

Senate Bill 203

By: Senators Kennedy of the 18th, Gooch of the 51st, Dugan of the 30th, Miller of the 49th,
Watson of the 1st and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated,
2 relating to specific periods of limitation, so as to prohibit retroactive application of certain
3 limitations of actions; to provide a definition; to amend Code Section 9-10-5 of the Official
4 Code of Georgia Annotated, relating to written jury charges, exceptions, and filing of written
5 jury charges, so as to require the judge to respond to the jury in writing; to amend Chapter
6 11 of Title 9 of the Official Code of Georgia Annotated, relating to the Civil Practice Act,
7 so as to provide for electronic transmission of discovery in civil practice; to provide for
8 conforming cross-references; to amend Code Section 5-6-43 of the Official Code of Georgia
9 Annotated, relating to preparation and transmittal of record of appeal by court clerk, so as
10 to provide for electronic transmission of the record; to amend Code Section 24-9-921 of the
11 Official Code of Georgia Annotated, relating to identification of medical bills and expert
12 witnesses unnecessary, so as to revise the standard of reasonableness regarding medical bills;
13 to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **PART I**
16 **SECTION 1-1.**

17 Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to
18 specific periods of limitation, is amended by adding a new Code section to read as follows:
19 "9-3-36.
20 (a) As used in this Code section, the term 'civil action' means a civil action or proceeding,
21 an administrative proceeding, an arbitration proceeding, or other adjudicative proceeding
22 before any court, panel, or other tribunal whose orders may be enforced in a state or federal
23 court.

24 (b) No civil action may be brought after the right of action arising therefrom is time barred
 25 under the provisions of this article in effect at the time the act, error, omission, or other
 26 conduct occurred on account of which the right of action shall have accrued."

27

SECTION 1-2.

28 Code Section 9-10-5 of the Official Code of Georgia Annotated, relating to written jury
 29 charges, exceptions, and filing of written jury charges, is amended by revising subsections
 30 (b) and (c) as follows:

31 ~~"(b) In any civil action, upon motion by a party, upon request by the jury, or sua sponte,~~
 32 ~~a judge of a superior, state, or city court is authorized, but shall not be required, to reduce~~
 33 ~~all of the charge to the jury to writing and send all of the charge so reduced to writing out~~
 34 ~~with the jury during its deliberation. In response to any written question sent to the judge~~
 35 ~~by a jury during its deliberation, the judge, after consultation with counsel for all parties,~~
 36 ~~shall respond to the jury in writing.~~

37 (c) Any charge or response to a jury question reduced to writing under subsection (a),
 38 ~~or (b), or (c)~~ of this Code section shall be filed with the clerk of the court in which it was
 39 given and shall be accessible to all persons interested in it. The clerk shall give certified
 40 copies of the charge to any person applying therefor, upon payment of the usual fee."

41

SECTION 1-3.

42 Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the Civil Practice
 43 Act, is amended by adding a new subsection to Code Section 9-11-8, relating to general rules
 44 of pleading, to read as follows:

45 **"(g) Scheduling orders.**

46 (1) The scheduling order must include:

47 (A) A time limit for amending the pleadings;

48 (B) A time limit for the completion of discovery;

49 (C) A time limit for filing motions; and

50 (D) Dates for other pretrial conferences and for trial.

51 (2) The scheduling order may include:

52 (A) Modifications for the timing of disclosures;

53 (B) Modifications of the extent of discovery permitted;

54 (C) Disclosure, discovery, or preservation of electronically stored information;

55 (D) Any agreements the parties reach for asserting claims of privilege or of protection
 56 as trial preparation material after information is produced;

57 (E) A requirement that before moving for an order relating to discovery, the movant
 58 must request a conference with the court; or

59 (F) Other appropriate matters.

60 (3) A schedule may be modified only for good cause with the arbitrator's consent."

61 **SECTION 1-4.**

62 Said chapter is further amended by revising subsection (j) of Code Section 9-11-12, relating
63 to stay of discovery, as follows:

64 **"(j) Stay of discovery.**

65 (1) If a party files a motion to dismiss before or at the time of filing an answer and
66 pursuant to the provisions of this Code section, discovery shall be stayed ~~for 90 days after~~
67 ~~the filing of such motion or~~ until the ruling of the court on such motion, ~~whichever is~~
68 ~~sooner~~. The court shall decide the motion to dismiss within ~~the~~ 90 days ~~provided in this~~
69 ~~paragraph~~.

70 (2) The discovery period and all discovery deadlines shall be extended for a period equal
71 to the duration of the stay imposed by this subsection.

72 (3) The court may upon its own motion or upon motion of a party terminate or modify
73 the stay imposed by this subsection ~~but shall not extend such stay only upon a~~
74 ~~demonstrated need~~.

75 (4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of
76 subsection (b) of this Code section or if any party needs discovery in order to identify
77 persons who may be joined as parties, limited discovery needed to respond to such
78 defenses or identify such persons shall be permitted until the court rules on such motion.

79 (5) The provisions of this subsection shall not modify or affect the provisions of
80 paragraph (2) of subsection (f) of Code Section 9-11-23 or any other power of the court
81 to stay discovery."

82 **SECTION 1-5.**

83 Said chapter is further amended by revising subsection (a) of Code Section 9-11-15, relating
84 to amended and supplemental pleadings, as follows:

85 **"(a) Amendments.** A party may amend ~~his~~ its pleading once as a matter of course ~~and~~
86 ~~without leave of court at any time before the entry of a pretrial order. within:~~

87 (1) Thirty days after serving it; or

88 (2) If the pleading is one to which a responsive pleading is required, 30 days after service
89 of a responsive pleading.

90 Thereafter, the party may amend ~~his~~ its pleading only by leave of court or by written
91 consent of the adverse party. Leave shall be freely given when justice so requires. A party
92 may plead or move in response to an amended pleading and, when required by an order of

93 the court, shall plead within 15 days after service of the amended pleading, unless the court
 94 otherwise orders."

95 **SECTION 1-6.**

96 Said chapter is further amended by revising subsections (a), (b), and (c) of Code Section
 97 9-11-26, relating to general provisions governing discovery, as follows:

98 "(a) **Discovery methods.** Parties may obtain discovery by one or more of the following
 99 methods: depositions upon oral examination or written questions; written interrogatories;
 100 production of documents, electronically stored information, or things or permission to enter
 101 upon land or other property for inspection and other purposes; physical and mental
 102 examinations; and requests for admission. Unless the court orders otherwise under
 103 subsection (c) of this Code section, the frequency of use of these methods is not limited.

104 (b) **Scope of discovery.** Unless otherwise limited by order of the court in accordance with
 105 this chapter, the scope of discovery is as follows:

106 (1) **In general.** Parties may obtain discovery regarding any matter, not privileged, which
 107 is relevant to ~~the subject matter involved in the pending action, whether it relates to the~~
 108 ~~claim or defense of the party seeking discovery or to the claim or defense of any other~~
 109 ~~party, including the existence, description, nature, custody, condition, and location of any~~
 110 ~~books, documents, or other tangible things and the identity and location of persons having~~
 111 ~~knowledge of any discoverable matter. It is not ground for objection that the information~~
 112 ~~sought will be inadmissible at the trial if the information sought appears reasonably~~
 113 ~~calculated to lead to the discovery of admissible evidence~~ any party's claim or defense
 114 and proportional to the needs of the case, considering the importance of the issues at stake
 115 in the action, the amount in controversy, the parties' relative access to relevant
 116 information, the parties' resources, the importance of the discovery in resolving the
 117 issues, and whether the burden or expense of the proposed discovery outweighs its likely
 118 benefit. Information within the scope of discovery need not be admissible in evidence
 119 to be discoverable;

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

127 (3) **Trial preparation; materials.** Subject to paragraph (4) of this subsection, a party
 128 may obtain discovery of documents, electronically stored information, and tangible things

129 otherwise discoverable under paragraph (1) of this subsection and prepared in
 130 anticipation of litigation or for trial by or for another party or by or for that other party's
 131 representative (including his or her attorney, consultant, surety, indemnitor, insurer, or
 132 agent) only upon a showing that the party seeking discovery has substantial need of the
 133 materials in the preparation of his or her case and that he or she is unable without undue
 134 hardship to obtain the substantial equivalent of the materials by other means. In ordering
 135 discovery of such materials when the required showing has been made, the court shall
 136 protect against disclosure of the mental impressions, conclusions, opinions, or legal
 137 theories of an attorney or other representative of a party concerning the litigation. A
 138 party may obtain, without the required showing, a statement concerning the action or its
 139 subject matter previously made by that party. Upon request, a person not a party may
 140 obtain, without the required showing, a statement concerning the action or its subject
 141 matter previously made by that person. If the request is refused, the person may move
 142 for a court order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the
 143 award of expenses incurred in relation to the motion. For purposes of this paragraph, a
 144 'statement previously made' is (A) a written statement signed or otherwise adopted or
 145 approved by the person making it, or (B) a stenographic, mechanical, electrical, or other
 146 recording, or a transcription thereof, which is a substantially verbatim recital of an oral
 147 statement by the person making it and contemporaneously recorded; and

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

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

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

162 (B) A party may discover facts known or opinions held by an expert who has been
 163 retained or specially employed by another party in anticipation of litigation or
 164 preparation for trial and who is not expected to be called as a witness at trial, only as
 165 provided in subsection (b) of Code Section 9-11-35 or upon a showing of exceptional

166 circumstances under which it is impracticable for the party seeking discovery to obtain
 167 facts or opinions on the same subject by other means; and

168 (C) Unless manifest injustice would result:

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

172 (ii) With respect to discovery obtained under division (ii) of subparagraph (A) of this
 173 paragraph, the court may require, and with respect to discovery obtained under
 174 subparagraph (B) of this paragraph the court shall require, the party seeking discovery
 175 to pay the other party a fair portion of the fees and expenses reasonably incurred by
 176 the latter party in obtaining facts and opinions from the expert.

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

178 **(A) Information withheld.** When a party withholds information otherwise
 179 discoverable by claiming that the information is privileged or subject to protection as
 180 trial preparation material, the party must:

181 (i) Expressly make the claim; and

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

186 **(B) Information produced.** If information produced in discovery is subject to a claim
 187 of privilege or of protection as trial preparation material, the party making the claim
 188 may notify any party that received the information of the claim and the basis for it.
 189 After being notified, a party must promptly return, sequester, or destroy the specified
 190 information and any copies it has; must not use or disclose the information until the
 191 claim is resolved; must take reasonable steps to retrieve the information if the party
 192 disclosed it before being notified; and may promptly present the information to the
 193 court under seal for a determination of the claim. The producing party must preserve
 194 the information until the claim is resolved.

195 (c) **Protective orders.** Upon motion by a party or by the person from whom discovery is
 196 sought and for good cause shown, the court in which the action is pending or, alternatively,
 197 on matters relating to a deposition, the court in the county where the deposition is to be
 198 taken may make any order which justice requires to protect a party or person from
 199 annoyance, embarrassment, oppression, or undue burden or expense, including one or more
 200 of the following:

- 201 (1) That the discovery not be had;
- 202 (2) That the discovery may be had only on specified terms and conditions, including a
203 designation of the time or place or the allocation of expenses;
- 204 (3) That the discovery may be had only by a method of discovery other than that selected
205 by the party seeking discovery;
- 206 (4) That certain matters not be inquired into or that the scope of the discovery be limited
207 to certain matters;
- 208 (5) That discovery be conducted with no one present except persons designated by the
209 court;
- 210 (6) That a deposition, after being sealed, be opened only by order of the court;
- 211 (7) That a trade secret or other confidential research, development, or commercial
212 information not be disclosed or be disclosed only in a designated way; or
- 213 (8) That the parties simultaneously file specified documents, electronically stored
214 information, or information enclosed in sealed envelopes to be opened as directed by the
215 court.
- 216 If the motion for a protective order is denied in whole or in part, the court may, on such
217 terms and conditions as are just, order that any party or person provide or permit discovery.
218 Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses
219 incurred in relation to the motion."

220 **SECTION 1-7.**

221 Said chapter is further amended by revising paragraphs (1), (4), and (5) of subsection (b) and
222 subparagraph (f)(1)(B) of Code Section 9-11-30, relating to depositions upon oral
223 examination, as follows:

224 "(1) **General requirements.** A party desiring to take the deposition of any person upon
225 oral examination shall give reasonable notice in writing to every other party to the action.
226 The notice shall state the time and place for taking the deposition, the means by which
227 the testimony shall be recorded, and the name and address of each person to be examined,
228 if known, and, if the name is not known, a general description sufficient to identify the
229 person to be examined or the particular class or group to which he or she belongs. If a
230 subpoena for the production of documentary and tangible evidence including
231 electronically stored information is to be served on the person to be examined, the
232 designation of the materials to be produced, as set forth in the subpoena, shall be attached
233 to, or included in, the notice."

234 "(4) **Recording of deposition.** Unless the court orders otherwise, the testimony at a
235 deposition must be recorded by stenographic means, and may also be recorded by sound
236 or sound and visual means in addition to stenographic means, and the party taking the

237 deposition shall bear the costs of the recording. A deposition shall be conducted before
 238 an officer appointed or designated under Code Section 9-11-28, and may be conducted
 239 in person with all parties or via video conferencing. Upon motion of a party or upon its
 240 own motion, the court may issue an order designating the manner of recording,
 241 preserving, and filing of a deposition taken by nonstenographic means, which order may
 242 include other provisions to assure that the recorded testimony will be accurate and
 243 trustworthy. Any party may arrange for a transcription to be made from the recording of
 244 a deposition taken by nonstenographic means. With prior notice to the deponent and
 245 other parties, any party may designate another method to record the deponent's testimony
 246 in addition to the methods specified by the person taking the deposition. The additional
 247 record or transcript shall be made at that party's expense unless the court otherwise
 248 orders. The appearance or demeanor of deponents or attorneys shall not be distorted
 249 through camera or sound-recording techniques. Notwithstanding the foregoing
 250 provisions of this paragraph, a deposition may be taken by telephone or other remote
 251 electronic means, other than video conferencing, only upon the stipulation of the parties
 252 or by order of the court. For purposes of the requirements of this chapter, a deposition
 253 taken by telephone or other remote electronic means is may be taken in the this state or
 254 any other location and at the place where the deponent is to answer questions.

255 (5) **Production of documents, electronically stored information, and things.** The
 256 notice to a party deponent may be accompanied by a request made in compliance with
 257 Code Section 9-11-34 for the production of documents, electronically stored information,
 258 and tangible things at the taking of the deposition. The procedure of Code Section
 259 9-11-34 shall apply to the request."

260 "(B) Documents, electronically stored information, and things produced for inspection
 261 during the examination of the witness shall, upon the request of a party, be marked for
 262 identification and annexed to and returned with the deposition and may be inspected
 263 and copied by any party, except that the person producing the materials may substitute
 264 copies to be marked for identification, if he or she affords to all parties fair opportunity
 265 to verify the copies by comparison with the originals; and, if the person producing the
 266 materials requests their return, the officer shall mark them, give each party an
 267 opportunity to inspect and copy them, and return them to the person producing them,
 268 and the materials may then be used in the same manner as if annexed to and returned
 269 with the deposition. Any party may move for an order that the original be annexed to
 270 and returned with the deposition to the court, pending final disposition of the case."

271

SECTION 1-8.

272 Said chapter is further amended by revising Code Section 9-11-34, relating to production of
 273 documents and things and entry upon land for inspection and other purposes, applicability
 274 to nonparties, and confidentiality, as follows:

275 "9-11-34.

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

277 (1) To produce and permit the requesting party or its representative making the request,
 278 or someone acting on his behalf, to inspect, and copy any, test, or sample the following
 279 items in the responding party's possession, custody, or control:

280 (A) Any designated documents or electronically stored information (including writings,
 281 drawings, graphs, charts, photographs, ~~phono-records~~ sound recordings, images, and
 282 other data or ~~and other~~ data compilations from which information can be obtained;
 283 translated, if necessary, by the respondent through detection devices either directly or,
 284 if necessary, after translation by the responding party into a reasonably usable form);

285 or

286 (B) Any designated tangible things; or to inspect and copy, test, or sample any tangible
 287 things which constitute or contain matters within the scope of subsection (b) of Code
 288 Section 9-11-26 and which are in the possession, custody, or control of the party upon
 289 whom the request is served; or

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

294 (b) **Procedure.**

295 (1) The request may, without leave of court, be served upon the plaintiff after
 296 commencement of the action and upon any other party with or after service of the
 297 summons and complaint upon that party. The request shall:

298 (A) Set set forth the items to be inspected, either by individual item or by category, and
 299 describe each item and category with reasonable particularity each item or category of
 300 items to be inspected;:

301 (B) The request shall specify Specify a reasonable time, place, and manner of making
 302 the inspection and performing the related acts; and

303 (C) May specify the form or forms in which electronically stored information is to be
 304 produced.

305 (2)(A) The party upon whom the request is served shall serve a written response within
 306 30 days after the service of the request, except that a defendant may serve a response

307 within 45 days after service of the summons and complaint upon that defendant. The
 308 court may allow a shorter or longer time.

309 (B) For each item or category, the response must either state that inspection and related
 310 activities will be permitted as requested or state with specificity the grounds for
 311 objecting to the request, including the reasons. The responding party may state that it
 312 will produce copies of documents or of electronically stored information instead of
 313 permitting inspection. The production must then be completed no later than the time
 314 for inspection specified in the request or another reasonable time specified in the
 315 response.

316 (C) An objection must state whether any responsive materials are being withheld on
 317 the basis of that objection. An objection to part of a request must specify the part and
 318 permit inspection of the rest. The response shall state, with respect to each item or
 319 category, that inspection and related activities will be permitted as requested, unless the
 320 request is objected to, in which event the reasons for objection shall be stated. If
 321 objection is made to part of an item or category, the part shall be specified. The party
 322 submitting the request may move for an order under subsection (a) of Code Section
 323 9-11-37 with respect to any objection to or other failure to respond to the request or any
 324 part thereof, or any failure to permit inspection as requested.

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

326 (1) This Code section shall also be applicable with respect to discovery against persons,
 327 firms, or corporations who are not parties, in which event a copy of the request shall be
 328 served upon all parties of record; or, upon notice, the party desiring such discovery may
 329 proceed by taking the deposition of the person, firm, or corporation on oral examination
 330 or upon written questions under Code Section 9-11-30 or 9-11-31. A party requesting
 331 discovery from a nonparty shall take reasonable steps to avoid imposing undue burden
 332 or expense on the nonparty. The nonparty or any party may file an objection as provided
 333 in subsection (b) of this Code section. If the party desiring such discovery moves for an
 334 order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall
 335 make a showing of good cause to support his or her motion. The party making a request
 336 under this Code section shall, upon request from any other party to the action, make all
 337 reasonable efforts to cause all information produced in response to the nonparty request
 338 to be made available to all parties. A reasonable document copying charge may be
 339 required.

340 (2) This Code section shall also be applicable with respect to discovery against a
 341 nonparty who is a practitioner of the healing arts or a hospital or health care facility,
 342 including those operated by an agency or bureau of the state or other governmental unit.
 343 Where such a request is directed to such a nonparty, a copy of the request shall be served

344 upon the person whose records are sought by certified mail or statutory overnight
345 delivery, return receipt requested, or, if known, that person's counsel, and upon all other
346 parties of record in compliance with Code Section 9-11-5; where such a request to a
347 nonparty seeks the records of a person who is not a party, a copy of the request shall be
348 served upon the person whose records are sought by certified mail or statutory overnight
349 delivery, return receipt requested, or, if known, that person's counsel by certified mail or
350 statutory overnight delivery, return receipt requested, and upon all parties of record in
351 compliance with Code Section 9-11-5; or, upon notice, the party desiring such discovery
352 may proceed by taking the deposition of the person, firm, or corporation on oral
353 examination or upon written questions under Code Section 9-11-30 or 9-11-31. The
354 nonparty, any party, or the person whose records are sought may file an objection with
355 the court in which the action is pending within 20 days of service of the request and shall
356 serve a copy of such objection on the nonparty to whom the request is directed, who shall
357 not furnish the requested materials until further order of the court, and on all other parties
358 to the action. Upon the filing of such objection, the party desiring such discovery may
359 move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and,
360 if he or she shall make a showing of good cause to support his or her motion, discovery
361 shall be allowed. If no objection is filed within 20 days of service of the request, the
362 nonparty to whom the request is directed shall promptly comply therewith.

363 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this
364 subsection or a subpoena requesting records from a nonparty pursuant to Code Section
365 9-11-45, when the nonparty to whom the discovery request is made is not served with an
366 objection and the nonparty produces the requested records, the nonparty shall be immune
367 from regulatory, civil, or criminal liability or damages notwithstanding that the produced
368 documents or electronically stored information contained confidential or privileged
369 information.

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

379

SECTION 1-9.

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

382 "9-11-34.1.

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

388

SECTION 1-10.

389 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section
390 9-11-36, relating to requests for admission, as follows:

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

401

SECTION 1-11.

402 Said chapter is further amended by revising subsection (c) and adding a new subsection to
403 Code Section 9-11-37, relating to failure to make discovery, motions to compel, sanctions,
404 and expenses, as follows:

405 "(c) **Expenses on failure to admit.** If a party fails to admit the genuineness of any
406 document or electronically stored information or the truth of any matter as requested under
407 Code Section 9-11-36 and if the party requesting the admissions thereafter proves the
408 genuineness of the document or electronically stored information or the truth of the matter,
409 he or she may apply to the court for an order requiring the other party to pay him or her the
410 reasonable expenses incurred in making that proof, including reasonable attorney's fees.
411 The court shall make the order unless it finds that the request was held objectionable
412 pursuant to subsection (a) of Code Section 9-11-36, or the admission sought was of no
413 substantial importance, or the party failing to admit had reasonable ground to believe that

414 he or she might prevail on the matter, or there was other good reason for the failure to
415 admit."

416 "(e) If electronically stored information that should have been preserved in the anticipation
417 or conduct of litigation is lost because a party failed to take reasonable steps to preserve it,
418 and it cannot be restored or replaced through additional discovery, the court:

419 (1) Upon finding prejudice to another party from loss of the information, may order
420 measures no greater than necessary to cure the prejudice; or

421 (2) Only upon finding that a party acted with the intent to deprive another party of the
422 information's use in litigation may:

423 (A) Presume that the lost information was unfavorable to the party;

424 (B) Instruct the jury that it may or must presume the information was unfavorable to
425 the party; or

426 (C) Dismiss the action or enter a default judgment."

427 **SECTION 1-12.**

428 Said chapter is further amended by revising subparagraph (a)(1)(C) and paragraph (2) of
429 subsection (a) of Code Section 9-11-45, relating to subpoenas for taking depositions,
430 objections, and places of examination, as follows:

431 "(C) Subpoenas issued pursuant to this paragraph shall be issued and served in
432 accordance with law governing issuance of subpoenas for attendance at court, except
433 as to issuance by an attorney. The subpoena may command the person to whom it is
434 directed to produce and permit inspection and copying of designated books, papers,
435 documents, electronically stored information, or tangible things which constitute or
436 contain matters within the scope of the examination permitted by subsection (b) of
437 Code Section 9-11-26, but in that event the subpoena will be subject to subsection (c)
438 of Code Section 9-11-26; or the court, upon motion made promptly and in any event at
439 or before the time specified in the subpoena for compliance therewith, may quash or
440 modify the subpoena if it is unreasonable and oppressive, or condition denial of the
441 motion upon the advancement by the person in whose behalf the subpoena is issued of
442 the reasonable cost of producing the books, papers, documents, electronically stored
443 information, or tangible things. A party requesting discovery from a nonparty shall take
444 reasonable steps to avoid imposing an undue burden or expense on the nonparty.

445 (2) The person to whom the subpoena is directed may, within ten days after the service
446 thereof or on or before the time specified in the subpoena for compliance, if such time is
447 less than ten days after service, serve upon the attorney designated in the subpoena
448 written objection to inspection or copying of any or all of the designated materials. If
449 objection is made, the party serving the subpoena shall not be entitled to inspect and copy

450 the materials except pursuant to an order of the court from which the subpoena was
451 issued. The party serving the subpoena may, if objection has been made, move, upon
452 notice to the deponent, for an order at any time before or during the taking of the
453 deposition, provided that nothing in this Code section shall be construed as requiring the
454 issuance of a subpoena to compel a party to attend and give his or her deposition or
455 produce documents or electronically stored information, at the taking of his or her
456 deposition where a notice of deposition under Code Section 9-11-30 has been given or
457 a request under Code Section 9-11-34 has been served, such notice or request to a party
458 being enforceable by motion under Code Section 9-11-37."

459 **PART II**

460 **SECTION 2-1.**

461 Code Section 5-6-43 of the Official Code of Georgia Annotated, relating to preparation and
462 transmittal of record on appeal by court clerk, is amended by adding a new subsection to read
463 as follows:

464 "(a.1) The transmission of the record may be by electronic means pursuant to rules that the
465 Supreme Court and Court of Appeals shall adopt for such purposes."

466 **PART III**

467 **SECTION 3-1.**

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