

Senate Bill 318

By: Senators Murphy of the 27th, Rogers of the 21st, Hill of the 32nd, Wiles of the 37th, Hill of the 4th 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 an affidavit to accompany a complaint against certain law enforcement
3 professionals; to provide for related matters; to provide an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
8 revising Code Section 9-11-9.1, relating to affidavits to accompany a charge of professional
9 malpractice, as follows:

10 "9-11-9.1.

11 (a) In any action for damages alleging professional malpractice against:

12 (1) A professional licensed by the State of Georgia and listed in subsection (g) of this
13 Code section;

14 (2) A domestic or foreign partnership, corporation, professional corporation, business
15 trust, general partnership, limited partnership, limited liability company, limited liability
16 partnership, association, or any other legal entity alleged to be liable based upon the
17 action or inaction of a professional licensed by the State of Georgia and listed in
18 subsection (g) of this Code section; or

19 (3) Any licensed health care facility alleged to be liable based upon the action or inaction
20 of a health care professional licensed by the State of Georgia and listed in subsection (g)
21 of this Code section,

22 and in any action for damages brought against a law enforcement professional who is a
23 certified peace officer employed by a law enforcement agency in this state based upon the
24 action or inaction of such certified professional acting within the scope of his or her official
25 duties, the plaintiff shall be required to file with the complaint an affidavit of an expert

26 competent to testify, which affidavit shall set forth specifically at least one negligent or
27 intended act or omission claimed to exist and the factual basis for each such claim.

28 (b) The contemporaneous affidavit filing requirement pursuant to subsection (a) of this
29 Code section shall not apply to any case in which the period of limitation will expire or
30 there is a good faith basis to believe it will expire on any claim stated in the complaint
31 within ten days of the date of filing the complaint and, because of time constraints, the
32 plaintiff has alleged that an affidavit of an expert could not be prepared. In such cases, if
33 the attorney for the plaintiff files with the complaint an affidavit in which the attorney
34 swears or affirms that his or her law firm was not retained by the plaintiff more than 90
35 days prior to the expiration of the period of limitation on the plaintiff's claim or claims, the
36 plaintiff shall have 45 days after the filing of the complaint to supplement the pleadings
37 with the affidavit. The trial court shall not extend such time for any reason without consent
38 of all parties. If either affidavit is not filed within the periods specified in this Code
39 section, or it is determined that the law firm of the attorney who filed the affidavit
40 permitted in lieu of the contemporaneous filing of an expert affidavit or any attorney who
41 appears on the pleadings was retained by the plaintiff more than 90 days prior to the
42 expiration of the period of limitation, the complaint shall be dismissed for failure to state
43 a claim.

44 (c) This Code section shall not be construed to extend any applicable period of limitation,
45 except that if the affidavits are filed within the periods specified in this Code section, the
46 filing of the affidavit of an expert after the expiration of the period of limitations shall be
47 considered timely and shall provide no basis for a statute of limitations defense.

48 (d) If a complaint ~~alleging professional malpractice~~ required to have an affidavit pursuant
49 to subsection (a) of this Code section is filed without the contemporaneous filing of an
50 affidavit as permitted by subsection (b) of this Code section, the defendant shall not be
51 required to file an answer to the complaint until 30 days after the filing of the affidavit of
52 an expert, and no discovery shall take place until after the filing of the answer.

53 (e) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom
54 it pertains alleges, with specificity, by motion to dismiss filed on or before the close of
55 discovery, that said affidavit is defective, the plaintiff's complaint shall be subject to
56 dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect
57 by amendment pursuant to Code Section 9-11-15 within 30 days of service of the motion
58 alleging that the affidavit is defective. The trial court may, in the exercise of its discretion,
59 extend the time for filing said amendment or response to the motion, or both, as it shall
60 determine justice requires.

61 (f) If a plaintiff fails to file an affidavit as required by this Code section and the defendant
62 raises the failure to file such an affidavit by motion to dismiss filed contemporaneously

63 with its initial responsive pleading, such complaint shall not be subject to the renewal
 64 provisions of Code Section 9-2-61 after the expiration of the applicable period of
 65 limitation, unless a court determines that the plaintiff had the requisite affidavit within the
 66 time required by this Code section and the failure to file the affidavit was the result of a
 67 mistake.

68 (g) The professions to which this Code section shall apply are:

- 69 (1) Architects;
- 70 (2) Attorneys at law;
- 71 (3) Audiologists;
- 72 (4) Certified peace officers;
- 73 (5) Certified public accountants;
- 74 ~~(5)~~(6) Chiropractors;
- 75 ~~(6)~~(7) Clinical social workers;
- 76 ~~(7)~~(8) Dentists;
- 77 ~~(8)~~(9) Dietitians;
- 78 ~~(9)~~(10) Land surveyors;
- 79 ~~(10)~~(11) Marriage and family therapists;
- 80 ~~(11)~~(12) Medical doctors;
- 81 ~~(12)~~(13) Nurses;
- 82 ~~(13)~~(14) Occupational therapists;
- 83 ~~(14)~~(15) Optometrists;
- 84 ~~(15)~~(16) Osteopathic physicians;
- 85 ~~(16)~~(17) Pharmacists;
- 86 ~~(17)~~(18) Physical therapists;
- 87 ~~(18)~~(19) Physicians' assistants;
- 88 ~~(19)~~(20) Podiatrists;
- 89 ~~(20)~~(21) Professional counselors;
- 90 ~~(21)~~(22) Professional engineers;
- 91 ~~(22)~~(23) Psychologists;
- 92 ~~(23)~~(24) Radiological technicians;
- 93 ~~(24)~~(25) Respiratory therapists;
- 94 ~~(25)~~(26) Speech-language pathologists; or
- 95 ~~(26)~~(27) Veterinarians."

96 **SECTION 2.**

97 This Act shall become effective upon its approval by the Governor or upon its becoming law
 98 without such approval and shall apply to all complaints filed on or after such date.

99

SECTION 3.

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