

The House Committee on Judiciary Non-Civil offers the following substitute to HB 513:

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, so as to revise provisions regarding the procedure for
3 claims asserted against a person or entity arising from an act by that person or entity which
4 could reasonably be construed as an act in furtherance of the right of free speech or the right
5 to petition government for a redress of grievances; to revise definitions; to amend Chapter
6 5 of Title 51 of the Official Code of Georgia Annotated, relating to libel and slander, so as
7 to revise a cross-reference; to provide for related matters; to provide for an effective date; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
12 pleadings and motions, is amended by revising Code Section 9-11-11.1, relating to exercise
13 of rights of freedom of speech and to petition government for redress of grievances,
14 legislative findings, verification of claims, definitions, procedure on motions, exception, and
15 fees and expenses, as follows:

16 "9-11-11.1.

17 (a) The General Assembly of Georgia finds and declares that it is in the public interest to
18 encourage participation by the citizens of Georgia in matters of public significance and
19 public interest through the exercise of their constitutional rights of petition and freedom of
20 speech ~~and the right to petition government for redress of grievances~~. The General
21 Assembly of Georgia further finds and declares that the valid exercise of the constitutional
22 rights of petition and freedom of speech ~~and the right to petition government for a redress~~
23 ~~of grievances~~ should not be chilled through abuse of the judicial process. To accomplish
24 the declarations provided for under this subsection, this Code section shall be construed
25 broadly.

26 ~~(b)(1) A claim for relief For any claim asserted against a person or entity arising from~~
 27 ~~an act by that any act of such person or entity which could reasonably be construed as an~~
 28 ~~act in furtherance of the person's right of petition or free speech or the right to petition~~
 29 ~~government for a redress of grievances under the Constitution of the United States or the~~
 30 ~~Constitution of the State of Georgia in connection with an issue of public interest or~~
 31 ~~concern shall be subject to a motion to strike unless the court determines that the~~
 32 ~~nonmoving party has established that there is a probability that the nonmoving party will~~
 33 ~~prevail on the claim, both the party asserting the claim and the party's attorney of record,~~
 34 ~~if any, shall be required to file, contemporaneously with the pleading containing the~~
 35 ~~claim, a written verification under oath as set forth in Code Section 9-10-113. Such~~
 36 ~~written verification shall certify that the party and his or her attorney of record, if any,~~
 37 ~~have read the claim, that to the best of their knowledge, information, and belief formed~~
 38 ~~after reasonable inquiry it is well grounded in fact and is warranted by existing law or a~~
 39 ~~good faith argument for the extension, modification, or reversal of existing law; that the~~
 40 ~~act forming the basis for the claim is not a privileged communication under paragraph (4)~~
 41 ~~of Code Section 51-5-7; and that the claim is not interposed for any improper purpose~~
 42 ~~such as to suppress a person's or entity's right of free speech or right to petition~~
 43 ~~government, or to harass, or to cause unnecessary delay or needless increase in the cost~~
 44 ~~of litigation. If the claim is not verified as required by this subsection, it shall be stricken~~
 45 ~~unless it is verified within ten days after the omission is called to the attention of the party~~
 46 ~~asserting the claim. If a claim is verified in violation of this Code section, the court, upon~~
 47 ~~motion or upon its own initiative, shall impose upon the persons who signed the~~
 48 ~~verification, a represented party, or both an appropriate sanction which may include~~
 49 ~~dismissal of the claim and an order to pay to the other party or parties the amount of the~~
 50 ~~reasonable expenses incurred because of the filing of the pleading, including a reasonable~~
 51 ~~attorney's fee.~~

52 (2) In making the determination as provided for in paragraph (1) of this subsection, the
 53 court shall consider the pleadings and supporting and opposing affidavits stating the facts
 54 upon which the liability or defense is based.

55 (3) If the court determines that the nonmoving party under paragraph (1) of this
 56 subsection has established a probability that he or she would prevail on the claim, neither
 57 that determination nor the fact of such determination shall be admissible in evidence at
 58 any later stage of the case or in any subsequent action and no burden or proof or degree
 59 of proof otherwise applicable shall be affected by such determination in any later stage
 60 of the case or in any subsequent proceeding.

61 (b.1) In any action subject to subsection (b) of this Code section, a prevailing moving party
 62 on a motion to strike shall be granted the recovery of attorney's fees and expenses of

63 litigation related to the action in an amount to be determined by the court based on the facts
 64 and circumstances of the case. If the court finds that a motion to strike is frivolous or is
 65 solely intended to cause unnecessary delay, the court shall award attorney's fees and
 66 expenses of litigation to the nonmoving party prevailing on the motion for the attorney's
 67 fees and expenses of litigation associated with the motion in an amount to be determined
 68 by the court based on the facts and circumstances of the case.

69 (c) As used in this Code section, the term 'act in furtherance of the person's right of
 70 petition or free speech or the right to petition government for a redress of grievances under
 71 the Constitution of the United States or the Constitution of the State of Georgia in
 72 connection with an issue of public interest or concern' ~~includes any~~ shall include:

73 (1) Any written or oral statement; or writing; or petition made before or to a legislative,
 74 executive, or judicial proceeding, or any other official proceeding authorized by law; or
 75 any;

76 (2) Any written or oral statement; or writing; or petition made in connection with an
 77 issue under consideration or review by a legislative, executive, or judicial body, or any
 78 other official proceeding authorized by law; or

79 (3) Any written or oral statement or writing or petition made in a place open to the public
 80 or a public forum in connection with an issue of public interest or concern.

81 (d) All discovery and any pending hearings or motions in the action shall be stayed upon
 82 the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of
 83 this Code section until a final decision on the motion. The motion shall be heard not more
 84 than 30 days after service unless the emergency matters before the court require a later
 85 hearing. The court, on noticed motion and for good cause shown, may order that specified
 86 discovery or other hearings or motions be conducted notwithstanding this subsection.

87 (e) Nothing in this Code section shall affect or preclude the right of any party to any
 88 recovery otherwise authorized by common law, statute, law, or rule.

89 (f) This Code section shall not apply to any action brought by the Attorney General or a
 90 prosecuting attorney, or a city attorney acting as a prosecutor, to enforce laws aimed at
 91 public protection.

92 (f)(g) Attorney's fees and expenses of litigation under this Code section may shall be
 93 requested by motion at any time during the course of the action but not later than 45 days
 94 after the final disposition, including but not limited to dismissal by the plaintiff, of the
 95 action."

96 **SECTION 2.**

97 Chapter 5 of Title 51 of the Official Code of Georgia Annotated, relating to libel and slander,
98 is amended in Code Section 51-5-7, relating to privileged communications, by revising
99 paragraph (4) as follows:

100 "(4) Statements made in good faith as part of an act in furtherance of the person's right
101 of petition or free speech ~~or the right to petition government for a redress of grievances~~
102 under the Constitution of the United States or the Constitution of the State of Georgia in
103 connection with an issue of public interest or concern, as defined in subsection (c) of
104 Code Section 9-11-11.1;"

105 **SECTION 3.**

106 This Act shall become effective on July 1, 2016.

107 **SECTION 4.**

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