

House Bill 417

By: Representatives Smith of the 76<sup>th</sup>, Burkhalter of the 36<sup>th</sup>, Graves of the 106<sup>th</sup>, Westmoreland of the 86<sup>th</sup>, Harbin of the 80<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so  
2 as to provide for appeals from certain awards of attorney's fees or expenses of litigation; to  
3 amend Chapter 15 of Title 9 of the Official Code of Georgia Annotated, relating to court and  
4 litigation costs in civil actions, so as to provide for recovery of costs and attorney's fees by  
5 certain prevailing parties who made offers or demands of judgments in tort actions; to amend  
6 Article 1 of Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to  
7 general provisions relative to damages in tort actions, so as to repeal certain provisions  
8 relating to procedure for demand of unliquidated damages in tort actions and when interest  
9 may be recovered; to provide for an effective date and applicability; to repeal conflicting  
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
14 by striking paragraph (10) of subsection (a) of Code Section 5-6-35, relating to cases  
15 requiring application for appeal and related procedures, and inserting in its place the  
16 following:

17 "(10) Appeals from awards of attorney's fees or expenses of litigation under Code  
18 Section 9-15-14 or Code Section 9-15-16; and".

19 style="text-align:center">**SECTION 2.**

20 Chapter 15 of Title 9 of the Official Code of Georgia Annotated, relating to court and  
21 litigation costs in civil actions, is amended by adding a new Code section to read as follows:  
22 "9-15-16.

23 (a) In any civil action for damages in tort filed in the courts of this state:

24 (1) If a defendant files an offer of judgment which is not accepted by the plaintiff within  
25 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees

1 incurred by him or her or on the defendant's behalf pursuant to a policy of liability  
2 insurance or other contract from the date of filing of the offer if the judgment is one of  
3 no liability or the judgment obtained by the plaintiff is at least 25 percent less than such  
4 offer, and the court shall set off such costs and attorney's fees against the award. Where  
5 such costs and attorney's fees total more than the judgment, the court shall enter  
6 judgment for the defendant against the plaintiff for the amount of the costs and fees, less  
7 the amount of the plaintiff's award;

8 (2) If a plaintiff files a demand for judgment which is not accepted by the defendant  
9 within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent  
10 greater than the offer, he or she shall be entitled to recover reasonable costs and  
11 attorney's fees incurred from the date of the filing of the demand; and

12 (3) If rejected, neither such offer nor demand is admissible in subsequent litigation,  
13 except for pursuing the penalties of this Code section.

14 (b) The making of an offer of settlement which is not accepted does not preclude the  
15 making of a subsequent offer. An offer must:

16 (1) Be in writing and state that it is being made pursuant to this Code section;

17 (2) Name the party making it and the party to whom it is being made;

18 (3) State with particularity the amount offered to settle a claim for punitive damages, if  
19 any; and

20 (4) State its total amount.

21 The offer shall be construed as including all damages which may be awarded in a final  
22 judgment.

23 (c) The offer shall be served upon the party to whom it is made, but it shall not be filed  
24 unless it is accepted or unless filing is necessary to enforce the provisions of this Code  
25 section.

26 (d) An offer shall be accepted by filing a written acceptance with the court within 30 days  
27 after service. Upon filing of both the offer and acceptance, the court has full jurisdiction  
28 to enforce the settlement agreement.

29 (e) An offer may be withdrawn in writing which is served before the date a written  
30 acceptance is filed. Once withdrawn, an offer is void.

31 (f) Upon motion made by the offeror within 30 days after the entry of judgment or after  
32 voluntary or involuntary dismissal, the court shall determine the following:

33 (1) If a defendant serves an offer which is not accepted by the plaintiff, and if the  
34 judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer,  
35 the defendant shall be awarded reasonable costs, including investigative expenses, and  
36 attorney's fees, incurred from the date the offer was served, and the court shall set off  
37 such costs in attorney's fees against the award. When such costs and attorney's fees total

1 more than the amount of the judgment, the court shall enter judgment for the defendant  
 2 against the plaintiff for the amount of the costs and fees, less the amount of the award to  
 3 the plaintiff. For purposes of the determination required by this paragraph, the term  
 4 'judgment obtained' means the amount of the net judgment entered, plus any postoffer  
 5 collateral source payments received or due as of the date of the judgment, plus any  
 6 postoffer settlement amounts by which the verdict was reduced; or

7 (2) If a plaintiff serves an offer which is not accepted by the defendant, and if the  
 8 judgment obtained by the plaintiff is at least 25 percent more than the amount of the  
 9 offer, the plaintiff shall be awarded reasonable costs, including investigative expenses,  
 10 and attorney's fees, incurred from the date the offer was served. For purposes of the  
 11 determination required by this paragraph, the term 'judgment obtained' means the amount  
 12 of the net judgment entered, plus any postoffer settlement amounts by which the verdict  
 13 was reduced.

14 (g)(1) If a party is entitled to costs and fees pursuant to the provisions of this Code  
 15 section, the court may, in its discretion, determine that an offer was not made in good  
 16 faith. In such case, the court may disallow an award of costs and attorney's fees.

17 (2) When determining the reasonableness of an award of attorney's fees pursuant to this  
 18 Code section, the court shall consider, along with all other relevant criteria, the following  
 19 additional factors:

20 (A) The then apparent merit or lack of merit in the claim;

21 (B) The number and nature of offers made by the parties;

22 (C) The closeness of questions of fact and law at issue;

23 (D) Whether the person making the offer had unreasonably refused to furnish  
 24 information necessary to evaluate the reasonableness of such offer;

25 (E) Whether the suit was in the nature of a test case presenting questions of  
 26 far-reaching importance affecting nonparties; and

27 (F) The amount of the additional delay cost and expense that the person making the  
 28 offer reasonably would be expected to incur if the litigation should be prolonged.

29 (h) Evidence of an offer is admissible only in proceedings to enforce an accepted offer or  
 30 to determine the imposition of sanctions under this Code section."

### 31 SECTION 3.

32 Article 1 of Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to  
 33 general provisions relative to damages in tort actions, is amended by repealing Code Section  
 34 51-12-14, relating to procedure for demand of unliquidated damages in tort actions and when  
 35 interest may be recovered.

1 **SECTION 4.**

2 This Act shall become effective on July 1, 2003, and shall apply with respect to actions  
3 pending on or filed on or after that date.

4 **SECTION 5.**

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