

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 reassign functions of the former Division of Public Health of the Department of
5 Community Health to the new Department of Public Health relating to disclosure of AIDS
6 confidential information; to provide for related matters; to provide an effective date; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **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 subsections (c), (h), (t), (x), and (aa) of Code Section 24-12-21, relating to disclosure
22 of AIDS confidential information, as follows:

23 "(c) AIDS confidential information shall be disclosed to the person identified by that
24 information or, if that person is ~~a minor or an~~ incompetent person, to that person's ~~parent~~

25 or legal guardian. AIDS confidential information may be disclosed to such person's parent
 26 or legal guardian if that person is a minor."

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

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

35 (2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to
 36 the Department of ~~Community~~ Public Health is determined by that department to be
 37 reasonably necessary, that department shall establish by regulation a date on and after
 38 which such reporting shall be required. On and after the date so established, each health
 39 care provider, health care facility, or any other person or legal entity which orders an HIV
 40 test for another person shall report to the Department of ~~Community~~ Public Health the
 41 name and address of any person thereby determined to be infected with HIV. No such
 42 report shall be made regarding any confirmed positive HIV test provided at any
 43 anonymous HIV test site operated by or on behalf of the Department of ~~Community~~
 44 Public Health.

45 (3) The Department of ~~Community~~ Public Health may disclose that a person has been
 46 reported, under paragraph (1) or (2) of this subsection, to have been determined to be
 47 infected with HIV to the board of health of the county in which that person resides or is
 48 located if reasonably necessary to protect the health and safety of that person or other
 49 persons who may have come in contact with the body fluids of the HIV infected person.
 50 The Department of ~~Community~~ Public Health or county board of health to which
 51 information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this
 52 subsection:

- 53 (A) May contact any person named in such disclosure as having been determined to
 54 be an HIV infected person for the purpose of counseling that person and requesting
 55 therefrom the name of any other person who may be a person at risk of being infected
 56 with HIV by that HIV infected person;
- 57 (B) May contact any other person reasonably believed to be a person at risk of being
 58 infected with HIV by that HIV infected person for the purposes of disclosing that such
 59 infected person has been determined to be infected with HIV and counseling such
 60 person to submit to an HIV test; and

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

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

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

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

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

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

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

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

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

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

98 (6) Upon the issuance of an order that a person or legal entity be required to disclose
 99 AIDS confidential information regarding a person named in that order, that person or
 100 entity so ordered shall disclose to the ordering court any such information which is in the
 101 control or custody of that person or entity and which relates to the person named in the
 102 order for the court to make an in camera inspection thereof. If the court determines from
 103 that inspection that the person named in the order is an HIV infected person, the court
 104 shall disclose to the petitioner for disclosure that determination and shall impose
 105 appropriate safeguards against unauthorized disclosure which shall specify the persons
 106 who may have access to the information, the purposes for which the information shall be
 107 used, and appropriate prohibitions on future disclosure.

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

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

112 "(x) Neither the Department of Community Public Health nor any county board of health
 113 shall disclose AIDS confidential information contained in its records unless such disclosure
 114 is authorized or required by this Code section or any other law, except that such
 115 information in those records shall not be a public record and shall not be subject to
 116 disclosure through subpoena, court order, or other judicial process."

117 "(aa) In connection with any judicial proceeding in which AIDS confidential information
 118 is disclosed as authorized or required by this Code section, the party to whom that
 119 information is thereby disclosed may subpoena any person to authenticate such AIDS
 120 confidential information, establish a chain of custody relating thereto, or otherwise testify
 121 regarding that information, including, but not limited to, testifying regarding any
 122 notifications to the patient regarding results of an HIV test. The provisions of this
 123 subsection shall apply to records, personnel, or both of the Department of Community
 124 Public Health or a county board of health notwithstanding Code Section 50-18-72, but only
 125 as to test results obtained by a prosecutor under subsection (q) of this Code section and to
 126 be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section
 127 16-5-60."

128 SECTION 3.

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

131 SECTION 4.

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