

Senate Bill 108

By: Senators Cowser of the 46th, Pearson of the 51st, Hudgens of the 47th, Heath of the 31st, Hill of the 32nd and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,  
2 relating to pleadings and motions under the "Georgia Civil Practice Act," so as to provide for  
3 the recovery of attorney's fees and costs involving a motion to dismiss under certain  
4 circumstances; to provide for definitions; to provide for exceptions; to provide for notice; to  
5 provide for a stay of discovery; to provide for related matters; to provide for an effective date  
6 and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to  
10 pleadings and motions under the "Georgia Civil Practice Act," is amended by adding a new  
11 Code section to read as follows:

12 "9-11-12.1.

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

14 (1) 'Claim' means a claim, counterclaim, cross-claim, or third-party claim.

15 (2)(A) 'Substantial merit' means more than simply not frivolous, and, based on the  
16 arguments submitted to the court, a reasonable judge could have denied the motion to  
17 dismiss.

18 (B) 'Substantial merit' does not mean not frivolous; a claim may be not frivolous and  
19 still not have substantial merit.

20 (b) A party whose claim is dismissed pursuant to subsection (b) of Code Section 9-11-12  
21 shall be required to pay reasonable attorney's fees and costs to the prevailing party unless  
22 the court determines, after notice and hearing, that:

23 (1) In the case of a claim dismissed pursuant to paragraph (4) or (5) of subsection (b) of  
24 Code Section 9-11-12, the party bringing or alleging the dismissed claim acted with due  
25 diligence in the prosecution thereof;

26 (2) In the case of a claim dismissed pursuant to paragraph (1), (2), (3), (6), or (7) of  
27 subsection (b) of Code Section 9-11-12, the claim exhibited substantial merit or  
28 represented a good faith attempt to establish a new theory of law in Georgia if such new  
29 theory of law is based on some recognized precedential or persuasive authority; or

30 (3) The award of attorney's fees would render a substantial injustice on the party liable  
31 for such fees.

32 (c) Before filing a claim, an attorney shall provide notice of this Code section to his or her  
33 client. Upon notice that a motion filed pursuant to Code Section 9-11-12 has been filed  
34 against a party, the attorney shall provide notice of such filing to the client. Failure to  
35 provide the notice required by this Code section may result in the court imposing a portion  
36 of or all attorney's fees awarded pursuant to this Code section against such attorney.

37 (d) If a party files a motion to dismiss pursuant to the provisions of Code Section 9-11-12,  
38 discovery shall be stayed until the trial court rules on the motion; provided, however, that  
39 the filing of a motion to dismiss against less than all counts alleged shall only stay  
40 discovery related to the challenged claims. Discovery shall be extended for the duration  
41 of the stay of discovery imposed by this Code section. Upon a showing of good cause, a  
42 court may grant a motion for expedited discovery while the motion to dismiss is pending.  
43 Good cause may include, but is not limited to, discovery needed because a witness will be  
44 unavailable during the discovery period or because a party is seeking an interlocutory  
45 injunction."

46 **SECTION 2.**

47 This Act shall become effective on July 1, 2009, and shall apply to all claims, counterclaims,  
48 cross-claims, or third-party claims filed on or after July 1, 2009.

49 **SECTION 3.**

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