

House Bill 46 (AS PASSED HOUSE AND SENATE)

By: Representatives Jacobs of the 80<sup>th</sup>, Lindsey of the 54<sup>th</sup>, Oliver of the 83<sup>rd</sup>, Willard of the 49<sup>th</sup>, Lane of the 167<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Title 24 of the Official Code of Georgia Annotated, relating to evidence, so as to repeal the "Uniform Foreign Depositions Act" and to replace such Act with the "Uniform Interstate Depositions and Discovery Act"; to provide for a short title; to provide for definitions; to provide for issuance and service of subpoenas; to provide for depositions and production and inspection of documents and tangible evidence; to provide for protective orders; to provide for related matters; to provide for an effective date and a contingent effective date and applicability; to provide for automatic repeal under certain circumstances; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

**SECTION 1-1.**

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by repealing Article 6 of Chapter 10, the "Uniform Foreign Depositions Act," and enacting a new Article 6 to read as follows:

"ARTICLE 6

24-10-110.

This article shall be known and may be cited as the 'Uniform Interstate Depositions and Discovery Act.'

24-10-111.

As used in this article, the term:

(1) 'Foreign jurisdiction' means a state other than this state.

(2) 'Foreign subpoena' means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Native American tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) 'Subpoena' means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) Attend and give testimony at a deposition;

(B) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of such person; or

(C) Permit inspection of premises under the control of such person.

24-10-112.

(a) To request issuance of a subpoena under this Code section, a party shall submit a foreign subpoena to the clerk of superior court of the county in which the person receiving the subpoena resides. A request for the issuance of a subpoena under this Code section shall not constitute an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of superior court in this state, the clerk shall promptly issue and provide to the requestor a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this Code section shall:

(1) Incorporate the terms used in the foreign subpoena; and

(2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) This Code section shall only apply to a subpoena to be issued in this state if the foreign jurisdiction that issued the foreign subpoena has adopted a version of the 'Uniform Interstate Depositions and Discovery Act.'

(e) This Code section shall not apply to criminal proceedings.

24-10-113.

(a) For purposes of this Code section, the term 'subpoena' shall have only the meaning set forth in subparagraph (A) of paragraph (5) of Code Section 24-10-111.

(b) In addition to the mechanism for issuing subpoenas provided for in Code Section 24-10-112, whenever any mandate, writ, or commission is issued out of any court of record in a foreign jurisdiction, a witness may be compelled by subpoena issued by the clerk of superior court of the county in which such witness resides to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

24-10-114.

A subpoena issued by the clerk of superior court under Code Section 24-10-112 or 24-10-113 shall be served in compliance with Code Section 24-10-23 and shall be served within a reasonable time prior to the appearance required by such subpoena.

24-10-115.

Part 1 of Article 2 of this chapter shall apply to subpoenas issued under Code Section 24-10-112 or 24-10-113.

24-10-116.

An application for a protective order or to enforce, quash, or modify a subpoena issued by the clerk of superior court under Code Section 24-10-112 or 24-10-113 shall comply with the statutes and court rules of this state and shall be submitted to the superior court of the county in which the subpoena was issued."

## PART II

### SECTION 2-1.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by repealing Article 5 of Chapter 13 as enacted by HB 24, substantially revising, superseding, and modernizing provisions relating to evidence during the 2011-2012 biennium of the General Assembly, and enacting a new article to read as follows:

### "ARTICLE 5

24-13-110.

This article shall be known and may be cited as the 'Uniform Interstate Depositions and Discovery Act.'

24-13-111.

As used in this article, the term:

(1) 'Foreign jurisdiction' means a state other than this state.

(2) 'Foreign subpoena' means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Native American tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) 'Subpoena' means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) Attend and give testimony at a deposition;

(B) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of such person; or

(C) Permit inspection of premises under the control of such person.

24-13-112.

(a) To request issuance of a subpoena under this Code section, a party shall submit a foreign subpoena to the clerk of superior court of the county in which the person receiving the subpoena resides. A request for the issuance of a subpoena under this Code section shall not constitute an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of superior court in this state, the clerk shall promptly issue and provide to the requestor a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this Code section shall:

(1) Incorporate the terms used in the foreign subpoena; and

(2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) This Code section shall only apply to a subpoena to be issued in this state if the foreign jurisdiction that issued the foreign subpoena has adopted a version of the 'Uniform Interstate Depositions and Discovery Act.'

(e) This Code section shall not apply to criminal proceedings.

24-13-113.

(a) For purposes of this Code section, the term 'subpoena' shall have only the meaning set forth in subparagraph (A) of paragraph (5) of Code Section 24-13-111.

(b) In addition to the mechanism for issuing subpoenas provided for in Code Section 24-13-112, whenever any mandate, writ, or commission is issued out of any court of record in a foreign jurisdiction, a witness may be compelled by subpoena issued by the clerk of superior court of the county in which such witness resides to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

24-13-114.

A subpoena issued by the clerk of superior court under Code Section 24-13-112 or 24-13-113 shall be served in compliance with Code Section 24-13-23 and shall be served within a reasonable time prior to the appearance required by such subpoena.

24-13-115.

Article 2 of this chapter shall apply to subpoenas issued under Code Section 24-13-112 or 24-13-113.

24-13-116.

An application for a protective order or to enforce, quash, or modify a subpoena issued by the clerk of superior court under Code Section 24-13-112 or 24-13-113 shall comply with the statutes and court rules of this state and shall be submitted to the superior court of the county in which the subpoena was issued."

### PART III

#### SECTION 3-1.

(a) This part and Part I of this Act shall become effective on July 1, 2011, and shall apply to subpoenas served on or after July 1, 2011, and in actions pending on or after July 1, 2011, except as otherwise provided by subsection (b) of this section.

(b)(1) Part II of this Act shall become effective only if HB 24, substantially revising, superseding, and modernizing provisions relating to evidence, is enacted during the 2011-2012 biennium of the General Assembly and becomes law on or before January 1, 2013, in which case Part II of this Act shall become effective on the same date that said HB 24 becomes effective and shall apply to subpoenas served on or after July 1, 2013, and in actions pending on or after July 1, 2013.

154 (2) Part I of this Act shall stand repealed if and when Part II of this Act becomes  
155 effective as provided by paragraph (1) of this subsection.

156 (3) If said HB 24 does not become law on or before January 1, 2013, as provided by  
157 paragraph (1) of this subsection, then Part II of this Act shall stand repealed on January 1,  
158 2013.

159 **SECTION 3-2.**

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