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EVIDENCE

Amend the Official Code of Georgia Annotated so as to Substantially Revise, Supersede, and Modernize Provisions Relating to Evidence; to Provide for Legislative Findings; to Provide for Definitions; to Provide for General Provisions; to Provide for Judicial Notice; to Provide for Parol Evidence; to Provide for Admission of Relevant Evidence; to Provide for Testimonial Privileges; to Provide for Competency of Witnesses; to Provide for Opinions and Expert Testimony; to Provide for and Define Hearsay; to Provide for Authentication and Identification of Writings, Recordings, and Photographs; to Provide for the Best Evidence Rule; to Provide for Establishment of Lost Records; to Provide for Medical and Other Confidential Information; to Provide for Securing Attendance of Witnesses and Production and Preservation of Evidence; to Provide for Proof Generally; to Amend Title 35 of the Official Code of Georgia Annotated, Relating to Law Enforcement Officers and Agencies, so as to Move Provisions Relating to DNA Analysis of Persons Convicted of Certain Crimes from Title 24 to Title 35; to Change Provisions Relating to Foreign Language Interpreters and Interpreters for the Hearing Impaired; to Amend the Official Code of Georgia Annotated so as to Conform Provisions to the New Title 24 and Correct Cross-References; to Provide for Effective Dates and Applicability; to Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 4-11-17 (amended); 7-1-63, -94, -95 (amended); 8-3-6, -104 (amended); 9-10-6, -9 (amended); 9-11-44 (amended); 10-1-157, -188, -208, -444 (amended); 10-4-15 (amended); 10-6-64 (amended); 10-14-27 (amended); 14-9A-117 (amended); 15-1-14 (amended); 15-11-79.1, -84 (amended); 15-18-14.1, -15 (amended); 16-5-27 (amended); 16-12-55 (amended); 17-4-30, -40 (amended);

17-7-25, -28, -93 (amended); 17-9-20, -41 (amended); 17-16-4 (amended); 17-17-9 (amended); 20-2-940, -991 (amended); 22-1-14 (amended); 24-1-1 to -2 (amended); 24-1-101 to -106 (amended); 24-2-201 (amended); 24-2-220 to -221 (amended); 24-3-1 to -10 (amended); 24-4-401 to -417 (amended); 24-5-501 to -508 (amended); 24-6-601 to -616 (amended); 24-6-620 to -623 (amended); 24-6-650 to -656 (amended); 24-6-658 (amended); 24-7-701 to -707 (amended); 24-8-801 to -807 (amended); 24-8-820 to -826 (amended); 24-9-901 to -904 (amended); 24-9-920 to -924 (amended); 24-10-1001 to -1008 (amended); 24-11-1 to -3 (amended); 24-11-20 to -29 (amended); 24-12-1 to -2 (amended); 24-12-10 to -14 (amended); 24-12-20 to -21 (amended); 24-12-30 to -31 (amended); 24-13-1 to -7 (amended); 24-13-20 to -29 (amended); 24-13-60 to -62 (amended); 24-13-90 to -97 (amended); 24-13-110 to -112 (amended); 24-13-130 to -139 (amended); 24-13-150 to -154 (amended); 24-14-1 to -9 (amended); 24-14-20 to -29 (amended); 24-14-40 to -47 (amended); 26-4-80 (amended); 28-1-16 (amended); 29-9-13.1 (amended); 31-5-5 (amended); 31-10-26 (amended); 31-21-3 (amended); 33-2-2 (amended); 33-20A-37 (amended); 34-9-60, -102, -108 (amended); 35-3-160 to -165 (new); 36-74-25, -45; 37-3-166 (amended); 37-4-125 (amended);

	37-7-166 (amended); 40-2-74 (amended); 40-5-2, -58 (amended); 40-6-10, -11 (amended); 42-5-52.2 (amended); 42-6-4, -5 (amended); 43-3-24 (amended); 43-6-6 (amended); 43-9-12 (amended); 43-11-12 (amended); 43-18-8 (amended); 43-23-3 (amended); 43-28-6 (amended); 43-29-4 (amended); 43-33-9, -18 (amended); 43-34-8 (amended); 43-40-6 (amended); 44-2-5, -20, -23, -101 (amended); 44-4-3, -6 (amended); 44-5-45 (amended); 44-13-11 (amended); 44-14-38 (amended); 45-9-1, -20 (amended); 45-14-5 (amended); 45-16-43 (amended); 46-2-53 (amended); 46-3-175 (amended); 48-2-14 (amended); 48-5-138 (amended); 49-5-183.1 (amended); 50-5A-4 (amended); 50-18-96 (amended); 52-6-8 (amended); 53-5-33, -35, -43 (amended); 53-11-11 (amended)[1]
BILL NUMBER:	HB 24
ACT NUMBER:	52
GEORGIA LAWS:	2011 Ga. Laws 99
SUMMARY:	The Act revises, modernizes, and reorganizes the Georgia evidentiary rules and adopts a structure modeled after the Federal Rules of Evidence. The act retains all substantive laws of evidence in Georgia not superseded by the new evidence rules.
EFFECTIVE DATE:	Jan. 1, 2013

1. See Table 1: Other O.C.G.A. Sections Impacted by HB 24, *infra*, for a brief description of the changes outside of Title 24. This table was substantially reproduced from Daniel Hendrix et al., Note, *Evidence*, 27 GA. ST. U. L. REV. 1, 21 app. tbl.1 (2010).

House Bill (HB) 24 is substantially the same bill that passed out of the Georgia House of Representatives in 2010.[2] However, because there was never a vote on the bill in the Senate, it did not pass during the 2010 session. The bill was reintroduced during the 2011 session with the same bill number and was signed by the Governor after passing the House and Senate. The following legislative history of HB 24 is an update to the legislative history originally published in 2010 by Daniel Hendrix, Sofia Jeong, and Warren Thomas.[3]

History

The last major update to the Georgia Rules of Evidence (GRE) occurred in 1863, when Title 24 was written.[4] As one commentator stated: "The blue and the gray were recent history when Georgia last wrote down just what, and how, evidence could be introduced at trial."[5] Law and technology have changed a great deal since the 1860s and the Georgia rules have struggled to keep up.[6] Because the rules of evidence control what facts can be admitted at trial, keeping evidence rules current is important from both an economic standpoint and a judicial efficiency standpoint.[7]

It was for similar reasons that efforts were made to modernize the Federal Rules of Evidence (FRE) in the 1960s.[8] In 1965, fifteen lawyers, judges, and legal scholars served on an Advisory Committee to formulate uniform rules of evidence for the federal courts.[9] The Committee issued a preliminary draft of the FRE in 1969, which was

2. HB 24 (HCS), 2010 Ga. Gen. Assem.

3. Hendrix et al., *supra* note 1.

4. Video Recording of House Judiciary Committee Proceedings, Mar. 2, 2009, at 1 hr., 40 min., 9 sec. (remarks by Thomas Byrne, Chair of State Bar of Georgia Evidence Study Committee), http://media.legis.ga.gov/hav/09_10/comm/judy/judiy030209.wmv.

5. April Hunt, *Bill Key to Trial Evidence*, ATLANTA J.-CONST., Jan. 17, 2011, at B3, *available at* 2011 WLNR 1039916 (pointing out that a major revision to the evidence code had not been conducted in Georgia since shortly after the Civil War).

6. *See* Paul Milich, Op-Ed., *Court Rules Will Benefit Public*, ATLANTA J.-CONST., May 26, 2011, at A19, *available at* 2011 WLNR 10473194 ("Phones did not exist when Georgia's evidence code was written . . . let alone cars, videos, computers, or even Facebook.").

7. *See id.*

8. EVIDENCE STUDY COMM., STATE BAR OF GA., PROPOSED NEW RULES OF EVIDENCE 3 (2005), *available at* http://www.gabar.org/public/pdf/news/proposed_new_evidence_rules.pdf [hereinafter EVIDENCE STUDY].

9. *Id.*

vetted by every segment of the practicing bar.[10] A new draft was submitted to the United States Supreme Court in 1970 and, after returning the rules to the Committee for further consideration, the Supreme Court approved the FRE in 1972.[11] Congress enacted the FRE in 1975 with some changes.[12] Between 1975 and the beginning of the 2011 Georgia legislative session, forty-three states had adopted the FRE as a model for their state courts.[13]

The State Bar of Georgia Evidence Study Committee (Study Committee) was formed in 1986, but as a result of not receiving any support from the House Judiciary Committee, the efforts of the Study Committee were stalled.[14] According to Frank C. Jones, who was Chair of the Study Committee at the time, this was mainly due to opposition from then-Speaker of the House Tom Murphy.[15] Likely due to Murphy's defeat in his 2002 reelection bid,[16] the Study Committee was reactivated in 2003.[17] In 2005, the Study Committee prepared a report proposing a new Georgia evidence code modeled after the FRE.[18] The Georgia House of Representatives and Senate formed a joint committee to study the proposed rules in 2008.[19] The joint committee served from June until November of that year, meeting every Thursday for up to four hours.[20] The joint committee carefully analyzed and debated the proposed bill over the summer and into the fall, with the input of many representatives from the

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10. *Id.*

11. *Id.*

12. *Id.* at 4.

13. Video Recording of House Judiciary Committee Proceedings, Feb. 8, 2011 at 43 min., 35 sec. (remarks by Thomas Byrne, Chair of the State Bar of Georgia Evidence Study Committee), http://media.legis.ga.gov/hav/11_12/2011/committees/judi/judi020811EDITED.wmv [hereinafter House Judy Comm. Video 02/08]. The most recent state, prior to Georgia, to adopt the FRE as a model was Illinois. *Id.*

14. Robert D. Ingram, *Proposed New Georgia Rules of Evidence*, STATE BAR OF GA., http://www.gabar.org/news/proposed_new_georgia_rules_of_evidence/ (last visited May 30, 2011).

15. *Id.* ("Our failure to get favorable action in the House was due primarily to opposition from the then[-]Speaker. We met with him . . . in an effort to obtain support but were unsuccessful.").

16. *See* A. J. L. Waskey, *Tom Murphy (1924–2007)*, THE NEW GA. ENCYCLOPEDIA, http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-1095 (last updated Dec. 18 2007). Murphy had served for twenty-eight years as Speaker of the House. *Id.*

17. Ingram, *supra* note 14.

18. *See* EVIDENCE STUDY, *supra* note 8.

19. Video Recording of House Proceedings, Feb. 28, 2011 at 1 hr. 16 min., 25 sec. (remarks by Rep. Wendell Willard (R-49th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_022811_PM.wmv [hereinafter House Floor Video].

20. *Id.*

Georgia legal community.[21] A bill was approved and proposed by the joint committee in time for the 2009 session.[22]

In the 2009 session, HB 24 was introduced to the House of Representatives and assigned to the House Committee on Judiciary.[23] The Committee favorably reported a House Committee Substitute in March.[24] However, the bill was never voted on by the House and thus died in the House Rules Committee.[25]

During the 2010 legislative session, HB 24 gained more traction in the Georgia General Assembly.[26] After passing fourteen amendments to the bill, the Judiciary Committee unanimously passed a House Committee Substitute.[27] The bill then passed the entire House of Representatives by a vote of 150 to 12.[28] Next, the bill was introduced to the Senate and assigned to the Senate Judiciary Committee.[29] This Committee favorably reported the House Committee Substitute of HB 24, but the bill was never brought to the floor for a vote.[30]

Bill Tracking of HB 24

Consideration and Passage by the House of Representatives

Representatives Wendell Willard (R-49th), Edward Lindsey (R-54th), Tom Weldon (R-3rd), Elly Dobbs (D-53rd), Mike Jacobs (R-80th), and Dar'shun Kendrick (D-94th) sponsored HB 24.[31] The House read the bill for the first time on January 24, 2011.[32] The

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21. *See* Telephone Interview with Rep. Wendell Willard (R-49th) (May 18, 2011) [hereinafter Willard Interview] (on file with Georgia State University Law Review); *see also* Hendrix et al., *supra* note 1, at 5–6.
22. House Floor Video, *supra* note 19.
23. Hendrix et al., *supra* note 1, at 6–7.
24. *Id.* at 8.
25. *Id.* For a detailed description of the consideration given to HB 24 by the House of Representatives during the 2009 legislative session, see *id.* at 6–8.
26. See *id.* at 9–12 for a detailed description of the consideration given to HB 24 by the House of Representatives and the Senate during the 2010 legislative session.
27. *Id.* at 9–11.
28. Hendrix et al., *supra* note 1, at 11.
29. *Id.* at 11–12.
30. *Id.* at 12.
31. HB 24, as introduced, 2011 Ga. Gen. Assem.
32. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

House read the bill for the second time on January 25, 2011.[33] Speaker of the House David Ralston (R-7th) assigned HB 24 to the House Committee on Judiciary.[34]

The bill introduced during the 2011 session was nearly identical to the bill that failed to pass in 2010.[35] One difference between the two bills was the effective date.[36] The other differences in the 2011 version served to correct various drafting errors in the prior version.[37] The bill was first discussed briefly during a meeting of the House Judiciary Committee on February 1, 2011.[38]

Because the bill was virtually identical to the version from the prior year, much of the second meeting of the House Judiciary Committee—which took place on February 8th, 2011—was focused on discussing amendments to the bill.[39] The first amendment to the bill was explained to the Committee by Professor Paul Milich, a GRE scholar and professor at Georgia State University College of Law.[40] This amendment changed the wording of proposed Rule 804(b)(3), the statement against interest rule, to match a change made to the FRE in 2010.[41] Professor Milich explained that it was important to have the "exact same language of the Federal Rules" so that there would be "greater certainty in state courts when they [are] using language that was interpreted in other jurisdictions."[42]

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33. *Id.*

34. *Id.*

35. *Compare* HB 24, as introduced, 2011 Ga. Gen. Assem., *with* HB 24 (HCS), 2010 Ga. Gen. Assem.

36. HB 24, as introduced, § 101, p. 132, ln. 4432, 2011 Ga. Gen. Assem.

37. *See id.* at § 1, p. 20, ln. 632 (changing "of one year or more" to "in excess of one year" to match the wording of the FRE); *id.* at § 1, p. 23, ln. 746–48 (correcting a section importing an existing statute to correctly integrate the rules with existing Georgia law); *id.* at § 12, p. 91, ln. 3036–38 (adding wording from an existing statute that was inadvertently left out of the prior version); *id.* at § 35, p. 98, ln. 3284–90 (adding a section to correctly integrate the rules with existing Georgia law).

38. Video Recording of House Judiciary Committee Proceedings, Feb. 1, 2011 at 7 min., 23 sec. (remarks by Rep. Wendell Willard (R-49th)), http://media.legis.ga.gov/hav/11_12/2011/committees/judi/judi020111EDITED.wmv.

39. House Judy Comm. Video 02/08, *supra* note 13, at 42 min., 46 sec. (remarks by Rep. Mike Jacobs (R-80th)) ("[B]ecause the bill has already been through the ringer with this committee, and through the entire legislative process, and the study committee that existed prior to that, I don't think we need to rehash the provisions of the bill."). S*ee generally id.* at 31 min., 13 sec. (discussing the amendments to the bill).

40. *Id.* at 36 min., 16 sec. (remarks by Prof. Paul Milich).

41. *Compare* FED. R. EVID. 804(b)(3), *with* HB 24 (HCS), § 1, p. 36, ln. 1206–13, 2011 Ga. Gen. Assem.

42. House Judy Comm. Video 02/08, *supra* note 13, at 36 min., 36 sec. (remarks by Prof. Paul

The second amendment, introduced and explained by Representative Willard, removed a licensing requirement for foreign language interpreters.[43] This change was prompted after concerns were raised by the Council of Superior Court Judges.[44] According to Representative Willard, this section of HB 24 was never meant to be limited to licensed interpreters.[45] The third, and final, amendment to the bill corrected a drafting error from the prior version.[46]

Prior to any of the votes on the amendments, a number of speakers addressed the Committee. Thomas Byrne, the Chair of the State Bar of Georgia Evidence Study Committee, and Lester Tate, the President of the State Bar of Georgia, both spoke in support of the bill.[47] Jack Martin, representing the Georgia Association of Criminal Defense Lawyers, noted his association's support of the bill as well.[48] Ken Mauldin, the President of the District Attorneys Association of Georgia, and Brian Fortner, speaking for the Georgia Association of Solicitors General, confirmed that their organizations were not opposing the bill.[49] Byrne joked that this seemingly unanimous opinion amongst the state's lawyers was "as rare as an albino solar eclipse."[50]

"Albino solar eclipses" aside, one person who spoke at the meeting was opposed to the bill. Robert Stokely, the Solicitor General of Coweta County, was concerned with "invit[ing] the Feds in to help

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Milich).

43. *Compare* HB 24 (HCS), § 1, p. 36, ln. 3125–3127, 2011 Ga. Gen. Assem., *with* HB 24, as introduced, § 20, p. 94, ln. 3124–29, 2011 Ga. Gen. Assem. In 2010, Justice Harold Melton of the Georgia Supreme Court headed a Committee that the Supreme Court established to examine the issue of foreign language interpreters. House Judy Comm. Video 02/08, *supra* note 13, at 39 min., 45 sec. (remarks by Rep. Wendell Willard (R-49th)). The proposal of that Committee was added to HB 24. *Id.*

44. House Judy Comm. Video 02/08, *supra* note 13, at 39 min., 45 sec. (remarks by Rep. Wendell Willard (R-49th)).

45. *Id.* The Committee headed by Justice Melton of the Georgia Supreme Court also approved of this amendment. *See id.*

46. *See id.* at 1 hr., 11 min., 7 sec. (remarks by Jill Travis, House Legislative Counsel).

47. House Judy Comm. Video 02/08, *supra* note 13, at 43 min., 35 sec. (remarks by Thomas Byrne, Chair of the State Bar of Georgia Evidence Study Committee); *id.* at 50 min., 55 sec. (remarks by Lester Tate, President of the State Bar of Georgia).

48. *See id.* at 53 min., 47 sec. (remarks by Jack Martin, representative of the Georgia Association of Criminal Defense Lawyers).

49. *Id.* at 1hr., 1 min., 32 sec. (remarks by Ken Mauldin, President of the District Attorneys Association of Georgia); *id.* at 1 hr., 2 min., 44 sec. (remarks by Brian Fortner, representative of the Georgia Association of Solicitors General).

50. *Id.* at 45 min., 45 sec. (remarks by Thomas Byrne, Chair of the State Bar of Georgia Evidence Study Committee).

administer [Georgia's] court system."[51] Stokely was also concerned about the costs involved with the bill, including training, purchasing of materials, and future litigation.[52] Lastly, Stokely urged the committee to change the mileage reimbursement provision for witnesses to a floating rate instead of a fixed rate.[53]

After individually passing all three proposed amendments,[54] the Committee unanimously passed the House Committee Substitute.[55] The Committee favorably reported the new House Committee Substitute on February 9, 2011.[56] However, on February 15, 2011, the bill was withdrawn and recommitted to the House Judiciary Committee.[57] The bill had to be recommitted because of two drafting errors that were found after the bill was favorably reported by the Committee.[58]

The correction to the first of the two errors was simply to add "of subsection (a)" to one sentence in the bill and needed no further discussion.[59] The other correction was to change the word "shall" to "may" in a section referred to as the medical narrative statute.[60] The existing Georgia medical narrative statute had used the word "may," but HB 24 used the word "shall."[61] Bill Clark, representing the Georgia Trial Lawyers Association, spoke before the Committee to explain why his association was concerned by this one word drafting error.[62] The Trial Lawyers Association worried that requiring

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51. House Judy Comm. Video 02/08, *supra* note 13, at 54 min., 55 sec. (remarks by Robert Stokely, Solicitor General of Coweta County).

52. *Id.* at 56 min., 49 sec. (remarks by Robert Stokely, Solicitor General of Coweta County).

53. *Id.* Stokely stressed that changing the mileage reimbursement rate from a fixed to a floating rate would not be enough to assuage his other fears. *Id*.

54. *Id.* at 1 hr., 6 min., 56 sec. (remarks by Rep. Mike Jacobs (R-80th)).

55. *Id.* at 1 hr., 11 min., 45 sec. (remarks by Rep. Mike Jacobs (R-80th)).

56. House Judy Comm. Video 02/08, *supra* note 13, at 1 hr., 11 min., 45 sec. (remarks by Rep. Mike Jacobs (R-80th)).

57. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

58. Video Recording of House Judiciary Committee Proceedings, Feb. 17, 2011 at 55 sec. (remarks by Rep. Wendell Willard (R-49th)). http://media.legis.ga.gov/hav/11_12/2011/committees/judi/judi021711EDITED.wmv [hereinafter House Judy Comm. Video 02/17].

59. *Id.* at 1 min., 50 sec. (remarks by Jill Travis, House Legislative Counsel). *Compare* HB 24, as passed, § 1, p. 16, ln. 501, 2011 Ga. Gen. Assem., *with* HB 24 (HCS), § 1, p. 16, ln. 501, 2011 Ga. Gen. Assem.

60. *Compare* HB 24, as passed, § 1, p. 39, ln. 1285, 2011 Ga. Gen. Assem., *with* HB 24 (HCS), § 1, p. 39, ln. 1284, 2011 Ga. Gen. Assem.

61. O.C.G.A. § 24-3-18 (2010).

62. House Judy Comm. Video 02/17, *supra* note 58, at 3 min., 43 sec. (remarks by Bill Clark,

qualifications would provoke a fight about the quality and quantity of qualifications in every single case where a medical narrative was entered.[63] Clark stated that changing the wording to include "shall" was never the intent of anybody working on the bill.[64]

Both changes were incorporated in a House Committee Substitute, which passed the House Judiciary Committee over a single dissenting vote.[65] The Committee favorably reported the second House Committee Substitute on February 17, 2011.[66] The bill was read for the third time on February 28, 2011[67] and passed the same day by a vote of 162 to 5.[68]

Consideration and Passage by the Senate

HB 24 was first introduced to the Senate on March 1, 2011.[69] Lieutenant Governor Casey Cagle (R) assigned it to the Senate Judiciary Committee, [70] which favorably reported the House version of the bill on March 30, 2011.[71] The bill was read to the Senate a second time that same day.[72] On April 12, 2011, the bill was read for the third time and then immediately tabled by Senator Bill Cowsert (R-46th), the sponsor of the bill in the Senate .[73] Although Senator Cowsert sponsored HB 24, Representative Wendell Willard (R-49th) does not believe that Senator Cowsert was committed to the passage of the bill.[74] The bill was taken from the table on April 14, 2011, the last day of the 2011 session, and debated on the Senate floor.[75]

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representative of the Georgia Trial Lawyers Association).

63. *Id.*

64. *Id.*

65. *Id.* at 8 min., 7 sec. (remarks by Rep. Willard (R-49th)). The dissenting vote occurred off-screen and the dissenter was never identified. *Id.*

66. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

67. *Id.*

68. Georgia House of Representatives Voting Record, HB 24 (Feb. 28, 2011).

69. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

70. *Id.*

71. *Id.*

72. *Id.*

73. *See id*; *see also* Kathleen Baydala Joyner, *Evidence Bill Roller Coaster Ends Today*, FULTON COUNTY DAILY REP., Apr. 14, 2011, at 1, *available at* http://www.dailyreportonline.com/Editorial/News/singleEdit.asp (search "Search site" for "Evidence Bill Roller Coaster"; follow "Evidence bill roller coaster ends today" hyperlink) ("[W]hen the bill came up for debate Tuesday, Cowsert tabled the measure . . . .").

74. Willard Interview, *supra* note 21 (stating that "it was odd" to have a Senator who opposed the

Senator Cowsert proposed two amendments to HB 24.[76] The first amendment sought to exclude evidence of prior DUI offenses without a conviction.[77] The second amendment dealt with proof of medical expenses and added language that allowed parties in a case to offer proof that medical expenses incurred by a party were less than the amount billed because the medical provider accepted less than the full amount for full satisfaction of the bill.[78] The DUI amendment generated a lot of debate, and was received negatively.[79] The wording in the DUI amendment would have unraveled a compromise in the bill related to the admissibility of a defendant's past actions that was struck between prosecutors and defense attorneys in 2010.[80] The Senate voted on both amendments and the DUI amendment failed, with a vote of 3 to 35.[81] The medical compensation amendment also failed, with a vote of 8 to 40.[82] Although there was not as much attention given to the medical compensation amendment during the floor debate, its prospects appeared to have been hurt by the negative feelings surrounding the DUI amendment.[83]

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bill offer to sponsor it and that Senator Cowsert was "not committed to the bill"). Senator Cowsert also delayed any votes on the bill in the Senate Judiciary Committee, of which he is vice chairman, after the first reading. Baydala, *supra* note 73, at 1. The Committee later reported the bill favorably after a meeting that Cowsert did not attend. *Id.*

75. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

76. Video Recording of Senate Proceedings, Apr. 14, 2011 at 47 min., 8 sec. (remarks by Sen. Bill Cowsert (R-46th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-senate_041411_AM.wmv [hereinafter Senate Floor Video]. Representative Willard does not believe that these were "poison pill," amendments, but items that Senator Cowsert legitimately wanted to get done. Willard Interview, *supra* note 21. For Senator Cowsert's explanation, see *infra* text accompanying note 85.

77. *Id.*

78. *Id.*

79. *See, e.g.*, *id.* at 54 min., 2 sec. (remarks by Sen. Donzella James (D-35th)) ("Isn't it true that as a mother of someone who was killed by a habitual drunk driver and after consulting with Mothers Against Drunk Driving . . . [that] they are opposed to amendment number one?"); *id.* at 1 hr., 19 min., 20 sec. (remarks by Sen. Renee Unterman (R-45th)) ("[W]e do feel like it does weaken the law. I think it does give the advantage to DUI defenders and people who are in that business.").

80. *See* Hendrix et al., *supra* note 1, at 9–10; Kathleen Baydala Joyner, *After Drama, Evidence Bill Passes*, ATLAW BLOG, Apr. 14, 2011, 1:00 PM, http://www.atlawblog.com/2011/04/after-drama-evidence-bill-passes/.

81. Senate Floor Video, *supra* note 76, at 1 hr., 20 min., 1 sec. (remarks by Lieutenant Governor Casey Cagle).

82. *Id.*

83. *See id.* at 1 hr., 19 min., 20 sec. (remarks by Sen. Renee Unterman (R-45th)) ("[I]nnocent victims . . . could be killed on roads by people who are drunk driving. So, with that, I'm asking you to not approve of the *two* amendments.") (emphasis added).

The Senate next voted on HB 24 and it passed 50 to 3.[84] One of the three votes against the bill was cast by Senator Cowsert.[85] The House then forwarded the bill to the Governor's office on April 26, 2011.[86] Governor Deal signed the bill into law on May 3, 2011 as Act 52.[87]

The Act

The 132 page Act replaces Title 24 of the Official Code of Georgia Annotated with a new Title 24 that is modeled after the FRE.[88] The Act also incorporates existing Georgia evidence rules not impacted by the changes and reorganizes the various evidence rules scattered throughout the Georgia Code.[89]

Section 1 of the Act is the preamble.[90] This section lists the intent of the General Assembly to "adopt the Federal Rules of Evidence."[91] This section also states that where conflicts were found amongst the various federal circuit courts, the General Assembly "considered" the decision of the 11th Circuit Court of Appeals.[92] Finally, this section explains that Georgia substantive evidence law is retained where not displaced by the Act.[93]

Section 2 of the Act replaces Title 24 in its entirety and replaces it with a new Title 24 modeled after the FRE.[94] Even the numbering of this section attempts to mirror, as closely as possible, the FRE.[95] This, of course, was not possible in areas where the substantive rules of the GRE deviate from the FRE.[96]

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84. Georgia Senate Voting Record, HB 24 (Apr. 14, 2011).

85. *Id.* As a lawyer whose practice includes DUI defense, Sen. Cowsert responded to criticism that his amendments were self-serving by stating, "I will concede that the ideas [ ] came from personal experience and instances where I felt injustices were done." Baydala, *supra* note 80.

86. State of Georgia Final Composite Status Sheet, HB 24, Apr. 14, 2011.

87. *Id.*

88. *See* HB 24, as passed, 2011 Ga. Gen. Assem.

89. *Id.*

90. *Id.* at § 1, pp. 1–2, ln. 18–31.

91. *Id.* at § 1, p. 1, ln. 19–20.

92. *Id.* at § 1, p. 1, ln. 22–24.

93. *Id.* at § 1, p. 2, ln. 29–31.

94. *See* HB 24, as passed, § 2, pp. 2–87, ln. 33–2905, 2011 Ga. Gen. Assem.

95. *Id.*; *see also* FED R. EVID. 101–1103.

96. For a table listing all of the departures from a strict adoption of the FRE, see the comprehensive table created in Hendrix et al., *supra* note 1, at 24 app. tbl.2.

Sections 3 to 100 of the Act—other than the three exceptions noted below—contain style changes and other changes necessary to make the existing Georgia Code consistent with the new Title 24.[97] Section 20[98] updates the rule regarding interpreters to address the concerns raised by the Council of Superior Court Judges.[99] Section 27 adds a Code section to Title 17 of the Official Code of Georgia Annotated.[100] This Code section requires an arresting officer to comply with provisions of Title 24 when arresting a hearing impaired individual.[101] Section 50 moves the former Code sections related to DNA analysis for certain sex offenses from Title 24 to new Code sections, 35-3-160 to 35-3-165.[102]

Finally, section 101 establishes the effective date of the Act as January 13, 2013.[103] This section makes clear that the Act will apply to any "motion made or hearing or trial commenced on or after [that] date."[104]

Analysis

In their comprehensive analysis of the 2010 version of HB 24, Daniel Hendrix, Sofia Jeong, and Warren Thomas discussed the potential effect of the GRE changes related to similar transactions, character evidence, and defendant's bent of mind.[105] The authors also discussed how case law and reliance on precedent would be handled after the implementation of the new GRE, how the Rape Shield and Tort Reform legislation were left alone in the new GRE, and how the GRE was likely constitutional under the "single subject" rule.[106] This analysis remains applicable to this Act. As such, this legislative history analysis will focus on the only substantive difference between

97. See Table 1: Other O.C.G.A. Sections Impacted by HB 24, *infra*, for a listing of the code sections affected and a brief description of the changes.
98. HB 24, as passed, § 20, pp. 93–94, ln. 3117–40, 2011 Ga. Gen. Assem.
99. *See supra* notes 43–45 and accompanying text.
100. HB 24, as passed, § 27, p. 96, ln. 3207–14, 2011 Ga. Gen. Assem.
101. *Id.*
102. *See* Hendrix et al., *supra* note 1, at 14.
103. HB 24, as passed, § 101, p. 132, ln. 4430–32, 2011 Ga. Gen. Assem.
104. *Id.* at § 101, p. 132, *ll*. 4431–32.
105. Hendrix et al., *supra* note 1, at 14–17.
106. *Id.* at 17–20.

the 2010 bill and the 2011 Act—the change made to the statement against interest rule.[107]

The Statement Against Interest Exception to the Hearsay Rule

Explained briefly, the statement against interest exception is an evidentiary rule that allows certain statements to be entered into evidence, despite being inadmissible hearsay, if the statement is contrary to the declarant's pecuniary or penal interest.[108] Prior to the Act, statements against interest were only allowed as admissible hearsay evidence in Georgia when a person was deceased.[109] In all other cases, statements against interest were considered inadmissible hearsay.[110] During the three years that the Georgia General Assembly was debating the Act, changes were being proposed to section 804(b)(3) of the FRE.[111] This section of the FRE contains the statement against interest exception to the hearsay rule.[112]

Prior to December 31, 2010, FRE 804(b)(3) only specified that corroborating evidence of a statement against interest was required for a defendant in a criminal case.[113] A federal circuit split developed regarding whether this requirement should be applied to statements introduced by prosecutors as well, despite the lack of explicit language in the FRE.[114] The 11th Circuit Court of Appeals took the position that corroboration should be required for statements against interest in a criminal case regardless of who is presenting the evidence.[115] FRE 804(b)(3) was amended in 2010—incorporating the approach taken by the 11th Circuit—and now makes explicit that anyone attempting to introduce a statement against interest in a criminal case must provide corroborating evidence.[116]

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107. *See supra* notes 40–42.
108. For the complete wording of the rule, see FED. R. EVID. 804(b)(3).
109. *See* O.C.G.A. § 24-3-8 (2010).
110. *See* EVIDENCE STUDY, *supra* note 8, at 9, 106.
111. *See New FRE Amendment to FRE 804(b)(3) (Declarations Against Interest) Takes Effect Today (Part XI)*, FEDERAL EVIDENCE BLOG (Dec. 01, 2010), http://federalevidence.com/node/1022.
112. FED. R. EVID. 804(b)(3).
113. House Judy Comm. Video 02/08, *supra* note 13, at 36 min., 36 sec. (remarks by Prof. Paul Milich).
114. *Id.*
115. *See, e.g.*, United States v. US Infrastructure, Inc., 576 F.3d 1195 (11th Cir. 2009); United States v. Costa, 31 F.3d 1073 (11th Cir. 1994).
116. FED. R. EVID. 804(b)(3).

The Act reflects the language of the 2010 revision to FRE 804(b)(3).[117] The new wording will likely cause few, if any, problems in Georgia courts for two reasons. First, because the language is in line with the FRE and 11th Circuit precedent, there will be no consistency issues with federal cases. Second, the previous Georgia rule related to statements against interest was extremely restrictive.[118] By requiring corroborating evidence in all circumstances, the Act is now more restrictive than the 2010 version of the bill, which mirrored the old FRE 804(b)(3). This is more in line with Georgia's history of prohibiting hearsay in most circumstances. Thus, as lawyers and judges throughout the state become familiar with the new rules, the statement against interest exception to the hearsay rule is likely to feel less foreign.

Robert Steele

117. *See supra* notes 40–42.
118. *See* EVIDENCE STUDY, *supra* note 8, at 9, 106.

Table 1: Other O.C.G.A. Sections Impacted by HB 24[119]

Bill Section	Code Section Affected	Detail
3	4-11-17	reference to Title 24
4	7-1-63	remove embedded evidence rule
5	7-1-94	remove embedded evidence rule; refer to Title 24; style
6	7-1-95	delete evidence rule; reserved
7	8-3-6	remove embedded evidence rule
8	8-3-104	remove embedded evidence rule
9	9-10-6	remove embedded evidence rule; style
10	9-10-9	delete evidence rule; reserved
11	9-11-44	delete evidence rule; reserved
12	10-1-157	remove embedded evidence rule
13	10-1-188	delete evidence rule; reserved
14	10-1-208	delete evidence rule; reserved
15	10-1-444	remove embedded evidence rule
16	10-4-15	remove embedded evidence rule; style
17	10-6-64	delete evidence rule; reserved
18	10-14-27	delete evidence rule; reserved
19	14-9A-117	delete evidence rule; reserved
20	15-1-14	update rule regarding interpreters; re-organize section
21	15-11-79.1	reference to Title 24
22	15-11-84	reference to Title 24; style
23	15-18-14.1	reference to Title 24; style
24	15-18-15	reference to Title 24
25	16-5-27	reference to Title 24; style
26	16-12-55	remove embedded evidence rule; style
27	17-4-30	added code section as reference to Title 24
28	17-4-40	reference to Title 24; style
29	17-7-25	reference to Title 24

119. This table was substantially reproduced from Hendrix et al., *supra* note 1.

30	17-7-28	reference to Title 24; style
31	17-7-93	remove embedded evidence rule; style
32	17-9-20	remove embedded evidence rule; style
33	17-9-41	delete evidence rule; reserved
34	17-16-4	reference to Title 24
35	17-17-9	reference to Title 24
36	20-2-940	reference to Title 24; style
37	20-2-991	remove embedded evidence rule
38	22-1-14	reference to Title 24
39	26-4-80	reference to Title 24
40	28-1-16	reference to Title 24; style
41	29-9-13.1	reference to Title 24
42	31-5-5	remove embedded evidence rule; style
43	31-10-26	remove embedded evidence rule; style
44	31-21-3	reference to Title 24
45	33-2-2	remove embedded evidence rule; style
46	33-20A-37	remove embedded evidence rule
47	34-9-60	reference to Title 24
48	34-9-102	reference to Title 24
49	34-9-108	reference to Title 24
50	35-3-160 to -165	new Article 6A (former Article 4 of Chapter 4 of Title 24)
51	36-74-25	reference to Title 24
52	36-74-45	reference to Title 24
53	37-3-166	reference to Title 24
54	37-4-125	reference to Title 24
55	37-7-166	reference to Title 24
56	40-2-74	reference to Title 24; style
57	40-5-2	remove embedded evidence rule
58	40-5-58	reference to Title 24
59	40-6-10	reference to Title 24
60	40-6-11	reference to Title 24

61	42-5-52.2	reference to Title 24
62	42-6-4	reference to Title 24
63	42-6-5	reference to Title 24
64	43-3-24	reference to Title 24
65	43-6-6	remove embedded evidence rule
66	43-9-12	reference to Title 24
67	43-11-12	remove embedded evidence rule
68	43-18-8	delete evidence rule; reserved
69	43-23-3	remove embedded evidence rule
70	43-28-6	remove embedded evidence rule
71	43-29-4	remove embedded evidence rule
72	43-33-9	remove embedded evidence rule; style
73	43-33-18	reference to Title 24
74	43-34-8	reference to Title 24
75	43-40-6	remove embedded evidence rule
76	44-2-5	remove embedded evidence rule; style
77	44-2-20	remove embedded evidence rule; style
78	44-2-23	delete evidence rule; reserved
79	44-2-101	remove embedded evidence rule; style
80	44-4-3	remove embedded evidence rule
81	44-4-6	remove embedded evidence rule
82	44-5-45	delete evidence rule; reserved
83	44-13-11	remove embedded evidence rule; style
84	44-14-38	delete evidence rule; reserved
85	45-9-1	remove embedded evidence rule; style
86	45-9-20	remove embedded evidence rule
87	45-14-5	remove embedded evidence rule; style
88	45-16-43	delete evidence rule; reserved
89	46-2-53	delete evidence rule; reserved
90	46-3-175	remove embedded evidence rule;

		style
91	48-2-14	remove embedded evidence rule; style
92	48-5-138	remove embedded evidence rule
93	49-5-183.1	reference to Title 24
94	50-5A-4	remove embedded evidence rule
95	50-18-96	delete evidence rule; reserved
96	52-6-8	remove embedded evidence rule; style
97	53-5-33	reference to Title 24
98	53-5-35	reference to Title 24
99	53-5-43	reference to Title 24
100	53-11-11	reference to Title 24