

The House Committee on Judiciary offers the following substitute to HB 1400:

A BILL TO BE ENTITLED  
AN ACT

1 To enact the "Frivolous Litigation Prevention Act"; to provide for legislative findings; to  
2 amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as to  
3 change provisions relating to signing of pleadings and other documents, representation to the  
4 court, and sanctions; to change provisions relating to failure to make discovery, sanctions,  
5 and expenses; to change provisions relating to litigation costs and attorney's fees in frivolous  
6 actions and defenses; to provide requirements for the imposition of sanctions; to provide for  
7 related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Frivolous Litigation Prevention Act."

11 **SECTION 2.**

12 The General Assembly finds that frivolous claims and defenses are detrimental to the prompt  
13 and efficient administration of justice and shall be prohibited according to the specific  
14 provisions contained in this Act.

15 **SECTION 3.**

16 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
17 striking Code Section 9-11-11, relating to signing of pleadings and verification, and inserting  
18 in lieu thereof the following:

19 "9-11-11.

20 (a) Signature. Every pleading and other document of a party represented by an attorney  
21 shall be signed by at least one attorney of record in his the attorney's individual name;  
22 whose or, if the party is not represented by an attorney, shall be signed by the party. Each  
23 pleading or document shall state the signer's address shall be stated and telephone number,  
24 if any. A party who is not represented by an attorney shall sign his pleading and state his

1 ~~address. The signature of an attorney constitutes a certificate by him that he has read the~~  
 2 ~~pleading and that it is not interposed for delay.~~

3 (b) Except when otherwise specifically provided by rule or statute, pleadings need not be  
 4 verified or accompanied by affidavit. An unsigned pleading or document shall be stricken  
 5 unless omission of the signature is corrected within 30 days of notifying the attorney or  
 6 party in writing.

7 (c) The rule in equity that the averments of an answer under oath must be overcome by the  
 8 testimony of two witnesses or of one witness sustained by corroborating circumstances is  
 9 abolished.

10 (b) Representation to court. By presenting to the court, whether by signing, filing,  
 11 submitting, a pleading or other document, an attorney or unrepresented party is certifying  
 12 that to the best of the person's knowledge, information, and belief:

13 (1) It is not being presented for any improper purpose, such as to harass or to cause  
 14 unnecessary delay or needless increase in the cost of litigation;

15 (2) The claims, defenses, and other legal contentions therein are warranted by existing  
 16 law or by a nonfrivolous argument for the extension, modification, or reversal of existing  
 17 law or the establishment of new law;

18 (3) The allegations and other factual contentions have evidentiary support or, if  
 19 specifically identified, are likely to have evidentiary support after a reasonable  
 20 opportunity for further investigation or discovery; and

21 (4) The denials of factual contentions are warranted on the evidence or, if specifically  
 22 identified, are reasonably based on a lack of information or belief.

23 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court  
 24 determines that subsection (b) of this Code section has been violated, the court shall,  
 25 subject to this subsection, impose an appropriate sanction upon the attorneys, law firms,  
 26 or parties that have violated subsection (b) of this Code section or are responsible for the  
 27 violation. In the event any attorney, representing the insured, to whom the provisions of  
 28 this subsection may apply is an employee of the insurance company, the provisions of this  
 29 subsection shall also apply to the insurance company.

30 (d) Inapplicability to discovery. Subsections (a) and (b) of this Code section do not apply  
 31 to disclosures and discovery requests, responses, objections, and motions that are subject  
 32 to the provisions of Code Sections 9-11-26 through 9-11-37."

#### 33 SECTION 4.

34 Said title is further amended by striking paragraph (2) of subsection (a) of Code Section  
 35 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:



1 request is objected to, in which event the ~~reasons for objection shall be stated~~ reasons for  
 2 ~~objection shall be stated~~ objecting party shall state the reasons for objection and shall  
 3 respond to the extent the request is not objectionable. If objection is made to part of an  
 4 item or category, the part shall be specified. The party submitting the request may move  
 5 for an order under subsection (a) of Code Section 9-11-37 with respect to any objection  
 6 to or other failure to respond to the request or any part thereof, or any failure to permit  
 7 inspection as requested."

#### 8 SECTION 7.

9 Said title is amended further by striking paragraph (4) of subsection (a) and subsections (b)  
 10 and (d) of Code Section 9-11-37, relating to failure to make discovery, motion to compel,  
 11 sanctions, and expenses, and inserting in their respective places the following:

12 "(4) AWARD OF EXPENSES OF MOTION.

13 (A) If the motion is granted, the court shall, after opportunity for hearing, require the  
 14 party or deponent whose conduct necessitated the motion or the party or the attorney  
 15 advising ~~such conduct or both of them~~ the party to pay to the moving party the  
 16 reasonable expenses incurred in obtaining the order, including attorney's fees, unless  
 17 the court finds that the opposition to the motion was substantially justified or that other  
 18 circumstances make an award of expenses unjust. In the event any attorney,  
 19 representing the insured, to whom the provisions of this subparagraph may apply is an  
 20 employee of the insurance company, the provisions of this subparagraph shall also  
 21 apply to the insurance company.

22 (B) If the motion is denied, the court shall, after opportunity for hearing, require the  
 23 moving party or the attorney advising the ~~motion or both of them~~ party to pay to the  
 24 party or deponent who opposed the motion the reasonable expenses incurred in  
 25 opposing the motion, including attorney's fees, unless the court finds that the making  
 26 of the motion was substantially justified or that other circumstances make an award of  
 27 expenses unjust. In the event any attorney, representing the insured, to whom the  
 28 provisions of this subparagraph may apply is an employee of the insurance company,  
 29 the provisions of this subparagraph shall also apply to the insurance company.

30 (C) If the motion is granted in part and denied in part, the court may apportion the  
 31 reasonable expenses incurred in relation to the motion among the parties and persons  
 32 in a just manner."

1    "(b) *Failure to comply with order.*

2    (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails  
3    to be sworn or to answer a question after being directed to do so by the court in the  
4    county in which the deposition is being taken, the failure may be considered a contempt  
5    of that court.

6    (2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director,  
7    or managing agent of a party or a person designated under paragraph (6) of subsection (b)  
8    of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf  
9    of a party fails to obey an order to provide or permit discovery, including an order made  
10   under subsection (a) of this Code section or Code Section 9-11-35, the court in which the  
11   action is pending may make such orders in regard to the failure as are just and, among  
12   others, the following:

13    (A) An order that the matters regarding which the order was made or any other  
14    designated facts shall be taken to be established for the purposes of the action in  
15    accordance with the claim of the party obtaining the order;

16    (B) An order refusing to allow the disobedient party to support or oppose designated  
17    claims or defenses, or prohibiting him or her from introducing designated matters in  
18    evidence;

19    (C) An order striking out pleadings or parts thereof, or staying further proceedings until  
20    the order is obeyed, or dismissing the action or proceeding or any part thereof, or  
21    rendering a judgment by default against the disobedient party;

22    (D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as  
23    a contempt of court the failure to obey any orders except an order to submit to a  
24    physical or mental examination; or

25    (E) Where a party has failed to comply with an order under subsection (a) of Code  
26    Section 9-11-35 requiring him or her to produce another for examination, such orders  
27    as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party  
28    failing to comply shows that he or she is unable to produce such person for  
29    examination.

30    In lieu of any of the foregoing orders, or in addition thereto, the court shall require the  
31    party failing to obey the order or the attorney advising ~~him, or both,~~ the party to pay the  
32    reasonable expenses, including attorney's fees, caused by the failure, unless the court  
33    finds that the failure was substantially justified or that other circumstances make an  
34    award of expenses unjust. In the event any attorney, representing the insured, to whom  
35    the provisions of this paragraph may apply is an employee of the insurance company, the  
36    provisions of this paragraph shall also apply to the insurance company."

1 "(d) *Failure of party to attend at own deposition or serve answers to interrogatories or*  
 2 *respond to request for inspection.*

3 (1) If a party or an officer, director, or managing agent of a party or a person designated  
 4 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code  
 5 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to  
 6 take his or her deposition, after being served with a proper notice, or fails to serve  
 7 answers or objections to interrogatories submitted under Code Section 9-11-33, after  
 8 proper service of the interrogatories, or fails to serve a written response to a request for  
 9 inspection submitted under Code Section 9-11-34, after proper service of the request, the  
 10 court in which the action is pending on motion may make such orders in regard to the  
 11 failure as are just; and, among others, it may take any action authorized under  
 12 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or  
 13 in addition thereto, the court shall require the party failing to act or the attorney advising  
 14 ~~him, or both,~~ the party to pay the reasonable expenses, including attorney's fees, caused  
 15 by the failure, unless the court finds that the failure was substantially justified or that  
 16 other circumstances make an award of expenses unjust. In the event any attorney,  
 17 representing the insured, to whom the provisions of this paragraph may apply is an  
 18 employee of the insurance company, the provisions of this paragraph shall also apply to  
 19 the insurance company.

20 (2) The failure to act described in the provisions of this chapter which relate to  
 21 depositions and discovery may not be excused on the ground that the discovery sought  
 22 is objectionable unless the party failing to act has applied for a protective order as  
 23 provided by subsection (c) of Code Section 9-11-26."

#### 24 SECTION 8.

25 Said title is further amended by striking subsections (a), (b), and (e) of Code Section 9-15-14,  
 26 relating to litigation costs and attorney's fees assessed for frivolous actions and defenses, and  
 27 inserting in lieu thereof, respectively, the following:

28 "(a) In any civil action in any court of record of this state, ~~reasonable and necessary~~  
 29 ~~attorney's fees and expenses of litigation~~ sanctions under subsection (e) of this Code  
 30 section shall be awarded to any party against whom another party has asserted a claim,  
 31 defense, or other position with respect to which there existed such a complete absence of  
 32 any justiciable issue of law or fact that it could not be reasonably believed that a court  
 33 would accept the asserted claim, defense, or other position. ~~Attorney's fees and expenses~~  
 34 ~~so awarded~~ Sanctions under subsection (e) of this Code section shall be assessed against  
 35 the party asserting such claim, defense, or other position, or against that party's attorney,  
 36 or against both of them in such manner as is just. In the event any attorney, representing

1 the insured, to whom the provisions of this subsection may apply is an employee of the  
 2 insurance company, the provisions of this subsection shall also apply to the insurance  
 3 company.

4 (b) The court ~~may~~ shall assess ~~reasonable and necessary attorney's fees and expenses of~~  
 5 ~~litigation~~ sanctions as provided in subsection (e) of this Code section in any civil action in  
 6 any court of record if, upon the motion of any party or the court itself, it finds that an  
 7 ~~attorney or a party~~ or an attorney, or both of them, brought or defended an action, or any  
 8 part thereof, that lacked substantial justification or that the action, or any part thereof, was  
 9 interposed for delay or harassment, or if it finds that ~~an attorney or a party~~ or an attorney,  
 10 or both of them, unnecessarily expanded the proceeding by other improper conduct,  
 11 including, but not limited to, abuses of discovery procedures available under Chapter 11  
 12 of this title, the 'Georgia Civil Practice Act.' As used in this Code section, 'lacked  
 13 substantial justification' means substantially frivolous, substantially groundless, or  
 14 substantially vexatious. In the event any attorney, representing the insured, to whom the  
 15 provisions of this subsection may apply is an employee of the insurance company, the  
 16 provisions of this subsection shall also apply to the insurance company."

17 ~~"(e)(1) Attorney's fees and expenses under this Code section may be requested by motion~~  
 18 ~~at any time during the course of the action but not later than 45 days after the final~~  
 19 ~~disposition of the action. A motion for sanctions under this Code section shall be made~~  
 20 ~~separately from other motions or requests and shall describe the specific conduct alleged~~  
 21 ~~to violate subsection (a) or (b) of this Code section or subsection (b) of Code Section~~  
 22 ~~9-11-11.~~

23 (2) A motion shall not be filed with or presented to the court unless, within 30 days after  
 24 service of the pleading or other document at issue, the movant has delivered to the  
 25 nonmovant written notice of the movant's intent to file the motion. Upon receipt of such  
 26 notice, the nonmovant shall have 21 days to withdraw or appropriately correct the  
 27 challenged pleading or other document. If the nonmovant refuses or fails to withdraw or  
 28 appropriately correct the challenged pleading or other document, the movant shall then  
 29 have ten days from the date of such refusal or failure to file a motion under this Code  
 30 section.

31 (3) If warranted, the court shall award to the party prevailing on the motion the  
 32 reasonable expenses and attorney's fees incurred in presenting or opposing the motion.  
 33 Absent exceptional circumstances, a law firm shall be held jointly responsible for  
 34 violations committed by its partners, associates, and employees.

35 (4) On its own initiative, the court may enter an order describing the specific conduct  
 36 that appears to warrant sanctions under this Code section and directing an attorney, law  
 37 firm, or party to show cause why sanctions should not be imposed. In the event any

1 attorney, representing the insured, to whom the provisions of this paragraph may apply  
 2 is an employee of the insurance company, the provisions of this paragraph shall also  
 3 apply to the insurance company.

4 (5) A sanction imposed pursuant to this Code section shall be sufficient to deter  
 5 repetition of such conduct or comparable conduct by others similarly situated. Subject  
 6 to the limitations in subparagraphs (A) and (B) of this paragraph, the sanction may  
 7 consist of or include directives of a nonmonetary nature as described in subparagraph (C)  
 8 of this paragraph, an order to pay a penalty into court, or, if imposed on motion and  
 9 warranted for effective deterrence, an order to pay a penalty into court or an order  
 10 directing payment to the movant of some or all of the reasonable attorney's fees and other  
 11 expenses incurred as a direct result of the violation; provided, however, that:

12 (A) Monetary sanctions may not be awarded against a represented party for a violation  
 13 of paragraph (2) of subsection (b) of Code Section 9-11-11;

14 (B) Monetary sanctions may not be awarded on the court's initiative unless the court  
 15 issues its order to show cause before a voluntary dismissal or settlement of the claims  
 16 made by or against the party which is, or whose attorneys are, to be sanctioned; and

17 (C) In addition to any monetary penalties, the court may, in its discretion, impose  
 18 additional sanctions as are just and, among others, the following:

19 (i) An order refusing to allow the party to support or oppose designated claims or  
 20 defenses or prohibiting him or her from introducing designated matters in evidence;  
 21 and

22 (ii) An order striking out pleadings or parts thereof, dismissing the action or  
 23 proceeding or any part thereof, or rendering a judgment by default against the  
 24 violating party.

25 (6) When imposing sanctions, the court shall describe the conduct determined to warrant  
 26 sanctions and explain the basis for the sanction imposed. Sanctions may not be imposed  
 27 under subparagraph (C) of paragraph (5) of this subsection unless the court issues its  
 28 order to show cause before a voluntary dismissal or settlement of the claims made by or  
 29 against the party which is, or whose attorneys are, to be sanctioned."

### 30 SECTION 9.

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