

House Bill 887

By: Representatives Smith of the 76th, Willard of the 40th, and Burkhalter of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to provisional and final remedies and special proceedings under the "Georgia Civil
3 Practice Act," so as to provide that any party who rejects an offer of settlement more
4 favorable than the judgment finally obtained in civil actions shall pay the reasonable costs
5 incurred by the offeror after the making of the offer; to provide for procedures, withdrawal
6 of the offer, and inadmissibility of the offer; to provide for subsequent offers and offers after
7 determination of liability but before determination of the amount or extent of liability; to
8 provide for related matters; to provide for applicability; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
13 provisional and final remedies and special proceedings under the "Georgia Civil Practice
14 Act," is amended by striking in its entirety Code Section 9-11-68, which is reserved, and
15 inserting in lieu thereof a new Code Section 9-11-68 to read as follows:

16 "9-11-68.

17 (a) The provisions of this Code section shall apply to civil actions.

18 (b) At any time more than 15 days before the trial begins, any party may give written
19 notice by registered or certified mail or statutory overnight delivery, return receipt
20 requested, to an adverse party of an offer to settle a claim for monetary damages for a
21 specific dollar amount. If, before the trial begins and within 30 days after the date the
22 notice of the offer is received or refused, the adverse party gives written notice by
23 registered or certified mail or statutory overnight delivery, return receipt requested, to the
24 offeror that the offer is accepted, either party may then file the offer and notice of
25 acceptance together with proof of written notice by registered or certified mail or statutory
26 overnight delivery, and thereupon the clerk shall enter judgment. An offer not accepted

1 before the trial begins and within 30 days of receipt or refusal shall be deemed withdrawn,
2 and evidence thereof is not admissible except in a proceeding to determine costs under
3 subsection (c) of this Code section. Any offer made or accepted under this Code section
4 may specify that the terms of settlement are confidential and are not to be disclosed to any
5 other party or any nonparty. Nothing in this Code section is intended to prohibit the
6 implementation of a confidential settlement reached as a result of a settlement offer
7 extended pursuant to the terms of this Code section.

8 (c) If the judgment finally obtained is not more favorable to the offeree than the offer, the
9 offeree must pay the reasonable costs incurred by the offeror, as determined by the court,
10 after the making of the offer, and the offeree may not be awarded costs under subsection
11 (d) of Code Section 9-11-54.

12 (d) The fact that an offer is made but not accepted does not preclude a subsequent offer.
13 An offeror who would be awarded costs under subsection (c) of this Code section on the
14 basis of the offer shall be deprived of such costs by failing to accept a subsequent offer
15 more favorable than the judgment finally obtained, and such deprivation of costs shall
16 commence upon the failure to accept such subsequent offer. Upon the failure of an offeror
17 who would be awarded costs under this Code section to accept the first subsequent offer
18 more favorable than the judgment finally obtained, neither party shall thereafter pay the
19 costs of the other.

20 (e) When the liability of one party to another has been determined by verdict or order or
21 judgment but the amount or extent of the liability remains to be determined by further
22 proceedings, any party may make an offer of settlement under this Code section, which
23 shall have the same effect as an offer made before trial if written notice by registered or
24 certified mail is given within a reasonable time not less than 15 days prior to the
25 commencement of hearings to determine the amount or extent of liability.

26 (f) For purposes of this Code section, costs may include without limitation expenses of
27 mandatory mediation and alternative dispute resolution mechanisms; premiums paid on the
28 expenses of necessary posting, undertakings, bonds, or security stipulations; ordinary
29 witness fees; fees of expert witnesses who are not employees of any party; the cost of
30 taking, videotaping, and transcribing necessary depositions, including an original and one
31 copy of those taken by the claimant and one copy of depositions taken by the party against
32 whom costs are allowed and travel expenses to attend depositions; the cost of producing
33 exhibits; the expense of service and publication of summons or notices, and postage when
34 the same are served by mail; expenses of attachment; filing, motion, and jury fees and other
35 charges made by the clerk of the court; fees for transcripts required in the trial of a case and
36 for transcripts of court proceedings; court reporters' fees; the reasonable, actual cost of
37 demonstrative evidence and exhibits, if reasonably helpful to the trier of fact; and any other

1 expenses reasonably incurred in order to enable a party to secure some right accorded the
2 party in the action or proceeding, except that attorney's fees, fees for investigators, and
3 expenses of voluntary mediation and alternative dispute resolution mechanisms shall not
4 be included."

5 **SECTION 2.**

6 This Act shall apply to cases first filed on or after the date this Act becomes effective.

7 **SECTION 3.**

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