

House Bill 960

By: Representatives Lane of the 167th and Lindsey of the 54th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 33 of the Official Code of Georgia Annotated, relating to
2 actions against insurance companies, so as to provide for procedure relative to claimant's
3 offers to settle tort claims involving liability insurance policies; to provide that offers to settle
4 automatically are deemed to include certain provisions; to provide that failure to make an
5 offer to settle in conformity with the law precludes the recovery of a claim for bad faith or
6 negligent failure to settle; to provide for construction; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 4 of Title 33 of the Official Code of Georgia Annotated, relating to actions against
11 insurance companies, is amended by adding a new Code section to read as follows:

12 "33-4-8.

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

14 (1) 'Claimant' means a person pursuing a tort claim and shall also mean a plaintiff
15 pursuing a tort claim if a civil action has been commenced.

16 (2) 'Medical release' means a release that is compliant with the requirements of the
17 federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L.
18 104-191.

19 (3) 'Offer to settle' includes a demand for settlement.

20 (4) 'Tort claim' means a claim for personal injuries or wrongful death arising out of an
21 incident involving liability insurance policies.

22 (b) A claimant making an offer to settle a tort claim covered by a liability insurance policy
23 shall:

24 (1) Serve the offer to settle on the insurer by certified mail or statutory overnight delivery
25 in the manner provided by Code Section 9-11-5;

26 (2) Allow the insurer at least 60 days to respond to the offer to settle;

27 (3) Include full and complete copies of the claimant's medical, pharmacy, therapy, and
 28 similar treatment records and billing statements for treatment in connection with the tort
 29 claim that are in the possession or control of the claimant or the claimant's attorney at the
 30 time of serving the offer to settle; and

31 (4) Include an executed medical release for medical records from or on behalf of the
 32 claimant.

33 (c) Any offer to settle a tort claim covered by a liability insurance policy shall be deemed
 34 to include:

35 (1) That the claimant, from the settlement amount, shall settle, satisfy, extinguish, and
 36 otherwise resolve any valid and enforceable lien, right of subrogation, excluding the
 37 rights belonging to an uninsured or underinsured motor vehicle insurance carrier, or other
 38 enforceable statutory or contractually reimbursable obligation upon the claimant to a third
 39 party or upon all causes of action accruing to the claimant;

40 (2) That the claimant shall indemnify the insured and the insurer from any claim or loss
 41 that a responsible party may suffer as a result of the claimant's failure to resolve the third
 42 party obligations as specified in paragraph (1) of this subsection; and

43 (3) That the claimant's and his or her spouse's executed release in full of all claims
 44 includes a release of all derivative claims, including, but not limited to, a claim for loss
 45 of consortium, against any insured or insurer unless there is other available insurance to
 46 cover the tort claim, and in that event, then a limited liability release may be executed in
 47 favor of any insured or insurer in accordance with Code Section 33-24-41.1.

48 (d) Any offer to settle a tort claim covered by a liability insurance policy that does not
 49 comply with this Code section shall preclude a claimant from obtaining an award for bad
 50 faith or negligent failure to settle against the insurer.

51 (e) An insurer that includes the provisions of subsection (c) of this Code section in its
 52 response to an offer to settle a tort claim covered by a liability insurance policy shall not
 53 constitute a counteroffer.

54 (f) Nothing contained in this Code section shall require reimbursement:

55 (1) Of any health insurance benefit not included in the federal Employee Retirement
 56 Income Security Act of 1974 and not otherwise required by Code Section 33-24-56.1; or

57 (2) To any employer or insurer not otherwise required reimbursement pursuant to Code
 58 Section 34-9-11.1.

59 (g) Nothing in this Code section shall be construed to affect the provisions of Code Section
 60 9-11-68."

61 **SECTION 2.**

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