

Senate Bill 19

By: Senators Johnson of the 1st, Balfour of the 9th, Wiles of the 37th, Hill of the 32nd,
Williams of the 19th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-11-23 of the Official Code of Georgia Annotated, relating to class
2 actions, so as to provide for procedures, conditions, and limitations on certification of class
3 actions; to provide for appellate procedures relating to class actions certification; to provide
4 for related matters; to provide an effective date; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 9-11-23 of the Official Code of Georgia Annotated, relating to class actions,
9 is amended by striking subsection (f), and inserting in lieu thereof the following:

10 ~~"(f)(1) The appropriate appellate court may in its discretion permit an appeal from an~~
11 ~~order of a trial court granting or denying class action certification under this Code section~~
12 ~~if application is made to it within ten days after entry of the order. An appeal does not~~
13 ~~stay proceedings in the trial court unless the trial judge or the appellate court so orders.~~
14 No class of civil litigants shall be certified or recognized by any court of this state unless
15 there shall have been compliance with the procedures for certification of the class set
16 forth in this subsection.

17 (2) As soon as practicable after the commencement of an action in which claims or
18 defenses are purported to be asserted on behalf of or against a class, or as soon as
19 practicable after such assertions in an amended pleading, but in no event prior to the time
20 allowed by law for each party, including, but not limited to, counterclaim, cross-claim,
21 and third-party defendants to file an answer or other pleading responsive to the complaint,
22 counterclaim, cross-claim, or third-party claim, the court shall hold a conference among
23 all named parties to the action for the purpose of establishing a schedule, in the same
24 manner and to the same extent contemplated by Code Section 9-11-16, for any discovery
25 in which the parties may wish to engage which is both allowed by Code Section 9-11-26
26 through Code Section 9-11-37 and germane to the issue of whether the requested class

1 should or should not be certified. At this conference, the court may set a date for a
2 hearing on the issue of class certification, but such hearing may not be set sooner than 90
3 days after the date on which the court issues its scheduling order pursuant to the
4 conference unless a shorter time is agreed to by all parties.

5 (3) Upon motion of any party, the court shall, except for good cause shown and even then
6 only if the interests of justice require that it not do so, stay all discovery directed solely
7 to the merits of the claims or defenses in the action until the court shall have made its
8 decision regarding certification of the class. In considering such a motion, the court shall
9 consider whether any prejudice to the plaintiff exists because of the filing by the
10 defendant of a motion for summary judgment pursuant to Code Section 9-11-56 prior to
11 the court's decision regarding class certification.

12 (4) The court shall, on motion of any party, hold a full evidentiary hearing on class
13 certification. The hearing shall be recorded, and all named parties to the action shall be
14 given notice of the date, time, and place of the hearing by written notification given to the
15 party's attorney, or if appearing pro se, to the party, no later than 60 days prior to the date
16 set for the hearing. At the hearing, the parties shall be allowed to present, in the same
17 manner as at trial, any admissible evidence in support of or in opposition to the
18 certification of the class.

19 (5) When deciding whether a requested class is to be certified, the court shall determine,
20 by employing a rigorous analysis, if the party or parties requesting class certification have
21 proved its or their entitlement to class certification under this Code section. The burden
22 of coming forward with such proof shall at all times be on the party or parties seeking
23 certification, and if such proof shall not have been adduced, the court shall not order
24 certification of the class. In making this determination, the court shall analyze all factors
25 required by this Code section for certification of a class and shall not order certification
26 unless all such factors shall have been established. In announcing its determination, the
27 court shall place in the record of the action a written order addressing all such factors and
28 specifying the evidence, or lack of evidence, on which the court has based its decision
29 with regard to whether each such factor has been established. In so doing, the court may
30 treat a factor as having been established if all parties to the action have so stipulated on
31 the record and if the court shall be satisfied that such factor could be proven to have been
32 established.

33 (6) Nothing in this Code section shall affect, or be construed to affect, any provision of
34 Code Section 9-11-12 or Code Section 9-11-56.

35 (g) A court's order certifying a class or refusing to certify a class action shall be appealable
36 in the same manner as a final order to the appellate court which would otherwise have
37 jurisdiction over the appeal from a final order in the action. Such appeal may only be filed

1 within 42 days of the order certifying or refusing to certify the class. The filing of such
2 appeal, the failure to file an appeal, or the affirmance of the certification or denial order
3 shall in no way affect the right of any party, after the entry of final judgment, to appeal the
4 earlier certification of, or refusal to certify, the class. If the appeal is not the first appeal
5 taken by the party, the subsequent appeal shall be based upon the record at the time of final
6 judgment and shall be considered by the court only to the extent that either the facts or
7 controlling law relevant to certification have changed from that which existed or controlled
8 at the time of the earlier certification or refusal to certify. During the pendency of any such
9 appeal, the action in the trial court shall be stayed in all respects. Following adjudication
10 on appeal or, if the initial appeal is to an intermediate appellate court, adjudication of the
11 action on any writ of certiorari granted by the Supreme Court of Georgia, if the class is not
12 to be certified, the stay in the trial court shall automatically dissolve and the trial court may
13 proceed to adjudicate any remaining individual claims or defenses. If, after such appeal or
14 procedure on writ of certiorari, the class is to be certified, the stay shall likewise dissolve
15 and the trial court shall proceed with adjudication on the merits. Such certification shall
16 constitute a final and binding determination with respect to that class for the remainder of
17 the adjudication of the action."

18 **SECTION 2.**

19 This Act shall become effective upon its approval by the Governor or upon its becoming law
20 without such approval.

21 **SECTION 3.**

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