

The Senate Committee on Judiciary offered the following substitute to SB 390:

A BILL TO BE ENTITLED  
AN ACT

1 To amend various titles of the Official Code of Georgia Annotated so as to streamline the  
2 process of litigation and reduce costs for Georgia's industries, small businesses, and citizens;  
3 to amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as  
4 to provide further guidance as to the use of the "Georgia Civil Practice Act"; to change  
5 certain provisions related to stays of discovery; to provide for the discovery and preservation  
6 of electronically stored information; to establish additional requirements for requests for  
7 admission; to establish requirements for the production and inspection of documents; to  
8 amend Title 24 of the Official Code of Georgia Annotated, relating to evidence, so as to  
9 provide for rebuttal interrogations; to amend Title 31 of the Official Code of Georgia  
10 Annotated, relating to health, so as to revise provisions regarding furnishing copies of health  
11 records to patients, providers, and other authorized persons; to provide for definitions; to  
12 provide for costs in producing health records; to require that certain health records be in  
13 electronic format; to amend Title 33 of the Official Code of Georgia Annotated, relating to  
14 insurance, so as to provide for requirements of insurers upon information requests by  
15 claimants; to require certain notices and disclosures to claimants and insureds; to provide for  
16 a private cause of action for unfair trade practices; to revise the liability of an insurer upon  
17 refusal to pay an insured for any loss pursuant to uninsured motorist coverage under motor  
18 vehicle liability policies; to provide for related matters; to provide for severability; to provide  
19 for effective dates; to provide for applicability; to repeal conflicting laws; and for other  
20 purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22

**PART I**

23

**SECTION 1-1.**

24 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
 25 revising Code Section 9-11-1, relating to the scope of the "Georgia Civil Practice Act" and  
 26 construction, as follows:

27 "9-11-1.

28 This chapter governs the procedure in all courts of record of this state in all actions of a  
 29 civil nature whether cognizable as cases at law or in equity, with the exceptions stated in  
 30 Code Section 9-11-81. This chapter shall be construed, administered, and employed by the  
 31 court and the parties to secure the just, speedy, and inexpensive determination of every  
 32 action. This chapter shall also apply to courts which are not courts of record to the extent  
 33 that no other rule governing a particular practice or procedure of such courts is prescribed  
 34 by general or local law applicable to such courts."

35

**SECTION 1-2.**

36 Said title is further amended by revising subsection (j) of Code Section 9-11-12, relating to  
 37 answer, defenses, and objections, when and how presented and heard, when defenses waived,  
 38 and stay of discovery, as follows:

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

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

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

47 (3) The court by written order may upon its own motion or upon motion of a party  
 48 terminate or modify the stay imposed by this subsection ~~but shall not extend such stay.~~

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

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

56

**SECTION 1-3.**

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

59 "9-11-34.1.

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

65

**SECTION 1-4.**

66 Said title is further amended by revising Code Section 9-11-36, relating to requests for  
67 admission, as follows:

68 "9-11-36.

69 (a) **Scope; service; answer or objection; motion to determine sufficiency.**

70 (1) A party may serve upon any other party a written request for the admission, for  
71 purposes of the pending action only, of the truth of any matters within the scope of  
72 subsection (b) of Code Section 9-11-26 which are set forth in the request and that relate  
73 to statements or opinions of fact or of the application of law to fact, including the  
74 genuineness of any documents or electronically stored information described in the  
75 request. Copies of documents or electronically stored information shall be served with  
76 the request unless they have been or are otherwise furnished or made available for  
77 inspection and copying. The request may, without leave of court, be served upon the  
78 plaintiff after commencement of the action and upon any other party with or after service  
79 of the summons and complaint upon that party. The request shall clearly identify in the  
80 caption and before each request that it is a request for admission. Each matter on which  
81 an admission is requested shall be stated separately.

82 (2) ~~Each matter of which an admission is requested shall be separately set forth. The A~~  
83 ~~matter is admitted unless, within 30 days after service of the request pursuant to~~  
84 ~~paragraph (1) of this subsection~~ or within such shorter or longer time as the court may  
85 allow, the party to whom the request is directed serves upon the party requesting the  
86 admission a written answer or objection addressed to the matter, signed by the party or  
87 by his or her attorney; but unless the court shortens the time, a defendant shall not be  
88 required to serve answers or objections before the expiration of 45 days after service of  
89 the summons and complaint upon him or her. If objection is made, the reasons therefor  
90 shall be stated. The answer shall specifically deny the matter or set forth in detail the  
91 reasons why the answering party cannot truthfully admit or deny the matter. A denial

92 shall fairly meet the substance of the requested admission; and, when good faith requires  
 93 that a party qualify his or her answer or deny only a part of the matter of which an  
 94 admission is requested, he or she shall specify so much of it as is true and qualify or deny  
 95 the remainder. An answering party may not give lack of information or knowledge as a  
 96 reason for failure to admit or deny unless he or she states that he or she has made  
 97 reasonable inquiry and that the information known or readily obtainable by him or her is  
 98 insufficient to enable him or her to admit or deny. A party who considers that a matter  
 99 of which an admission has been requested presents a genuine issue for trial may not, on  
 100 that ground alone, object to the request; he or she may, subject to subsection (c) of Code  
 101 Section 9-11-37, deny the matter or set forth reasons why he or she cannot admit or deny  
 102 it.

103 (3) The party who has requested the admissions may move to determine the sufficiency  
 104 of the answers or objections. Unless the court determines that an objection is justified,  
 105 it shall order that an answer be served. If the court determines that an answer does not  
 106 comply with the requirements of this subsection, it may order either that the matter is  
 107 admitted or that an amended answer be served. The court may, in lieu of these orders,  
 108 determine that final disposition of the request be made at a pretrial conference or at a  
 109 designated time prior to trial. Paragraph (4) of subsection (a) of Code Section 9-11-37  
 110 shall apply to the award of expenses incurred in relation to the motion.

111 (b) **Effect of admission.** Any matter admitted under this Code section is conclusively  
 112 established unless the court, on motion, permits withdrawal or amendment of the  
 113 admission. Subject to Code Section 9-11-16 governing amendment of a pretrial order, the  
 114 court may permit withdrawal or amendment when the presentation of the merits of the  
 115 action will be subserved thereby and the party who obtained the admission fails to satisfy  
 116 the court that withdrawal or amendment will prejudice him or her in maintaining his or her  
 117 action or defense on the merits. Any admission made by a party under this Code section  
 118 is for the purpose of the pending action only and is not an admission by him or her for any  
 119 other purpose, nor may it be used against him or her in any other proceeding."

## 120 SECTION 1-5.

121 Said title is further amended by revising Code Section 9-11-37, relating to failure to make  
 122 discovery, motions to compel, sanctions, and expenses, as follows:

123 "9-11-37.

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

127 (1) **Appropriate court.** An application for an order to a party may be made to the court  
128 in which the action is pending or, on matters relating to a deposition, to the court in the  
129 county where the deposition is being taken. An application for an order to a deponent  
130 who is not a party shall be made to the court in the county where the deposition is being  
131 taken;

132 (2) **Motion; protective order.** If a deponent fails to answer a question propounded or  
133 submitted under Code Section 9-11-30 or 9-11-31, or a corporation or other entity fails  
134 to make a designation under paragraph (6) of subsection (b) of Code Section 9-11-30 or  
135 subsection (a) of Code Section 9-11-31, or a party fails to answer an interrogatory  
136 submitted under Code Section 9-11-33, or if a party, in response to a request for  
137 inspection submitted under Code Section 9-11-34, fails to produce documents or fails to  
138 respond that inspection will be permitted as requested or fails to permit inspection as  
139 requested, the discovering party may move for an order compelling an answer, or a  
140 designation, or an order compelling inspection in accordance with the request. When  
141 taking a deposition on oral examination, the proponent of the question may complete or  
142 adjourn the examination before ~~he applies~~ applying for an order. If the court denies the  
143 motion in whole or in part, it may make such protective order as it would have been  
144 empowered to make on a motion made pursuant to subsection (c) of Code  
145 Section 9-11-26;

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

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

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

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

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

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

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

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

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

180 (B) An order refusing to allow the disobedient party to support or oppose designated  
181 claims or defenses, or prohibiting him such party from introducing designated matters  
182 in evidence;

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

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

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

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

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

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

212 (1) If a party or an officer, director, or managing agent of a party or a person designated  
213 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code  
214 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to  
215 take ~~his~~ the deposition, after being served with a proper notice, or fails to serve answers  
216 or objections to interrogatories submitted under Code Section 9-11-33, after proper  
217 service of the interrogatories, or fails to serve a written response to a request for  
218 inspection submitted under Code Section 9-11-34, after proper service of the request, the  
219 court in which the action is pending on motion may make such orders in regard to the  
220 failure as are just; and, among others, it may take any action authorized under  
221 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or  
222 in addition thereto, the court shall require the party failing to act or the attorney advising  
223 ~~him~~ such party, or both, to pay the reasonable expenses, including attorney's fees, caused  
224 by the failure, unless the court finds that the failure was substantially justified or that  
225 other circumstances make an award of expenses unjust.

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

230 (e) **Failure to preserve documents, electronically stored information, or tangible**  
231 **things.** If documents, electronically stored information, or tangible things that should have  
232 been preserved in the anticipation or conduct of litigation are lost because a party failed to  
233 take reasonable steps to preserve them, and they cannot be restored or replaced through  
234 additional discovery, the court, upon a finding of prejudice to another party from loss of  
235 such documents, electronically stored information, or tangible things or upon finding that

236 a party acted negligently or with the intent to deprive another party of the use of such  
 237 documents, electronically stored information, or tangible things in litigation, may order  
 238 measures necessary to cure the prejudice, including but not limited to:

239 (1) A presumption that the lost documents, electronically stored information, or tangible  
 240 things were unfavorable to the party;

241 (2) Instructions to the jury that it may or must presume that the lost documents,  
 242 electronically stored information, or tangible things were unfavorable to the party; or

243 (3) Dismissal of the action or the entry of a default judgment."

244 **SECTION 1-6.**

245 Said title is further amended by revising subparagraph (a)(1)(C) and paragraph (2) of  
 246 subsection (a) of Code Section 9-11-45, relating to subpoena for taking depositions,  
 247 objections, and place of examination, as follows:

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

262 (2) The person to whom the subpoena is directed may, within ten days after the service  
 263 thereof or on or before the time specified in the subpoena for compliance, if such time is  
 264 less than ten days after service, serve upon the attorney designated in the subpoena  
 265 written objection to inspection or copying of any or all of the designated materials. If  
 266 objection is made, the party serving the subpoena shall not be entitled to inspect and copy  
 267 the materials except pursuant to an order of the court from which the subpoena was  
 268 issued. The party serving the subpoena may, if objection has been made, move, upon  
 269 notice to the deponent, for an order at any time before or during the taking of the  
 270 deposition, provided that nothing in this Code section shall be construed as requiring the  
 271 issuance of a subpoena to compel a party to attend and give his or her deposition or



272 produce documents or electronically stored information at the taking of his or her  
 273 deposition where a notice of deposition under Code Section 9-11-30 has been given or  
 274 a request under Code Section 9-11-34 has been served, such notice or request to a party  
 275 being enforceable by motion under Code Section 9-11-37."

276 **PART II**

277 **SECTION 2-1.**

278 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
 279 revising Code Section 24-6-611, relating to mode and order of witness interrogation and  
 280 presentation, as follows:

281 "24-6-611.

282 (a) The court shall exercise reasonable control over the mode and order of interrogating  
 283 witnesses and presenting evidence so as to:

284 (1) Make the interrogation and presentation effective for the ascertainment of the truth;

285 (2) Avoid needless consumption of time; and

286 (3) Protect witnesses from harassment or undue embarrassment.

287 (b) A witness may be cross-examined on any matter relevant to any issue in the  
 288 proceeding. The right of a thorough and sifting cross-examination shall belong to every  
 289 party as to the witnesses called against the party. If several parties to the same proceeding  
 290 have distinct interests, each party may exercise the right to cross-examination.

291 (c) Leading questions shall not be used on the direct examination of a witness except as  
 292 may be necessary to develop the witness's testimony. Ordinarily leading questions shall  
 293 be permitted on cross-examination. When a party calls a hostile witness, an adverse party,  
 294 or a witness identified with an adverse party, interrogation may be by leading questions,  
 295 and the other parties may, in the court's discretion, conduct a rebuttal interrogation of the  
 296 witness that is limited to the scope of examination conducted by the party first calling that  
 297 witness."

298 **PART III**

299 **SECTION 3-1.**

300 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 301 Code Section 31-33-1, relating to definitions regarding health records, as follows:

302 "31-33-1.

303 As used in this chapter, the term:

304 (1) 'Authorized person' means:

305 (A) Where the patient is alive, the patient or a person entitled to have access to the  
 306 patient's record under a signed medical authorization, an advance directive for health  
 307 care, or a durable power of attorney for health care for such patient;

308 (B) Where the patient is deceased:

309 (i) The executor, administrator, or temporary administrator for the decedent patient's  
 310 estate if such person has been appointed;

311 (ii) The surviving spouse of the decedent patient, if an executor, administrator, or  
 312 temporary administrator for the decedent patient's estate has not been appointed;

313 (iii) Any surviving child of the decedent patient, if there is no surviving spouse, and  
 314 if an executor, administrator, or temporary administrator for the decedent patient's  
 315 estate has not been appointed; and

316 (iv) Any parent of the decedent patient, if there is no surviving child and no surviving  
 317 spouse and if an executor, administrator, or temporary administrator for the decedent  
 318 patient's estate has not been appointed; or

319 (C) A party to a civil lawsuit requesting the patient's record pursuant to subsection (c)  
 320 of Code Section 9-11-34.

321 (2) 'Metadata' means the text, numbers, content, data, or other information that is directly  
 322 or indirectly entered into a native file by a user and which is not typically visible to the  
 323 user viewing the output display of the native file on screen or as a printout.

324 ~~(1)~~(3) 'Patient' means any person who has received health care services from a provider.

325 ~~(2)~~(4) 'Provider' means all hospitals, including public, private, osteopathic, and  
 326 tuberculosis hospitals; other special care units, including podiatric facilities, skilled  
 327 nursing facilities, and kidney disease treatment centers, including freestanding  
 328 hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical  
 329 facilities; health maintenance organizations; and home health agencies. It shall also mean  
 330 any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43.

331 ~~(3)~~(5) 'Record' means a patient's health record, including, but not limited to, evaluations,  
 332 diagnoses, prognoses, laboratory reports, biopsy slides, X-rays, prescriptions, and other  
 333 such items or technical information used in assessing the patient's condition, or the  
 334 pertinent portion of the record relating to a specific condition or a summary of the record,  
 335 or medical bills for health care services provided to the patient by the provider."

### 336 **SECTION 3-2.**

337 Said title is further amended by revising Code Section 31-33-2, relating to furnishing copy  
 338 of records to patient, provider, or other authorized person, as follows:

339 "31-33-2.

340 (a)(1)(A) A provider having custody and control of any ~~evaluation, diagnosis, prognosis,~~  
 341 ~~laboratory report, or biopsy slide~~ item in a patient's record shall:

342 (1) ~~Retain~~ retain such item for a period of not less than ten years from the date such item  
 343 was created; except for:

344 (B) ~~The requirements of subparagraph (A) of this paragraph shall not apply to:~~

345 (i)(A) An individual provider who has retired from or sold his or her professional  
 346 practice if such provider has notified the patient of such retirement or sale and offered  
 347 to provide such items in the patient's record or copies thereof to another provider of the  
 348 patient's choice and, if the patient so requests, to the patient; or

349 (ii)(B) A hospital which is an institution as defined in subparagraph (A) of  
 350 paragraph (4) of Code Section 31-7-1, which shall retain patient records in accordance  
 351 with rules and regulations for hospitals as issued pursuant to Code Section 31-7-2; and

352 (2) Within 30 days of receipt of a written request for ~~Upon written request from the~~  
 353 ~~patient or a person authorized to have access to the patient's record under an advance~~  
 354 ~~directive for health care or a durable power of attorney for health care for such patient,~~  
 355 ~~the provider having custody and control of the patient's record shall~~ from an authorized  
 356 person, furnish a complete and current copy of that record, ~~in accordance with the~~  
 357 ~~provisions of this Code section. If the patient is deceased, such request may be made by~~  
 358 ~~the following persons:~~ to that authorized person in electronic format, unless expressly  
 359 requested to be produced in paper format.

360 (A) ~~The executor, administrator, or temporary administrator for the decedent's estate~~  
 361 ~~if such person has been appointed;~~

362 (B) ~~If an executor, administrator, or temporary administrator for the decedent's estate~~  
 363 ~~has not been appointed, by the surviving spouse;~~

364 (C) ~~If there is no surviving spouse, by any surviving child; and~~

365 (D) ~~If there is no surviving child, by any parent.~~

366 (b) Except for requests made by an authorized person as specified in subparagraph (C) of  
 367 paragraph (1) of Code Section 31-33-1, such record request under subsection (a) of this  
 368 Code section ~~Any record requested under subsection (a) of this Code section shall within~~  
 369 ~~30 days of the receipt of a request for records be furnished to the patient, any other provider~~  
 370 ~~designated by the patient, any person authorized by paragraph (2) of subsection (a) of this~~  
 371 ~~Code section to request a patient's or deceased patient's medical records, or any other~~  
 372 ~~person designated by the patient. Such record request shall be accompanied by:~~

373 (1) An authorization in compliance with the federal Health Insurance Portability and  
 374 Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations  
 375 implementing such act; and

376 (2) A signed written authorization as specified in subsection ~~(d)~~ (e) of this Code section.  
 377 (c) Receipt of a request for records shall be deemed conclusive by any of the following:  
 378 (1) A signed return receipt for certified mail correctly addressed;  
 379 (2) Confirmation of a facsimile transmission to the correct telephone number; or  
 380 (3) Proof of delivery via overnight delivery service.

381 ~~(c)~~(d) If the provider reasonably determines that disclosure of the record to the patient will  
 382 be detrimental to the physical or mental health of the patient, the provider may refuse to  
 383 furnish the record; however, upon such refusal, the patient's record shall, upon written  
 384 request by the patient, be furnished to any other provider designated by the patient.

385 ~~(d)~~(e) A provider shall not be required to release records in accordance with this Code  
 386 section unless and until the requesting person has furnished the provider with a signed  
 387 written authorization indicating that he or she is an authorized person entitled to have  
 388 access to the patient's records by paragraph (2) of subsection (a) of this Code section. Any  
 389 provider shall be justified in relying upon such written authorization.

390 ~~(e)~~(f) Any provider or person who in good faith releases copies of medical records in  
 391 accordance with this Code section shall not be found to have violated any criminal law or  
 392 to be civilly liable to the patient, the deceased patient's estate, or to any other person.

393 (g) Except as provided in subsections (d) or (e) of this Code section, any provider that fails  
 394 to comply with this Code section:

395 (1) Shall be subject to the following civil penalty:

396 (A) Ten dollars per day for each day that the record is not provided to the authorized  
 397 person after the date the record was due to the authorized person;

398 (B) An additional \$15.00 per day for each day the record is not provided to the  
 399 authorized person after 30 days from the date the record was due to the authorized  
 400 person; and

401 (C) An additional \$25.00 per day for each day the record is not provided to the  
 402 authorized person after 60 days from the date the record was due to the authorized  
 403 person; and

404 (2) Shall pay the civil penalty due in accordance with paragraph (1) of this subsection  
 405 to the authorized person requesting the record that was not timely provided in violation  
 406 of this Code section.

407 (h) An authorized person shall have a right of action for the recovery of any civil penalty  
 408 arising under subsection (g) of this Code section and shall be entitled to an award of  
 409 reasonable attorney fees and expenses incurred in those efforts; provided however, where  
 410 a provider contracts with a third-party service to copy or provide records, then such  
 411 third-party service shall be liable to the authorized person for the penalties arising under

412 subsection (g) of this Code section upon the provider showing evidence of such contract  
 413 to the person requesting the records."

414 **SECTION 3-3.**

415 Said title is further amended by revising Code Section 31-33-3, relating to costs of copying  
 416 and mailing, patient's rights as to records, and applicability to psychiatric, psychological, and  
 417 other mental health records, as follows:

418 "31-33-3.

419 (a)(1) Except for a record requested in order to make or complete an application for a  
 420 disability benefits program, the authorized person ~~The party~~ requesting the patient's  
 421 records shall be responsible to the provider for the costs of ~~copying and mailing~~  
 422 producing the patient's record. Payment of such costs may be required by the provider  
 423 prior to the record being furnished.

424 (2) For producing a record in an electronic format, a provider may charge a flat fee not  
 425 to exceed \$50.00 for search, retrieval, certification, other direct administrative costs  
 426 related to compliance with the request under this chapter, media, postage, and copying  
 427 of the patient's record to an electronic file.

428 (3) For producing a record in paper format, when expressly requested, the provider may  
 429 charge a fee ~~A charge~~ of up to \$20.00 ~~may be collected~~ for search, retrieval, certification,  
 430 and other direct administrative costs related to compliance with the request under this  
 431 chapter. ~~A fee for certifying the medical records may also be charged not to exceed \$7.50~~  
 432 ~~for each record certified.~~ The actual cost of postage incurred in mailing the requested  
 433 records may also be charged. In addition, copying costs for a record which is in paper  
 434 form shall not exceed ~~\$.75~~ 25¢ per page for the first 20 pages of the patient's records  
 435 which are copied; ~~\$.65~~ 15¢ per page for pages 21 through 100; and ~~\$.50~~ 5¢ for each page  
 436 copied in excess of 100 pages. ~~All of the fees allowed by this Code section may be~~  
 437 ~~adjusted annually in accordance with the medical component of the consumer price~~  
 438 ~~index. The Department of Community Health shall be responsible for calculating this~~  
 439 ~~annual adjustment, which will become effective on July 1 of each year.~~

440 (4) To the extent the record request for medical records includes portions of records  
 441 which are not in paper form, including but not limited to radiology films, models,  
 442 metadata, or fetal monitoring strips, such portions shall be produced in an easily  
 443 accessible format and the provider shall be entitled to recover the full reasonable cost of  
 444 such reproduction. Payment of such costs may be required by the provider prior to the  
 445 records being furnished. This subsection shall not apply to records requested in order to  
 446 make or complete an application for a disability benefits program.

447 (b) The rights granted to a patient or other authorized person under this chapter are in  
 448 addition to any other rights such patient or authorized person may have relating to access  
 449 to a patient's records; however, nothing in this chapter shall be construed as granting to a  
 450 patient or authorized person any right of ownership in the records, as such records are  
 451 owned by and are the property of the provider.

452 (c) This Code section shall apply to psychiatric, psychological, and other mental health  
 453 records of a patient."

454 **SECTION 3-4.**

455 Said title is further amended by revising Code Section 31-33-8, relating to electronic health  
 456 records, as follows:

457 "31-33-8.

458 (a) Notwithstanding any other provision of the law to the contrary, ~~any provider may, in~~  
 459 ~~its sole discretion, every provider shall~~ create, maintain, transmit, receive, and store records  
 460 created on or after January 1, 2021, in an electronic format within the meaning of Code  
 461 Section 10-12-2 and may, in its sole discretion, temporarily or permanently convert  
 462 existing tangible records into an electronic format.

463 (b) A provider shall not be required to maintain separate tangible copies of electronically  
 464 stored records.

465 (c) The other provisions of this chapter shall apply to electronic records to the same extent  
 466 as those provisions apply to tangible records.

467 (d) This Code section is subject to all applicable federal laws governing the security and  
 468 confidentiality of a patient's personal health information.

469 (e) A tangible copy of a record reproduced from an electronically stored record shall be  
 470 considered an original for purposes of providing copies to patients or other authorized  
 471 parties and for introduction of the records into evidence in administrative or court  
 472 proceedings.

473 (f) Except as provided otherwise under federal law, upon receiving a request for a copy  
 474 of a record from a patient or an authorized person under Code Section 31-33-2 and Code  
 475 Section 31-33-3, a provider shall provide copies of the record in ~~either tangible or~~  
 476 ~~electronically stored form, unless expressly requested in paper form.~~

477 (g) Subsections (a), (b), (d), and (e) of this Code section shall apply to psychiatric,  
 478 psychological, or other mental health records of a patient."

**PART IV**  
**SECTION 4-1.**

481 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
482 revising Code Section 33-3-28, relating to request by claimant for information as to name of  
483 insurer, name of each insured, and limits of coverage, as follows:

484 "33-3-28.

485 ~~(a)(1) Every insurer providing liability or casualty insurance coverage in this state and~~  
486 ~~which is or may be liable to pay all or a part of any claim shall provide, within 60 days of~~  
487 ~~receiving a written request from the claimant, a~~ Prior to making a settlement offer or  
488 contemporaneous with such settlement offer, every insurer providing liability or casualty  
489 insurance coverage in this state and which is or may be liable to pay all or a part of any  
490 claim shall provide a claimant or claimant's agent the following information within 14 days  
491 of receiving, by certified mail or statutory overnight delivery, a written request from the  
492 claimant or claimant's agent for information which shall include a statement under oath  
493 setting forth the specific nature of the claim or claims asserted:

494 (1) A statement, under oath, of a corporate officer or the insurer's claims manager stating  
495 with regard to each known applicable policy of insurance issued by it, including excess  
496 or umbrella insurance, the name of the insurer, the name of each insured, and the limits  
497 of coverage. Such insurer may provide a copy of the declaration page of each such policy  
498 in lieu of providing such information. The claimant's request shall set forth under oath  
499 the specific nature of the claim asserted and shall be mailed to the insurer by certified  
500 mail or statutory overnight delivery.:

501 (A) Name of the insurer;

502 (B) Name of each insured; and

503 (C) Limits of coverage, including, but not limited to, time limitations;

504 provided, however, that the insurer may additionally provide a copy of the declaration  
505 page of each policy if the declaration page provides such information as otherwise  
506 provided in this paragraph;

507 ~~(2) The insured, within 30 days of receiving a written request from a claimant or the~~  
508 ~~claimant's attorney, shall disclose to the claimant or his attorney the name of each known~~  
509 ~~insurer which may be liable to the claimant upon such claim. A statement, under oath,~~  
510 of a corporate officer or the insurer's claims manager stating with regard to the incident  
511 giving rise to the claim asserted:

512 (A) Whether the insured was operating or using a motor vehicle at the time of the  
513 incident and, if so, the purpose of the operation or use;

514 (B) Whether the insured was acting within the scope of any business or employment  
515 when the incident occurred and, if so, the name and address of the business or place of  
516 employment and the name of the business's or employer's insurance company;

517 (C) The insured's place or places of residence at the time of the incident;

518 (D) If a motor vehicle was involved, whether the insured at the time of the incident  
519 resided with any relatives that own a motor vehicle and, if so, the names of such  
520 relatives and the names of the insurance carriers for those motor vehicles;

521 (E) Whether the insured owns any other motor vehicles and, if so, the make, model,  
522 year, and names of the insurance carriers for those motor vehicles;

523 (F) The identity of any other person or legal entity that the insurer or insured believes  
524 may be liable for injuries caused by the incident, the name and address of such person  
525 or legal entity, and the basis for the insurer's or insured's belief; and

526 (G) The name of each known insurer which may be liable to the claimant upon such  
527 claim; and

528 (3) The following statement which shall reference the policy number and claim number:

529 'You may seek representation by an attorney to ensure that your interests are protected  
530 during this claim process.' Such statement shall be prepared in at least 16 point Arial font  
531 and shall appear at the top of such written notification at least two inches apart from any  
532 other text within such notification.

533 (b) Within 14 days of receiving a request from a claimant as provided for in subsection (a)  
534 of this Code section, every insurer providing liability or casualty insurance coverage in this  
535 state and which is or may be liable to pay all or a part of any claim shall provide the  
536 insured or insured's agent, in at least 16 point Arial font and placed at least two inches apart  
537 from any other text, a written notice stating the following:

538 'You may seek representation by an attorney to ensure that your interests are protected  
539 during this claim process.

540 We, your insurer, are required to treat your financial interests as at least equal to that  
541 of our own financial interests. However, this could create a conflict between the  
542 financial interests of you (the insured) and our own (the insurer). Therefore, you may  
543 seek to be represented by an attorney who is not provided by us, regardless of whether  
544 we provide or offer to provide an attorney to you. You may also seek redress in the  
545 courts of this state regarding the claim asserted and any claims arising under the law.

546 Please know that pursuant to O.C.G.A. § 9-3-30 actions for damage to property must  
547 generally be brought within four years after the right of action accrues.



548 Please know that pursuant to O.C.G.A. § 9-3-33 actions for injuries to a person must  
 549 generally be brought within two years after the right of action accrues, except for  
 550 injuries to the reputation, which must be brought within one year after the right of  
 551 action accrues, and except for actions for injuries to a person involving loss of  
 552 consortium, which must be brought within four years after the right of action accrues.'

553 (c) An insurer's failure to comply with subsection (a) or (b) of this Code section shall give  
 554 rise to a claim for negligence or bad faith and may give rise to damages or equitable relief.

555 ~~(b)~~(d) If the request provided in subsection (a) of this Code section contains information  
 556 insufficient to allow compliance, the insurer or insured upon whom the request was made  
 557 may so state in writing, stating specifically what additional information is needed, and such  
 558 compliance shall constitute compliance with this Code section.

559 ~~(c)~~(e) The information provided to a claimant or ~~his attorney~~ claimant's agent as required  
 560 by subsection (a) of this Code section shall not create a waiver of any defenses to coverage  
 561 available to the insurer and shall not be admissible in evidence unless otherwise admissible  
 562 under Georgia law.

563 ~~(d)~~(f) The information provided to a claimant or ~~his attorney~~ claimant's agent as required  
 564 by subsection (a) of this Code section shall be amended upon the discovery of facts  
 565 inconsistent with or in addition to the information provided."

566 **SECTION 4-2.**

567 Said title is further amended by revising Code Section 33-6-37, relating to private cause of  
 568 action not created or implied, as follows:

569 "33-6-37.

570 Any person who is injured as a result of acts provided for under Code Section 33-6-34 shall  
 571 have ~~Nothing contained in this article shall be construed to create or imply~~ a private cause  
 572 of action ~~for a violation of this article."~~

573 **PART V**

574 **SECTION 5-1.**

575 Said Title 33 is further amended in Code Section 33-7-11, relating to uninsured motorist  
 576 coverage under motor vehicle liability policies, by revising subsection (j) as follows:

577 "(j) If the insurer shall refuse to pay any insured any loss covered by this Code section  
 578 within 60 days after a written demand has been made by the insured and a finding has been  
 579 made that such refusal was made negligently or in bad faith, the insurer shall be liable to  
 580 the insured, in addition to any recovery under this Code section, ~~for not more than 25~~  
 581 percent of the recovery and the total amount of the claimant's damages, including, but not

582 limited to, the amount in excess of the policy limits, any interest on unpaid benefits, all  
 583 reasonable attorney's fees for the prosecution of the case under this Code section, and any  
 584 damages caused by a violation of a law of this state. The total amount of the claimant's  
 585 damages is recoverable whether caused by an insurer or by a third-party tort-feasor. The  
 586 question of negligence, bad faith, ~~the amount of the penalty, if any,~~ and the reasonable  
 587 attorney's fees, if any, shall be determined in a separate action filed by the insured against  
 588 the insurer after a judgment has been rendered against the uninsured motorist in the original  
 589 tort action. The attorney's fees shall be fixed on the basis of competent expert evidence as  
 590 to the reasonable value of the services, based on the time spent and legal and factual issues  
 591 involved, in accordance with prevailing fees in the locality where the action is pending.  
 592 The trial court shall have the discretion, if it finds such jury verdict fixing attorney's fees  
 593 to be greatly excessive or inadequate, to review and amend such portion of the verdict  
 594 fixing attorney's fees without the necessity of disapproving the entire verdict. The  
 595 limitations contained in this subsection in reference to the amount of attorney's fees are not  
 596 controlling as to the fees which may be agreed upon by the plaintiff and his or her attorney  
 597 for the services of the attorney in the action against the insurer."

598

## PART VI

599

### SECTION 6-1.

600 This Act shall be severable in accordance with Code Section 1-1-3 of the Official Code of  
 601 Georgia Annotated.

602

### SECTION 6-2.

603 Parts III and IV of this Act shall become effective on January 1, 2021, and Part IV of this Act  
 604 shall apply to any claim which accrues on or after said effective date. All other parts of this  
 605 Act shall become effective upon its approval by the Governor or upon its becoming law  
 606 without such approval.

607

### SECTION 6-3.

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