

House Bill 741

By: Representative Ehrhart of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to judgments in civil cases, so as to provide that when a default judgment is entered
3 against a party for failure to comply with an order compelling discovery, the default
4 judgment shall be conditioned on the other party's waiver of a jury trial of remaining issues;
5 to provide for related matters; to provide for an effective date and for applicability; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 7 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
10 judgments in civil cases, is amended by striking Code Section 9-11-55, relating to default
11 judgments, and inserting in its place a new Code section to read as follows:

12 "9-11-55.

13 (a) *When case in default; opening as matter of right; judgment.* If in any case an answer
14 has not been filed within the time required by this chapter, the case shall automatically
15 become in default unless the time for filing the answer has been extended as provided by
16 law. The default may be opened as a matter of right by the filing of such defenses within
17 15 days of the day of default, upon the payment of costs. If the case is still in default after
18 the expiration of the period of 15 days, the plaintiff at any time thereafter shall be entitled
19 to verdict and judgment by default, in open court or in chambers, as if every item and
20 paragraph of the complaint or other original pleading were supported by proper evidence,
21 without the intervention of a jury, unless the action is one ex delicto or involves
22 unliquidated damages, in which event the plaintiff shall be required to introduce evidence
23 and establish the amount of damages before the court without a jury, with the right of the
24 defendant to introduce evidence as to damages and the right of either to move for a new
25 trial in respect of such damages; provided, however, in the event a defendant, though in
26 default, has placed damages in issue by filing a pleading raising such issue, either party

1 shall be entitled, upon demand, to a jury trial of the issue as to damages. An action based
2 upon open account shall not be considered one for unliquidated damages within the
3 meaning of this Code section.

4 (b) Waiver of jury trial in certain instances. Notwithstanding subsection (a) of this Code
5 section, if a default judgment has been rendered at the discretion of the court pursuant to
6 subparagraph (b)(2)(C) of Code Section 9-11-37, relating to compelling discovery, the
7 judgment against the disobedient party shall be conditioned upon a waiver by the opposing
8 party of a jury trial of any and all remaining issues.

9 (b)(c) Opening default. At any time before final judgment, the court, in its discretion, upon
10 payment of costs, may allow the default to be opened for providential cause preventing the
11 filing of required pleadings or for excusable neglect or where the judge, from all the facts,
12 shall determine that a proper case has been made for the default to be opened, on terms to
13 be fixed by the court. In order to allow the default to be thus opened, the showing shall be
14 made under oath, shall set up a meritorious defense, shall offer to plead instanter, and shall
15 announce ready to proceed with the trial."

16 **SECTION 2.**

17 This Act shall become effective July 1, 2001, and shall apply with respect to default
18 judgments entered on or after that effective date in cases filed before, on, or after that
19 effective date.

20 **SECTION 3.**

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