

## MEMORANDUM

<b>From:</b>	Luckshume Ketheeswaran
<b>Date:</b>	May 7, 2025
<b>Re:</b>	Key Legal Reforms Enacted by Georgia Senate Bill 68

### ISSUE:

This memorandum provides a summary of the major changes introduced in the recently signed Senate Bill 68 (SB 68).

### ANALYSIS:

On April 21, 2025, Governor Brian Kemp signed Georgia's tort reform bill, Senate Bill 68 (SB 68), into law. This reform contains a variety of changes, but the overarching theme is Georgia's desire to directly address and to limit elevated civil litigation costs and "nuclear verdicts," enormous jury awards often appearing in personal injury or wrongful death lawsuits. Aside from this goal, this new law targets other areas of civil practice, evidentiary matters, and negligent security cases.

The following is a summary of the key changes introduced by SB 68:

#### **I. Civil Litigation Reforms**

- **Allowing bifurcation of liability and damage verdicts.** O.C.G.A. § 51-12-15. To encourage efficiency and to avoid jury prejudice, SB 68 allows either party in bodily injury or wrongful death cases to request bifurcation into separate phases for liability and damages. The party must make its request via written demand prior to the entry of the pretrial order.
  - First, the trier of fact must determine whether there is fault, and if so, what percentage is owed by each defendant. Second, if any defendants are found to be at fault, the trier of fact will determine what compensatory damages are awarded to the plaintiff. Once calculated, further proceedings can be held to determine punitive damages, attorney's fees, court costs, or litigation expenses.
  - Bifurcation may be denied if the plaintiff was injured by an alleged sexual offense and would likely suffer from testifying more than once in a bifurcated proceeding or if the amount in controversy is under \$150,000.
- **Restrictions on Voluntary Dismissals.** O.C.G.A. § 9-11-41(a). Plaintiffs may only dismiss without court approval within 60 days after the defendant answers. A second dismissal, whether voluntary or by court order, will result in a dismissal with prejudice.

This is far stricter than the prior rule which allowed plaintiffs to dismiss a case without prejudice at any time before the first witness was sworn in.

- **Restricting Double Recovery of Attorneys' Fees.** O.C.G.A. § 9-15-16. Parties may only recover attorney's fees, court costs, and litigation expenses in a single award, unless a statute explicitly authorizes the recovery of duplicate attorney's fees. When reasonable attorney's fees are available under a statute, SB 68 prevents the use of a contingent fee agreement as evidence of reasonableness.
- **More Efficient Motions to Dismiss and Discovery Stays.** O.C.G.A. § 9-11-12(a), (j). Prior to this reform, defendants had to file an answer within 30 days, even if a motion to dismiss was pending. Under SB 68, Defendants may now file a motion to dismiss instead of an answer. Discovery is also automatically stayed upon filing. If the court has not ruled on the motion within 90 days, either party may seek to end or modify the stay for good cause. If the motion is denied or its disposition postponed, the defendant must file an answer within 15 days of the court's order.

## II. Liability and Damages Reform

- **Restricting "Anchoring" of Noneconomic Damages.** O.C.G.A. § 9-10-184(b)–(e). In an action to recover damages for bodily injury or wrongful death, plaintiffs are restricted from "anchoring" noneconomic damages. SB 68 limits parties from arguing monetary value of pain and suffering damages. If a party introduced a specific value during its opening, it may include it again in its closing. If an attorney fails to abide by this restriction, the court may instruct the jury to disregard the argument or order a mistrial. This change does not prevent counsel from asking in voir dire whether a prospective juror could return a verdict that is zero or more than some unspecified amount, as long as such question is supported by evidence.
- **Limiting Inflated Medical Bill Damages.** O.C.G.A. 51-12-1.1. Defendants are allowed to present evidence of actual amounts paid by health insurers for medical care. Further, medical and healthcare expenses are limited to the reasonable value of necessary care, treatment, or services which can be shown through billed charges and actual payments, regardless of whether insurance has been or will be used. Expenses under Letters of Protection and related assignments are discoverable, but courts may clarify the role of such evidence and attempt to minimize prejudice by providing jury instructions.
- **Revising Admissibility of Seat Belt Evidence.** O.C.G.A. § 40-8-76.1(d). Evidence of whether a plaintiff was wearing a seat belt may be admissible to assess negligence, comparative negligence, causation, assumption of risk and apportionment of fault. Courts may still exclude the evidence if its probative value is substantially outweighed by the risk of unfair prejudice. Further, the failure to wear a seat belt cannot be used to cancel insurance coverage or to increase premiums.
- **Changes in Negligent Security Claims.** O.C.G.A. § 51-3-50–51-3-57. SB 68 provides a more defined legal framework in the field of premises liability law and significantly narrows the circumstances in which an owner or occupier can be held liable for third-party criminal acts on their premises.

- Liability for Invitees. O.C.G.A. § 51-3-51. A property owner or occupier may be liable to invitees for negligent security only if: (1) the criminal or wrongful conduct was reasonably foreseeable; (2) the injury was a foreseeable result; (3) the conduct was linked to a known, hazardous condition on the property which posed a higher than normal risk; (4) the owner or occupier failed to exercise ordinary care to fix or limit the condition or to keep the premises safe; and (5) this failure was the proximate cause of the injury.
- Liability for Licensees. O.C.G.A. § 51-3-52. A property owner or occupier is liable to a licensee for third-party injuries only if: (1) the wrongful act was reasonably foreseeable due to a specific, prior warning; (2) the injury was a foreseeable result; (3) the third person exploited a known hazardous condition on the property; (4) the owner or occupier willfully and wantonly failed to fix or limit the condition or to keep the premises safe; and (5) the failure was the proximate cause of the injury.
- Standard and Duty of Care. O.C.G.A. § 51-3-55. Owners and occupiers are not required to exercise extraordinary care for the wrongful conduct of third persons nor are they required to assume the responsibilities of law enforcement and public safety. To determine if reasonable care was exercised the statute lists several factors to consider including: (1) the security measures in place at the time of the injury; (2) the need and practicality of additional measures; (3) whether these measures would have prevented the injury; and (4) the owner and occupier's responsibilities compared to those of the government or law enforcement.
- Other Defenses to Negligent Security Claims. O.C.G.A. § 51-3-54. SB 68 provides other limitations to an owner or occupier's potential liability in a negligent security claim. Property owners or occupiers are not liable when: (1) the injured person is a trespasser; (2) the injury occurred off premises or the wrongful act happened in a place where the owner had no legal authority to exclude the third party; (3) if the third party was a tenant or guest of a tenant who was being evicted; (4) if the injured party was committing a felony or theft-related misdemeanor; (5) if the injury took place in a single-family residence; or (6) the owner or occupier made a reasonable effort to notify law enforcement of a specific threat of imminent harm.
- Apportionment of Damages. O.C.G.A. § 51-3-56. The trier of fact must reasonably apportion fault among the owner or occupier, any third party whose wrongful conduct caused the injury, and any other person at fault and subject to apportionment. Parties may not present evidence or arguments about a third party's criminal history or background, the financial resources of any party or non-party, or how apportionment affects the plaintiff's damages. If the jury fails to reasonably apportion fault, the court shall set aside the verdict and order a new trial on liability and damages.
  - There is a rebuttable presumption that apportionment is 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, occupiers, security contractors, or other persons or entities who did not engage in wrongful conduct.

- Security Contractors. O.C.G.A. § 51-3-57. If a security contractor assumes a duty to keep all or part of an owner or occupier's premises safe from the wrongful conduct of a third person, they may be held liable for negligent security only to the same extent, and subject to the same limitations, as the property owner or occupier. Contractors cannot be held more liable than the owner or occupier.

### **III. Application and Effective Date of SB 68 Subsections**

Sections relating to negligent security claims, O.C.G.A. § 51-3-50–51-3-57, and overinflated medical bills and costs, O.C.G.A. § 51-12-1.1, will apply to claims arising on or after April 21, 2025. Claims arising before this date will be governed by prior law. All other subsections of SB 68 will apply retroactively to existing lawsuits and to all future lawsuits.

### **CONCLUSION:**

SB 68's goal is to increase transparency between all parties. In the civil litigation sphere, the hope is SB 68 will increase efficiency in the courts as well as limit steep jury verdicts not rationally supported by evidence. In premises liability law, SB 68 clarifies what level of care is owed by owners and occupiers to certain individuals who come onto their premises.

Clients are encouraged to review SB 68 and the associated Georgia Code sections for more details.

For questions or further guidance regarding SB 68, please contact **Luckshume Ketheeswaran** at HunterMaclean via email [lketheeswaran@huntermaclean.com](mailto:lketheeswaran@huntermaclean.com) or (912) 236-0261.