

**Insights**

## **GEORGIA'S LEGISLATORS PASS CRITICAL BILL AMENDING THE STATE'S APPORTIONMENT STATUTE**

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Georgia's General Assembly passed significant legislation last month to amend Section 51-12-33 of the Official Code of Georgia Annotated—known colloquially as the “Apportionment Statute”—which will cure the well-publicized impacts of the Georgia Supreme Court's 2021 decision in *Alston & Bird, LLP v. Hatcher Management Holdings, LLC*, 312 Ga. 350, 862 S.E.2d 295 (2021).

The Georgia House approved the amendment to the Apportionment Statute—House Bill 961—unanimously in early March. The Georgia Senate approved the same amendment to Section 51-12-33 at the close of the legislative session. The Governor is expected to soon sign it into law, upon which the new statute will take effect.

House Bill 961 serves to unwind the Supreme Court's holding in *Hatcher Management* and now again permits apportionment of damages among both parties and non-parties regardless whether there are one or more defendants named in the litigation.

### **The Hatcher Management Decision:**

In *Hatcher Management*, the Georgia Supreme Court interpreted the existing version of the Apportionment Statute to permit apportionment of damages only in litigation involving multiple named defendants. Stated another way, apportionment was not available to a litigant who was named as the sole defendant in a dispute, or who ultimately found themselves as the sole remaining defendant, regardless of that single-defendant's actual degree of fault.

The Court further found that this limitation on single-party cases applied even where a jury or trier-of-fact expressly determined that a non-party was also at fault. In practical terms, and had the Court's recent interpretation of the Apportionment Statute remained, single-named defendants in Georgia litigation faced liability for the entirety of a damage award (minus only whatever proportion could be attributed to the plaintiff), regardless of other non-parties' liability for a portion of those same damages.

The Georgia Supreme Court reached this decision through a literal reading of subsection (b) of the Apportionment Statute. Although subsection (b) permits the reduction of damages in proportion to

the fault of any non-party, the subsection applies only where “an action is brought against **more than one** person[.]” The Court compared this qualification to language in other subsections of the statute, which refer to actions “brought against **one or more** persons[.]” See, e.g., O.C.G.A. 51-12-33(a). In the Court’s words, this was a “critical textual difference” between subsection (b) and other provisions in the Apportionment Statute.

More on the *Hatcher Management* decision can be found [here](#).

## **Amendment to the Apportionment Statute**

House Bill 961 amends Section 51-12-33 to resolve the “critical textual difference” the Supreme Court identified between subsection (b) and the Statute’s other sections. The amended statute revises the “more than one person” language in subsection (b) so that apportionment in Georgia now is clearly available in “action[s] brought against **one or more** persons[.]”

This seemingly innocuous change has significant impacts for Georgia litigants, particularly those single-named defendants who may otherwise have faced the very real possibility of liability for a full damage award with no apportionment to other non-parties who are found to be at fault.

The full text of House Bill 961 is available [here](#).

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