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GEORGIA PASSES TORT REFORM PACKAGE SIGNALING IMPORTANT SHIFT IN FUTURE LITIGATION

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Georgia has enacted the most comprehensive tort reform legislation the state has seen in nearly 20 years.

Passed during the 2025 Georgia legislative session, the legislation impacts multiple aspects of Georgia tort litigation and may ultimately benefit the state's consumers and businesses alike. The legislation consisted of two bills—Georgia Senate Bill 68 and Georgia Senate Bill 69—both of which were passed by the Georgia General Assembly and subsequently signed by Georgia Governor Kemp on April 21, 2025. Senate Bill 68 took effect upon its approval by the Governor; Senate Bill 69 will take effect January 1, 2026, except for two of its sections which took effect upon signing.

WHAT IS THE IMPETUS FOR LEGISLATIVE REFORM IN GEORGIA?

Georgia Governor Brian Kemp announced the Tort Reform Package during a press conference at the state capitol on January 30, 2025.

The package had been presented over the course of the 2025 legislative session as a response to a multitude of factors: data collected by the Office of the Georgia Insurance Commissioner over the last two years pursuant to House Bill 1114 (Data Analysis for Tort Reform Act), roundtables with legislators and businesses around the state, and other stakeholders collectively calling for reform.

The availability and cost of insurance to businesses and consumers in Georgia sits in large part as the backdrop for this impetus to pursue new legislation. The Insurance Commissioner's data indicates an increase in the five-year average of claims, the number of claims with legal representation awarding the full limit of insurance policies, decreases in the availability of insurance in critical sectors of the economy and increases in insurance premiums statewide, among other trends.

Additionally, according to a 2024 report published by the U.S. Chamber of Commerce Institute for Legal Reform, Georgia was among the top states experiencing an increase in "nuclear verdicts;" on a per capita basis for such verdicts, Georgia earned 4thplace nationally between 2013 and 2022 (on

a cumulative basis during this period, Georgia tied for 5th place). *See* Cary Silverman and Christopher E. Appel, Shook, Hardy & Bacon LLP, U.S. Chamber of Commerce Institute for Legal Reform, Nuclear Verdicts – An Update on Trends, Causes, and Solutions, at 17 (May 30, 2024).

At a February Senate Judiciary Committee meeting addressing the proposed Tort Reform Package, the Insurance Commissioner and others who testified in favor of the legislation identified specific areas of concern, including:

- The impacts of fewer insurance companies in the state: rate increases, less competition among carriers, and less coverage choices for consumers and businesses. On the other hand, an increase in carriers in the state should encourage competition and allow more choices for consumers and businesses in coverage and rates. The takeaway offered is a need for affordability and access to insurance.

- The affordability of coverage facing Georgia businesses. Affordability, or lack thereof, affects businesses' ability to operate, and in some instances, impacts their ability to receive financing. The downstream effects of this ecosystem are felt by the communities that these businesses serve—*e.g.* the cost, accessibility, and availability of goods and services are impacted as a result.

- The losses on average experienced by the insurance industry in Georgia over the last ten years in commercial auto, private passenger auto, homeowner's multiple peril, commercial multiple peril, and medical professional liability.

While not a panacea for all concerns, the Tort Reform Package has been presented as a step toward stabilizing the insurance market and thereby bringing balance to Georgia's legal system.

WHAT ARE SOME OF THE KEY CHANGES?

The legislation includes various amendments impacting Georgia tort law. In particular, based on the bills as passed, these statutory revisions are as follows:

1. Codification of the "Negligent Security" Cause of Action:
   a. A new article within Title 51 of the Georgia Code, Chapter 3, codifies a cause of action for "negligent security," and includes a new standard for premises liability in the context of "wrongful conduct of a third person" on the premises.

2. Bifurcation of Civil Trials:
   a. A new code section under Title 51 of the Georgia Code, Chapter 12, permits any party to request a bifurcated trial—in which the issue of fault would be heard and determined (including apportionment of fault) before the issue of damages.

3. Regulation of Third-Party Litigation Funding:

a. A new chapter within Title 7 of the Georgia Code regulates the practice of third-party litigation funding.

b. Amendments to O.C.G.A. § 9-11-26 expand the scope of discovery to include "litigation financing agreements."

4. Availability of Damages:
   a. Amendments to O.C.G.A. § 9-10-184 restrict counsel from arguing, eliciting testimony, or referencing amounts or ranges of noneconomic damages until after the close of evidence and at such time that the party has its first opportunity to argue the issue of damages. Even when permitted at this time, the argument made must be supported by the evidence. In other words, counsel would not be permitted to "anchor" the amount of such damages by arguing or otherwise bringing forth amounts with no rational connection to the facts presented. The measure of damages would be left to the "enlightened conscience of an impartial jury."

   b. A new code section under Title 51 of the Georgia Code, Chapter 12 limits recoverability of special damages for medical and healthcare expenses to the "reasonable value of medically necessary care, treatment, or services," and establishes parameters for the types of evidence relevant to this determination by the trier of fact.

5. Recovery of Attorneys' Fees:
   a. A new code section under Title 9 of the Georgia Code, Chapter 15 prevents duplicative recovery of attorney's fees, court costs, or litigation expenses pursuant to statutes that provide for recovery of these items, unless the statute or statutes specifically authorize double recovery.

6. Other Changes:
   a. Amendments to O.C.G.A. § 40-8-76.1 allow evidence that a motor vehicle occupant was not wearing a seatbelt, subject to the general standards for admissibility.

   b. Amendments to O.C.G.A. §§ 9-11-12 and 9-11-41 impact various aspects of filing responsive pleadings and pretrial motions, a plaintiff's ability to voluntarily dismiss actions, and the timing of these procedures.

THE PARAMETERS FOR A "NEGLIGENT SECURITY" CAUSE OF ACTION:

NEGLIGENT SECURITY UNDER GEORGIA COMMON LAW:

Georgia has historically treated negligent security as a subset of premises liability claims. Georgia case law has developed such that the legal duty an owner/occupier owes to invitees to keep a premises safe—under O.C.G.A. § 51-3-1—includes a duty to protect against foreseeable criminal acts of a third party. *See, e.g.*, *Georgia CVS Pharmacy, LLC v. Carmichael*, 890 S.E.2d 209, 218-19 (Ga. 2023). In a landmark decision in 2023, the Georgia Supreme Court ruled that the reasonable foreseeability of the underlying third-party criminal conduct is determined case-by-case, based on

the totality of the circumstances. *Id.* at 222. Whether this activity was reasonably foreseeable determines if the landowner's duty under § 51-3-1 is triggered. *Id.* at 219.

NEGLIGENT SECURITY UNDER SENATE BILL 68:

Senate Bill 68 codifies a specific "negligent security" cause of action. "Negligent security" under the bill refers to tort or nuisance claims against an owner/occupier or security contractor in which the claimant seeks recovery for bodily injury or wrongful death *that "arise[] from an alleged failure to keep the premises and approaches safe from the wrongful conduct of third persons."* In particular, the revisions confirm that the cause of action fully encompasses owner/occupier liability for negligent security—signaling the legislature's aim to set the boundaries for this type of claim through the new legislation.

Claims Against Owners/Occupiers of Land:

Senate Bill 68 establishes standards of liability with respect to invitees and licensees. The bill also confirms there will be no liability for a negligent security claim when the injury is sustained by a trespasser.

For injuries sustained by an invitee on the premises, a plaintiff would have to prove the following elements to maintain a claim against an owner/occupier:

1. The third person's wrongful conduct was:
   a. reasonably foreseeable to the owner/occupier based on one of two types of knowledge *and*

   b. "a reasonably foreseeable consequence of such third person *exploiting a specific physical condition of the premises known to the owner/occupier, which created a reasonably foreseeable risk of wrongful conduct on the premises that was substantially greater than the general risk of wrongful conduct in the vicinity of the premises*";

2. The plaintiff's injury was a reasonably foreseeable consequence of the third person's wrongful conduct;

3. The owner/occupier failed to exercise ordinary care to remedy or mitigate the physical condition and otherwise keep the premises safe from such third-party wrongful conduct; and

4. This failure of the owner/occupier proximately caused the invitee's injury.

For injuries sustained by a licensee on the premises, the standard is lessened. While the other requirements remain the same, for licensees:

1. The reasonable foreseeability of the third party's wrongful conduct is based on only one type of knowledge possessed by the owner/occupier—"particularized warning of imminent wrongful conduct by a third person"; and

2. The owner/occupier must have *willfully and wantonly failed to exercise any care* to remedy or mitigate the physical condition and otherwise keep the premises safe from such third-party wrongful conduct.

Notably, these elements generally limit owner/occupier liability to circumstances within their knowledge and control. There are various exceptions emphasizing this limitation on claims; for example, liability is limited to injuries sustained by persons *on* the premises and third-party wrongful conduct occurring *on* the premises. Further, claims are excluded where the injured person is a third party who entered the premises intending to commit a crime or was in the commission of a crime at the time of injury. When the basis of the owner/occupier's duty is based on one type of knowledge ("a particularized warning of imminent wrongful conduct by a third person"), the owner/occupier's reasonable effort to provide information to law enforcement—*e.g.* calling 9-1-1—also triggers an exception.

Claims Against Security Contractors:

Senate Bill 68 specifically provides parameters for a security contractor's liability for negligent security. Under the bill, when a security contractor "assumes and undertakes" a duty to invitees and licensees to keep all or part of the premises safe from third-party wrongful conduct, the security contractor may be held liable for negligent security "only in the same manner, to the same extent, and subject to the same limitations and provisions applicable to an owner or occupier. . . ."

Apportionment of Fault:

Senate Bill 68 also addresses mandatory apportionment of fault under certain circumstances.

Notably, the provisions require that, where any defendant is found liable to the plaintiff, the jury *must apportion a reasonable degree* of fault to any third person whose wrongful conduct was a cause of the injury giving rise to the claim, among others. When this does not occur, the provisions require the court to set aside the jury verdict and order a retrial of liability and damages.

Further, the provisions create a rebuttable presumption—the apportionment of fault is presumed unreasonable "if the total percentage of fault apportioned to all third persons for their wrongful conduct is less than the total percentage of fault apportioned to all owners or occupiers, security contractors, and other persons and entities that did not engage in wrongful conduct." Thus, to avoid the presumption, the third person or persons would need to be apportioned a percentage of fault at least equal to the total percentage awarded to the other persons collectively.

A NEW APPROACH TO PHANTOM DAMAGES:

Senate Bill 68 adds new code section 51-12-1.1, which grapples with the issue of phantom damages. In the context of special damages for medical and healthcare expenses, these damages generally refer to the difference between the initial amount billed for medical services and the

amount the medical provider accepted to satisfy the bill. *See* Paul S. Milich, *Georgia Rules of Evidence* § 9:3 (2024-2025 ed.).

The new code section would limit the recovery of special damages for medical expenses to the "reasonable value of medically necessary care, treatment, or services." In determining reasonable value, the trier of fact may hear evidence regarding both the amount charged *and* the amount "actually necessary to satisfy such charge[] pursuant to the insurance contract[,]" regardless of whether the insurance is ultimately used to cover the charges.

The section also states that "[i]t is the intent of the General Assembly that this Code section abrogates the common law collateral source rule to the extent necessary to introduce evidence described in this Code section; provided, however, that nothing in this Code section shall be construed or applied to prevent the court from issuing appropriate jury instructions to clarify the role of collateral source payments and to prevent potential jury confusion regarding the effect of collateral source payments on the plaintiff's recovery."

THE RIGHT TO REQUEST BIFURCATED TRIALS IN ACTIONS FOR BODILY INJURY OR WRONGFUL DEATH:

Senate Bill 68 also adds new code section 51-12-15, which creates a right for any party to request a bifurcated civil trial in actions to recover damages for bodily injury or wrongful death. If demanded in writing before the pretrial order is entered, the trial would be divided into at least two phases:

- First, a fault phase, including apportionment of fault where applicable;
- Second, a compensatory damages phase if any defendant is found at fault in phase one;
- Third, an additional phase for further proceedings as needed—*e.g.*, in cases requiring a determination on punitive damages, or regarding attorney's fees, court costs, and litigation expenses.

The evidence and arguments at each phase of the trial would be limited to the issues contained within the respective phase, and where a case proceeds to the next phase, the trial is to be recommenced "immediately with the same judge and the same jury."

Under certain circumstances, a court may reject this type of bifurcation election. For this to happen, an opposing party must move to oppose the bifurcation, and the court must determine that one of the following is applicable: (1) the plaintiff (or minor represented by their legal guardian) is a victim of an alleged sexual offense and requiring testimony more than once is likely to cause serious psychological or emotional distress; *or* (2) the amount in controversy is less than $150,000.00.

RESTRICTIONS ON THIRD-PARTY LITIGATION FUNDING:

Senate Bill 69, entitled “Georgia Courts Access and Consumer Protection Act,” introduces robust measures concerning third-party litigation funding.

The Act introduces measures to regulate and increase transparency, such as:

- Requiring “litigation financiers” to register with the Department of Banking and Finance before providing funding or otherwise engaging as a funder in litigation, and authorizing the department to participate in a multi-state licensing system and registry;
- Prohibiting registration of a funder by persons and entities affiliated with a foreign adversary under 15 C.F.R. Section 7.4;
- Restricting what a litigation financier is permitted to do with respect to the litigation or proceeding being funded and the parties and legal representation involved; and
- Imposing requirements on “litigation financing contracts,” including specific disclosures.

The Act makes it a criminal offense to willfully violate this new chapter. The Act additionally amends the Georgia Civil Practice Act rules regarding discovery, such that litigation funding agreements are discoverable.

CONCLUSION

The extent to which these new laws are interpreted and applied remains to be seen in future litigation. However, the passage of the Tort Reform Package signals a potential business and consumer-friendly shift in Georgia tort litigation and Georgia’s insurance market.

Both bills as passed are accessible on the website of the General Assembly: Senate Bill 68 and Senate Bill 69.

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