

## COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 792

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 7, 9, 50, and 51 of the Official Code of Georgia Annotated, relating to  
 2 banking and finance, civil practice, state government, and torts, respectively, so as to provide  
 3 for substantive revisions to provisions regarding civil procedure and settlements and dispute  
 4 resolution; to change certain provisions regarding interest on judgments; to provide for  
 5 vacation of an arbitration award based upon an arbitrator's manifest disregard for the law;  
 6 to provide for the comprehensive revision of provisions regarding class actions; to provide  
 7 for procedures, conditions, and limitations; to change provisions relating to dismissal of  
 8 actions; to change provisions relating to jurisdiction; to change provisions relating to  
 9 prerequisites for transfer of structured settlement payment rights; to provide for court filings;  
 10 to provide for hearings relative to transfers; to change provisions relating to notification of  
 11 cancellation rights; to provide for related matters; to provide for an effective date and  
 12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

## SECTION 1.

14 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
 15 amended by striking Code Section 7-4-12, relating to interest on judgments, and inserting in  
 16 lieu thereof the following:  
 17

18 "7-4-12.

19 (a) All judgments in this state shall bear annual interest upon the principal amount  
 20 recovered at ~~the rate~~ a rate of 12 percent per year equal to the prime rate as published by  
 21 the Board of Governors of the Federal Reserve System, as published in statistical release  
 22 H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3  
 23 percent.

24 (b) ~~If unless~~ the judgment is rendered on a written contract or obligation providing for  
 25 interest at a specified rate, ~~in which case~~ the judgment shall bear interest at the rate  
 26 specified in ~~such~~ the contract or obligation.

1 (c) The postjudgment interest provided for in this Code section shall apply automatically  
 2 to all judgments in this state and ~~such~~ the interest shall be collectable as a part of each ~~such~~  
 3 judgment whether or not ~~such~~ the judgment specifically reflects the entitlement to ~~such~~  
 4 postjudgment interest.

5 (d) This Code section shall apply to all civil actions filed on or after the effective date of  
 6 this Code section."

7 **SECTION 2.**

8 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
 9 striking subsection (b) of Code Section 9-9-13, relating to vacation of award by court,  
 10 application, grounds, rehearing, and appeal of order, and inserting in lieu thereof the  
 11 following:

12 "(b) The award shall be vacated on the application of a party who either participated in the  
 13 arbitration or was served with a demand for arbitration if the court finds that the rights of  
 14 that party were prejudiced by:

- 15 (1) Corruption, fraud, or misconduct in procuring the award;
- 16 (2) Partiality of an arbitrator appointed as a neutral;
- 17 (3) An overstepping by the arbitrators of their authority or such imperfect execution of
- 18 it that a final and definite award upon the subject matter submitted was not made; ~~or~~
- 19 (4) A failure to follow the procedure of this part, unless the party applying to vacate the
- 20 award continued with the arbitration with notice of this failure and without objection; or
- 21 (5) The arbitrator's manifest disregard of the law."

22 **SECTION 3.**

23 Said title is further amended by striking Code Section 9-11-23, relating to class actions, and  
 24 inserting in lieu thereof the following:

25 "~~9-11-23.~~

26 ~~(a) Representation. If persons constituting a class are so numerous as to make it~~  
 27 ~~impracticable to bring them all before the court, such of them, one or more, as will fairly~~  
 28 ~~ensure the adequate representation of all may, on behalf of all, bring or defend an action~~  
 29 ~~when the character of the right sought to be enforced for or against the class is:~~

- 30 ~~(1) Joint, or common, or secondary in the sense that the owner of a primary right refuses~~  
 31 ~~to enforce that right and a member of the class thereby becomes entitled to enforce it; or~~
- 32 ~~(2) Several, and the object of the action is the adjudication of claims which do or may~~  
 33 ~~affect specific property involved in the action.~~

34 ~~(b) Secondary action by shareholders. In an action brought to enforce a secondary right~~  
 35 ~~on the part of one or more shareholders in an association, incorporated or unincorporated,~~

1 because the association refuses to enforce rights which may properly be asserted by it, the  
 2 complaint shall be verified by oath and shall aver that the plaintiff was a shareholder at the  
 3 time of the transaction of which he or she complains or that his or her share thereafter  
 4 devolved on him or her by operation of law. The complaint shall also set forth with  
 5 particularity the efforts of the plaintiff to secure from the managing directors or trustees  
 6 such actions as the plaintiff desires and the reasons for his or her failure to obtain such  
 7 action or the reasons why irreparable injury to the association, incorporated or  
 8 unincorporated, would result by waiting for 90 days from the date of the demand upon the  
 9 managing directors or trustees. This Code section is cumulative of Code Section 14-2-831.  
 10 ~~(c) *Dismissal or compromise.* A class action shall not be dismissed or compromised~~  
 11 ~~without the approval of the court. If the right sought to be enforced is one defined in~~  
 12 ~~paragraph (1) of subsection (a) of this Code section, notice of the proposed dismissal or~~  
 13 ~~compromise shall be given to all members of the class in such manner as the court directs.~~  
 14 ~~If the right is one defined in paragraph (2) of subsection (a) of this Code section, notice~~  
 15 ~~shall be given only if the court requires it.~~

16 9-11-23.

17 (a) One or more members of a class may sue or be sued as representative parties on behalf  
 18 of all only if:

19 (1) The class is so numerous that joinder of all members is impracticable;

20 (2) There are questions of law or fact common to the class;

21 (3) The claims or defenses of the representative parties are typical of the claims or  
 22 defenses of the class; and

23 (4) The representative parties will fairly and adequately protect the interests of the class.

24 (b) An action may be maintained as a class action if the prerequisites of subsection (a) of  
 25 this Code section are satisfied, and, in addition:

26 (1) The prosecution of separate actions by or against individual members of the class  
 27 would create a risk of:

28 (A) Inconsistent or varying adjudications with respect to individual members of the  
 29 class which would establish incompatible standards of conduct for the party opposing  
 30 the class; or

31 (B) Adjudications with respect to individual members of the class which would as a  
 32 practical matter be dispositive of the interests of the other members not parties to the  
 33 adjudications or substantially impair or impede their ability to protect their interests;

34 (2) The party opposing the class has acted or refused to act on grounds generally  
 35 applicable to the class, thereby making appropriate final injunctive relief or  
 36 corresponding declaratory relief with respect to the class as a whole; or

1 (3) The court finds that the questions of law or fact common to the members of the class  
 2 predominate over any questions affecting only individual members, and that a class  
 3 action is superior to other available methods for the fair and efficient adjudication of the  
 4 controversy. The matters pertinent to the findings include:

5 (A) The interest of members of the class in individually controlling the prosecution or  
 6 defense of separate actions;

7 (B) The extent and nature of any litigation concerning the controversy already  
 8 commenced by or against members of the class;

9 (C) The desirability or undesirability of concentrating the litigation of the claims in the  
 10 particular forum; and

11 (D) The difficulties likely to be encountered in the management of a class action.

12 (c)(1) As soon as practicable after the commencement of an action brought as a class  
 13 action, the court shall determine by order whether it is to be so maintained. An order  
 14 under this subsection may be conditional, and may be altered or amended before the  
 15 decision on the merits.

16 (2) In any class action maintained under paragraph (3) of subsection (b) of this Code  
 17 section, the court shall direct to the members of the class the best notice practicable under  
 18 the circumstances, including individual notice to all members who can be identified  
 19 through reasonable effort. The notice shall advise each member that:

20 (A) The court will exclude the member from the class if the member so requests by a  
 21 specified date;

22 (B) The judgment, whether favorable or not, will include all members who do not  
 23 request exclusion; and

24 (C) Any member who does not request exclusion may, if the member desires, enter an  
 25 appearance through counsel.

26 (3) The judgment in an action maintained as a class action under paragraph (1) or (2) of  
 27 subsection (b) of this Code section, whether or not favorable to the class, shall include  
 28 and describe those whom the court finds to be members of the class. The judgment in an  
 29 action maintained as a class action under paragraph (3) of subsection (b) of this Code  
 30 section, whether or not favorable to the class, shall include and specify or describe those  
 31 to whom the notice provided in paragraph (2) of subsection (b) of this Code section was  
 32 directed, and who have not requested exclusion, and whom the court finds to be members  
 33 of the class.

34 (4) When appropriate:

35 (A) An action may be brought or maintained as a class action with respect to particular  
 36 issues; or

1 (B) A class may be divided into subclasses and each subclass treated as a class, and the  
 2 provisions of this rule shall then be construed and applied accordingly.

3 (d) In the conduct of actions to which this rule applies, the court may make appropriate  
 4 orders:

5 (1) Determining the course of proceedings or prescribing measures to prevent undue  
 6 repetition or complication in the presentation of evidence or argument;

7 (2) Requiring, for the protection of the members of the class or otherwise for the fair  
 8 conduct of the action, that notice be given in such manner as the court may direct to some  
 9 or all of the members of any step in the action, or of the proposed extent of the judgment,  
 10 or of the opportunity of members to signify whether they consider the representation fair  
 11 and adequate, to intervene and present claims or defenses, or otherwise to come into the  
 12 action;

13 (3) Imposing conditions on the representative parties or on intervenors; and

14 (4) Requiring that the pleadings be amended to eliminate therefrom allegations as to  
 15 representation of absent persons, and that the action proceed accordingly.

16 The orders may be combined with other orders, and may be altered or amended by the  
 17 court as may be desirable from time to time.

18 (e) A class action shall not be dismissed or compromised without the approval of the court,  
 19 and notice of the proposed dismissal or compromise shall be given to all members of the  
 20 class in such manner as the court directs.

21 (f) The appropriate appellate court may in its discretion permit an appeal from an order of  
 22 a trial court granting or denying class action certification under this Code section if  
 23 application is made to it within ten days after entry of the order. An appeal does not stay  
 24 proceedings in the trial court unless the trial judge or the appellate court so orders."

25 **SECTION 4.**

26 Said title is further amended by striking subsection (a) of Code Section 9-11-41, relating to  
 27 dismissal of actions, and inserting in lieu thereof the following:

28 "(a) Voluntary dismissal; effect:.

29 (1) BY PLAINTIFF; BY STIPULATION. Subject to the provisions of subsection (e) (e) of  
 30 Code Section 9-11-23, ~~of~~ Code Section 9-11-66, and ~~of~~ any statute, an action may be  
 31 dismissed by the plaintiff, without order or permission of court, ~~by:~~

32 (A) By filing a written notice of dismissal at any time before the plaintiff rests his case.  
 33 After the plaintiff rests his case, permission and an order of the court must be obtained  
 34 before dismissal first witness is sworn; or

35 (B) By filing a stipulation of dismissal signed by all parties who have appeared in the  
 36 action.

1 (2) BY ORDER OF COURT. Except as provided in paragraph (1) of this subsection, an  
 2 action shall not be dismissed upon the plaintiff's motion except upon order of the court  
 3 and upon the terms and conditions as the court deems proper. If a counterclaim has been  
 4 pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to  
 5 dismiss, the action shall not be dismissed against the defendant's objection unless the  
 6 counterclaim can remain pending for independent adjudication by the court.

7 (3) EFFECT. A dismissal under this subsection is without prejudice, except that the filing  
 8 of a ~~third~~ second notice of dismissal operates as an adjudication upon the merits."

## 9 SECTION 5.

10 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
 11 by striking Code Section 50-2-21 relating to jurisdiction extending to persons within state  
 12 limits, and inserting in its place a new Code Section 50-2-21 to read as follows:

13 "50-2-21.

14 (a) The jurisdiction of this state and its laws extend to all persons while within its limits,  
 15 whether as citizens, denizens, or temporary sojourners.

16 (b) A court of this state may decline to exercise jurisdiction of any civil cause of action of  
 17 a nonresident accruing outside this state if there is another forum with jurisdiction of the  
 18 parties in which the trial can be more appropriately held. In determining the  
 19 appropriateness of this state or of another forum, the court shall take into account the  
 20 following factors:

21 (1) The place of accrual of the cause of action;

22 (2) The location of witnesses;

23 (3) The residence or residences of the parties;

24 (4) Whether a litigant is attempting to circumvent the applicable statute of limitations of  
 25 another state; and

26 (5) The public factor of the convenience to and burden upon the court.

27 (c) Upon a motion filed not later than 90 days after the last day allowed for the filing of  
 28 the moving party's answer and upon the party's showing that the existing forum constitutes  
 29 an inconvenient forum based on the factors listed in subsection (b) of this Code section and  
 30 where there is another forum which can assume jurisdiction, the court may dismiss the  
 31 action without prejudice to its being filed in any appropriate jurisdiction on any condition  
 32 or conditions that may be just."



1 (e) This Code section shall be known and may be cited as the 'Unliquidated Damages  
2 Interest Act.'

### 3 SECTION 7.

4 Said title is further amended by striking Code Section 51-12-71, relating to prerequisites for  
5 transfer of structured settlement payment rights, and inserting in lieu thereof the following:

6 "51-12-71.

7 (a) No direct or indirect transfer of structured settlement payment rights shall be effective  
8 and no structured settlement obligor or annuity issuer shall be required to make any  
9 payment directly or indirectly to any transferee of structured settlement payment rights  
10 unless the transfer has been approved in advance in a final court order by a court of  
11 competent jurisdiction or order of any government authority vested by law with exclusive  
12 jurisdiction over the settled claim resolved by the structured settlement based on express  
13 findings by the court or government authority that:

14 (1) The transfer complies with the requirements of this article and ~~will~~ does not  
15 contravene ~~other applicable law~~ any federal or state statute or the order of any court or  
16 any responsible administrative authority;

17 (2) The transfer is in the best interest of the payee taking into account the welfare and  
18 support of the payee's dependents;

19 ~~(2)~~(3) Not less than ten days prior to the date on which the transfer agreement is  
20 executed in writing, the transferee has provided to the payee an informational pamphlet  
21 relating to transfers of structured settlements as provided for in subsection (b) of Code  
22 Section 51-12-73, when available, and a separate disclosure statement in bold type, no  
23 smaller than 14 points, setting forth:

24 (A) The amounts and due dates of the structured settlement payments to be transferred;

25 (B) The aggregate amount of such payments;

26 (C) The discounted present value of such payments, together with the discount rate  
27 used in determining such discounted present value;

28 (D) The gross amount payable to the payee in exchange for such payments;

29 (E) An itemized listing of all brokers' commissions, service charges, application fees,  
30 processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and  
31 other commissions, fees, costs, expenses, and charges payable by the payee or  
32 deductible from the gross amount otherwise payable to the payee;

33 (F) The net amount payable to the payee after deduction of all commissions, fees,  
34 costs, expenses, and charges described in subparagraph (E) of this paragraph;

35 (G) The quotient (expressed as a percentage) obtained by dividing the net payment  
36 amount by the discounted present value of the payments; and

1 (H) The amount of any penalty and the aggregate amount of any liquidated damages  
2 (inclusive of penalties) payable by the payee in the event of any breach of the transfer  
3 agreement by the payee; and

4 ~~(3) Written notice at least two business days prior to the effective execution of the~~  
5 ~~transfer agreement has been provided by the transferee to the annuity issuer and the~~  
6 ~~structured settlement obligor by certified mail or statutory overnight delivery, postage~~  
7 ~~prepaid; and~~

8 (4) The transferee has given written notice of the transferee's name, address, and  
9 taxpayer identification number to the annuity issuer and the structured settlement obligor  
10 and has filed a copy of the notice with the court.

11 (b) At least 20 days before the hearing which is scheduled on an application for  
12 authorizing a transfer of structured settlement payment rights under this Code section, the  
13 transferee shall file with the court and deliver to all interested parties a notice of the  
14 proposed transfer and the application for its authorization. The notice shall include the  
15 following:

16 (1) A copy of the transferee's application to the court;

17 (2) A copy of the transfer agreement;

18 (3) A copy of the disclosure statement required under paragraph (3) of subsection (a) of  
19 this Code section;

20 (4) Notification that an interested party may support, oppose, or otherwise respond to the  
21 transferee's application, either in person or through counsel, by participating in the  
22 hearing or by submitting written comments to the court; and

23 (5) A rule nisi containing notification of the time and place of the hearing and  
24 notification of the manner in and the time by which any written response to the  
25 application must be filed in order to be considered by the court. A written response shall  
26 be filed within 15 days after service of the transferee's notice.

27 (c) Delivery of notice as required by subsection (b) of this Code section may be made as  
28 provided in Code Section 9-11-4 or by registered or certified mail, return receipt requested.  
29 Notice by registered or certified mail is effective upon the date of delivery as shown on the  
30 return receipt. If notice by registered or certified mail is refused or returned undelivered,  
31 notice shall be delivered as provided in Code Section 9-11-4.

32 (d) The venue for any application brought under this Code section shall be in the county  
33 in which any transferee or transferor resides or in any county in which any of the  
34 transferees or transferors have consented to venue."

**SECTION 8.**

Said title is further amended by striking Code Section 51-12-72, relating to required transfer agreements, and inserting in lieu thereof the following:

"51-12-72.

(a) Any transfer agreement of structured settlement payment rights must, in addition to the other requirements of this article, be executed in writing and filed as provided in Code Section 51-12-71. The transfer agreement shall not be so executed until after the expiration of the ten-day period provided for in paragraph ~~(2)~~ (3) of Code Section 51-12-71.

(b) No payee shall incur any obligation of any type with respect to a proposed transfer of structured settlement payment rights prior to the execution in writing of the transfer agreement.

(c) Any payee who executes in writing a transfer agreement shall have the right to rescind the transfer at any time within the next 21 days following the written execution of the transfer agreement or at the hearing provided for in subsection (b) of Code Section 51-12-71, whichever event occurs last. The transferee shall furnish to the payee at the time of execution of the transfer agreement a notice to the payee allowing the payee 21 days to cancel the transfer. This right to cancel shall not limit or otherwise affect the payee's right to cancel pursuant to any other provision of applicable law. The notice shall serve as the cover sheet to the transfer documents. It shall be on a separate sheet of paper with no other written or pictorial material, in at least ten-point bold type, double spaced, and shall read substantially as follows:

**'NOTICE OF CANCELLATION RIGHTS:**

Please read this form completely and carefully. It contains valuable cancellation rights. You may cancel this transaction at any time prior to 5:00 P.M. of the twenty-first day following receipt of this notice or at the hearing on the application for authorization of a transfer of structured settlement payment rights, whichever event occurs last.

This cancellation right cannot be waived in any manner.

To cancel, sign this form, and mail or deliver it to the address below by 5:00 P.M. of \_\_\_\_\_ (the twenty-first day following the transaction). It is best to mail it by certified mail or statutory overnight delivery, return receipt requested, and to keep a photocopy of the signed form and your post office receipt.

Address to which cancellation is to be returned:

\_\_\_\_\_

I (we) hereby cancel this transaction.

\_\_\_\_\_

Payee's Signature

Date: \_\_\_\_\_."

**SECTION 9.**

1  
2  
3  
4  
5

This Act shall become effective on July 1, 2003, and shall apply to all civil actions filed on or after July 1, 2003.

**SECTION 10.**

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