

Senate Bill 514

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so  
2 as to provide for appeals from awards of attorney's fees or expenses in general agreements  
3 of indemnity contracts litigation; to amend Chapter 15 of Title 9 of the Official Code of  
4 Georgia Annotated, relating to court and litigation costs in civil actions, so as to provide for  
5 a standard of reasonable attorney's fees under general agreements of indemnity contracts; to  
6 amend Chapter 6 of Title 13 of the Official Code of Georgia Annotated, relating to damages  
7 and costs generally, so as to allow attorney's fees and expense litigation in indemnity  
8 contracts litigation; to provide for related matters; to provide for an effective date and  
9 applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
13 by revising paragraph (10) of subsection (a) of Code Section 5-6-35, relating to cases  
14 requiring application for appeal and related procedures, as follows:

15 "(10) Appeals from awards of attorney's fees or expenses of litigation under Code  
16 Section 9-15-14 or Code Section 9-15-16;"

17 **SECTION 2.**

18 Chapter 15 of Title 9 of the Official Code of Georgia Annotated, relating to court and  
19 litigation costs in civil actions, is amended by adding a new Code section to read as follows:

20 "9-15-16.

21 (a) Under a general agreement indemnity contract, the cost indemnified against by the  
22 principal, including attorney's fees, shall be reasonably incurred and reasonable in amount.

23 (b) The standard for reasonably incurred requires that the surety must act in good faith and  
24 out of reasonable necessity.

25 (c) The fees must have a rational and reasonable relation to the surety's actual and potential  
 26 liabilities arising directly from the bonded transaction.

27 (d) The surety shall have the burden of proving good faith and the reasonable necessity of  
 28 incurring attorney's fees.

29 (e) If the principal and his or her indemnified surety are sued by the obligee under the  
 30 surety's bond, and the surety exercises its right under the indemnity agreement of the  
 31 principal to hire its own counsel and incur litigation expense in defense of the action, the  
 32 liability of the principal for attorney's fees and expenses by the surety will depend upon  
 33 whether, under all the facts of the case, it was reasonably necessary for the surety to act in  
 34 its own defense and whether the surety acted in good faith toward the principal.

35 (f) An award of reasonable and necessary attorney's fees or expenses of litigation under  
 36 this Code section shall be determined by the court without a jury and shall be made by an  
 37 order of court which shall constitute and be enforceable as a money judgment."

38 **SECTION 3.**

39 Chapter 6 of Title 13 of the Official Code of Georgia Annotated, relating to damages and  
 40 costs generally, is amended by revising Code Section 13-6-11, relating to recovery of  
 41 expenses of litigation generally, as follows:

42 "13-6-11.

43 ~~The~~ Except as provided in Code Section 9-15-16, the expenses of litigation generally shall  
 44 not be allowed as a part of the damages; but where the plaintiff has specially pleaded and  
 45 has made prayer therefor and where the defendant has acted in bad faith, has been  
 46 stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury  
 47 may allow them."

48 **SECTION 4.**

49 This Act shall become effective on July 1, 2010, and shall apply with respect to actions filed  
 50 on or after that date.

51 **SECTION 5.**

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