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GEORGIA TORT REFORM:

What SB 68 & SB 69 Mean for Your Business

Sweeping Tort Reform

On April 21, 2025, Georgia Governor Brian Kemp approved comprehensive tort reform legislation aimed at reducing the negative economic impact of Georgia's tort litigation landscape and ensuring that Georgia's legal environment remains competitive and attractive for business investment.

Senate Bill 68 (SB 68) became effective on April 21, 2025, while the provisions of Senate Bill 69 (SB 69) governing litigation financing will become law effective January 1, 2026. There is a current disagreement about the effective date of changes in the law respecting evidence of seatbelt use. Together, the bills significantly reform the law respecting premises liability, litigation financing, the calculation of damages, the recovery of attorney's fees, and issues of procedural fairness.

This change in Georgia law was the direct result of a growing reputation for unfair and unbalanced civil justice in Georgia, culminating in the state's designation as a "Judicial Hellhole" by the American Tort Reform Foundation. This assessment reflected increasing incidents of frivolous litigation and nuclear jury verdicts, including recent eight- and nine-figure awards in negligent security cases. Businesses statewide in turn faced steady increases in the costs of liability insurance. This legislation is designed to alleviate the financial risks and burdens on businesses, and by extension, protect consumers who ultimately bear the brunt of rising operational costs.

Liability for "Negligent Security" (Premises Liability for the Wrongful Acts of Third Parties)

Among the most comprehensive reforms contained in SB 68 are those addressing tort claims for "negligent security" – liability actions where a plaintiff seeks to hold the owner or occupier of a premises liable for injuries occurring on the property resulting from the wrongful (and often criminal) conduct of a third-party. The concept of negligent security as a cause of action originated by judicial extrapolation from general statutory duties imposed on owners and occupiers of land to entrants onto property (see O.C.G.A. §§ 51-3-1 et seq.).

SB 68 codifies and significantly restructures this body of law by designating negligent security as a specific cause of action within the larger ambit of premises liability. New code sections introduce clear statutory definitions of key terms, create distinct standards of liability depending on the plaintiff's status (e.g., invitee or licensee), and establish express exemptions from liability for certain classes of plaintiffs and under specifically identified circumstances. The two most impactful reforms in this section of the bill are: (1) elevating and clarifying the standard by which a plaintiff must prove a negligent security claim; and (2) ensuring that negligent security verdicts allocate fault to the actual wrongdoer, rather than imposing all (or virtually all) liability on business owners for injuries resulting from third party crimes.

Plaintiff's Burden to Prove Negligent Security

By imposing a new, stricter standard for plaintiffs to prove claims for negligent security, SB 68 gives defendants greater opportunities to establish the absence of liability as a matter of law and avoid trial. The law expressly counteracts a lower standard for establishing liability articulated by the Georgia Supreme Court in 2023 in *Georgia CVS Pharmacy, LLC v. Carmichael*. There, the court held that a plaintiff could sustain a negligent security claim if the "totality of the circumstances relevant to the premises gave the proprietor sufficient reason to anticipate the criminal act." This broad standard often created triable issues of fact for a jury, making it difficult for proprietors to obtain summary judgment and avoid the burden of costly litigation and excessive verdicts.

Under the new law, the required burden of proof varies depending upon the plaintiff's legal status on the property. Invitees – such as customers, shoppers, or others present for the benefit of the business – must prove all five elements now set out in O.C.G.A. § 51-3-51: (1) the crime was reasonably foreseeable due to either a particularized warning or actual knowledge of substantially similar prior incidents on or near the premises (within 500 yards, or involving the same offender); (2) the injury was a foreseeable result of the criminal act; (3) the criminal exploited a known, dangerous physical condition on the property; (4) the owner or occupier failed to exercise ordinary care to address that condition; and (5) the failure proximately caused the injury.

The original version of the bill required the first element – the foreseeability of the act – to be shown by "clear and convincing evidence," a significantly higher burden of proof than a "preponderance of the evidence." The bill as passed removes this heightened foreseeability requirement, but clarifies that defendants must have "actual knowledge" of certain "prior occurrences of substantially similar wrongful conduct" in order for the litigated offense to be deemed foreseeable.

The requirement that an owner or occupier have actual knowledge of prior occurrences of substantially similar events prevents the assertion that a business owner or property manager "should have known" of events that were never reported to them. This advances the express intent of the new law that owners and occupiers of property not be required to assume the public safety duties of government institutions and law enforcement.

The "actual knowledge" requirement also places defendants in a better position to prevail on summary judgment, as the question of actual knowledge (or at least the absence of evidence showing actual knowledge) can more readily be proven as a matter of law, making a triable issue for a jury less likely.

For licensees – such as social guests, delivery personnel, or others lawfully on the premises but not present for the benefit of the business – the plaintiff's burden is even higher. In these circumstances, plaintiffs must satisfy the same five elements identified above for invitees, but foreseeability of the act can only be shown if the defendant "had particularized warning of imminent wrongful conduct by a third person." Licensee plaintiffs must also prove that the owner or occupier acted with willful and wanton disregard for safety in failing to address the known danger. This elevated requirement shields businesses from liability in cases where no specific warning or opportunity to intervene existed.

Categorical Exemptions from Liability

In addition to refining the standards for invitees and licensees, SB 68 includes categorical exemptions from liability under O.C.G.A. § 51-3-54. Specifically, property owners, occupiers, and their contractors cannot be held liable for injuries suffered by trespassers, for incidents occurring off their premises, for harm caused by tenants or guests during eviction proceedings, or for injuries sustained while the plaintiff was committing a felony

or certain misdemeanors. The law also exempts from liability incidents occurring on single-family residential properties and provides immunity in certain circumstances where the owner reports a threat to law enforcement, such as calling 911.

Apportionment of Fault

Another inequity for proprietors in negligent security cases was the frequency of juries apportioning disproportionate fault to the owner/occupier of the land relative to the fault of the third party criminal actor. SB 68 implements a common sense modification ensuring that premises owners cannot be held more responsible for the wrongdoing of third persons than the wrongdoers themselves. The bill takes a two-pronged approach to tackling this issue by prohibiting certain arguments that would improperly influence the jury's apportionment of fault, and by mandating that trial courts set aside a verdict when a jury fails to apportion a reasonable degree of fault to the actual wrongdoer.

First, the bill prohibits parties from making arguments or presenting evidence about the financial status of any party or nonparty, the effect of an apportionment of fault upon the total damages award, or any criminal penalties that have been or could be imposed on the third person whose wrongful conduct gave rise to the claim. This may not be effective in all cases: even without such arguments, jurors may independently conclude that the criminal wrongdoer is incarcerated or otherwise unable to pay any judgment, thereby influencing the jury's apportionment of fault to another defendant with the presumed resources to pay.

Consequently, a second prong of the statute mandates that if a jury fails to "apportion a reasonable degree of fault" to the actual wrongdoer, "the trial court shall set aside the verdict" and order a new trial. The word "shall" in this provision makes a new trial mandatory, and not permissive. The provision goes on to further specify that if a jury apportions a greater total percentage of fault to negligent security defendants than the total percentage apportioned to the criminal actor, "[t]here shall be a rebuttable presumption that an apportionment of fault is unreasonable." This language ensures that unreasonably apportioned verdicts will be set aside, mitigating the risk of the proprietor being liable for all injury or damage caused by the wrongdoing of a third party.

Exclusive Remedy For Negligent Security

SB 68 establishes that the new statutory framework supersedes the common law that had developed for negligent security liability, establishing it is the exclusive remedy for premises liability involving third-party criminal acts. Security contractors are included in this regime, with liability capped at the same level as the property owner or occupier. However, the statute expressly provides that claims based on contract violations or human trafficking are not affected by these limitations and may proceed under separate legal authority.

Taken together, these reforms limit exposure by creating clearer, more objective standards for property owners and their contractors, while simultaneously preserving narrowly tailored exceptions and procedural safeguards to ensure fairness in cases of truly egregious conduct.

Protecting the Jury's Decision from the Influence of Improper and Arbitrary "Anchoring" Tactics

SB 68 seeks to curb excessive verdicts in personal injury and wrongful death cases and protect jury awards of non-economic damages by prohibiting attorneys from engaging in a tactic known as "anchoring." In addition to quantifiable monetary losses such as medical expenses and lost wages, tort plaintiffs in Georgia can recover for pain and suffering, emotional distress, and other "non-economic" injuries. These damages are not quantifiable with any objective measures of monetary value, so the amount awarded for these injuries is left to the enlightened conscience of the jury.

"Anchoring" is a psychological tactic in which the plaintiff's attorney suggests an arbitrary dollar amount for the jury as a starting point for deliberations, often tying the proposed value to unrelated benchmarks (such as the hourly rate of the defendant's expert witness or the salary of a professional athlete). It is a technique that influences the jury's perception of appropriate non-economic damages, and the purported value of a case could be introduced as early as jury selection itself, with potential jurors asked, for example, whether they would be willing to award damages as high as twenty million dollars if the evidence supported it.

Georgia law expressly allowed such anchoring under O.C.G.A. § 9-10-184. Although the statute required that any argument about the worth of pain and suffering conform to "the evidence or reasonable deductions from the evidence in the case," this qualifying language had little to no effect on reasonability of verdicts. For example, in 2024 the Georgia Court of Appeals in *White v. McGouirk* affirmed an expansive reading of the statute by approving a plaintiff's closing argument anchoring an arbitrary damage amount of $65 million to the salaries of professional athletes, although the case had nothing to do with athletics.

The revised statute now prohibits counsel from making any argument as to the monetary value of non-economic damages until closing arguments. It also mandates that such arguments "be rationally related to the evidence of noneconomic damages and shall not make reference to objects or values having no rational connection to the facts proved by the evidence." In the event counsel makes such arguments prior to closing or makes arguments that are not rationally related to the evidence, the trial court is required to take "remedial measures", such as issuing a curative instruction to the jury, or declaring a mistrial in the case of significant misconduct. Notably, the bill removes any discretion from the trial judge when such improper argument occurs in the presence of prospective jurors. This provision for mandatory removal accomplishes the bill's goal of shielding juries from early psychological manipulation and maintaining the integrity of the fact-finding process.

The statute also provides for questioning in jury selection that benefits the defense. Specifically, a defendant's lawyer may ask prospective jurors "whether they could return a verdict that does not award any damages or a verdict in excess of some unspecified amount, provided that such question is supported by the evidence." As explained in the process of drafting the bill, this provision refers to asking prospective jurors if there is a certain dollar amount beyond which they would not be comfortable awarding damages, even if the evidence supports it, to determine if any prospective jurors are inherently biased respecting an award of damages.

While plaintiffs in civil trials in Georgia are afforded the opportunity to address the jury first and last during closing arguments, thereby giving them the final word with the jury, the bill clarifies that a party entitled to make the "opening and concluding" arguments cannot raise arguments for the first time in their concluding close, thereby preventing the defendant from offering a response.

Bifurcating Trials

Juries decide two fundamental issues in a civil trial: whether any defendant is liable for the plaintiff's injuries, and if so, the damages that should be awarded. These are two distinct questions, but as the law developed in Georgia, the jury hears evidence and argument on both issues in one proceeding before deliberating, enabling attorneys to conflate these issues. The effect was that evidence concerning the extent of a plaintiff's injuries was able to improperly influence the jury's threshold decision regarding liability. Essentially, by proving that a plaintiff sustained injury, plaintiffs were effectively able to have the question of liability entirely subsumed by a mere finding of injury or damage.

SB 68 now creates a statutory right to bifurcate trials in bodily injury and wrongful death cases. Upon timely request, the issues of liability and damages must be tried separately, so as to prevent emotional evidence about the plaintiff's injuries from prejudicing the jury's threshold determination of liability.

Specifically, O.C.G.A. § 51-12-15, now allows any party in an action for bodily injury or wrongful death to "elect, by written demand prior to the entry of the pretrial order," to have the issues of liability and damages determined in two bifurcated proceedings. First, the jury hears evidence and arguments solely regarding the alleged facts of liability and who is at fault. Only if the jury thereafter finds the defendant liable to the plaintiff in the first phase, the trial then recommences with evidence and arguments presented to the jury regarding the extent of the injuries and the measure of damages.

Pursuant to the new law, a court may reject such an election only when: (1) the plaintiff or the plaintiff's dependent is injured by an alleged sexual offense and was therefore likely to suffer psychological or emotional damages due to the extended nature of a bifurcated proceeding; or (2) the amount in controversy is less than $150,000.

Eliminating "Phantom" Medical Damages

Under pre-reform Georgia law, plaintiffs could present inflated medical damages, based on a healthcare provider's initial bill, or "list price," for services provided. At the same time, defendants were prohibited from presenting evidence that the negotiated rate paid by

plaintiffs or their insurers to satisfy the medical debt was less than that initially billed. This resulted in awards of "phantom damages," allowing plaintiffs to recover amounts that were not actually charged by the provider and never actually incurred by the plaintiff.

Under O.C.G.A. § 51-12-1.1, defendants can now present to the jury the costs that insurance companies or plaintiffs actually incurred for medical and healthcare. This evidence of the actual amount charged or incurred includes evidence of negotiated insurance rates and write-offs. Defendants may also contest the medical necessity of any past or future treatment, further ensuring that jurors are not presented with inflated, fictitious "phantom" damages, and that the evidence reflects the plaintiff's actual economic harm.

Additionally, the new statute prevents the tactic of using Letters of Protection (LOPs) – agreements in which a medical provider defers payment in exchange for a potential recovery from a lawsuit. The statute clarifies that LOPs are discoverable and relevant to the damages analysis. Plaintiffs therefore must now disclose itemized bills covered by LOPs, identify whether any medical receivables have been sold (and at what price), and reveal the source of any referral. These disclosures give defendants the opportunity to expose inflated or speculative claims and allow jurors to better assess the credibility and necessity of the treatment provided.

Plaintiffs are No Longer Guaranteed Two Attempts at a Case

Prior to the enactment of tort reform, plaintiffs were allowed to unilaterally dismiss a suit without prejudice until the first witness was sworn at trial. Consequently, after a defendant had incurred the time and expense of pleading, discovery, pre-trial motions, jury selection, and opening arguments, a plaintiff could unilaterally dismiss their case if the proceeding was not going well for the plaintiff and re-file it. This gave plaintiffs a guaranteed second chance at favorable pre-trial rulings and jury selection, perhaps with a new judge or in a different jurisdiction, and with the procedural slate wiped clean.

SB 68 puts an end to this practice by only allowing plaintiffs a right of unilateral dismissal ithout prejudice until 60 days after the defendant has filed an answer. Thereafter, a plaintiff seeking dismissal without prejudice requires either consent of all parties or court approval.

Streamlining Dismissal of Frivolous Lawsuits

Historically, Georgia law did not allow defendants to file a motion to dismiss in lieu of an answer. When moving to dismiss a baseless lawsuit, a defendant was required to file an answer to avoid a default judgment. As a result, defendants often had to engage in extensive discovery before the motion to dismiss was decided. This resulted in considerable legal fees in cases the defendant asserted was frivolous and subject to dismissal.

Under revised O.C.G.A. § 9-11-12, defendants are now entitled to file a motion to dismiss in lieu of an answer, aligning with the Federal Rules of Civil Procedure. Discovery is stayed while the motion is pending, and the court must rule within 90 days following the conclusion of the briefing on the motion. If the motion is denied, defendants have 15 days after notice of the court's decision to file an answer.

Importantly, if a defendant does file an answer prior to the court's ruling on the pending motion, the discovery stay will be automatically terminated as to that defendant.

Eliminating Double Recovery of Attorney's Fees

Prior to the recent reform, multiple Georgia statutes allowed courts to award attorney's fees under various circumstances. Each code provision permitting an award of fees was intended to apply separately, but courts nonetheless interpreted an attorney's fee provision under Georgia's contract code to apply in tort cases, sometimes allowing plaintiff's counsel to recover their fees twice in the same suit.

Under the revised law, O.C.G.A. § 9-15-16 explicitly prohibits double recovery for the same attorney's fees, court costs, or expenses of litigation, unless a statute specifically authorizes the duplicate recovery.

Permitting Defense to Present Evidence Regarding Plaintiff's Seatbelt Usage

In a highly significant change to long-standing Georgia law, O.C.G.A. § 40-8-76.1 now allows a defendant to introduce evidence about the plaintiff's usage (or lack of use) of a seatbelt in a motor vehicle case. This change in the law reflects the plain relevance of a

plaintiff's failure to use a legally mandated safety feature to multiple aspects of an auto tort claim, and allows such evidence to be considered in apportioning fault and diminishing recovery for the plaintiff. Based upon potential inconsistencies in the language of SB 68 and SB 69 respecting the effective date of this aspect of the new law, evidence of non-use of a seatbelt may apply retroactively, or may apply only to cases filed on or after April 21, 2025. It is likely an issue the courts will have to resolve.

SB 69: Regulation of Third-Party Litigation Financing

SB 69 introduces regulation of entities providing litigation financing, whereby funding is provided (usually by non-lawyers) to facilitate the pursuit of the litigation and the payment of expenses necessary to advance it. The general opacity and lack of regulation in the litigation financing industry created an ideal environment for those seeking to abuse Georgia's judicial system and sometimes exploit parties to lawsuits.

Effective January 1, 2026, SB 69 creates a new regulatory framework to govern third-party litigation funding transactions. The principal components of the bill are:

(1) Mandatory registration of litigation financiers with the Georgia Department of Banking and Finance.

(2) Prohibitions on financier involvement in litigation strategy and limitations on the share of proceeds financiers may collect.

(3) Requirements for full disclosure of financing terms to the recipient of funds.

(4) Liability on the part of litigation financier for attorney's fees and costs if the financed party is ordered to pay them.

(5) Requirements for disclosure of litigation finance agreements in discovery, with the opportunity to offer the same into evidence under certain circumstances.

(6) Prohibitions on foreign entities considered threats to U.S. interests from engaging in litigation funding, thereby preserving the security of the Georgia court system.

These measures aim to promote transparency, reduce conflicts of interest, and guard against abuses of the Georgia judicial system.

Which Georgia Tort Reforms Apply to My Case?

Section 9 of SB 68 governs the effective dates and application of the new law. The default rule is that most provisions apply retroactively to all cases pending as of April 21, 2025 and to all cases filed thereafter. This means that reforms such as anchoring restrictions, bifurcation, recovery of attorney's fees, discovery stays, and modified dismissal rules can be invoked immediately in ongoing litigation.

However, there are two major exceptions that apply prospectively only: (1) the new framework for calculating medical damages; and (2) the provisions modifying liability for negligent security claims. These two provisions apply only to causes of action that arise on or after April 21, 2025.

What Does SB 68 Leave Undone?

Despite the sweeping changes introduced in SB 68, several significant areas of tort litigation remain unaddressed or only partially addressed.

First, SB 68 does not create a categorical immunity or safe harbor for property owners in negligent security cases. While the law raises the burden of proof for plaintiffs and narrows circumstances under which liability may attach, it stops short of fully shielding owners from liability – even when they acted in good faith or implemented security measures of some kind.

Further, SB 68 also does not cap non-economic compensatory damages, nor does it impose restrictions on contingency fee arrangements, despite calls for reform in both areas.

While the anchoring reforms limit when and how attorneys can suggest specific non-economic damage amounts, juries still retain broad discretion in ultimately awarding those damages.

As for SB 69, the law mandates disclosure of third-party litigation financing but does not restrict or regulate the terms of such financing agreements. It does not require court approval of financing contracts, prohibit interest rate gouging, or impose consumer protections like those in other jurisdictions. Moreover, SB 69 does not apply retroactively and therefore does not reach existing litigation or financing arrangements already in place. It also leaves open questions about enforcement – such as whether parties may seek sanctions or exclusion of claims based on non-compliance with disclosure requirements. These omissions leave space for future legislative or judicial action.