2025 TORT REFORM
SUMMARY OF LEGISLATION

SENATE BILL 68
SB 68 introduced by Sen. John Kennedy (R-Macon), carried by Rep. James Burchett (R-Waycross), includes, among other things, provisions that address GHA's Healthcare Liability Reform priorities to prohibit anchoring of the jury and allowing evidence of actual medical expenses.

<u>Prohibits Anchoring</u> [Section 1] – **Effective April 21, 2025**

- Eliminates the statutory right for a plaintiff to argue arbitrary, inflated values of pain and suffering throughout the trial.
- Allows for a plaintiff to argue the value of pain and suffering during the closing arguments as long as the amount is rationally related to the evidence.
- Allows the plaintiff to ask prospective jurors if they could return a large verdict without specifying an amount.

This limits the ability of plaintiffs to anchor the jury by suggesting an arbitrary amount of damages for pain and suffering. It also introduces a more objective standard for the calculation of damages for pain and suffering by requiring any suggested amount be tied to the evidence presented at trial.

<u>Eliminates Phantom Damages</u> [Section 7]– **Effective for causes of action arising after April 21, 2025**

- Allows the jury to see evidence of the actual amounts paid or owed for the plaintiff's medical expenses based on the plaintiff's health insurance coverage regardless of whether a claim is filed with the health insurer.
- Allows discovery of letters of protection or other private payment agreements used by some healthcare providers when they treat patients involved in a personal injury case. [Hospitals do not typically use letters of protection.]

Allowing the jury to see the amounts actually paid or owed for healthcare services will help eliminate phantom damages and lead to awards that are fair for both the plaintiff and the defendant. SB 68 does not change the process for hospitals and other healthcare providers to file liens and recover payment for uninsured patients involved in personal injury cases.

Trial Bifurcation [Section 8] – Effective April 21, 2025

- Allows for the bifurcation of the liability and damages portions of a trial when requested by either party.
- Provides judges the discretion not to bifurcate a trial when a party opposes bifurcation and the amount of controversy is less than $150,000 or when the case involves an alleged sexual offense.

This allows all parties to focus on the liability portion of a case without the risk of prejudicing the jury by also discussing the worth or value of the alleged injuries. When combined with the prohibition on anchoring in Section 1, trial bifurcation helps to ensure that the jury is not influenced by an arbitrary amount of damages suggested by the plaintiff when determining whether the defendant is liable for any harm to the plaintiff.

Premises Liability [Section 6] – **Effective for causes of action arising after April 21, 2025**

- Clarifies when property owners, occupiers, or security contractors, including hospitals and other businesses, are liable for injuries to invitees due to the wrongful acts of third parties:
  - The wrongful conduct was reasonably foreseeable because the owner or occupier:
    - Had a particularized warning of imminent wrongful conduct by a third person; or
    - Reasonably should have known that a third person was reasonably likely to engage in such wrongful conduct based on prior occurrences of substantially similar conduct:
      - On the same property;
      - On adjacent property of which the owner or occupier had actual knowledge; or
      - By the same third party if the owner or occupier had actual knowledge of such prior occurrences and knew or should have known that the third party was or would be upon the premises;
  - The injury was a reasonably foreseeable consequence of the wrongful conduct;
  - The wrongful conduct was a reasonably foreseeable consequence of the third party's exploitation of a specific physician condition of the premises known to the owner or occupier and such condition created a reasonable foreseeable risk of wrongful conduct that was substantially greater than the general risk of wrongful conduct;
  - The owner or occupier failed to exercise ordinary care to remedy or mitigate the specific and known physical condition of the premises and to otherwise keep the premises safe from the wrongful conduct; and

- The owner or occupier's failure to exercise ordinary care was a proximate cause of the injury sustained.

[This includes injuries to patients, family members, or visitors as a result of the wrongful acts of other patients, family members, or others who are not under the direction or control of the hospital.]

- Clarifies that property owners and occupiers shall not be liable for the wrongful conduct of third parties when:
  - The injured party is a trespasser;
  - The injury did not occur on the premises;
  - The third party's wrongful conduct did not occur on the premises and in a place from which the owner or occupier had the legal right to exclude the third party;
  - The third party wrongdoer is a tenant on the premises and the owner or occupier had commenced eviction proceedings against such tenant;
  - The injured person:
    - Came upon the premises for the purpose of committing a felony or certain misdemeanors; or
    - Was engaged at the time of the injury in the commission of a felony or certain misdemeanors;
  - The premises where the injury was sustained is used as a single-family residence; or
  - The owner or occupier has received a particularized warning of imminent wrongful conduct and has made any reasonable effort to inform law enforcement personnel.
- Provides a rebuttable presumption that the liability apportioned to the third party wrongdoers is at least as much as the fault apportioned to the property owners, occupiers, or security contractors.

Hospitals should review these new standards with their legal counsel, risk managers, liability insurers, and security contractors to help limit potential liability for the wrongful acts of patients, family members, visitors, or others on the hospital's campus.

Civil Procedure – Effective April 21, 2025

- Discovery [Section 2] – Extends the stay of most discovery when a motion to dismiss is filed until the judge rules on the motion to dismiss. [The stay of discovery previously only lasted 90-days. This keeps hospital defendants from having to respond to discovery requests while a motion to dismiss remains pending.]
- Voluntary Dismissal [Section 3] – Only allows a plaintiff to voluntarily dismiss the case without prejudice until the 60th day after the defendant has filed an answer to the complaint. [This prohibits a plaintiff from voluntarily dismissing the case right before the trial is set to begin and then refile.]

- Attorneys' Fees [Section 4] – Closes a loophole that allowed for the double recovery of attorneys' fees in certain cases.

Seat Belt Evidence [Section 5] – **Effective for causes of action commenced on or after April 21, 2025** [SB 69 clarifies the effective date for this section.]

- Allows the jury to consider evidence of whether the plaintiff was wearing a seat belt in car accident cases.

Senate Bill 69

SB 69, the Georgia Courts Access and Consumer Protection Act, introduced by Sen. John Kennedy (R-Macon), carried by Rep. James Burchett (R-Waycross), is the second bill in the Governor's tort reform package, addressing third-party litigation funding in Georgia.

Regulation of Litigation Financiers [Section 2] – **Effective January 1, 2026**

- Requires the registration of litigation financiers with the Georgia Department of Banking and Finance.
- Prohibits the registration of litigation financiers affiliated with a foreign government or entity declared a foreign adversary by the U.S. Department of Commerce.
- Prohibits litigation financiers from:
  - Making or directing any decisions with respect to the course of any civil action, administrative proceeding, legal claim, or other legal proceeding for which the litigation financier has provided financing;
  - Paying or offering commission, referral fees, rebates, or other forms of consideration to any person in exchange for referring a consumer to a litigation financier;
  - Accepting any commissions, referral fees, rebates, or other forms of consideration from any person for providing any goods or services to the consumer;
  - Receiving any amount greater than the amount equal to the share of the proceeds collectively recovered by the plaintiffs;
  - Advertising false or misleading information;
  - Referring or requiring any consumer to hire or engage any person providing any goods or services to the consumer;
  - Failing to promptly deliver a fully completed and signed litigation financing contract to the consumer;
  - Attempting to secure a remedy that the consumer may or may not be entitled to pursue or recover;
  - Offering or providing legal advice to the consumer;

    - Assigning or securitizing a litigation financing agreement unless certain provisions apply; or
    - Reporting a consumer to a credit reporting agency if insufficient funds remain to repay the litigation financier in full from the proceeds received from any judgement, award, settlement or other monetary relief obtained from the legal action.
- Indicates a litigation financier that provides $25,000 or more in financing may be jointly and severally liable for any award or monetary sanctions for frivolous litigation.
- Requires litigation financiers to provide consumers with six "Important Disclosures" in at least 14-point bold font in any litigation financing agreement.

Discovery of Litigation Financing [Section 3] – Effective for any civil action or other legal proceeding commencing on or after April 21, 2025 or for any contract entered into on or after that date.
Makes discoverable as evidence the existence and terms and conditions of any litigation financing agreement for $25,000 or more.