

Senate Bill 46

By: Senators Thomas of the 2<sup>nd</sup> and Johnson of the 1<sup>st</sup>

**AS PASSED SENATE**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated,  
2 relating to dispossessory proceedings, so as to change certain time limits; to change the time  
3 within which the tenant must file an answer; to change the provisions relating to defenses and  
4 counterclaims; to change the provisions relating to tenders of rents owed and costs; to change  
5 the period for payments pursuant to court orders; to change the provisions relating to tenants  
6 remaining in possession; to change the provisions relating to payments into court; to change  
7 certain provisions relating to writs of possession and their effective dates; to change the  
8 provisions relating to appeals, the filing thereof, and supplementing the record; to repeal  
9 conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to  
13 dispossessory proceedings, is amended by striking Code Section 44-7-51, relating to issuance  
14 of summons, service, time for answer, and defenses and counterclaims, and inserting in its  
15 place the following:

16 "44-7-51.

17 (a) When the affidavit provided for in Code Section 44-7-50 is made, the judge of the  
18 superior court, the state court, or any other court with jurisdiction over the subject matter  
19 or the judge, clerk, or deputy clerk of the magistrate court shall grant and issue a  
20 summons to the sheriff or his deputy or to any lawful constable of the county where the  
21 land is located. A copy of the summons and a copy of the affidavit shall be personally  
22 served upon the defendant. If the sheriff is unable to serve the defendant personally,  
23 service may be had by delivering the summons and the affidavit to any person who is sui  
24 juris residing on the premises or, if after reasonable effort, one attempt at deliverance  
25 shall constitute reasonable effort, no such person is found residing on the premises, by  
26 posting a copy of the summons and the affidavit on the door of the premises and, on the

1 same day of such posting, by enclosing, directing, stamping, and mailing by first-class  
 2 mail a copy of the summons and the affidavit to the defendant at his last known address,  
 3 if any, and making an entry of this action on the affidavit filed in the case.

4 (b) The summons served on the defendant pursuant to subsection (a) of this Code  
 5 section shall command and require the tenant to answer either orally or in writing  
 6 within ~~seven~~ five days from the date of the actual service unless the ~~seventh~~ fifth day  
 7 is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on  
 8 the next day which is not a Saturday, a Sunday, or a legal holiday. If the answer is  
 9 oral, the substance thereof shall be endorsed on the dispossessory affidavit. The  
 10 answer may contain any legal or equitable defense or counterclaim. The landlord need  
 11 not appear on the date of the tenant's response. The last possible date to answer shall  
 12 be stated on the summons."

### 13 SECTION 2.

14 Said article is further amended by striking Code Section 44-7-52, relating to when  
 15 tender of payment by a tenant serves as a complete defense, and inserting in its place  
 16 the following:

17 "44-7-52.

18 (a) Except as provided in subsection (c) of this Code section, in an action for  
 19 nonpayment of rent, the tenant shall be allowed to tender to the landlord, within ~~seven~~  
 20 five days of the day the tenant was served with the summons pursuant to Code Section  
 21 44-7-51, all rents allegedly owed plus the cost of the dispossessory warrant. Such a  
 22 tender shall be a complete defense to the action; provided, however, that a landlord is  
 23 required to accept such a tender from any individual tenant after the issuance of a  
 24 dispossessory summons only once in any 12 month period.

25 (b) If the court finds that the tenant is entitled to prevail on the defense provided in  
 26 subsection (a) of this Code section and the landlord refused the tender as provided  
 27 under subsection (a) of this Code section, the court shall issue an order requiring the  
 28 tenant to pay immediately to the landlord all rents which are owed by the tenant and  
 29 the costs of the dispossessory warrant ~~within three days of said order~~. Upon failure of  
 30 the tenant to pay such sum, a writ of possession shall issue. Such payment shall not  
 31 count as a tender pursuant to subsection (a) of this Code section.

32 (c) For a tenant who is not a tenant under a residential rental agreement as defined in  
 33 Code Section 44-7-30, tender and acceptance of less than all rents allegedly owed plus  
 34 the cost of the dispossessory warrant shall not be a bar nor a defense to an action  
 35 brought under Code Section 44-7-50 but shall, upon proof of same, be considered by  
 36 the trial court when awarding damages."



1 shall determine the amount of rent to be paid into court in the same manner as  
2 provided in paragraph (1) of this subsection."

### 3 SECTION 5.

4 Said article is further amended by striking subsection (a) of Code Section 44-7-55,  
5 relating to judgment, writ of possession, the landlord's liability for wrongful conduct,  
6 and distribution of funds paid into court, and inserting in its place the following:

7 "(a) If, on the trial of the case, the judgment is against the tenant, judgment shall be  
8 entered against the tenant for all rents due and for any other claim relating to the  
9 dispute. The court shall issue a writ of possession, both of execution for the judgment  
10 amount and a writ to be effective at the expiration of ~~seven~~ five days after the date  
11 such judgment was entered, except as otherwise provided in Code Section 44-7-56."

### 12 SECTION 6.

13 Said article is further amended by striking Code Section 44-7-56, relating to appeal and  
14 possession and payment of rent pending appeal, and inserting in its place the following:

15 "44-7-56.

16 Any judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7  
17 of Title 5, provided that any such appeal shall be filed within ~~seven~~ five days of the  
18 date such judgment was entered and provided, further, that, after the notice of appeal  
19 is filed with the clerk of the trial court, the clerk shall immediately notify the trial  
20 judge of the notice of appeal and the trial judge may, within ~~15~~ ten days, supplement  
21 the record with findings of fact and conclusions of law which will be considered as a  
22 part of the order of the judge in that case. If the judgment of the trial court is against  
23 the tenant and the tenant appeals this judgment, the court may upon motion of the  
24 landlord and upon good cause shown order the tenant to pay into the registry of the  
25 court all sums found by the trial court to be due for rent in order to remain in  
26 possession of the premises. The tenant shall also be required to pay all future rent as it  
27 becomes due into the registry of the trial court pursuant to paragraph (1) of subsection  
28 (a) of Code Section 44-7-54 until the issue has been finally determined on appeal."

### 29 SECTION 7.

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