

House Bill 1017

By: Representatives Fleming of the 121st, Willard of the 51st, Oliver of the 82nd, Powell of the 171st, Mabra of the 63rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, the "Georgia
2 Civil Practice Act," so as to change provisions relating to general provisions governing
3 discovery; to provide for discovery of electronically stored information; to provide for
4 claiming privilege or protection for trial preservation materials; to change provisions relating
5 to when an interrogatory answer allows the option to produce business records; to change
6 provisions relating to production of documents and things and entry upon land for inspection
7 and other purposes; to change provisions relating to failure to make discovery; to provide for
8 consequences of failure to preserve electronically stored information; to change provisions
9 relating to subpoenas for taking depositions; to amend the Official Code of Georgia
10 Annotated so as to provide for conforming cross-references to include the production of
11 electronically stored information; to provide for related matters; to provide an effective date;
12 to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 PART I
15 SECTION 1-1.

16 Chapter 11 of Title 9 of the Official Code of Georgia Annotated, the "Georgia Civil Practice
17 Act," is amended by revising Code Section 9-11-26, relating to general provisions governing
18 discovery, as follows:

19 "9-11-26.

20 (a) **Discovery methods.** Parties may obtain discovery by one or more of the following
21 methods: depositions upon oral examination or written questions; written interrogatories;
22 production of documents, electronically stored information, or tangible things or
23 permission to enter upon land or other property for inspection and other purposes; physical
24 and mental examinations; and requests for admission. Unless the court orders otherwise

25 under subsection (c) of this Code section, the frequency of use of these methods ~~is~~ shall not
26 be limited.

27 (b) **Scope of discovery.** Unless otherwise limited by order of the court in accordance with
28 this chapter, the scope of discovery ~~is~~ shall be as follows:

29 (1) **In general.** Parties may obtain discovery regarding any matter, not privileged, which
30 is relevant to the subject matter involved in the pending action, whether it relates to the
31 claim or defense of the party seeking discovery or to the claim or defense of any other
32 party, including the existence, description, nature, custody, condition, and location of any
33 books, documents, electronically stored information, or other tangible things and the
34 identity and location of persons having knowledge of any discoverable matter. It ~~is~~ shall
35 not be ground for objection that the information sought will be inadmissible at the trial
36 if the information sought appears reasonably calculated to lead to the discovery of
37 admissible evidence;

38 (2) **Insurance agreements.** A party may obtain discovery of the existence and contents
39 of any insurance agreement under which any person carrying on an insurance business
40 may be liable to satisfy part or all of a judgment which may be entered in the action or
41 to indemnify or reimburse for payments made to satisfy the judgment. Information
42 concerning the insurance agreement is not by reason of disclosure admissible in evidence
43 at trial. For purposes of this paragraph, an application for insurance shall not be treated
44 as part of an insurance agreement;

45 (3) **Trial preparation; materials.**

46 (A) Subject to paragraph (4) of this subsection, a party may obtain discovery of
47 documents, electronically stored information, or ~~and~~ tangible things otherwise
48 discoverable under paragraph (1) of this subsection and prepared in anticipation of
49 litigation or for trial by or for another party or by or for that other party's representative,
50 (including ~~his~~ the party's attorney, consultant, surety, indemnitor, insurer, or agent),
51 only upon a showing that the party seeking discovery has substantial need of the
52 materials in the preparation of his or her case and that ~~he~~ the party is unable without
53 undue hardship to obtain the substantial equivalent of the materials by other means. In
54 ordering discovery of such materials when the required showing has been made, the
55 court shall protect against disclosure of the mental impressions, conclusions, opinions,
56 or legal theories of an attorney or other representative of a party concerning the
57 litigation. A party may obtain, without the required showing, a statement concerning
58 the action or its subject matter previously made by ~~that~~ such party. Upon request, a
59 person not a party may obtain, without the required showing, a statement concerning
60 the action or its subject matter previously made by ~~that~~ such person. If the request is
61 refused, the person may move for a court order. Paragraph (4) of subsection (a) of

62 Code Section 9-11-37 applies to the award of expenses incurred in relation to the
63 motion.

64 (B) For purposes of this paragraph, a 'statement previously made' is ~~(A) a:~~

65 (i) A written statement signed or otherwise adopted or approved by the person
66 making it, ~~or (B) a; or~~

67 (ii) A stenographic, mechanical, electrical, or other recording, or a transcription
68 thereof, which is a substantially verbatim recital of an oral statement by the person
69 making it and contemporaneously recorded; ~~and~~

70 (4) **Trial preparation; experts.** Discovery of facts known and opinions held by experts,
71 otherwise discoverable under paragraph (1) of this subsection and acquired or developed
72 in anticipation of litigation or for trial, may be obtained only as follows:

73 (A)(i) A party may, through interrogatories, require any other party to identify each
74 person whom the other party expects to call as an expert witness at trial, to state the
75 subject matter on which the expert is expected to testify, and to state the substance of
76 the facts and opinions to which the expert is expected to testify and a summary of the
77 grounds for each opinion.

78 (ii) A party may obtain discovery under Code Section 9-11-30, 9-11-31, or 9-11-34
79 from any expert described in this paragraph, the same as any other witness, but the
80 party obtaining discovery of an expert hereunder must pay a reasonable fee for the
81 time spent in responding to discovery by that expert, subject to the right of the expert
82 or any party to obtain a determination by the court as to the reasonableness of the fee
83 so incurred;

84 (B) A party may discover facts known or opinions held by an expert who has been
85 retained or specially employed by another party in anticipation of litigation or
86 preparation for trial and who is not expected to be called as a witness at trial, only as
87 provided in subsection (b) of Code Section 9-11-35 or upon a showing of exceptional
88 circumstances under which it is impracticable for the party seeking discovery to obtain
89 facts or opinions on the same subject by other means; and

90 (C) Unless manifest injustice would result:

91 (i) The court shall require the party seeking discovery to pay the expert a reasonable
92 fee for time spent in responding to discovery under subparagraph (B) of this
93 paragraph; and

94 (ii) With respect to discovery obtained under division (ii) of subparagraph (A) of this
95 paragraph, the court may require, and with respect to discovery obtained under
96 subparagraph (B) of this paragraph the court shall require, the party seeking discovery
97 to pay the other party a fair portion of the fees and expenses reasonably incurred by
98 the latter party in obtaining facts and opinions from the expert; and

99 **(5) Claiming privilege or protecting trial preparation materials.**

100 **(A) Information withheld.** When a party withholds information otherwise
 101 discoverable by claiming that the information is privileged or subject to protection as
 102 trial preparation material, the party shall:

103 (i) Expressly make the claim; and

104 (ii) Describe the nature of the documents, electronically stored information,
 105 communications, or tangible things not produced or disclosed and do so in a manner
 106 that, without revealing information itself privileged or protected, will enable other
 107 parties to assess such claim.

108 **(B) Information produced.** If information produced in discovery is subject to a claim
 109 of privilege or of protection as trial preparation material, the party making the claim
 110 shall notify any party that received the information of the claim and the basis for it.
 111 The producing party shall preserve the information until the claim is resolved. After
 112 being notified, a party:

113 (i) Shall promptly return, sequester, or destroy the specified information and any
 114 copies thereof;

115 (ii) Shall not use or disclose the information until the claim is resolved;

116 (iii) Shall take reasonable steps to retrieve the information if the party disclosed it
 117 before being notified; and

118 (iv) May promptly present the information to the court for in camera review for
 119 determination of the claim.

120 **(c) Protective orders.**

121 (1) Upon motion by a party or by the person who is, or who may be, subject to a request
 122 to preserve documents, electronically stored information, or tangible things, or from
 123 whom discovery is sought and for good cause shown, the court in which the action is
 124 pending or, alternatively, on matters relating to a deposition, the court in the county
 125 where the deposition is to be taken may make any order which justice requires to protect
 126 a party or person from annoyance, embarrassment, oppression, or undue burden or
 127 expense;. Upon a showing of good cause by the party or person seeking a protective
 128 order, the court may consider whether the discovery sought is not proportional to the
 129 needs of the case, considering the importance of the issues at stake in the action, the
 130 amount in controversy, the party's relative access to relevant information, the party's
 131 resources, the importance of the discovery in resolving the issues, and whether the burden
 132 or expense of the proposed discovery outweighs its likely benefit. The court may enter
 133 an order including one or more of the following:

134 (A) That the discovery not be had;

- 135 ~~(2)~~(B) That the discovery may be had only on specified terms and conditions, including
 136 a designation of the time or place;
- 137 ~~(3)~~(C) That the discovery may be had only by a method of discovery other than that
 138 selected by the party seeking discovery;
- 139 ~~(4)~~(D) That certain matters not be inquired into or that the scope of the discovery be
 140 limited to certain matters;
- 141 ~~(5)~~(E) That discovery be conducted with no one present except persons designated by
 142 the court;
- 143 ~~(6)~~(F) That a deposition, after being sealed, be opened only by order of the court;
- 144 ~~(7)~~(G) That a trade secret or other confidential research, development, or commercial
 145 information not be disclosed or be disclosed only in a designated way; ~~or~~
- 146 ~~(8)~~(H) That the parties simultaneously file specified documents, electronically stored
 147 information, or information enclosed in sealed envelopes to be opened as directed by
 148 the court.

149 (2) If ~~the~~ a motion for a protective order is denied in whole or in part, the court may, on
 150 such terms and conditions as are just, order that any party or person preserve documents,
 151 electronically stored information, or tangible things or provide or permit discovery.
 152 Paragraph (4) of subsection (a) of Code Section 9-11-37 ~~applies~~ shall apply to the award
 153 of expenses incurred in relation to the motion.

154 (d) **Sequence and timing of discovery.** Unless the court, upon motion, for the
 155 convenience of parties and witnesses and in the interests of justice, orders otherwise,
 156 methods of discovery may be used in any sequence; and the fact that a party is conducting
 157 discovery, whether by deposition or otherwise, shall not operate to delay any other party's
 158 discovery.

159 (e) **Supplementation of responses.** A party who has responded to a request for discovery
 160 with a response that was complete when made is under no duty to supplement his or her
 161 response to include information thereafter acquired, except as follows:

162 (1) A party is under a duty seasonably to supplement his or her response ~~with respect~~ to
 163 any question directly addressed to:

164 (A) The identity and location of persons having knowledge of discoverable matters;
 165 and

166 (B) The identity of each person expected to be called as an expert witness at trial, the
 167 subject matter on which he or she is expected to testify, and the substance of his or her
 168 testimony;

169 (2) A party is under a duty seasonably to amend a prior response if he or she obtains
 170 information upon the basis of which:

171 (A) He or she knows that the response was incorrect when made; or

172 (B) He or she knows that the response, though correct when made, is no longer true
 173 and the circumstances are such that a failure to amend the response is, in substance, a
 174 knowing concealment; and

175 (3) A duty to supplement responses may be imposed by order of the court, agreement of
 176 the parties, or at any time prior to trial through new requests for supplementation of prior
 177 responses."

178 **SECTION 1-2.**

179 Said chapter is further amended by revising paragraphs (1) and (5) of subsection (b) and
 180 subparagraph (f)(1)(B) of Code Section 9-11-30, relating to depositions upon oral
 181 examination, as follows:

182 "(1) **General requirements.** A party desiring to take the deposition of any person upon
 183 oral examination shall give reasonable notice in writing to every other party to the action.
 184 The notice shall state the time and place for taking the deposition, the means by which
 185 the testimony shall be recorded, and the name and address of each person to be examined,
 186 if known, and, if the name is not known, a general description sufficient to identify the
 187 person to be examined or the particular class or group to which he or she belongs. If a
 188 subpoena for the production of documentary, electronically stored information, and
 189 tangible evidence is to be served on the person to be examined, the designation of the
 190 materials to be produced, as set forth in the subpoena, shall be attached to, or included
 191 in, the notice."

192 "(5) **Production of documents, electronically stored information, and tangible**
 193 **things.** The notice to a party deponent may be accompanied by a request made in
 194 compliance with Code Section 9-11-34 for the production of documents, electronically
 195 stored information, and tangible things at the taking of the deposition. The procedure of
 196 Code Section 9-11-34 shall apply to the request."

197 "(B) Documents, electronically stored information, and things produced for inspection
 198 during the examination of the witness shall, upon the request of a party, be marked for
 199 identification and annexed to and returned with the deposition and may be inspected
 200 and copied by any party, except that the person producing the materials may substitute
 201 copies to be marked for identification, if he or she affords to all parties fair opportunity
 202 to verify the copies by comparison with the originals; and, if the person producing the
 203 materials requests their return, the officer shall mark them, give each party an
 204 opportunity to inspect and copy them, and return them to the person producing them,
 205 and the materials may then be used in the same manner as if annexed to and returned
 206 with the deposition. Any party may move for an order that the original be annexed to
 207 and returned with the deposition to the court, pending final disposition of the case."

208 **SECTION 1-3.**

209 Said chapter is further amended by revising subsection (c) of Code Section 9-11-33, relating
210 to interrogatories to parties, as follows:

211 **"(c) Option to produce business records.** ~~Where~~ When the answer to an interrogatory
212 may be ~~derived or ascertained from the~~ determined by examining, auditing, compiling,
213 abstracting, or summarizing a party's business records ~~of the party upon whom the~~
214 ~~interrogatory has been served or from an examination, audit, or inspection of such business~~
215 ~~records, or from a compilation, abstract, or summary based thereon, including~~
216 electronically stored information, and the burden of deriving or ascertaining the answer is
217 substantially the same for ~~the party serving the interrogatory as for the party served, it is~~
218 ~~a sufficient answer to the interrogatory to specify the records from which the answer may~~
219 ~~be derived or ascertained and to afford to the party serving the interrogatory~~ either party,
220 the responding party may answer by:

- 221 (1) Specifying the records that must be reviewed in sufficient detail so as to enable the
222 interrogating party to locate and identify such records as readily as the responding party
223 could locate and identify such records; and
224 (2) Giving the interrogating party a reasonable opportunity to examine, audit, or inspect
225 such records and to make copies, compilations, abstracts, or summaries."

226 **SECTION 1-4.**

227 Said chapter is further amended by revising Code Section 9-11-34, relating to production of
228 documents and things and entry upon land for inspection and other purposes, as follows:

229 "9-11-34.

230 (a) **Scope.** Any party may serve on any other party a request:

- 231 (1) To produce and permit the ~~party making the request, or someone acting on his behalf~~
232 requesting party, or such party's representative, to inspect and ~~copy any designated~~
233 ~~documents (including writings, drawings, graphs, charts, photographs, phono-records,~~
234 ~~and other data compilations from which information can be obtained, translated, if~~
235 ~~necessary, by the respondent through detection devices into reasonably usable form), or~~
236 ~~to inspect and copy, test, or sample any tangible things which constitute or contain~~
237 ~~matters within the scope of subsection (b) of Code Section 9-11-26 and the following~~
238 items which are in the responding party's possession, custody, or control ~~of the party upon~~
239 whom the request is served:

- 240 (A) Any designated document or electronically stored information, including writings,
241 drawings, graphs, charts, photographs, sound recordings, images, and other data or data
242 compilations, stored in any medium from which information can be obtained, directly

243 or, if necessary, after translation by the responding party into a reasonably usable form;

244 or

245 (B) Any designated tangible thing; or

246 (2) To permit entry upon designated land or other property in the possession or control
247 of the party upon whom the request is served for the purpose of inspection and
248 measuring, surveying, photographing, testing, or sampling the property or any designated
249 object or operation thereon, within the scope of subsection (b) of Code Section 9-11-26.

250 (b) **Procedure.**

251 (1) **Generally.** The request may, without leave of court, be served upon the plaintiff
252 after commencement of the action and upon any other party with or after service of the
253 summons and complaint upon that party. The request ~~shall:~~

254 (A) Shall set forth the items to be inspected, either by individual item or by category,
255 and describe each item and category with reasonable particularity. The request shall
256 each item or category of items to be inspected;

257 (B) Shall specify a reasonable time, place, and manner of making the inspection and
258 performing the related acts; and

259 (C) May specify the form in which electronically stored information shall be produced.

260 (2) **Responses and objections.**

261 (A) Time to respond. The responding party upon whom the request is served shall
262 serve a written response within 30 days after the service of the request, except that a
263 defendant may serve a response within 45 days after service of the summons and
264 complaint upon that defendant. The court may allow a shorter or longer time. ~~The~~
265 ~~response shall state, with respect to each item or category, that inspection and related~~
266 ~~activities will be permitted as requested, unless the request is objected to, in which~~
267 ~~event the reasons for objection shall be stated. If objection is made to part of an item~~
268 ~~or category, the part shall be specified. In addition to other bases for objection, the~~
269 response may state an objection to production of electronically stored information from
270 sources that the party identifies as not reasonably accessible because of undue burden
271 or cost. The response shall state any objection to a requested form for producing
272 electronically stored information. If the responding party objects to a requested form
273 or if no form is specified in the request, the responding party shall state the form it
274 intends to use.

275 (B) Responding to each item. For each item or category, the response shall state that
276 inspection and related activities will be permitted as requested or state with specificity
277 the grounds for objecting to the request, including the reasons. The responding party
278 may state that it will produce copies of documents or of electronically stored
279 information instead of permitting inspection. The production shall be completed no

280 later than the time for inspection specified in the request, or as soon as is reasonably
 281 practicable thereafter, which time shall be specified in the response.

282 (C) **Objections.** Objections shall state whether any responsive material is being
 283 withheld on the basis of an objection. An objection to part of a request shall specify the
 284 objectionable part and permit inspection of the rest of the materials. The party
 285 submitting the request may move for an order under subsection (a) of Code Section
 286 9-11-37 with respect to any objection to or other failure to respond to the request or any
 287 part thereof, or any failure to permit inspection as requested.

288 (c) **Applicability to nonparties.**

289 (1) This Code section shall also be applicable ~~with respect~~ to discovery against persons,
 290 firms, or corporations who are not parties, in which event a copy of the request shall be
 291 served upon all parties of record; or, upon notice, the party desiring such discovery may
 292 proceed by taking the deposition of the person, firm, or corporation on oral examination
 293 or upon written questions under Code Section 9-11-30 or 9-11-31. A party requesting
 294 discovery from a nonparty shall take reasonable steps to avoid imposing undue burden
 295 or expense on the nonparty. The nonparty or any party may file an objection as provided
 296 in subsection (b) of this Code section. If the party desiring such discovery moves for an
 297 order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall
 298 make a showing of good cause to support his or her motion. The party making a request
 299 under this Code section shall, upon request from any other party to the action, make all
 300 reasonable efforts to cause all information produced in response to the nonparty request
 301 to be made available to all parties and may require the payment of a reasonable document
 302 copying charge. ~~A reasonable document copying charge may be required.~~

303 (2) This Code section shall also be applicable ~~with respect~~ to discovery against a
 304 nonparty who is a practitioner of the healing arts or a hospital or health care facility,
 305 including those operated by an agency or bureau of the state or other governmental unit.
 306 Where such a request is directed to such a nonparty, a copy of the request shall be served
 307 upon the person whose records are sought by certified mail or statutory overnight
 308 delivery, return receipt requested, or, if known, ~~that~~ such person's counsel, and upon all
 309 other parties of record in compliance with Code Section 9-11-5; where such a request to
 310 a nonparty seeks the records of a person who is not a party, a copy of the request shall be
 311 served upon the person whose records are sought by certified mail or statutory overnight
 312 delivery, return receipt requested, or, if known, ~~that~~ such person's counsel by certified
 313 mail or statutory overnight delivery, return receipt requested, and upon all parties of
 314 record in compliance with Code Section 9-11-5; or, upon notice, the party desiring such
 315 discovery may proceed by taking the deposition of the person, firm, or corporation on
 316 oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The

317 nonparty, any party, or the person whose records are sought may file an objection with
 318 the court in which the action is pending within 20 days of service of the request and shall
 319 serve a copy of such objection on the nonparty to whom the request is directed, who shall
 320 not furnish the requested materials until further order of the court, and on all other parties
 321 to the action. Upon the filing of such objection, the party desiring such discovery may
 322 move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and,
 323 if he or she shall make a showing of good cause to support his or her motion, discovery
 324 shall be allowed. If no objection is filed within 20 days of service of the request, the
 325 nonparty to whom the request is directed shall promptly comply therewith.

326 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this
 327 subsection or a subpoena requesting records from a nonparty pursuant to Code Section
 328 9-11-45, when the nonparty to whom the discovery request is made is not served with an
 329 objection and the nonparty produces the requested records, the nonparty shall be immune
 330 from regulatory, civil, or criminal liability or damages notwithstanding that the produced
 331 documents contained confidential or privileged information.

332 (d) **Confidentiality.** The provisions of this Code section shall not be deemed to repeal the
 333 confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment
 334 records, 37-4-125 concerning developmental disability treatment records, 37-7-166
 335 concerning alcohol and drug treatment records, 24-12-20 concerning the confidential nature
 336 of AIDS information, and 24-12-21 concerning the disclosure of AIDS information;
 337 provided, however, that a person's failure to object to the production of documents or
 338 electronically stored information as set forth in paragraph (2) of subsection (c) of this Code
 339 section shall waive any right of recovery for damages as to the nonparty for disclosure of
 340 the requested documents or electronically stored information."

341 **SECTION 1-5.**

342 Said chapter is further amended by revising Code Section 9-11-34.1, relating to civil actions
 343 for evidence seized in criminal proceedings, as follows:

344 "9-11-34.1.

345 Notwithstanding the provisions of Code Section 9-11-34, in any civil action based upon
 346 evidence seized in a criminal proceeding involving any violation of Part 2 of Article 3 of
 347 Chapter 12 of Title 16, a party shall not be permitted to copy any books, papers,
 348 documents, electronically stored information, photographs, tangible ~~objects~~ things, audio
 349 and visual tapes, films and recordings, or copies or portions thereof."

350 **SECTION 1-6.**

351 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section
352 9-11-36, relating to requests for admission, as follows:

353 "(1) A party may serve upon any other party a written request for the admission, for
354 purposes of the pending action only, of the truth of any matters within the scope of
355 subsection (b) of Code Section 9-11-26 which are set forth in the request and that relate
356 to statements or opinions of fact or of the application of law to fact, including the
357 genuineness of any documents or electronically stored information described in the
358 request. Copies of documents or electronically stored information shall be served with
359 the request unless they have been or are otherwise furnished or made available for
360 inspection and copying. The request may, without leave of court, be served upon the
361 plaintiff after commencement of the action and upon any other party with or after service
362 of the summons and complaint upon that party."

363 **SECTION 1-7.**

364 Said chapter is further amended by revising Code Section 9-11-37, relating to failure to make
365 discovery, as follows:

366 "9-11-37.

367 (a) **Motion for order compelling discovery.** A party, upon reasonable notice to other
368 parties and all persons affected thereby, may apply for an order compelling discovery as
369 follows:

370 (1) **Appropriate court.** An application for an order to a party may be made to the court
371 in which the action is pending or, on matters relating to a deposition, to the court in the
372 county where the deposition is being taken. An application for an order to a deponent
373 who is not a party shall be made to the court in the county where the deposition is being
374 taken;

375 (2) **Motion; protective order.** If a deponent fails to answer a question propounded or
376 submitted under Code Section 9-11-30 or 9-11-31, or a corporation or other entity fails
377 to make a designation under paragraph (6) of subsection (b) of Code Section 9-11-30 or
378 subsection (a) of Code Section 9-11-31, or a party fails to answer an interrogatory
379 submitted under Code Section 9-11-33, or if a party, in response to a request for
380 inspection submitted under Code Section 9-11-34, fails to respond that inspection will be
381 permitted as requested or fails to permit inspection as requested, the discovering party
382 may move for an order compelling an answer, or a designation, or an order compelling
383 inspection in accordance with the request. When taking a deposition on oral examination,
384 the proponent of the question may complete the examination or adjourn the examination
385 before ~~he applies~~ it is completed in order to apply for an order. If the court denies the

386 motion in whole or in part, it may make such protective order as it would have been
 387 empowered to make on a motion made pursuant to subsection (c) of Code Section
 388 9-11-26;

389 (3) **Evasive or incomplete answer.** For purposes of the provisions of this chapter which
 390 relate to depositions and discovery, an evasive or incomplete answer is to be treated as
 391 a failure to answer; and

392 (4) **Award of expenses of motion.**

393 (A) If the motion is granted, the court shall, after opportunity for hearing, require the
 394 party or deponent whose conduct necessitated the motion or the party or attorney
 395 advising such conduct or both of them to pay to the moving party the reasonable
 396 expenses incurred in obtaining the order, including attorney's fees, unless the court
 397 finds that the opposition to the motion was substantially justified or that other
 398 circumstances make an award of expenses unjust.

399 (B) If the motion is denied, the court shall, after opportunity for hearing, require the
 400 moving party or the attorney advising the motion or both of them to pay to the party or
 401 deponent who opposed the motion the reasonable expenses incurred in opposing the
 402 motion, including attorney's fees, unless the court finds that the making of the motion
 403 was substantially justified or that other circumstances make an award of expenses
 404 unjust.

405 (C) If the motion is granted in part and denied in part, the court may apportion the
 406 reasonable expenses incurred in relation to the motion among the parties and persons
 407 in a just manner.

408 (b) **Failure to comply with order.**

409 (1) **Sanctions by court in county where deposition is taken.** If a deponent fails to be
 410 sworn or to answer a question after being directed to do so by the court in the county in
 411 which the deposition is being taken, the failure may be considered a contempt of that
 412 court.

413 (2) **Sanctions by court in which action is pending.** If a party or an officer, director, or
 414 managing agent of a party or a person designated under paragraph (6) of subsection (b)
 415 of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf
 416 of a party fails to obey an order to provide or permit discovery, including an order made
 417 under subsection (a) of this Code section or Code Section 9-11-35, the court in which the
 418 action is pending may make such orders in regard to the failure as are just and, among
 419 others, the following:

420 (A) An order that the matters regarding which the order was made or any other
 421 designated facts shall be taken to be established for the purposes of the action in
 422 accordance with the claim of the party obtaining the order;

423 (B) An order refusing to allow the disobedient party to support or oppose designated
 424 claims or defenses, or prohibiting him or her from introducing designated matters in
 425 evidence;

426 (C) An order striking out pleadings or parts thereof, or staying further proceedings until
 427 the order is obeyed, or dismissing the action or proceeding or any part thereof, or
 428 rendering a judgment by default against the disobedient party;

429 (D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as
 430 a contempt of court the failure to obey any orders except an order to submit to a
 431 physical or mental examination; or

432 (E) Where a party has failed to comply with an order under subsection (a) of Code
 433 Section 9-11-35 requiring him or her to produce another for examination, such orders
 434 as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party
 435 failing to comply shows that he or she is unable to produce such person for
 436 examination.

437 In lieu of any of the foregoing orders, or in addition thereto, the court shall require the
 438 party failing to obey the order or the attorney advising him such party, or both, to pay the
 439 reasonable expenses, including attorney's fees, caused by the failure, unless the court
 440 finds that the failure was substantially justified or that other circumstances make an
 441 award of expenses unjust.

442 (c) **Expenses on failure to admit.** If a party fails to admit the genuineness of any
 443 document or electronically stored information or the truth of any matter as requested under
 444 Code Section 9-11-36 and if the party requesting the admissions thereafter proves the
 445 genuineness of the document or electronically stored information or the truth of the matter,
 446 ~~he~~ the requesting party may apply to the court for an order requiring the other party to pay
 447 him or her the reasonable expenses incurred in making that proof, including reasonable
 448 attorney's fees. The court shall make the order unless it finds that the request was held
 449 objectionable pursuant to subsection (a) of Code Section 9-11-36, or the admission sought
 450 was of no substantial importance, or the party failing to admit had reasonable ground to
 451 believe that he or she might prevail on the matter, or there was other good reason for the
 452 failure to admit.

453 (d) **Failure of party to attend at own deposition or serve answers to interrogatories
 454 or respond to request for inspection.**

455 (1) If a party or an officer, director, or managing agent of a party or a person designated
 456 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code
 457 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to
 458 take ~~his~~ the deposition, after being served with a proper notice, or fails to serve answers
 459 or objections to interrogatories submitted under Code Section 9-11-33, after proper

460 service of the interrogatories, or fails to serve a written response to a request for
 461 inspection submitted under Code Section 9-11-34, after proper service of the request, the
 462 court in which the action is pending on motion may make such orders in regard to the
 463 failure as are just; and, among others, it may take any action authorized under
 464 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or
 465 in addition thereto, the court shall require the party failing to act or the attorney advising
 466 ~~him~~ such party, or both, to pay the reasonable expenses, including attorney's fees, caused
 467 by the failure, unless the court finds that the failure was substantially justified or that
 468 other circumstances make an award of expenses unjust.

469 (2) The failure to act described in the provisions of this chapter which relate to
 470 depositions and discovery may not be excused on the ground that the discovery sought
 471 is objectionable unless the party failing to act has applied for a protective order as
 472 provided by subsection (c) of Code Section 9-11-26.

473 **(e) Failure to preserve electronically stored information.**

474 (1) If electronically stored information that should have been preserved in the
 475 anticipation or conduct of litigation is lost because a party failed to take reasonable steps
 476 to preserve it, and it cannot be restored or replaced through additional discovery, and the
 477 court finds that there is prejudice to another party from the loss of the information, the
 478 court may order measures no greater than necessary to cure the prejudice. If measures
 479 are insufficient to cure the prejudice, and further considering the practical importance of
 480 the evidence and whether the party who failed to preserve acted in good or bad faith, the
 481 court may instruct the jury that it may presume the information was unfavorable to the
 482 party; provided, however, that when the court finds that the party who failed to preserve
 483 acted with the intent to deprive potential litigants of the information's use in litigation or
 484 to avoid civil, administrative, regulatory, or criminal sanctions or penalties, the court
 485 may:

486 (A) Instruct the jury that it shall presume the information was unfavorable to the party;

487 or

488 (B) Strike the party's claims or defenses, dismiss the action, or enter default judgment.

489 (2) Any party or the court may request a hearing regarding a party's failure to preserve
 490 electronically stored information. Upon the request of a party, the court shall in its order
 491 make findings of fact and conclusions of law."

492 **SECTION 1-8.**

493 Said chapter is further amended by revising Code Section 9-11-45, relating to subpoenas for
 494 taking depositions, as follows:

495 "9-11-45.

496 (a)(1)(A) The clerk of the superior court of the county in which the action is pending
497 or the clerk of any court of record in the county where the deposition is to be taken shall
498 issue subpoenas for the persons sought to be deposed, upon request.

499 (B) Upon agreement of the parties, an attorney, as an officer of the court, may issue
500 and sign a subpoena for the person sought to be deposed on behalf of a court in which
501 the attorney is authorized to practice or a court for a venue in which a deposition is
502 compelled by the subpoena, if the deposition pertains to an action pending in a court in
503 which the attorney is authorized to practice.

504 (C) Subpoenas issued pursuant to this paragraph shall be issued and served in
505 accordance with law governing issuance of subpoenas for attendance at court, except
506 as to issuance by an attorney. The subpoena may command the person to whom it is
507 directed to produce and permit inspection and copying of designated books, papers,
508 documents, electronically stored information, or tangible things which constitute or
509 contain matters within the scope of the examination permitted by subsection (b) of
510 Code Section 9-11-26, but in that event the subpoena will be subject to subsection (c)
511 of Code Section 9-11-26; or the court, upon motion made promptly and in any event at
512 or before the time specified in the subpoena for compliance therewith, may quash or
513 modify the subpoena if it is unreasonable and oppressive, or condition denial of the
514 motion upon the advancement by the person in whose behalf the subpoena is issued of
515 the reasonable cost of producing the books, papers, documents, electronically stored
516 information, or tangible things. A party who issues a subpoena to a nonparty to
517 produce electronically stored information shall take reasonable steps to avoid imposing
518 undue burden or expense on such nonparty.

519 (2) The person to whom the subpoena is directed may, within ten days after the service
520 thereof or on or before the time specified in the subpoena for compliance, if such time is
521 less than ten days after service, serve upon the attorney designated in the subpoena
522 written objection to inspection or copying of any or all of the designated materials. If
523 objection is made, the party serving the subpoena shall not be entitled to inspect and copy
524 the materials except pursuant to an order of the court from which the subpoena was
525 issued. The party serving the subpoena may, if objection has been made, move, upon
526 notice to the deponent, for an order at any time before or during the taking of the
527 deposition, provided that nothing in this Code section shall be construed as requiring the
528 issuance of a subpoena to compel a party to attend and give his or her deposition or
529 produce documents or electronically stored information at the taking of his or her
530 deposition where a notice of deposition under Code Section 9-11-30 has been given or

531 a request under Code Section 9-11-34 has been served, such notice or request to a party
532 being enforceable by motion under Code Section 9-11-37.

533 (b) A person who is to give a deposition may be required to attend an examination:

534 (1) In the county wherein he or she resides or is employed or transacts his or her business
535 in person;

536 (2) In any county in which he or she is served with a subpoena while therein; or

537 (3) At any place which is not more than 30 miles from the county seat of the county
538 wherein the witness resides, is employed, or transacts his or her business in person."

539 **SECTION 1-9.**

540 Said chapter is further amended by revising Code Section 9-11-69, relating to execution and
541 discovery in aid of execution, as follows:

542 "9-11-69.

543 Process to enforce a judgment for the payment of money shall be a writ of execution unless
544 the court directs otherwise. In aid of the judgment or execution, the judgment creditor, or
545 his or her successor in interest when that interest appears of record, may do any or all of
546 the following:

547 (1) Examine any person, including the judgment debtor, by taking depositions or
548 propounding interrogatories;

549 (2) Compel the production of documents, electronically stored information, or tangible
550 things; and

551 (3) Upon a showing of reasonable necessity, obtain permission from a court of
552 competent jurisdiction to enter upon that part of real property belonging to or lawfully
553 occupied by the debtor which is not used as a residence and which property is not bona
554 fide in the lawful possession of another;

555 in the manner provided in this chapter for such discovery measures prior to judgment."

556 **PART II**

557 **SECTION 2-1.**

558 The following Code sections of the Official Code of Georgia Annotated are amended by
559 replacing "documents," with "documents, electronically stored information," wherever such
560 term occurs in:

561 (1) Code Section 2-7-60, relating to subpoena powers of the Commissioner of Agriculture
562 regarding control of pesticides;

563 (2) Code Section 2-7-108, relating to subpoena powers of the Commissioner of Agriculture
564 regarding use and application of pesticides;

- 565 (3) Code Section 7-1-237, relating to reimbursement of judicial process costs incurred in
 566 answering subpoena, garnishment, or order and subpoena to be answered within five days;
 567 (4) Code Section 9-9-9, relating to power of subpoena, enforcement, use of discovery,
 568 opportunity to examine documents, and compensation of witnesses under the "Georgia
 569 Arbitration Code";
 570 (5) Code Section 9-9-49, relating to subpoenas for witnesses and other evidence and
 571 compensation of witnesses under the "Georgia International Commercial Arbitration Code";
 572 (6) Code Section 10-14-19, relating to enforcement and civil penalties regarding cemetery
 573 and funeral services;
 574 (7) Code Section 15-12-100, relating to procedure for impaneling special grand jury, number
 575 of jurors, foreperson, and powers of jury;
 576 (8) Code Section 25-2-28, relating to procedure for investigation of suspected arson -
 577 issuance of subpoenas to compel attendance of witnesses or production of documents,
 578 administration of oaths, and issuance of court order compelling compliance;
 579 (9) Code Section 43-15-6, relating to general powers of the State Board of Registration for
 580 Professional Engineers and Land Surveyors, injunctions, and continuing education;
 581 (10) Code Section 43-17-13, relating to penalties, cease and desist orders, injunctions,
 582 restitution, appointment and powers of receiver, and subpoenas regarding charitable
 583 solicitations;
 584 (11) Code Section 44-3-6, relating to order prohibiting Georgia Land Sales Act, practice, or
 585 transaction in violation of article and injunctive relief; and
 586 (12) Code Section 50-27-9, relating to general powers of the Georgia Lottery Corporation.

587 **SECTION 2-2.**

588 The following Code sections of the Official Code of Georgia Annotated are amended by
 589 replacing "records," with "records, electronically stored information," wherever such term
 590 occurs in:

- 591 (1) Code Section 2-8-29, relating to maintenance and inspection of books and records and
 592 provision of information, confidentiality of information, and hearings, testimony, and
 593 subpoenas and the Agricultural Commodity Commission generally;
 594 (2) Code Section 2-8-69, relating to books and records of processors and distributors,
 595 furnishing information to commission, inspection of books and records, confidentiality, and
 596 enforcement regarding the Agricultural Commodity Commission for Peanuts;
 597 (3) Code Section 10-5A-20, relating to investigations regarding enforcement of commodities
 598 and commodity contracts and options;
 599 (4) Code Section 10-14-15, relating to investigations by Secretary of State, subpoenas, and
 600 hearings regarding cemetery and funeral services;

- 601 (5) Code Section 10-14-23, relating to administrative appeal of order of Secretary of State
602 regarding cemetery and funeral services;
- 603 (6) Code Section 16-9-108, relating to investigative and subpoena powers of district
604 attorneys and the Attorney General regarding computer systems protection;
- 605 (7) Code Section 20-1A-12, relating to application, "license" defined, actions authorized by
606 department in event of violations, investigations, and governmental immunity regarding
607 general provisions of early care and learning;
- 608 (8) Code Section 25-5-9, relating to mediation board - time, notice, and conduct of hearings,
609 transmittal of findings and opinion, and effect of decision regarding resolution of wages,
610 hours, and working conditions of firefighters;
- 611 (9) Code Section 38-2-1046.1, relating to issuance of process and mandates, who may issue,
612 and execution regarding trial procedures under the "Georgia Code of Military Justice";
- 613 (10) Code Section 38-3-23, relating to investigations and surveys, subpoena power, and
614 cooperation regarding organization and administration under emergency management;
- 615 (11) Code Section 43-17-11, relating to enforcement of chapter, investigations, subpoenas,
616 and cooperation with Attorney General, law enforcement, and regulatory agencies regarding
617 charitable solicitations;
- 618 (12) Code Section 43-17-16, relating to hearings, notice, and powers and orders of the
619 Secretary of State regarding charitable solicitations;
- 620 (13) Code Section 45-15-17, relating to power to conduct investigations generally and
621 issuance and enforcement of subpoenas regarding general provisions of the Attorney
622 General;
- 623 (14) Code Section 45-16-27, relating to when inquest to be held, special situations, coroner's
624 fee, issuance of subpoenas for books, records, or papers, cost of copying, and limited
625 disclosure of photographs in death investigations;
- 626 (15) Code Section 45-16-34, relating to issuance of subpoenas and administration of oath
627 to witnesses in death investigations;
- 628 (16) Code Section 46-2-20, relating to jurisdiction of the Public Service Commission
629 generally and powers and duties of commission generally;
- 630 (17) Code Section 48-2-8, relating to judicial and investigative powers of the state revenue
631 commissioner; and
- 632 (18) Code Section 49-2-17, relating to disciplinary actions against licensees or license
633 applicants for certain violations regarding general provisions of the Department of Human
634 Services.

635 **SECTION 2-3.**

636 The following Code sections of the Official Code of Georgia Annotated are amended by
637 replacing "papers," with "papers, electronically stored information," wherever such term
638 occurs in:

639 (1) Code Section 19-11-11, relating to issuance of subpoenas by department and court order
640 requiring compliance regarding child support;

641 (2) Code Section 21-2-228, relating to examination of electors' qualifications, subpoenas,
642 notice and hearing, and right of appeal regarding registration of voters;

643 (3) Code Section 21-2-229, relating to challenge of applicant for registration by other
644 electors, notice and hearing, and right of appeal regarding registration of voters;

645 (4) Code Section 31-2-8, relating to actions against certain applicants or licensees regarding
646 the Department of Community Health;

647 (5) Code Section 33-2-16, relating to powers of Commissioner of Insurance as to evidence
648 and witnesses, payment of witness fees and expenses, subpoenas, and giving of false
649 testimony;

650 (6) Code Section 33-6-7, relating to conduct of hearings by the Commissioner of Insurance,
651 rights of person being investigated, powers of Commissioner, and service of process;

652 (7) Code Section 33-37-20, relating to powers of liquidator regarding insurers rehabilitation
653 and liquidation;

654 (8) Code Section 33-39-16, relating to violations of chapter - service of statement of charges
655 and notice of hearing and conduct of hearing regarding the collection, use, and disclosure of
656 information gathered by insurance institutions; and

657 (9) Code Section 43-4B-4, relating to authority of the Georgia Athletic and Entertainment
658 Commission, inspectors, prefight physicals, investigations, promotion of amateur boxing,
659 identification cards for boxers, boxing registry, financial backing of professional events, and
660 tax payments.

661 **SECTION 2-4.**

662 The following Code sections of the Official Code of Georgia Annotated are amended by
663 replacing "documents" with "documents, electronically stored information," wherever such
664 term occurs in:

665 (1) Code Section 20-2-940, relating to grounds and procedure for terminating or suspending
666 contract of employment regarding teachers and other school personnel;

667 (2) Code Section 20-2-984.4, relating to the Professional Standards Commission -
668 preliminary investigations, powers of investigator, limitations, notice, change of address, and
669 withdrawal of application regarding teachers and other school personnel;

- 670 (3) Code Section 20-2-2101, relating to powers and duties regarding the High School
671 Athletics Overview Committee;
- 672 (4) Code Section 28-1-16, relating to issuance of subpoenas by Superior Court of Fulton
673 County on behalf of the Committees on Ethics of the Senate and House of Representatives;
- 674 (5) Code Section 28-10-3, relating to availability of services of state auditor and Attorney
675 General, committee employees, and employment of professional services;
- 676 (6) Code Section 42-9-50, relating to preliminary hearing for parole or conditional release
677 violator, ratification or overruling of decision of hearing officer by the State Board of
678 Pardons and Paroles, and disposition of violator;
- 679 (7) Code Section 42-9-51, relating to final hearing for parole or conditional release violator,
680 order and statement as to disposition of violator, and revocations without hearing and
681 temporary revocations;
- 682 (8) Code Section 43-45-8, relating to general powers and duties of the State Structural Pest
683 Control Commission;
- 684 (9) Code Section 43-45-17, relating to enforcement authority of the Commissioner of
685 Agriculture; and
- 686 (10) Code Section 45-19-27, relating to additional powers and duties of the administrator
687 of the Commission on Equal Opportunity.

688

SECTION 2-5.

689 The following Code sections of the Official Code of Georgia Annotated are amended by
690 replacing "books" with "books, electronically stored information," wherever such term occurs
691 in:

- 692 (1) Code Section 2-7-29, relating to enforcement of article generally, criminal proceedings,
693 and subpoena powers regarding general provisions relative to plant disease, pest control, and
694 pesticides;
- 695 (2) Code Section 8-3-30, relating to general powers of housing authorities and applicability
696 of laws as to acquisition, operation, or disposition of property by other public bodies;
- 697 (3) Code Section 9-9-74, relating to powers of referee to compel production of documentary
698 evidence regarding medical malpractice;
- 699 (4) Code Section 39-2-14, relating to employment certificates - revocation of certificates by
700 Commissioner of Labor;
- 701 (5) Code Section 44-2-103, relating to examiner's powers, contents, filing, and notice of
702 examiner's report, right to jury trial, new trial, and appeal, and recommitment to examiner
703 after trial or reversal on appeal in regard to land registration; and

704 (6) Code Section 45-8-23, relating to authority to issue subpoenas and punishment for
705 contempt for refusal to obey regarding public officers and employees accounting for public
706 funds.

707 **SECTION 2-6.**

708 The following Code sections of the Official Code of Georgia Annotated are amended by
709 replacing "papers" with "papers and electronically stored information," wherever such term
710 occurs in:

- 711 (1) Code Section 9-7-6, relating to powers of auditor generally regarding civil practice;
712 (2) Code Section 9-9-74, relating to powers of referee to compel production of documentary
713 evidence regarding arbitration of medical malpractice; and
714 (3) Code Section 9-14-14, relating to hearing of issue regarding general provisions relative
715 to habeas corpus.

716 **SECTION 2-7.**

717 The following Code sections of the Official Code of Georgia Annotated are amended by
718 replacing "writings," with "writings, electronically stored information," wherever such term
719 occurs in:

- 720 (1) Code Section 9-9-9, relating to power of subpoena, enforcement, use of discovery,
721 opportunity to examine documents, and compensation of witnesses regarding the "Georgia
722 Arbitration Code"; and
723 (2) Code Section 9-9-49, relating to subpoenas for witnesses and other evidence and
724 compensation of witnesses regarding the "Georgia International Commercial Arbitration
725 Code".

726 **SECTION 2-8.**

727 The following Code sections of the Official Code of Georgia Annotated are amended by
728 replacing "documents" with "documents and electronically stored information," wherever
729 such term occurs in:

- 730 (1) Code Section 9-9-9, relating to power of subpoena, enforcement, use of discovery,
731 opportunity to examine documents, and compensation of witnesses regarding the "Georgia
732 Arbitration Code";
733 (2) Code Section 9-9-49, relating to subpoenas for witnesses and other evidence and
734 compensation of witnesses regarding the "Georgia International Commercial Arbitration
735 Code";
736 (3) Code Section 19-11-11, relating to issuance of subpoenas by department and court order
737 requiring compliance regarding child support;

738 (4) Code Section 19-15-3, relating to county review committee, chairperson, eligible deaths
 739 for review, notification to coroner, reporting to chairperson, and committee review regarding
 740 child abuse;

741 (5) Code Section 19-15-4, relating to Georgia Child Fatality Review Panel; and

742 (6) Code Section 43-9-12, relating to refusal, suspension, or revocation of licenses,
 743 subpoenas, other discipline, judicial review, reinstatement, voluntary surrender of license,
 744 injunctions, and statement of complaint regarding chiropractors.

745 **SECTION 2-9.**

746 Code Section 35-8-7.2 of the Official Code of Georgia Annotated, relating to administrative
 747 procedure, hearings, and review regarding employment and training of peace officers, is
 748 amended by replacing "writing," with "writing, electronically stored information," in
 749 subsection (a).

750 **SECTION 2-10.**

751 The following Code sections of the Official Code of Georgia Annotated are amended by
 752 replacing "books and records or" with "books, records, electronically stored information, or"
 753 wherever such term occurs in:

754 (1) Code Section 48-2-18, relating to the State Board of Equalization and duties; and

755 (2) Code Section 48-5-348, relating to appeal from conditional approvals by the state
 756 revenue commissioner.

757 **SECTION 2-11.**

758 Code Section 50-13A-13 of the Official Code of Georgia Annotated, relating to application
 759 of Georgia Civil Practice Act, discovery, and attendance of witnesses, is amended by
 760 replacing "paper," with "paper, electronically stored information," in subsection (g).

761 **PART III**

762 **SECTION 3-1.**

763 This Act shall become effective on July 1, 2016.

764 **SECTION 3-2.**

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