

House Bill 239

By: Representatives Fleming of the 117<sup>th</sup>, Keen of the 179<sup>th</sup>, Burkhalter of the 50<sup>th</sup>, Parrish of the 156<sup>th</sup>, Cooper of the 41<sup>st</sup>, and others

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 provide for the manner of making certain settlement offers in certain civil actions; to  
3 provide that a party rejecting a settlement offer may be liable for litigation costs where a  
4 judgment is significantly less favorable to the rejecting party than was the settlement offer;  
5 to provide for practice and procedure; to provide for related matters; to provide an effective  
6 date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
10 adding after Code Section 9-15-15 a new Code Section 9-15-16 to read as follows:

11 "9-15-16.

12 (a) As used in this Code section, the term:

13 (1) 'Claim' means a request, including a counterclaim, cross-claim, or third-party claim,  
14 to recover monetary damages.

15 (2) 'Claimant' means a person making a claim.

16 (3) 'Defendant' means a person from whom a claimant seeks recovery on a claim,  
17 including a counterclaim defendant, cross-defendant, or third-party defendant.

18 (4) 'Governmental unit' means the state, a unit of state government, or a political  
19 subdivision of this state.

20 (5) 'Litigation costs' means money actually spent and obligations actually incurred that  
21 are directly related to the case in which a settlement offer is made. The term includes:

22 (A) Court costs;

23 (B) Reasonable fees for not more than two testifying expert witnesses; and

24 (C) Reasonable attorney's fees.

25 (6) 'Settlement offer' means an offer to settle or compromise a claim made in compliance  
26 with this Code section.

- 1 (b) The settlement procedures provided in this Code section apply only to claims for  
2 monetary relief.
- 3 (c) This Code section does not apply to:
- 4 (1) An action by or against a governmental unit;
- 5 (2) A domestic relations action;
- 6 (3) An action to collect workers' compensation benefits; or
- 7 (4) An action filed in a magistrate court.
- 8 (d) This Code section does not limit or affect the ability of any person to:
- 9 (1) Make an offer to settle or compromise a claim that does not comply with this Code  
10 section; or
- 11 (2) Offer to settle or compromise a claim to which this Code section does not apply.
- 12 (e) An offer to settle or compromise that is not made under this Code section or an offer  
13 to settle or compromise made in an action to which this Code section does not apply does  
14 not entitle the offering party to recover litigation costs under this Code section.
- 15 (f) A settlement offer under this Code section must:
- 16 (1) Be in writing and identify the party or parties making the offer and the party or  
17 parties to whom the offer is being made;
- 18 (2) State that it is made under this Code section;
- 19 (3) State the terms by which the claims may be settled;
- 20 (4) State the deadline by which the settlement offer must be accepted; and
- 21 (5) Be served on all parties to whom the settlement offer is made.
- 22 (g) If a settlement offer is made and rejected and the judgment rendered is significantly  
23 less favorable to the rejecting party than was the settlement offer, the offering party shall  
24 recover litigation costs from the rejecting party, and such recovery shall be made a part of  
25 the main judgment in the action.
- 26 (h) A judgment will be significantly less favorable to the rejecting party if:
- 27 (1) The rejecting party is a claimant and the judgment is less than 80 percent of the  
28 rejected offer; or
- 29 (2) The rejecting party is a defendant and the judgment is more than 120 percent of the  
30 rejected offer.
- 31 (i) The litigation costs that may be recovered by the offering party under this Code section  
32 are limited to those litigation costs incurred by the offering party after the date the rejecting  
33 party rejected the settlement offer."

34 **SECTION 2.**

35 This Act shall become effective July 1, 2005, and shall apply with respect to actions pending  
36 on that date as well as actions filed on or after that date.

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**SECTION 3.**

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