

Senate Bill 68

By: Senators Kennedy of the 18th, Gooch of the 51st, Robertson of the 29th, Anavitarte of the 31st, Walker III of the 20th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 13, 40, and 51 of the Official Code of Georgia Annotated, relating to civil
2 practice, contracts, motor vehicles, and torts, respectively, so as to provide for substantive
3 and comprehensive revision of provisions regarding civil practice, evidentiary matters,
4 damages, and liability in tort actions; to provide limitations relative to pain and suffering
5 testimony; to provide for timing of answers and discovery; to provide for dismissals of civil
6 actions; to provide for attorney's fees, court costs, and litigation expenses; to provide for
7 admissibility of evidence related to seat safety belts; to provide for trial procedures; to
8 provide for a negligent security cause of action; to provide for exclusive remedies for
9 negligent security actions; to provide for apportionment of damages in negligent security
10 actions; to provide for limitations relative to special damages; to provide for definitions; to
11 provide for related matters; to provide for an effective date and applicability; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14

18 "9-10-184.

(1) 'Economic damages' means pecuniary damages recoverable in tort for bodily injury or wrongful death, including, but not limited to, damages for past and future medical expenses; costs of rehabilitation; costs of therapy; loss of wages; loss of income; loss of earning capacity; loss of services performed by the injured or deceased person as a result of the injury or death, including domestic and other necessary services performed without compensation; and funeral or burial expenses.

(b) In the trial of any action to recover damages for bodily injury or wrongful death, counsel shall not argue the worth or monetary value of noneconomic damages, and counsel shall not, in the hearing of the jury or any prospective juror, elicit any testimony regarding, or make any reference to, any specific amount or range of amounts of noneconomic damages, the measure of such damages being the enlightened conscience of an impartial jury.

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41 ~~shall, with respect to prospective jurors, excuse the prospective jurors. In the trial of a civil~~
42 ~~action for personal injuries, counsel shall be allowed to argue the worth or monetary value~~
43 ~~of pain and suffering to the jury; provided, however, that any such argument shall conform~~
44 ~~to the evidence or reasonable deductions from the evidence in the case."~~

45 SECTION 2.

46 Said title is further amended in Code Section 9-11-12, relating to answer, defenses, and
47 objections, when and how presented and heard, when defenses waived, and stay of discovery,
48 by revising subsections (a), (e), and (j) as follows:

49 "(a) **When answer presented.**

50 (1) Except as provided in paragraph (2) of this subsection, a ~~A~~ defendant shall serve his
51 an answer within 30 days after the service of the summons and complaint upon him ~~the~~
52 defendant, unless otherwise provided by statute. A cross-claim or counterclaim shall not
53 require an answer, unless one is required by order of the court, and shall automatically
54 stand denied.

55 (2) Unless the court sets a different time, serving a motion under this Code section alters
56 the time for serving an answer pursuant to paragraph (1) of this subsection as follows:

57 (A) If the court denies the motion or postpones its disposition until trial, the answer
58 shall be served within 15 days after notice of the court's action; or

59 (B) If the court grants a motion for a more definite statement, the answer shall be
60 served within 15 days after the more definite statement is served."

61 "(e) **Motion for more definite statement.** If a pleading to which a responsive pleading
62 is permitted is so vague or ambiguous that a party cannot reasonably be required to frame
63 a proper responsive pleading, ~~he shall nevertheless answer or respond to the best of his~~
64 ~~ability, and he~~ such party may move for a more definite statement. The motion shall point
65 out the defects complained of and the details desired. If the motion is granted and the order
66 of the court is not obeyed within 15 days after notice of the order, or within such other time

as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just."

"(j) Stay of discovery.

(1) If a party files a motion to dismiss before or at the time of filing an answer and pursuant to the provisions of this Code section, discovery shall be stayed ~~for 90 days after the filing of such motion or~~ until the ruling of the court on such motion, ~~whichever is sooner~~. The court shall decide the motion to dismiss within ~~the~~ 90 days ~~provided in this paragraph~~.

(2) The discovery period and all discovery deadlines shall be extended for a period equal to the duration of the stay imposed by this subsection.

(3) If the court has not ruled on the motion to dismiss within 90 days, the ~~The~~ court may ~~upon its own motion or~~ upon motion of a party, and for good cause shown, terminate or modify the stay imposed by this subsection ~~but shall not extend such stay~~.

(4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of subsection (b) of this Code section or if any party needs discovery in order to identify persons who may be joined as parties, limited discovery needed to respond to such defenses or identify such persons shall be permitted until the court rules on such motion.

(5) The provisions of this subsection shall not modify or affect the provisions of paragraph (2) of subsection (f) of Code Section 9-11-23 or any other power of the court to stay discovery."

SECTION 3.

Said title is further amended in Code Section 9-11-41, relating to dismissal of actions and recommencement within six months, by revising subsection (a) as follows:

90 "(a) **Voluntary dismissal; effect.**

91 (1) **By plaintiff; by stipulation.** Subject to the provisions of subsection (e) of Code
92 Section 9-11-23, Code Section 9-11-66, and any statute, an action may be dismissed by
93 the plaintiff, without order or permission of court:

94 (A) By filing a written notice of dismissal at any time before ~~the first witness is sworn~~
95 the opposing party serves either an answer or a motion for summary judgment,
96 whichever occurs first; or

97 (B) By filing a stipulation of dismissal signed by all parties who have appeared in the
98 action.

99 (2) **Effect.** A dismissal under paragraph (1) of this subsection is without prejudice,
100 except that if the plaintiff previously dismissed any federal or state court action based on
101 or including the same claim, such notice or stipulation operates as an adjudication upon
102 the merits.

103 ~~(2)(3)~~ **By order of court.** Except as provided in paragraph (1) of this subsection, an
104 action shall not be dismissed upon the plaintiff's motion except upon order of the court
105 and upon the terms and conditions as the court deems proper. If a counterclaim has been
106 pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to
107 dismiss, the action shall not be dismissed against the defendant's objection unless the
108 counterclaim can remain pending for independent adjudication by the court. Unless the
109 court order states otherwise, a dismissal under this paragraph is without prejudice.

110 ~~(3) **Effect.** A dismissal under this subsection is without prejudice, except that the filing~~
111 ~~of a second notice of dismissal operates as an adjudication upon the merits."~~

112 SECTION 4.

113 Said title is further amended in Chapter 15, relating to court and litigation costs, by adding
114 a new Code section to read as follows:

115 "9-15-16.

116 (a) In any civil action, no party shall recover the same attorney's fees, court costs, or
117 expenses of litigation more than once pursuant to one or more statutes authorizing awards
118 of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes
119 authorize such awards for compensatory or punitive purposes, unless the statute or statutes
120 specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of
121 litigation.

122 (b) In any civil action, if a party seeks to recover attorney's fees pursuant to any statute
123 authorizing an award of reasonable attorney's fees, a contingent fee agreement between
124 such party and such party's attorney shall not be admissible as proof of the reasonableness
125 of the fees.

126 (c) Nothing in this Code section shall limit or diminish any contractual right to recover
127 attorney's fees, court costs, or expenses of litigation."

128 **SECTION 5.**

129 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by
130 revising Code Section 13-6-11, relating to recovery of expenses of litigation generally, as
131 follows:

132 "13-6-11.

133 In actions for breach of contract, the ~~The~~ expenses of litigation generally shall not be
134 allowed as a part of the damages; but where the plaintiff has specially pleaded and has
135 made prayer therefor and where the defendant has acted in bad faith, has been stubbornly
136 litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow
137 them."

SECTION 6.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, is amended in Code Section 40-8-76.1, relating to use of safety belts in passenger vehicles, by revising subsection (d) as follows:

"(d)(1) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts ~~shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not~~ may be considered in any civil action as evidence admissible on the issues of negligence, comparative negligence, causation, assumption of risk, or apportionment of fault or for any other purpose and may be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle.

(2) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be any basis for a cancellation of insurance coverage or an increase in insurance rate."

SECTION 7.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended in Chapter 3, relating to liability of owners and occupiers of land, by adding a new article to read as follows:

"ARTICLE 5

51-3-50.

As used in this article, the term:

(1) 'Negligent security' means any claim against an owner or occupier, or against a security contractor, that:

(A) Sounds in tort or nuisance, including, but not limited to, any claim under Article 1 of this chapter;

(B) Seeks to recover damages for bodily injury or wrongful death; and

(C) Arises from an alleged failure to keep persons on or around any premises safe from the wrongful conduct of any third person.

(2) 'Owner or occupier' means any person that owns, leases, occupies, operates, maintains, or manages real property of any kind or any director, officer, employee, or agent of such person.

(3) 'Particularized warning of imminent wrongful conduct by a third person' means information actually known to an owner or occupier and deemed credible by the owner or occupier, which causes the owner or occupier to consciously understand that a third person is likely to imminently engage in wrongful conduct on the premises that poses a clear danger to the safety of persons upon the premises, such information being specific as to the identity of the third person, the nature and character of the wrongful conduct, the degree of dangerousness of the wrongful conduct, and the location, time, and circumstances of the wrongful conduct.

(4) 'Premises' means the real property that is owned, leased, occupied, operated, maintained, or managed by an owner or occupier.

(5) 'Prior occurrences of substantially similar wrongful conduct' means prior occurrences of wrongful conduct which are sufficiently similar in nature and character, degree of dangerousness, proximity, location, time, and circumstances to the wrongful conduct from which a claim of negligent security arises to lead a reasonable person in the position of the owner or occupier to apprehend that such wrongful conduct is reasonably likely to occur upon the premises, to understand the risk of injury to persons upon the premises presented by such wrongful conduct, and to understand that a specific and known

physical condition of the premises has created a risk of such wrongful conduct on the premises that is substantially greater than the general risk of such wrongful conduct in the vicinity of the premises.

(6) 'Security contractor' means any person that contracts with an owner or occupier to provide protective or security services upon any premises and any director, officer, employee, or agent of such person.

(7) 'Third person' means any person other than an owner or occupier or a security contractor.

(8) 'Wrongful conduct' means:

(A) Any violation of a law of this state or an ordinance of any political subdivision thereof that is punishable as a felony or misdemeanor, regardless of whether such violation results in an arrest, citation, accusation, indictment, or conviction; or

(B) Any other conduct that amounts to an intentional, or willful and wanton, tort.

51-3-51.

Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for negligent security arising from any injury sustained by any person upon the premises of the owner or occupier as an invitee if the plaintiff proves that:

(1) The wrongful conduct by a third person that caused the injury sustained by the invitee was reasonably foreseeable because the owner or occupier:

(A) Had particularized warning of imminent wrongful conduct by a third person; or

(B) By clear and convincing evidence, reasonably should have known that a third person was reasonably likely to engage in such wrongful conduct upon the premises, based on:

(i) Prior occurrences of substantially similar wrongful conduct upon the premises of which the owner or occupier knew;

(ii) Prior occurrences of substantially similar wrongful conduct upon the property adjoining the premises, or otherwise occurring within 500 yards of the premises, of which the owner or occupier know; or

(iii) Prior occurrences of substantially similar wrongful conduct by the third person whose wrongful conduct caused the injury, if the owner or occupier knew such third person was or would be upon the premises and knew of such prior occurrences of substantially similar wrongful conduct;

(2) The injury sustained by the invitee was a reasonably foreseeable consequence of such wrongful conduct by a third person;

(3) Such wrongful conduct by a third person was a reasonably foreseeable consequence of such third person exploiting a specific physical condition of the premises known to the owner or 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;

(4) The owner or occupier failed to exercise ordinary care to remedy or mitigate such specific and known physical condition of the premises and to otherwise keep the premises safe from such wrongful conduct by a third person; and

(5) Such failure of the owner or occupier to exercise ordinary care was a proximate cause of the injury sustained by the invitee.

51-3-52.

Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for negligent security arising from any injury sustained by any person upon the premises of the owner or occupier as a licensee if the plaintiff proves that:

(1) The wrongful conduct by a third person that caused the injury sustained by the licensee was reasonably foreseeable because the owner or occupier had particularized warning of imminent wrongful conduct by a third person;

(2) The injury sustained by the licensee was a reasonably foreseeable consequence of such wrongful conduct by a third person;

(3) Such wrongful conduct by a third person was a reasonably foreseeable consequence of such third person exploiting a specific physical condition of the premises known to the owner or 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;

(4) The owner or occupier willfully and wantonly failed to exercise any care to remedy or mitigate the specific and known physical condition of the premises and to otherwise keep the premises safe from such wrongful conduct by a third person; and

(5) Such failure of the owner or occupier to exercise any care was a proximate cause of the injury sustained by the licensee.

51-3-53.

(a) The provisions of this article shall be the sole and exclusive remedy for negligent security against owners or occupiers, and no owner or occupier shall be liable for negligent security except as provided in this article.

(b) Nothing in this article shall limit or otherwise affect any claim or remedy for breach of contract.

51-3-54.

Notwithstanding Code Sections 51-3-51 and 51-3-52, no owner or occupier shall be liable for negligent security:

(1) Arising from an injury sustained by a person upon the premises of the owner or occupier as a trespasser;

(2) Arising from an injury sustained by a person not upon the premises of the owner or occupier;

(3) Arising from the wrongful conduct of a third person, if such wrongful conduct did not occur upon the premises and in a place from which the owner or occupier had the legal right and authority to exclude such third person;

(4) Arising from the wrongful conduct of a third person, if such third person was upon the premises as a tenant or as a guest of a tenant, if the owner or occupier had commenced eviction proceedings against such tenant at the time of the wrongful conduct;

(5) Arising from an injury sustained by a third person upon the premises of the owner or occupier as an invitee or a licensee, if such person:

(A) Came upon the premises for the purpose of committing any violation of a law of this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that is punishable as a misdemeanor; or

(B) Was engaged at the time of the injury in the commission of any violation of a law of this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that is punishable as a misdemeanor, provided that this subparagraph shall not apply to a victim of a violation of Code Section 16-5-46;

(6) Arising from an injury sustained upon premises that is used as a single-family residence; or

(7) Based on a particularized warning of imminent wrongful conduct by a third person, if the owner or occupier made any reasonable effort to provide such information to law enforcement personnel, provided that calling 9-1-1 or otherwise making a report about such information to law enforcement personnel shall be deemed a reasonable effort.

51-3-55.

(a) No owner or occupier shall be required to exercise extraordinary care to keep persons on or around any premises safe from wrongful conduct by a third person, and no owner or occupier shall be required to assume the responsibilities and obligations of government for law enforcement and public safety.

(b) In any action for negligent security, in assessing whether an owner or occupier has breached a duty to exercise ordinary care to keep persons on or around any premises safe from wrongful conduct by a third person, the trier of fact shall consider the security measures employed by the owner or occupier at the time of the injury from which the claim of negligent security arises, the need for additional or other security measures, the practicality of additional or other security measures, whether additional or other security measures would have prevented the injury, the respective responsibilities of owners or occupiers with respect to the premises and government with respect to law enforcement and public safety, and any other relevant circumstances.

51-3-56.

In any action for negligent security:

(1) If the trier of fact finds that any defendant is liable to the plaintiff, the trier of fact shall make an apportionment of fault under Code Section 51-12-33, and in making such an apportionment, the trier of fact shall reasonably apportion fault to:

(A) The owner or occupier;

(B) Any third person whose wrongful conduct was a cause of the injury from which the claim of negligent security arises; and

(C) Any other persons to whom fault otherwise should be apportioned under Code Section 51-12-33;

(2) In connection with an apportionment of fault under Code Section 51-12-33, no party shall offer evidence, or make an argument or other comment in the hearing of any juror or prospective juror, concerning:

(A) Any sentence of imprisonment or probation, fine, or other punishment that has been, or could be, imposed in a criminal prosecution of any third person for the wrongful conduct from which the claim of negligent security arises;

(B) The financial resources of any party or nonparty; or

(C) The effect of an apportionment of fault upon any award of damages to the plaintiff;
and

(3) If a jury fails as the trier of fact to apportion a reasonable degree of fault to the third person whose wrongful conduct was a cause of the injury from which the claim of negligent security arises, the trial court shall set aside the verdict of the jury and order a retrial of liability and damages. There shall be a rebuttable presumption that an apportionment of fault 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 or occupiers, security contractors, and other persons and entities that did not engage in wrongful conduct.

51-3-57.

(a) If a security contractor assumes and undertakes a duty to invitees and licensees to keep all or part of a premises of an owner or occupier safe from the wrongful conduct of a third person, the security contractor may be 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 contained in this article. In no event shall a security contractor be subject to liability for negligent security to an extent greater than the liability for negligent security of an owner or occupier.

(b) No security contractor shall be liable for negligent security except as provided in this Code section.

(c) Nothing in this Code section shall limit or otherwise affect any claim or remedy of an owner or occupier for breach of contract."

SECTION 8.

Said title is further amended in Article 1 of Chapter 12, relating to general provisions relative to damages, by adding a new Code section to read as follows:

341 "51-12-1.1.

342 (a) In any civil action to recover damages resulting from injury or death to a person,
343 special damages for medical and healthcare expenses shall be recoverable only as provided
344 in this Code section.

345 (b) Special damages for medical and healthcare expenses shall be limited to the expenses
346 of medically necessary care, treatment, or services, and the amount of such special
347 damages shall be limited to:

348 (1) Amounts paid by or on behalf of the plaintiff to healthcare providers for reasonable
349 and customary care, treatment, or services;

350 (2) Amounts necessary to satisfy the incurred but unpaid charges for reasonable and
351 customary care, treatment, or services due to a healthcare provider by the plaintiff or a
352 third party on behalf of the plaintiff; and

353 (3) With respect to medical and healthcare expenses not yet incurred, such amounts as
354 are actually necessary to satisfy future charges for medically necessary care, treatment,
355 or services.

356 (c) If the plaintiff in any such civil action has any form of public or private health
357 insurance that is subject to Code Section 33-24-56.1, including benefits under a
358 governmental workers' compensation program, an unpaid charge for medically necessary
359 care, treatment, or services under paragraph (2) of subsection (b) of this Code section shall
360 be the amount by which the charge may be satisfied by the claimant's health insurance in
361 addition to the amount representing the plaintiff's responsibility for the portion of the
362 charge under the insurance contract or applicable governmental program, regardless of
363 whether the health insurance has been used, is used, or will be used to satisfy the charge.

364 (d) Nothing in this Code section shall be construed to limit the right of a plaintiff or
365 defendant to present evidence or testimony, or both, challenging the reasonableness of
366 medical and healthcare expenses, whether incurred or projected future expenses, or the
367 medical necessity of any treatment."

SECTION 9.

Said title is further amended in said article by adding a new Code section to read as follows:

"51-12-15.

In any action to recover for damages for bodily injury or wrongful death, any party may elect, by written demand prior to the entry of the pretrial order, to have liability and any award of damages determined at trial in the following manner:

(1) In the first phase of the trial, the trier of fact shall determine the liability of each defendant, and if the trier of fact finds that any defendant is liable to the plaintiff, the trier of fact shall further determine through an appropriate form of the verdict the percentages of fault of all persons or entities that contributed to the injury or wrongful death as provided in Code Section 51-12-33, prior to any determination of the total amount of damages to be awarded, if any such findings are required. The evidence and arguments of counsel in the first phase of the trial shall be limited to the issues provided for in this paragraph;

(2) If the trier of fact finds in the first phase of the trial that any defendant is liable to the plaintiff, the trial shall be recommenced. In the second phase of the trial, the trier of fact shall determine all compensatory damages to be awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be limited to this issue; and

(3) If the trier of fact finds in the second phase of the trial that any compensatory damages are to be awarded to the plaintiff, the trial may be recommenced for such further proceedings as may be required, including, but not limited to, proceedings provided for in subsection (d) of Code Section 51-12-5.1 concerning punitive damages and proceedings to determine liability for, and the amount of, any attorney's fees, court costs, or expenses of litigation that may be awarded by the trier of fact as provided in Code Section 13-6-11 or any other statute."

393

SECTION 10.

394 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
395 law without such approval.

396 (b) Sections 7 and 8 of this Act shall apply only with respect to causes of action arising on
397 or after the effective date of this Act, and any prior causes of action shall be governed by
398 prior law. It is the intention of the General Assembly that all other provisions of this Act
399 shall apply to causes of action pending on the effective date of this Act, unless such
400 application would be unconstitutional.

401

SECTION 11.

402 All laws and parts of laws in conflict with this Act are repealed.