this
 91 subsection or by local rule, and what other limitations should be imposed; and
 92 (F) Any other protective orders that the court should issue.
- 93 (5) EXPEDITED SCHEDULE. If necessary to comply with its expedited schedule for pretrial
 94 conferences, a court may by local rule:
 95 (A) Require the parties' conference pursuant to this subsection to occur less than 21
 96 days before the pretrial conference is held or a pretrial order is due under subsection (b)
 97 of Code Section 9-11-16; and
 98 (B) Require the written report outlining the discovery plan to be filed less than 14 days
 99 after the parties' conference pursuant to this subsection or excuse the parties from

100 submitting a written report and permit them to report orally on their discovery plan at
101 the pretrial conference."

102 **SECTION 3.**

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