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Georgia's Tort Reform Revolution

A Practical Guide for Defense Litigators Post-SB 68 and SB 69

By Brannon Arnold

Georgia's tort reform isn't the end of the story—it's the opening chapter of a new litigation strategy for those ready to use it.

On April 21, 2025, Governor Brian Kemp signed into law two landmark tort reform bills—Senate Bill 68 and Senate Bill 69—representing Georgia's most sweeping civil litigation overhaul in decades. With nuclear verdicts mounting and Georgia repeatedly named a "Judicial Hellhole," lawmakers targeted excessive damages, relaxed liability standards, and brought procedural predictability to an often-chaotic landscape. For Georgia defense litigators, these reforms are not just legislative talking points—they are tools.

New Procedural Weapons: Motion to Dismiss and Discovery Stay

Perhaps the most immediately useful change lies in SB 68's amendment to Georgia's Civil Practice Act. Defendants may now file a motion to dismiss in lieu of an answer—and when they do, discovery is automatically stayed until the court rules. If the court does not rule within 90 days after briefing closes, the non-moving party must move to lift the stay, or it otherwise remains in effect. This alone marks a sea change for early case strategy.

Previously, defense counsel often had to answer—triggering discovery—before moving to dismiss. Now, litigators can pause discovery, conserve client resources, and test legal sufficiency early. But caution is warranted: attaching exhibits, such as an arbitration clause or contract, may convert the motion into one for summary judgment, forfeiting the stay and accelerating the case timeline.

Defense counsel must weigh their options carefully. If attaching exhibits is essential to prevailing on the motion, then filing an answer with attached exhibits may be wiser—even if it means forfeiting the automatic discovery stay. But if the motion is likely dispositive based solely on the pleadings, filing it alone can delay discovery and conserve resources. Counsel must consider their client's goals: Is staying discovery a meaningful advantage, or does it merely postpone inevitable expense? Each case requires a cost-benefit analysis tailored to the facts and the client's appetite for early motion practice.

Where early discovery pressure looms, filing a motion to dismiss without answering may provide breathing room to negotiate and develop defenses. But if the case relies on exhibit-heavy evidence, answering with attachments might still be the better play.

Affirmative Defenses: What's New, What's Required

SB 68 reshapes fault calculus in several claims—especially negligent security, premises liability, and auto injury cases. Defense attorneys must now rethink how they plead affirmative defenses. Key areas include:

Actual Knowledge in Negligent Security Cases: Gone is the amorphous "totality of the circumstances" test. Invitees must now prove the defendant had actual knowledge of substantially similar prior incidents. Constructive notice no longer suffices. Counsel should plead the absence

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of actual knowledge and particularized warning.

Plaintiff Classification: A plaintiff's legal status—invitee, licensee, or trespasser—now drives exposure. Invitees must meet five statutory elements, including foreseeability and known premises defects. Licensees must prove willful and wanton disregard plus a specific warning. Trespassers, criminals, and off-premises injuries are categorically barred. These defenses should be raised early and clearly.

Apportionment to Criminal Actors: A new trial is mandatory if a jury fails to assign a "reasonable degree of fault" to a third-party criminal actor. Defense counsel should plead this issue and, if appropriate, preserve it for a post-trial motion.

Seatbelt Non-Use: Defendants can now introduce evidence of a plaintiff's failure to wear a seatbelt to support comparative fault. Counsel should explicitly raise this as an affirmative defense in auto cases, particularly where injuries were exacerbated by non-use.

Paid Vs. Billed Medical Damages: O.C.G.A. §51-12-1.1 limits recovery of medical expenses to the amount actually paid or owed—not the inflated billed amount. Defense attorneys should proactively demand discovery of amounts paid, receivable sales, and any letters of protection (LOPs), and assert this limit on damages in both answers and pretrial motions.

Bifurcation: Splitting Liability and Damages

Another game changing provision: SB 68 gives defendants the right to demand bifurcation in personal injury and wrongful death trials. If requested before the pretrial order, trials must now proceed in two distinct phases—liability first, then damages.

Mock trials and focus groups should mirror this bifurcated structure to better

test liability themes independently of sympathy-inducing damages evidence. Voir dire and opening statements should focus on liability, limiting bias from early exposure to graphic injury evidence. Settlement posture may shift mid-trial—if liability is denied and the jury sides with the defense in Phase I, the case ends.

However, bifurcation is unavailable for cases involving alleged sexual offenses or where the amount in controversy is under $150,000. Defense counsel should evaluate early whether bifurcation is both available and tactically advantageous.

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Anchoring: Voir Dire Limitations and Motions in Limine

SB 68 sharply limits plaintiff's ability to "anchor" juries with arbitrary dollar figures for non-economic damages. Plaintiffs may not reference specific amounts during voir dire and before the closing of evidence. Even in closing argument, any proposed figure plan must be "rationally related to the evidence."

This change aims to close the door on classic anchoring techniques that have long skewed juror perception. In voir dire, plaintiffs can no longer ask, "Would you be comfortable awarding $10 million?" Instead, they may ask whether jurors would consider awarding "a large but unspecified amount," so long as the question is supported by the evidence.

Plaintiffs argue that as long as no specific number is mentioned, this line of questioning remains permissible. Others claim they can still probe for juror biases against large verdicts, so long as they avoid stating a number themselves. These positions all but guarantee early litigation over the statute's scope and application.

Defense attorneys should preempt improper anchoring by filing pretrial motions in limine to set the ground rules before trial begins. The purpose of these motions is twofold: to head off problematic arguments and evidentiary issues before they reach the jury; and to empower the court with the authority to strike jurors, issue curative instructions, or declare a mistrial if plaintiffs violate these prohibitions. If anchoring occurs, tainted jurors must be excused—there is no discretion.

It is also important to monitor how plaintiffs incorporate experts into their anchoring strategy. One common tactic is referencing the hourly rate of an expert, such as "$900 per hour," or comparing damages to professional athletes' salaries, both of which serve as psychological benchmarks meant to influence the jury. While expert compensation may still be admissible to show bias, any attempt to use it—or unrelated figures like sports salaries—as a stand-in figure for non-economic damages violates the statute. Unless the expert's fees are directly connected to the plaintiff's claimed pain and suffering, such arguments are improper and prejudicial.

Expect this entire provision—codified as O.C.G.A. §9-10-184—to be assessed in court. But until judicial guidance emerges, defense counsel should prepare early and comprehensive motions in limine to be prepared to enforce these limits.

Voluntary Dismissal: A Narrowed Window

Section 3 of SB 68 narrows the timeframe for voluntary dismissals without prejudice. Previously, plaintiffs could voluntarily dismiss at any time before resting and refile within six months under Georgia's renewal statute. Courts treated the first action as "voidable," allowing plaintiffs to fix procedural defects and refile stronger cases.

This gave plaintiffs a second bite at the apple—often after a defendant's motion to dismiss revealed flaws they could correct. Now, plaintiffs must voluntarily dismiss within 60 days of service to retain that automatic right. After that, dismissal requires consent or court approval.

This shift alters early motion practice. Defense counsel may avoid filing motions to dismiss unless it will likely prevail outright. Holding arguments for summary judgment may better preserve defenses without prematurely signaling weaknesses to opposing counsel. This is not gamesmanship—it reflects the narrowed procedural do-over window SB 68 creates.

Strategic Shifts: A New Playbook for Georgia Defense Lawyers

SB 68 and SB 69 are more than symbolic victories—they reset the rules of engagement. Defense attorneys should immediately integrate these reforms into their daily practice: Update templates to reflect the new defenses and damages limits. Educate claims professionals on the impact of bifurcation, apportionment, and anchoring. Train trial teams to prepare for bifurcated proceedings. File motions in limine early to block anchoring. And routinely seek discovery of LOPs, receivable sales, and referral relationships—now accessible under SB 69.

Though narrower in scope, SB 69 imposes meaningful restrictions on third-party litigation financing. Funders must register, cannot control case strategy, and their agreements are discoverable—especially when unusual treatment patterns raise suspicion.

Defense attorneys should also monitor Section 4's attorney's fees provision. Plaintiffs' attorneys are already challenging its constitutionality—arguing fee recovery is a substantive right that cannot apply retroactively. Expect litigation on this timeline issue.

Together, SB 69 and SB 69 equip defense attorneys with a powerful procedural toolkit. With codified standards, tightened liability thresholds, and greater transparency, Georgia's defense bar is positioned not just to respond—but to reshape the negotiating table.

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