

House Bill 204 (COMMITTEE SUBSTITUTE)

By: Representatives Beskin of the 54<sup>th</sup>, Willard of the 51<sup>st</sup>, Pak of the 108<sup>th</sup>, Caldwell of the 131<sup>st</sup>, Oliver of the 82<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the  
2 "Civil Practice Act," so as to change provisions relating to when opposing affidavits shall be  
3 served generally and in motions for summary judgment; to provide for procedure; to provide  
4 for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the "Civil  
8 Practice Act," is amended by revising subsection (d) of Code Section 9-11-6, relating to time,  
9 as follows:

10 "(d) **For motions; for affidavits.** A written motion, other than one which may be heard  
11 ex parte, and notice of the hearing thereof shall be served not later than five days before the  
12 time specified for the hearing, unless a different period is fixed by this chapter or by order  
13 of the court. Such an order may for cause shown be made on ex parte application. When  
14 a motion is supported by affidavit, the affidavit shall be served with the motion. Except  
15 as provided in Code Section 9-11-56, any opposing affidavits shall ~~Opposing affidavits~~  
16 ~~may~~ be served not later than one business day before the hearing, unless the court permits  
17 ~~them~~ such affidavits to be served at ~~some other~~ another time."

18 style="text-align:center">**SECTION 2.**

19 Said chapter is further amended by revising subsections (c) and (e) of Code Section 9-11-56,  
20 relating to summary judgment, as follows:

21 "(c) **Motion and proceedings thereon.** ~~The motion shall be served at least 30 days before~~  
22 ~~the time fixed for the hearing. The adverse party prior to the day of hearing may serve~~  
23 ~~opposing affidavits. A motion for summary judgment may be decided by the court without~~  
24 a hearing unless a hearing is requested by a party. A hearing on a motion for summary  
25 judgment shall be permitted if a written request for a hearing is filed with a motion for

26 summary judgment or within five days of the filing of a response to such motion. If a  
 27 request for a hearing is timely filed, a hearing shall be held not earlier than 45 days from  
 28 the date of service of the motion for summary judgment. Opposing affidavits, if used, shall  
 29 be served not later than seven days before the date set for a hearing, unless the court  
 30 permits such affidavits to be served at another time. The judgment sought shall be  
 31 rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions  
 32 on file, together with the affidavits, if any, show that there is no genuine issue as to any  
 33 material fact and that the moving party is entitled to a judgment as a matter of law; but  
 34 nothing in this Code section shall be construed as denying to any party the right to trial by  
 35 jury ~~where~~ when there are substantial issues of fact to be determined. A summary  
 36 judgment may be rendered on the issue of liability alone although there is a genuine issue  
 37 as to the amount of damage."

38 "(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing  
 39 affidavits shall be made on personal knowledge, shall set forth such facts as would be  
 40 admissible in the evidence, and shall show affirmatively that the affiant is competent to  
 41 testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof  
 42 referred to in an affidavit shall be attached thereto or served therewith. The court may  
 43 permit affidavits to be supplemented or opposed by depositions, answers to interrogatories,  
 44 or further affidavits. All affidavits shall be filed with the court and copies thereof shall be  
 45 served on the opposing parties as provided in subsection (c) of this Code section. When  
 46 a motion for summary judgment is made and supported as provided in this Code section,  
 47 an adverse party may not rest upon the mere allegations or denials of ~~his~~ such party's  
 48 pleading, but ~~his~~ such party's response, by affidavits or as otherwise provided in this Code  
 49 section, ~~must~~ shall set forth specific facts showing that there is a genuine issue for trial.  
 50 If ~~he~~ an adverse party does not so respond, summary judgment, if appropriate, shall be  
 51 entered against ~~him~~ such party."

52 **SECTION 3.**

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