

House Bill 1341

By: Representatives Westmoreland of the 86<sup>th</sup>, Butler of the 88<sup>th</sup>, Post 1, Lunsford of the 85<sup>th</sup>,  
Post 2, Burmeister of the 96<sup>th</sup>, Rice of the 64<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 9-11-41 of the Official Code of Georgia Annotated, relating to  
2 dismissal of actions, so as to change certain provisions relating to a plaintiff's voluntary  
3 dismissal; to provide for related matters; to provide for an effective date and applicability;  
4 to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Code Section 9-11-41 of the Official Code of Georgia Annotated, relating to dismissal of  
8 actions, is amended by striking subsection (a) and inserting in lieu thereof the following:

9 "*(a) Voluntary dismissal; effect.*

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

13 (A) By filing a written notice of dismissal at any time before ~~the first witness is sworn~~  
14 service by the adverse party of an answer or of a motion for summary judgment,  
15 whichever occurs first; or

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

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

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

1 **SECTION 2.**

2 This Act shall become effective upon its approval by the Governor or upon its becoming law  
3 without such approval. This Act shall apply only to causes of action arising on or after the  
4 effective date of this Act. Any cause of action arising prior to that date shall continue to be  
5 governed by the law in effect at the time such cause of action arose.

6 **SECTION 3.**

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