

The Georgia legislature passed tort reform legislation this year known as Senate Bill 3. The bill became effective on February 16, 2005, but some provisions are only effective for causes of action arising after February 16, 2005. The bill enacts O.C.G.A. §9-11-68, which allows a party to make an offer of judgment to an opposing party to encourage settlement. If a party rejects the offer and does not recover a certain amount, the party may then have to pay the offering party's attorney's fees from the time the party rejected the offer. This section also allows a prevailing party to recover attorney's fees if the finder of fact determines the opposing party presented a frivolous claim or defense.

The bill enacts O.C.G.A. §51-12-31 and 33 effective for causes of action arising after February 16, 2005. These provisions end joint and several liability, and replace it with proportionate liability. The trier of fact will determine whether the plaintiff was at fault, and if so, the percentage of the plaintiff's fault. The judge will then reduce the award of damages in proportion to the percentage of plaintiff's fault. If the plaintiff is 50 percent or greater at fault, the plaintiff cannot recover. The trier of fact will also determine whether any defendant is negligent, and if so, the relative percentage of fault as to each defendant.

The bill enacts O.C.G.A. §24-9-67.1 concerning expert witnesses. For all civil cases the bill adopts the federal "Daubert" standard for admissibility of expert witness testimony. For professional malpractice cases the bill further requires an expert to be licensed by an appropriate regulatory agency to practice his profession. For medical malpractice cases the bill further requires that an expert must have actively practiced or taught in the area of specialty at issue for three of the last five years. The bill also amends the requirements in O.C.G.A. §9-11-9.1 governing the filing of and objection to expert affidavits.

Concerning medical malpractice cases, the bill enacts O.C.G.A. §51-13-1 effective for causes of action arising after February 16, 2005. The bill limits a plaintiff's recovery of *non-economic damages*, including damages for wrongful death, as follows:

- \$350,000 for one or more healthcare providers, including physicians.
- \$350,000 for a single medical facility, including all persons and entities for which vicarious liability theories may apply, including nurses.
- \$700,000 for two or more medical facilities.
- A maximum total of \$1,050,000 regardless of the number and type of defendants.

The bill enacts several additional provisions. O.C.G.A. §9-11-9 requires that in medical malpractice cases the plaintiff file a medical authorization form with the Complaint authorizing the attorney for the defendant to obtain and disclose protected health information of the plaintiff. O.C.G.A. §24-30-37.1 prohibits conduct or statements that constitute offers of mistake, sympathy, or apology from being admitted into evidence. O.C.G.A. §51-1-29.5 provides that no physician or healthcare provider will be liable for a claim arising out of emergency medical care unless it is proven by clear and convincing evidence the provider was grossly negligent. O.C.G.A. §51-2-5.1 provides that a hospital is not liable for an act of a healthcare professional, unless there is an existing actual agency or an employment relationship between the hospital and the healthcare professional.

The bill amends O.C.G.A. §9-10-31 concerning venue requirements in medical malpractice cases. The bill enacts a new code section O.C.G.A. §9-10-31.1, providing for forum non conveniens in Georgia in all tort cases. Some trial courts, but as of yet no appellate courts, have ruled that the venue provisions are unconstitutional.

Newly enacted Senate Bill 3 contains many new and important changes to tort law generally and to medical malpractice cases specifically. Everyone who handles tort cases should take the time to familiarize themselves with the new provisions to avoid malpractice and better represent their clients.



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