

House Bill 714

By: Representative Kelley of the 16th

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, so as to revise and provide
3 for new requirements under the Georgia Civil Practice Act for settlement offers and
4 arrangements for tort claims for personal injury, bodily injury, and death; to amend Chapter
5 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of insurance, limits
6 of risks, and reinsurance, so as to revise the liability of an insurer upon refusal to pay an
7 insured for any loss pursuant to uninsured motorist coverage under motor vehicle liability
8 policies; to revise a penalty; to provide for related matters; to provide for applicability; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
13 provisional and final remedies and special proceedings, is amended by revising Code Section
14 9-11-67.1, relating to settlement offers and agreements for personal injury, bodily injury, and
15 death from motor vehicle, and payment methods, as follows:

H. B. 714

16 "9-11-67.1.

17 (a) Prior to the filing of a ~~civil action~~ an answer, any offer to settle a tort claim for personal
18 injury, bodily injury, or death arising from the use of a motor vehicle and prepared by or
19 with the assistance of an attorney on behalf of a claimant or claimants shall be in writing
20 and contain the following material terms:

21 (1) The time period within which such offer must be accepted, which shall be not less
22 than 30 days from receipt of the offer;

23 (2) Amount of monetary payment;

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

25 (4) ~~The~~ For any type of release, if any, whether the release is full or limited and an
26 itemization of what the claimant or claimants will provide to each releasee; and

27 (5) The claims to be released.

28 (b) When making an offer to settle under this Code section, the offeror shall include
29 medical or other records related to the subject claim that can be reasonably obtained and
30 sufficient to allow the recipient to evaluate the claim.

31 (c)(1) Unless otherwise agreed by both the offeror and the recipients in writing, the
32 material terms outlined in subsection (a) of this Code section shall be the only material
33 terms which can be included in an offer to settle made under this Code section; provided,
34 however, that the offeror may also include the following terms in the offer when
35 appropriate:

36 (A) A requirement that a certification signed under penalty of perjury be provided to
37 the offeror that all insurance that provides coverage for the claim at issue has been
38 disclosed to the offeror or claimant; and

39 (B) A requirement that a certification signed under penalty of perjury be provided to
40 the offeror as to whether or not a person involved in the motor vehicle collision giving
41 rise to the claim was acting in the course and scope of employment at the time of the
42 collision.

43 (2) The recipients of an offer to settle made under this Code section may accept the same
44 by providing written acceptance of the material terms outlined in subsection (a) of this
45 Code section in their entirety.

46 ~~(e)~~(d) Nothing in this Code section is intended to prohibit parties from reaching a
47 settlement agreement in a manner and under terms otherwise agreeable to both the ~~parties~~
48 offeror and the recipient of the offer.

49 ~~(d)~~(e) Upon receipt of an offer to settle set forth in subsection (a) of this Code section, the
50 recipients shall have the right to seek clarification regarding terms, liens, subrogation
51 claims, standing to release claims, medical bills, medical records, and other relevant facts.
52 An attempt to seek reasonable clarification shall not be deemed a counteroffer.

53 ~~(e)~~(f) An offer to settle made pursuant to this Code section shall be sent by certified mail
54 or statutory overnight delivery, return receipt requested, ~~and~~ shall specifically reference this
55 Code section, and shall include an address or a facsimile number or email address to which
56 a written acceptance pursuant to subsection (c) of this Code section may be provided.

57 ~~(f)~~(g) The person or entity providing payment to satisfy the material term set forth in
58 paragraph (2) of subsection (a) of this Code section may elect to provide payment by any
59 one or more of the following means:

- 60 (1) Cash;
- 61 (2) Money order;
- 62 (3) Wire transfer;
- 63 (4) A cashier's check issued by a bank or other financial institution;
- 64 (5) A draft or bank check issued by an insurance company; or
- 65 (6) Electronic funds transfer or other method of electronic payment.

66 ~~(g)~~(h) Nothing in this Code section shall prohibit a party making an offer to settle from
67 requiring payment within a specified period; provided, however, that such ~~period shall be~~
68 ~~not less than ten days after the written acceptance of the offer to settle~~ date shall not be less
69 than 40 days from the receipt of the offer.

70 ~~(h)~~(i) This Code section shall apply to causes of action for personal injury, bodily injury,
71 and death arising from the use of a motor vehicle on or after July 1, ~~2013~~ 2021."

72 **SECTION 2.**

73 Chapter 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of
74 insurance, limits of risks, and reinsurance, is amended by revising subsection (j) of Code
75 Section 33-7-11, relating to uninsured motorist coverage under motor vehicle liability
76 policies, as follows:

77 "(j) If the insurer shall refuse to pay any insured any loss covered by this Code section
78 within 60 days after a demand has been made by the insured and a finding has been made
79 that such refusal was made in bad faith, the insurer shall be liable to the insured in addition
80 to any recovery under this Code section for not more than 25 percent of the recovery or
81 \$25,000.00, whichever is greater, and all reasonable attorney's fees for the prosecution of
82 the case under this Code section. The question of bad faith, the amount of the penalty, if
83 any, and the reasonable attorney's fees, if any, shall be determined in a separate action filed
84 by the insured against the insurer after a judgment has been rendered against the uninsured
85 motorist in the original tort action. The attorney's fees shall be fixed on the basis of
86 competent expert evidence as to the reasonable value of the services, based on the time
87 spent and legal and factual issues involved, in accordance with prevailing fees in the
88 locality where the action is pending. The trial court shall have the discretion, if it finds
89 such jury verdict fixing attorney's fees to be greatly excessive or inadequate, to review and
90 amend such portion of the verdict fixing attorney's fees without the necessity of
91 disapproving the entire verdict. The limitations contained in this subsection in reference
92 to the amount of attorney's fees are not controlling as to the fees which may be agreed upon
93 by the plaintiff and his or her attorney for the services of the attorney in the action against
94 the insurer."

95 **SECTION 3.**

96 This Act shall apply to causes of action accruing on or after July 1, 2021.

97 **SECTION 4.**

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