

House Bill 1461

By: Representatives Lindsey of the 54th, Ralston of the 7th, Willard of the 49th, Mumford of the 95th, Lane of the 167th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to provisional and final remedies and special proceedings under the "Georgia Civil
3 Practice Act," so as to change provisions related to offers of judgment; to provide for
4 definitions; to provide for time frames for offers of settlement; to provide for service of
5 offers of settlement; to provide for counteroffers; to provide for attorney's fees and expenses
6 of litigation; to provide for procedure concerning offers of settlement; to provide for
7 automatic rejection of an offer of settlement; to provide for factors to be considered in not
8 awarding attorney's fees and expenses of litigation to a prevailing party; to provide for
9 related matters; to provide for a savings clause; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
14 provisional and final remedies and special proceedings under the "Georgia Civil Practice
15 Act," is amended striking in its entirety Code Section 9-11-68, relating to offers of settlement
16 and damages for frivolous claims or defenses, and inserting in lieu thereof the following:
17 "9-11-68.

18 (a)(1) The provisions of this Code section shall apply to any civil action filed in any state
19 or superior court in this state in which an award of monetary damages is sought.

20 (2) As used in this Code section, the term 'offer of settlement' means any offer or demand
21 made in compliance with this Code section by any party to an adverse party to settle
22 claims between such parties.

23 (b)(1) At any time more than 120 days after a complaint is filed and at least 30 days prior
24 to the commencement of trial, any party may give notice by hand delivery, statutory
25 overnight delivery, or by registered or certified mail, return receipt requested, to an
26 adverse party of an offer of settlement to settle a claim for monetary damages for a

1 specific dollar amount. An offer of settlement shall be accepted by giving written notice
2 to the offeror by hand delivery, statutory overnight delivery, or by registered or certified
3 mail, return receipt requested, within 20 days after receipt of such offer of settlement.

4 (2) An offer of settlement or acceptance shall not be filed with the court unless it is
5 necessary to enforce the provisions of this Code section. Upon filing of both the offer of
6 settlement and acceptance, the court shall have full jurisdiction to enforce the settlement
7 agreement.

8 (3) Evidence relating to any offer of settlement shall not be disclosed to the jury in any
9 manner and shall only be admissible in a proceeding to determine expenses pursuant to
10 subsection (c) of this Code section, to enforce the payment of such expenses, or to
11 determine the imposition of sanctions under this Code section for failure to pay such
12 expenses.

13 (c)(1) If a defendant makes an offer of settlement which is rejected by the plaintiff, the
14 defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation
15 incurred by the defendant or on the defendant's behalf from the date of the rejection of
16 the offer of settlement through the entry of judgment if the final judgment is one of no
17 liability or the final judgment obtained by the plaintiff is less than 75 percent of such
18 offer of settlement.

19 (2) If a plaintiff makes an offer of settlement which is rejected by the defendant and the
20 plaintiff recovers a final judgment in an amount greater than 125 percent of such offer of
21 settlement, the plaintiff shall be entitled to recover reasonable attorney's fees and
22 expenses of litigation incurred by the plaintiff or on the plaintiff's behalf from the date
23 of the rejection of the offer of settlement through the entry of judgment.

24 (d) The fact that an offer of settlement is made but rejected shall not preclude a subsequent
25 offer being made by any party. If a counteroffer is made it shall be considered a rejection
26 of the original offer and in order to be considered an offer of settlement, the counteroffer
27 shall be made in accordance with subsection (f) of this Code section. Such counteroffer
28 shall be made no later than 20 days prior to the commencement of the trial. Any
29 acceptance of the counteroffer shall be made no later than seven days prior to the
30 commencement of the trial.

31 (e)(1) The court shall order the payment of attorney's fees and expenses of litigation
32 upon receipt of proof that the judgment is one to which the provisions of either paragraph
33 (1) or paragraph (2) of subsection (c) of this Code section apply; provided, however, that
34 if an appeal is taken from such judgment, the court shall order payment of such attorney's
35 fees and expenses of litigation only upon remittitur affirming such judgment.

36 (2) In the event expenses of litigation are awarded pursuant to this Code section,
37 expenses under subsection (d) of Code Section 9-11-54 shall not be awarded.

1 (3) In the event the plaintiff is entitled to receive an award pursuant to this Code section
 2 and interest as provided under Code Section 51-12-14, the plaintiff may elect to receive
 3 either the expenses of litigation pursuant to this Code section or the interest provided
 4 under Code Section 51-12-14, but shall not be entitled to receive both such amounts.

5 (f)(1) An offer of settlement made pursuant to this Code section shall:

6 (A) Be in writing and state that it is being made pursuant to this Code section;

7 (B) Name the party or parties making the offer of settlement and the party or parties
 8 to whom it is being made;

9 (C) State with particularity the amount offered and the claim or claims to be settled;

10 (D) State any conditions to the settlement; and

11 (E) Be tendered to opposing counsel by hand delivery, statutory overnight delivery, or
 12 by registered or certified mail, return receipt requested.

13 (2) Unless otherwise stated, the offer of settlement shall be construed as including all
 14 damages that may be awarded in a final judgment.

15 (g)(1) An offer of settlement shall be considered rejected under the following
 16 circumstances:

17 (A) Receipt of a written rejection;

18 (B) Receipt of a counteroffer; or

19 (C) The expiration of 20 days from the receipt of the offer without acceptance.

20 (2) A counteroffer shall be considered rejected under the following circumstances:

21 (A) Receipt of a written rejection; or

22 (B) The expiration of 20 days from the receipt of the offer without acceptance.

23 Nothing contained in this subsection shall preclude an extension of time to respond to an
 24 offer of settlement or counteroffer upon agreement in writing of the offeror or upon order
 25 of the court.

26 (h)(1) If a party is entitled to attorney's fees and expenses of litigation pursuant to this
 27 Code section, the opposing party may rebut this entitlement by showing that the offer of
 28 settlement was not made in good faith, and in such cases the court may disallow an award
 29 of such attorney's fees and expenses of litigation.

30 (2) In considering whether to make an award of attorney's fees and expenses of litigation
 31 or the reasonableness of an award of attorney's fees and expenses of litigation pursuant
 32 to this Code section, the court shall consider all relevant criteria including, but not limited
 33 to, the following:

34 (A) Whether the offeror had unreasonably refused to furnish information necessary to
 35 evaluate the reasonableness of the offer of settlement;

36 (B) Whether the civil action was in the nature of a 'test case,' presenting questions of
 37 far reaching importance affecting nonparties;

- 1 (C) The apparent merit or lack of merit in the claim;
- 2 (D) The number and nature of offers made by the parties;
- 3 (E) The closeness of questions of fact and law at issue;
- 4 (F) The cost and expense of the additional delay that the person making the offer
- 5 reasonably would be expected to incur if the litigation should be prolonged; or
- 6 (G) Whether there exists claims other than claims for monetary damages.
- 7 (3) In considering the amount of any award pursuant to this Code section, the court shall
- 8 determine the amount of the moving parties' reasonable attorney's fees and expenses of
- 9 litigation, including investigation expenses, expert witness fees, and other expenses
- 10 which relate to the preparation for trial, after the rejection of the offer of settlement."

11 **SECTION 2.**

12 This Act shall not be construed to affect rights and duties that matured, penalties that were

13 incurred, and proceedings that were begun before the effective date of this Act.

14 **SECTION 3.**

15 This Act shall become effective upon its approval by the Governor or upon its becoming law

16 without such approval and shall apply to actions filed on or after the effective date of this Act

17 and to all pending actions the trial dates for which are more than 60 days after the effective

18 date of this Act.

19 **SECTION 4.**

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