Georgia Tort Reform Senate Bill 68

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SECTION 1: ANCHORING

Anchoring is a practice employed by plaintiff's attorneys of planting an often arbitrary or trumped-up number for non-economic damages in the minds of the jury. While this practice is typically used during closing statements, with little to no guardrails in place, Georgia plaintiff's attorneys use this tactic to condition jurors and even getting the trial court to strike potential jurors for cause when they state that they would not be comfortable in awarding a verdict the size they planned to seek. Further, at present, after a jury is selected, plaintiff's attorneys strategically wait until their second close to ask for an award, giving defense attorneys no chance to respond to the number suggested.

O.C.G.A. § 9-10-184
Effective April 21, 2025

SECTION 1: ANCHORING

The language of SB 68 does the following to address these issues:

1. Attorneys are prohibited from asking in voir dire if juror would be comfortable awarding "$50MM" for example. They may ask if a juror is comfortable awarding nothing or "an unspecified amount."

2. If a plaintiff's attorney is going to ask for an award, he or she must ask in his or her first opportunity to close (i.e. first closing argument). If he or she does not ask in the first close, he/she is prohibited from asking in the second closing argument. Further, plaintiff's attorneys are only permitted to ask for the same number in both closing statements.

3. The award amount requested must have a rational basis or connection to the evidence presented at trial (not "Patrick Mahomes' current contract is worth $450MM, shouldn't Ms. X's injury be worth that amount?")

SECTION 2: MOTION TO DISMISS

Plaintiff's lawyers know that frivolous lawsuits are often the death by 1,000 paper cuts to small businesses, driving businesses to settle instead of fight. Discovery is one of the most expensive processes of litigation, so dumping discovery requests and deposition notices on a defendant is a strategic way to force them to settle, despite having a meritless case. Section 2 puts a stay on most discovery while a motion to dismiss is pending while also encouraging the court to rule on the motion to dismiss before the 90-day mark.

O.C.G.A. § 9-11-12
Effective April 21, 2025

SECTION 3: VOLUNTARY DISMISSAL

Another tool in the plaintiffs' tool belt is dismissing and refiling for a more favorable venue, different jury, additional discovery, additional experts, additional time to develop facts/law, etc. Section 3 limits the number of times a plaintiff may voluntarily refile and limits the timeline for when a case may be dismissed without prejudice. The current law is that a case may be dismissed right up until the first witness is sworn in; this legislation changes it to 60 days after the opposing party serves an answer.

O.C.G.A. § 9-11-41
Effective April 21, 2025

SECTION 4:
DOUBLE RECOVERY OF ATTORNEY'S FEES

In Georgia, we have had several cases where plaintiff's attorneys have successfully recovered their attorney's fees multiple times in the same case by requesting them under different statutes. On appeal, the Court of Appeals upheld these awards. This language eliminates this practice.

O.C.G.A. § 9-15-16

Effective April 21, 2025, unless doing so would be unconstitutional. This likely means that it will only apply to lawsuits filed after April 21, 2025

SECTION 5:
ADMISSIBILITY OF EVIDENCE OF SEAT BELT USE

This section has been a controversial topic in Georgia politics for at least 15 years. Current law prohibits evidence of plaintiff's use or non-use of a seat belt. This provision as originally proposed made seat belt use or non-use admissible but was negotiated to be considered for admissibility after a judge applies the 403(b) test.

O.C.G.A. § 40-8-76.1
Effective for lawsuits filed after April 21, 2025

SECTION 6:
PREMISES LIABILITY: 3RD PARTY NEGLIGENT SECURITY

In Georgia, most of our notable "nuclear verdicts" have arisen from negligent security/premises liability cases including $70MM verdict against Kroger, a $35MM Six Flags case, and a $43MM case against CVS. Recent caselaw from Georgia's Supreme Court in the CVS opinion highlighted the ambiguity landowners faced by the current law as shaped by case law within the last 5-10 years.

To that end, this section of SB 68 provides clear, predictable standards for landowners regarding their obligations to invitees, licensees, and trespassers on their property, specifically as it relates to third party criminal activity. This language clarifies and narrows the "reasonable foreseeability" test, applies clarity to juries regarding apportionment of fault, and extends protections to security contractors.

O.C.G.A. §§ 51-3-50, et seq.

Effective for causes of action arising after April 21, 2025

SECTION 7: PHANTOM DAMAGES

Georgia's collateral source rule prevents the admissibility of evidence of collateral benefits (such as insurance) because it could prejudice the jury's assessment of the plaintiff's damages. In a trial, the result is the jury is only informed of the full freight of medical bills, not the amount actually paid by the plaintiff, which was likely reduced by negotiated insurance rates or Medicaid/Medicare rates. In addition, all that is required to introduce these bills into evidence is testimony from the plaintiff he/she received the bill. Once that occurs, there is no requirement for expert testimony to establish that the charges on the bill were reasonable. These inflated bills are often used as a multiplier to calculate non-economic damages such as pain and suffering leading to runaway verdicts.

SECTION 7: PHANTOM DAMAGES

Under SB 68, if the plaintiff has access to any form of public or private health insurance, including workers compensation, and regardless if the plaintiff uses it, the jury will be shown the amounts billed as well as the amounts necessary to pay for past, present, or future medical and healthcare expenses.

While the language does not specifically address uninsured plaintiffs, it does address a practice commonly used in other neighboring states by uninsured plaintiffs: letters of protection (LOP). This legislation forces transparency in litigation by deeming LOPs relevant and discoverable.

O.C.G.A. § 51-12-1.1
Effective for causes of action arising after April 21, 2025

SECTION 8: TRIAL BIFURCATION

Trial bifurcation refers to the separation of fault and damages portions of trial. While bifurcation (or trifurcation regarding punitive damages) is currently available on motion by either party, historically, it rested purely at the trial court's discretion. Absent an abuse of that discretion, which had little statutory guidance, such decisions would not be overturned.

In the bill's original language, one party could file a "demand" to bifurcate the trial into fault and damages into phases, and much like a jury demand, that would effectuate the bifurcation. After extensive testimony by sex trafficking victims in House Judiciary, the bill as passed provides for judicial determination for limited instances: 1) if the plaintiff was the alleged victim of sexual offense, 2) if the plaintiff is a legal guardian of the alleged victim of a sexual offense, or 3) if the amount in controversy is less than $150,000.

O.C.G.A. § 51-12-15

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Thank you!

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