

Senate Bill 593

By: Senators Harp of the 16th, Smith of the 52nd, Adelman of the 42nd, Hall of the 22nd and Kemp of the 3rd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as  
2 to mandate mediation in all professional malpractice civil actions; to provide for a short title;  
3 to provide for guidelines, time frames, and other issues related to mediation; to provide for  
4 an offer of judgment; to provide for matters relating to an offer of judgment, including time  
5 limitations, methods of service, withdrawal and acceptance of offers, admissibility of an  
6 offer, and court costs; to provide for a definition; to provide for an effective date and  
7 applicability; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 This Act shall be known and may be cited as the "Mandatory Professional Malpractice  
12 Mediation Act."

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

14 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
15 adding a new chapter to read as follows:

16 style="text-align:center">**"CHAPTER 9A**

17 9-9A-1.

18 (a) In all civil actions alleging professional malpractice that require an affidavit of an  
19 expert in accordance with Code Section 9-11-9.1, the judge to whom the civil action is  
20 assigned shall refer the action to mediation within 14 days of the last responsive pleading  
21 being filed. Prior to the court referring the action to mediation, the parties may agree to a  
22 private mediation and shall advise the court of the agreement by a consent order specifying  
23 the terms and details of the mediation. If the parties do not agree to a private mediation,

1 the court shall refer the case to mediation as is available or otherwise in accordance with  
2 the Georgia Supreme Court's Uniform Rule for Alternative Dispute Resolution Programs.

3 (b) The private or court referred mediation shall occur no sooner than 60 days but not more  
4 than 90 days after the order for mediation is entered.

5 (c) If the mediation does not result in a settlement of the civil action, the defendant or  
6 defendant's last settlement offer shall be memorialized as an offer of settlement in  
7 accordance with the provisions of Code Section 9-11-68."

### 8 SECTION 3.

9 Said title is further amended by striking Code Section 9-11-68, which is reserved, and  
10 inserting in its place the following:

11 "9-11-68.

12 ~~Reserved.~~ (a) At any time more than ten days before the trial begins, a party may serve  
13 upon the adverse party, by registered or certified mail or statutory overnight delivery, an  
14 offer for judgment for the money or property or to the effect specified in the offer, with  
15 costs then accrued. If within ten days after the service of the offer the adverse party serves  
16 written notice by registered or certified mail or statutory overnight delivery that the offer  
17 is accepted, either party may then file the offer and notice of acceptance together with  
18 proof of service of the offer and acceptance and the clerk shall enter judgment. An offer  
19 not accepted shall be deemed withdrawn and evidence of the offer shall not be admissible  
20 except in a proceeding to determine costs. If the judgment finally obtained by the offeree  
21 is not more favorable than the offer, the offeree shall pay the costs incurred after the  
22 making of the offer. The fact that an offer is made but not accepted does not preclude a  
23 subsequent offer. When the liability of one party to another has been determined by  
24 verdict, order, or judgment, but the amount or extent of the liability remains to be  
25 determined by further proceedings, the party adjudged liable may make an offer of  
26 judgment, which shall have the same effect as an offer made before trial if it is served  
27 within a reasonable time not less than ten days prior to the commencement of hearings to  
28 determine the amount or extent of liability.

29 (b) For purposes of this Code section, costs shall include attorney's fees and expenses of  
30 litigation.

31 (c) The procedure available pursuant to this Code section shall not affect a claimant's  
32 rights pursuant to Code Section 51-12-14, the 'Unliquidated Damages Interest Act.'"

### 33 SECTION 4.

34 This Act shall become effective on July 1, 2004, and shall apply to all actions filed on or  
35 after July 1, 2004.

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**SECTION 5.**

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