

The House Committee on Rules offers the following substitute to SB 83:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to provisional and final remedies and special proceedings under the "Georgia Civil
3 Practice Act," so as to revise and provide clarity regarding acceptance of settlement offers
4 involving motor vehicles for personal injury, bodily injury, and death; to provide for related
5 matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
9 provisional and final remedies and special proceedings under the "Georgia Civil Practice
10 Act," is amended by revising Code Section 9-11-67.1, relating to settlement offers and
11 agreements for personal injury, bodily injury, and death from motor vehicle and payment
12 methods, as follows:

13 "9-11-67.1.

14 (a) Any offer to settle a tort claim for personal injury, bodily injury, or death arising from
15 a motor vehicle collision shall be an offer to enter into a bilateral contract.

16 (b) From the time a cause of action accrues until the filing of an answer by the named
17 defendant, or if there are multiple named defendants, until the time that all named
18 defendants have filed their initial answers or been found to be in default, whichever is
19 applicable, Prior to the filing of an answer, any offer to settle a tort claim for personal
20 injury, bodily injury, or death arising from the use of a motor vehicle collision and prepared
21 by or with the assistance of an attorney on behalf of a claimant or claimants shall be in
22 writing and:

23 (1) Shall contain the following material terms, which shall be the only material terms:

24 (A) ~~The time period within~~ A date by which such offer must be accepted, which shall
25 be not less than 30 days from receipt of the offer sent by certified mail or statutory
26 overnight delivery, return receipt requested;

27 (B) Amount of monetary payment;

28 (C) The party or parties the claimant or claimants will release if such offer is accepted;

29 (D) For any type of release, whether the release is full or limited and an itemization of
30 what the claimant or claimants will provide to each releasee; ~~and~~

31 (E) The claims to be released;

32 (F) A date by which payment shall be delivered; provided, however, that such date
33 shall not be less than 40 days from receipt of the offer; and

34 (G) A requirement that in order to settle the claim the recipient shall provide the
35 offeror a statement, under oath, regarding whether all liability and casualty insurance
36 issued by the recipient that provides coverage or that may provide coverage for the
37 claim at issue has been disclosed to the offeror and a date by which such statement
38 under oath shall be delivered, and such date shall not be less than 40 days from receipt
39 of the offer; provided, however, that the requirement provided in this subparagraph may
40 be waived by the offeror; and

41 (2) Shall include medical or other records in the offeror's possession incurred as a result
42 of the subject claim that are sufficient to allow the recipient to evaluate the claim; ~~and~~

43 ~~(3) May include a term requiring that in order to settle the claim the recipient shall~~
44 ~~provide the offeror a statement, under oath, regarding whether all liability and casualty~~
45 ~~insurance issued by the recipient that provides coverage or that may provide coverage for~~
46 ~~the claim at issue has been disclosed to the offeror.~~

47 ~~(b)(1) Unless otherwise agreed by both the offeror and the recipients in writing, the terms~~
48 ~~outlined in subsection (a) of this Code section shall be the only terms which can be~~
49 ~~included in an offer to settle made under this Code section.~~

50 (c) Where any offer to settle a tort claim for personal injury, bodily injury, or death arising
51 from a motor vehicle collision provides any term outside of the material terms provided in
52 paragraph (1) of subsection (b) of this Code section, such term shall be construed as an
53 immaterial term that may be mutually agreed to, in writing, by both the offeror and the
54 recipient; provided, however, that a variance by the recipient from such immaterial term
55 shall not subject the recipient to a civil action arising from an alleged failure by the
56 recipient to accept an offer to settle such tort claim if such recipient otherwise complies
57 with subsection (i) of this Code section.

58 ~~(2)(d)~~ The recipients of an offer to settle made under this Code section may accept the
59 same by providing written acceptance of the material terms outlined in paragraph (1) of
60 subsection ~~(a)~~ (b) of this Code section in their entirety.

61 ~~(e)(e)~~ Nothing in this Code section is intended to prohibit parties from reaching a
62 settlement agreement in a manner and under terms otherwise agreeable to both the offeror
63 and recipient of the offer; provided, however, that no party shall require another party, as
64 a condition of settlement, to waive or modify the application of this Code section or any
65 provision of this Code section.

66 ~~(d)(f)~~ Upon receipt of an offer to settle set forth in subsection ~~(a)~~ (b) of this Code section,
67 the recipients shall have the right to seek clarification regarding the terms, the terms of the
68 release, liens, subrogation claims, standing to release claims, medical bills, medical
69 records, and other relevant facts. An attempt to seek ~~reasonable~~ clarification shall be in

70 writing and shall not be deemed a counteroffer; provided, however, that seeking to modify
71 the terms under paragraph (1) of subsection (b) of this Code section shall not be deemed
72 a clarification. In addition, if a release is not provided with an offer to settle, a recipient's
73 providing of a proposed release shall not be deemed a counteroffer.

74 ~~(e)~~(g) An offer to settle made pursuant to this Code section shall be sent by certified mail
75 or statutory overnight delivery, return receipt requested, shall specifically reference this
76 Code section, and shall include an address, and either ~~or~~ a facsimile number or email
77 address, to which a written acceptance pursuant to subsection ~~(b)~~ (d) of this Code section
78 may be provided.

79 ~~(f)~~(h) The person or entity providing payment to satisfy the material term set forth in
80 subparagraph ~~(a)(1)(B)~~ (b)(1)(B) of this Code section may elect to provide payment by any
81 one or more of the following means:

- 82 (1) Cash;
- 83 (2) Money order;
- 84 (3) Wire transfer;
- 85 (4) A cashier's check issued by a bank or other financial institution;
- 86 (5) A draft or bank check issued by an insurance company; or
- 87 (6) Electronic funds transfer or other method of electronic payment.

88 ~~(g) Nothing in this Code section shall prohibit a party making an offer to settle from~~
89 ~~requiring payment within a specified period; provided, however, that such date shall not~~
90 ~~be less than 40 days from the receipt of the offer.~~

91 (i)(1) There shall be no civil action arising from an alleged failure by the recipient to
92 settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle
93 collision, where the recipient provides the offeror on or before the dates specified in the
94 offer:

95 (A) A writing that purports to accept in their entirety the material terms of the offer,
96 with the exception of the amount of payment;

97 (B) A statement by the recipient under oath regarding insurance coverage provided by
 98 the recipient, if required as a material term; and

99 (C) Payment of the lesser of:

100 (i) The amount demanded in such offer; or

101 (ii) The available bodily injury liability limits of the applicable insurance policy or
 102 policies issued by the recipient.

103 (2) Except as provided in paragraph (3) of this subsection, this subsection shall apply to
 104 any offer to settle a tort claim for personal injury, bodily injury, or death arising from a
 105 motor vehicle collision; and shall apply to any such offer even where such offer expressly
 106 provides that any or all of this Code section does not apply to such offer; and shall not be
 107 construed to only apply to offers made pursuant to subsection (b) of this Code section.

108 (3) Where the recipient does not comply with paragraph (1) of this subsection in
 109 response to an offer made in compliance with subsection (b) of this Code section, this
 110 subsection shall not apply to any subsequent offer to settle a tort claim for personal
 111 injury, bodily injury, or death arising from a motor vehicle collision.

112 ~~(h)~~(j) Notwithstanding any other provision of this Code section to the contrary, this This
 113 Code section shall not apply to ~~causes of action for personal injury, bodily injury, and death~~
 114 ~~arising from the use of a motor vehicle on or after July 1, 2021~~ any offer to settle a product
 115 liability claim, including failure to warn arising under product liability."

116 SECTION 2.

117 With the exception of a product liability claim, including failure to warn arising under
 118 product liability, this Act shall apply to any offers to settle a tort claim for personal injury,
 119 bodily injury, or death arising from a motor vehicle collision made on or after the date this
 120 Act is approved by the Governor or upon its becoming law without such approval.

