

The Senate Judiciary Committee offered the following substitute to HB 3:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 2 of Article 1 of Chapter 6 of Title 12 and Title 24 of the Official Code of  
2 Georgia Annotated, relating to the practice of professional forestry and evidence,  
3 respectively, so as to conform provisions of the Code due to the passage of 2011 HB 24 and  
4 HB 214; to change provisions relating to using a writing to refresh memory; to reassign  
5 functions of the former Division of Public Health of the Department of Community Health  
6 to the new Department of Public Health relating to disclosure of AIDS confidential  
7 information; to provide for related matters; to provide an effective date; to repeal conflicting  
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

10 Part 2 of Article 1 of Chapter 6 of Title 12 of the Official Code of Georgia Annotated,  
11 relating to the practice of professional forestry, is amended by revising Code Section  
12 12-6-48, relating to the State Board of Registration for Foresters and the records of  
13 proceedings, as follows:

14 "12-6-48.

15 The board shall keep a record of its proceedings. ~~The records of the board shall be~~  
16 ~~prima-facie evidence of the proceedings of the board set forth therein, and a transcript~~  
17 ~~thereof, duly certified by the secretary of the board under seal, shall be admissible in~~  
18 ~~evidence with the same force and effect as if the original were produced."~~  
19

**SECTION 2.**

20 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
21 revising subsection (b) of Code Section 24-6-612, relating to writing used to refresh memory,  
22 as follows:

23 "(b) If a witness uses a writing to refresh his or her memory before testifying at trial and  
24 the court in its discretion determines it is necessary in the interests of justice, an adverse  
25

26 party shall be entitled to have the writing produced at the trial, to inspect it, to  
 27 cross-examine the witness on such writing, and to introduce in evidence those portions of  
 28 such writing which relate to the testimony of the witness. If the writing used is protected  
 29 by the attorney-client privilege or as attorney work product under Code Section 9-11-26,  
 30 use of the writing to refresh recollection prior to ~~the trial~~ testifying shall not constitute a  
 31 waiver of that privilege or protection. If it is claimed that the writing contains matters not  
 32 related to the subject matter of the testimony, the court shall examine the writing in camera,  
 33 excise any portions of such writing not so related, and order delivery of the remainder of  
 34 such writing to the party entitled to such writing. Any portion withheld over objections  
 35 shall be preserved and made available to the appellate court in the event of an appeal. If  
 36 a writing is not produced or delivered pursuant to an order under this Code section, the  
 37 court shall make any order justice requires; provided, however, that in criminal  
 38 proceedings, when the prosecution elects not to comply, the order shall be one striking the  
 39 testimony or, if the court in its discretion determines that the interests of justice so require,  
 40 declaring a mistrial."

41 **SECTION 3.**

42 Said title is further amended by revising subsections (c), (h), (t), (x), and (aa) of Code Section  
 43 24-12-21, relating to disclosure of AIDS confidential information, as follows:

44 "(c) AIDS confidential information shall be disclosed to the person identified by that  
 45 information or, if that person is ~~a minor or an~~ incompetent person, to that person's ~~parent~~  
 46 ~~or~~ legal guardian. AIDS confidential information may be disclosed to such person's parent  
 47 if that person is a minor."

48 "(h)(1) An administrator of an institution licensed as a hospital by the Department of  
 49 Community Health or a physician having a patient who has been determined to be  
 50 infected with HIV may disclose to the Department of ~~Community~~ Public Health:

- 51 (A) The name and address of that patient;  
 52 (B) That such patient has been determined to be infected with HIV; and  
 53 (C) The name and address of any other person whom the disclosing physician or  
 54 administrator reasonably believes to be a person at risk of being infected with HIV by  
 55 that patient.

56 (2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to  
 57 the Department of ~~Community~~ Public Health is determined by that department to be  
 58 reasonably necessary, that department shall establish by regulation a date on and after  
 59 which such reporting shall be required. On and after the date so established, each health  
 60 care provider, health care facility, or any other person or legal entity which orders an HIV  
 61 test for another person shall report to the Department of ~~Community~~ Public Health the

62 name and address of any person thereby determined to be infected with HIV. No such  
 63 report shall be made regarding any confirmed positive HIV test provided at any  
 64 anonymous HIV test site operated by or on behalf of the Department of ~~Community~~  
 65 Public Health.

66 (3) The Department of ~~Community~~ Public Health may disclose that a person has been  
 67 reported, under paragraph (1) or (2) of this subsection, to have been determined to be  
 68 infected with HIV to the board of health of the county in which that person resides or is  
 69 located if reasonably necessary to protect the health and safety of that person or other  
 70 persons who may have come in contact with the body fluids of the HIV infected person.  
 71 The Department of ~~Community~~ Public Health or county board of health to which  
 72 information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this  
 73 subsection:

74 (A) May contact any person named in such disclosure as having been determined to  
 75 be an HIV infected person for the purpose of counseling that person and requesting  
 76 therefrom the name of any other person who may be a person at risk of being infected  
 77 with HIV by that HIV infected person;

78 (B) May contact any other person reasonably believed to be a person at risk of being  
 79 infected with HIV by that HIV infected person for the purposes of disclosing that such  
 80 infected person has been determined to be infected with HIV and counseling such  
 81 person to submit to an HIV test; and

82 (C) Shall contact and provide counseling to the spouse of any HIV infected person  
 83 whose name is thus disclosed if both persons are reasonably likely to have engaged in  
 84 sexual intercourse or any other act determined by the Department of ~~Community~~ Public  
 85 Health likely to have resulted in the transmission of HIV between such persons within  
 86 the preceding seven years and if that spouse may be located and contacted without  
 87 undue difficulty."

88 "(t)(1) A superior court of this state may order a person or legal entity to disclose AIDS  
 89 confidential information in its custody or control to:

90 (A) A prosecutor in connection with a prosecution for the alleged commission of  
 91 reckless conduct under subsection (c) of Code Section 16-5-60;

92 (B) Any party in a civil proceeding; or

93 (C) A public safety agency or the Department of ~~Community~~ Public Health if that  
 94 agency or department has an employee thereof who has, in the course of that  
 95 employment, come in contact with the body fluids of the person identified by the AIDS  
 96 confidential information sought in such a manner reasonably likely to cause that  
 97 employee to become an HIV infected person and provided the disclosure is necessary  
 98 for the health and safety of that employee,

99 and, for purposes of this subsection, the term 'petitioner for disclosure' means any person  
100 or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

101 (2) An order may be issued against a person or legal entity responsible for recording,  
102 reporting, or maintaining AIDS confidential information to compel the disclosure of that  
103 information if the petitioner for disclosure demonstrates by clear and convincing evidence  
104 a compelling need for the information which cannot be accommodated by other means.  
105 In assessing compelling need, the court shall weigh the public health, safety, or welfare  
106 needs or any other public or private need for the disclosure against the privacy interest  
107 of the person identified by the information and the public interest which may be disserved  
108 by disclosures which may deter voluntary HIV tests.

109 (3) A petition seeking disclosure of AIDS confidential information under this subsection  
110 shall substitute a pseudonym for the true name of the person concerning whom the  
111 information is sought. The disclosure to the parties of that person's true name shall be  
112 communicated confidentially, in documents not filed with the court.

113 (4) Before granting any order under this subsection, the court shall provide the person  
114 concerning whom the information is sought with notice and a reasonable opportunity to  
115 participate in the proceedings if that person is not already a party.

116 (5) Court proceedings as to disclosure of AIDS confidential information under this  
117 subsection shall be conducted in camera unless the person concerning whom the  
118 information is sought agrees to a hearing in open court.

119 (6) Upon the issuance of an order that a person or legal entity be required to disclose  
120 AIDS confidential information regarding a person named in that order, that person or  
121 entity so ordered shall disclose to the ordering court any such information which is in the  
122 control or custody of that person or entity and which relates to the person named in the  
123 order for the court to make an in camera inspection thereof. If the court determines from  
124 that inspection that the person named in the order is an HIV infected person, the court  
125 shall disclose to the petitioner for disclosure that determination and shall impose  
126 appropriate safeguards against unauthorized disclosure which shall specify the persons  
127 who may have access to the information, the purposes for which the information shall be  
128 used, and appropriate prohibitions on future disclosure.

129 (7) The record of the proceedings under this subsection shall be sealed by the court.

130 (8) An order may not be issued under this subsection against the Department of  
131 ~~Community~~ Public Health, any county board of health, or any anonymous HIV test site  
132 operated by or on behalf of that department."

133 "(x) Neither the Department of ~~Community~~ Public Health nor any county board of health  
134 shall disclose AIDS confidential information contained in its records unless such disclosure  
135 is authorized or required by this Code section or any other law, except that such

136 information in those records shall not be a public record and shall not be subject to  
137 disclosure through subpoena, court order, or other judicial process."

138 "(aa) In connection with any judicial proceeding in which AIDS confidential information  
139 is disclosed as authorized or required by this Code section, the party to whom that  
140 information is thereby disclosed may subpoena any person to authenticate such AIDS  
141 confidential information, establish a chain of custody relating thereto, or otherwise testify  
142 regarding that information, including, but not limited to, testifying regarding any  
143 notifications to the patient regarding results of an HIV test. The provisions of this  
144 subsection shall apply to records, personnel, or both of the Department of ~~Community~~  
145 Public Health or a county board of health notwithstanding Code Section 50-18-72, but only  
146 as to test results obtained by a prosecutor under subsection (q) of this Code section and to  
147 be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section  
148 16-5-60."

149 **SECTION 4.**

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

152 **SECTION 5.**

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