

The Senate Judiciary Committee offered the following substitute to SB 133:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 7, 9, 24, 50, and 51 of the Official Code of Georgia Annotated, relating  
2 respectively to banking and finance; civil practice; evidence; state government; and torts, so  
3 as to provide for substantive and comprehensive revision of provisions regarding liability in  
4 tort actions; to provide for a short title; to change certain provisions regarding interest on  
5 judgements; to change certain provisions regarding codefendants residing in different  
6 counties; to change certain provisions regarding dismissal of actions; to change certain  
7 provisions regarding expert opinions; to change certain provisions regarding the extent of  
8 jurisdiction of the state; to provide for definitions; to provide for exceptions for vicarious  
9 liability; to change certain provisions relating to punitive damages; to change certain  
10 provisions relating to reduction of earnings to present value; to change certain provisions  
11 regarding unliquidated damages; to provide for related matters; to provide for effective dates  
12 and applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

14 This Act shall be known and may be cited as the "Common Sense Civil Justice Reform Act  
15 of 2003."  
16

**SECTION 2.**

17 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
18 amended by striking Code Section 7-4-12, relating to interest on judgements, and inserting  
19 in lieu thereof the following:  
20

21 "7-4-12.

22 (a) All judgments in this state shall bear annual interest upon the principal amount  
23 recovered at ~~the a rate of 12 percent per year~~ equal to the prime rate as published by the  
24 Board of Governors of the Federal Reserve System, as published in statistical release H.

1 15 or any publication that may supersede it, on the day the judgment is entered plus 3  
 2 percent.

3 (b) If unless the judgment is rendered on a written contract or obligation providing for  
 4 interest at a specified rate, ~~in which case~~ the judgment shall bear interest at the rate  
 5 specified in ~~such the~~ contract or obligation.

6 (c) The postjudgment interest provided for in this Code section shall apply automatically  
 7 to all judgments in this state and ~~such the~~ interest shall be collectable as a part of each ~~such~~  
 8 judgment whether or not ~~such the~~ judgment specifically reflects the entitlement to ~~such~~  
 9 postjudgment interest."

### 10 SECTION 3.

11 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
 12 striking Code Section 9-10-31, relating to actions against certain codefendants residing in  
 13 different counties, and inserting in lieu thereof the following:

14 "9-10-31.

15 (a) The General Assembly finds that Paragraph IV of Section 2 of Article VI of the  
 16 Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in  
 17 a county other than the county of the defendant's residence only if the Georgia resident  
 18 defendant is a joint obligor, joint tort-feasor, joint promisor, copartner, or joint trespasser  
 19 and therefore this Code section shall apply to all pending actions filed on or after July 1,  
 20 1999.

21 (b) Joint or joint and several tort-feasors, obligors, or promisors, or joint contractors or  
 22 copartners, residing in different counties, may be subject to an action as such in the same  
 23 action in any county in which one or more of the defendants reside. ~~If, however, the court~~  
 24 ~~determines prior to the commencement of trial that:~~ who are joint or joint and several  
 25 tort-feasors, obligors, or promisors, or joint contractors or copartners reside.

26 (1) ~~The plaintiff has brought the action in bad faith against all defendants residing in the~~  
 27 ~~county in which the action is brought; or~~

28 (2) ~~As a matter of law, no defendant residing in the county in which the action is brought~~  
 29 ~~is a proper party, the action shall be transferred to the county and court which the plaintiff~~  
 30 ~~elects in which venue is proper. The burden of proof on the issue of venue shall be on the~~  
 31 ~~party claiming improper venue by a preponderance of evidence.~~

32 ~~(b)(c)~~ If all defendants who reside in the county in which an action is pending are  
 33 discharged from liability before ~~the commencement of trial~~ or upon the return of a verdict  
 34 by the jury or the court hearing the case without a jury, a nonresident defendant may  
 35 require that the case be transferred to a county and court in which venue would otherwise  
 36 be proper. If venue would be proper in more than one county, the plaintiff may elect from

1 among the counties in which venue is proper the county and the court in which the action  
2 shall proceed.

3 ~~(c) If all defendants who reside in the county in which the action is pending are discharged~~  
4 ~~from liability after the commencement of trial, the case may be transferred to a county and~~  
5 ~~court in which venue would otherwise lie only if all parties consent to such transfer.~~

6 ~~(d) For purposes of this Code section, trial shall be deemed to have commenced upon the~~  
7 ~~jury being sworn or, in the instance of a trial without a jury, upon the first witness being~~  
8 ~~sworn.~~

9 ~~(e)~~(d) Nothing in this Code section shall be deemed to alter or amend the pleading  
10 requirements of Chapter 11 of this title relating to the filing of complaints or answers.

11 ~~(f) This Code section shall apply to actions filed on or after July 1, 1999."~~

#### 12 SECTION 4.

13 Said title is further amended by striking subsection (a) of Code Section 9-11-41, relating to  
14 dismissal of actions, and inserting in lieu thereof the following:

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

16 (1) BY PLAINTIFF; BY STIPULATION. Subject to the provisions of subsection (c) of Code  
17 Section 9-11-23, ~~of~~ Code Section 9-11-66, and ~~of~~ any statute, an action may be dismissed  
18 by the plaintiff, without order or permission of court;

19 (A) By ~~by~~ filing a written notice of dismissal at any time before the entry of a pretrial  
20 order pursuant to Code Section 9-11-16, provided that when there is no pretrial order,  
21 the notice of dismissal may be filed at any time before the jury is sworn, or in nonjury  
22 trials, before the first witness is sworn; or

23 (B) By filing a stipulation of dismissal signed by all parties who have appeared in the  
24 action. ~~the plaintiff rests his case. After the plaintiff rests his case, permission and an~~  
25 ~~order of the court must be obtained before dismissal.~~

26 (2) BY ORDER OF COURT. Except as provided in paragraph (1) of this subsection, an  
27 action shall not be dismissed upon the plaintiff's motion except upon order of the court  
28 and upon the terms and conditions as the court deems proper. If a counterclaim has been  
29 pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to  
30 dismiss, the action shall not be dismissed against the defendant's objection unless the  
31 counterclaim can remain pending for independent adjudication by the court.

32 (3) EFFECT. A dismissal under this subsection is without prejudice, except that the filing  
33 of a ~~third~~ second notice of dismissal operates as an adjudication upon the merits."

**SECTION 5.**

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by striking Code Section 24-9-67, relating to opinions of experts, and inserting in lieu thereof the following:

"24-9-67.

(a) As used in this Code section, the term 'professional malpractice action' means an action involving any profession listed in Code Section 9-11-9.1, including, but not limited to medical malpractice actions as defined in Code Section 9-3-70.

(b) The opinions of experts on any question of science, skill, trade, or like questions shall always be admissible, except as provided in subsection (c) of this Code section; and such opinions may be given on the facts as proved by other witnesses.

(c) In professional malpractice actions, the opinions of an expert as to the standard of care of the professional whose conduct is at issue shall be admissible only if, at the time the act or omission is alleged to have occurred or at the time of trial, the expert witness:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert was practicing or teaching; and

(2)(A) Was board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered;

(B) Had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) The active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding such time;

(ii) The teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which has been accredited in the teaching of his or her profession for at least three of the last five years immediately preceding such time; or

(iii) Any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of divisions (i) and (ii) of this subparagraph for at least three of the last five years immediately preceding such time;

or

(C) The court determines from all of the evidence or from the evidence introduced at the time when the professional malpractice expert is proffered as an expert witness on the standard of care, that the witness' knowledge concerning the standard of care with regard to the act or omission alleged is within the knowledge or expertise of any person holding a license from an appropriate regulatory agency to practice in the profession.

1 (d) An affiant under Code Section 9-11-9.1 shall not be deemed an expert competent to  
 2 testify if his or her opinions would not be admissible in the action at issue as provided in  
 3 this Code section."

#### 4 SECTION 6.

5 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
 6 by striking Code Section 50-2-21, relating to the extent of jurisdiction of the state and its  
 7 laws, and inserting in lieu thereof the following:

8 "50-2-21.

9 (a) The jurisdiction of this state and its laws extend to all persons while within its limits,  
 10 whether as citizens, denizens, or temporary sojourners.

11 (b) Each court of this state shall decline to exercise jurisdiction of any civil cause of action  
 12 of a nonresident accruing outside this state if there is another forum with jurisdiction of the  
 13 parties in which the trial can be more appropriately held taking into account the following:

14 (1) Place of accrual of the cause of action;

15 (2) Location of witnesses;

16 (3) The residence or residences of the parties; and

17 (4) The public factor of the convenience to and burden upon the court.

18 (c) Upon a motion filed not later than 90 days after the last day allowed for the filing of  
 19 that party's answer and upon the party's showing that the existing forum constitutes an  
 20 inconvenient forum based on the factors listed in subsection (b) of this Code section and  
 21 where there is another forum which can assume jurisdiction, the court may dismiss the  
 22 action without prejudice on any condition that may be just or transfer the case to a  
 23 convenient forum, if a forum with jurisdiction accepts the transfer.

24 (d) If a court dismisses an action pursuant to subsection (c) of this Code section, the  
 25 dismissal shall be under the following conditions:

26 (1) The defendant shall accept service of process from that court; and

27 (2) If the plaintiff elects to file the action in another forum within one year of the  
 28 dismissal order, and if the statute of limitations has run in the other forum, the defendant  
 29 shall waive that defense.

30 (e) If the defendant refuses to abide by the conditions of subsection (d) of this Code  
 31 section, the cause of action shall be retained in the court in which the dismissal was  
 32 requested or reinstated in the court in which the dismissal was granted. If the court in the  
 33 other forum refuses to accept jurisdiction, the plaintiff may, within 60 days of the final  
 34 order refusing jurisdiction, reinstate the cause of action in the court in which the dismissal  
 35 was granted.

1 (f) If a court transfers a case pursuant to subsection (c) of this Code section, the clerk of  
 2 the court from which the transfer is granted shall immediately certify and transmit to the  
 3 clerk of the court to which the transfer is ordered the originals of all papers filed in the case  
 4 together with copies of all orders entered in the case."

#### 5 **SECTION 7.**

6 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding  
 7 a new Code section immediately following Code Section 51-2-4, relating to liability for torts  
 8 of an independent employee, to read as follows:

9 "51-2-4.1.

10 (a) As used in this Code section, the term:

11 (1) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,  
 12 35, or 39 of Title 43 who provides care or assistance to an individual who has an  
 13 emergency medical condition within the scope of the health care provider's licensure,  
 14 either voluntarily or at the request of a hospital, including but not limited to any health  
 15 care provider who is 'on call' to a hospital.

16 (2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the  
 17 Department of Human Resources under Chapter 7 of Title 31 and that operates an  
 18 emergency room that provides care or assistance to individuals who have an emergency  
 19 medical condition. This term shall also include any employee of the hospital who  
 20 provides care or assistance to individuals within the scope of his or her employment,  
 21 whether or not the person is a health care provider.

22 (b) Unless there is an independent act of negligence, a hospital or health care provider  
 23 shall not be vicariously liable for the actions of a physician employed as an independent  
 24 contractor unless there exists an actual agency relationship between the physician and  
 25 hospital or health care provider."

#### 26 **SECTION 8.**

27 Said title is further amended by striking Code Section 51-12-5.1, relating to punitive  
 28 damages, and inserting in lieu thereof the following:

29 "51-12-5.1.

30 (a) As used in this Code section, the term 'punitive damages' is synonymous with the terms  
 31 'vindictive damages,' 'exemplary damages,' and other descriptions of additional damages  
 32 awarded because of aggravating circumstances in order to penalize, punish, or deter a  
 33 defendant.

34 (b) Punitive damages may be awarded only in such tort actions in which it is proven by  
 35 clear and convincing evidence that the defendant's actions showed willful misconduct,

1 malice, fraud, wantonness, oppression, or that entire want of care which would raise the  
2 presumption of conscious indifference to consequences.

3 (c) Punitive damages shall be awarded not as compensation to a plaintiff but solely to  
4 punish, penalize, or deter a defendant.

5 (d)(1) An award of punitive damages must be specifically prayed for in a complaint. In  
6 any case in which punitive damages are claimed, the trier of fact shall first resolve from  
7 the evidence produced at trial whether an award of punitive damages shall be made. This  
8 finding shall be made specially through an appropriate form of verdict, along with the  
9 other required findings.

10 (2) If it is found that punitive damages are to be awarded, the trial shall immediately be  
11 recommenced in order to receive such evidence as is relevant to a decision regarding  
12 what amount of damages will be sufficient to deter, penalize, or punish the defendant in  
13 light of the circumstances of the case. It shall then be the duty of the trier of fact to set the  
14 amount to be awarded according to subsection ~~(e), (f), or (g)~~ (e) or (f) of this Code  
15 section, as applicable.

16 ~~(e)(1) In a tort case in which the cause of action arises from product liability, there shall  
17 be no limitation regarding the amount which may be awarded as punitive damages. Only  
18 one award of punitive damages may be recovered in a court in this state from a defendant  
19 for any act or omission if the cause of action arises from product liability, regardless of  
20 the number of causes of action which may arise from such act or omission.~~

21 ~~(2) Seventy-five percent of any amounts awarded under this subsection as punitive  
22 damages, less a proportionate part of the costs of litigation, including reasonable  
23 attorney's fees, all as determined by the trial judge, shall be paid into the treasury of the  
24 state through the Office of Treasury and Fiscal Services. Upon issuance of judgment in  
25 such a case, the state shall have all rights due a judgment creditor until such judgment is  
26 satisfied and shall stand on equal footing with the plaintiff of the original case in securing  
27 a recovery after payment to the plaintiff of damages awarded other than as punitive  
28 damages. A judgment debtor may remit the state's proportional share of punitive  
29 damages to the clerk of the court in which the judgment was rendered. It shall be the duty  
30 of the clerk to pay over such amounts to the Office of Treasury and Fiscal Services within  
31 60 days of receipt from the judgment debtor. This paragraph shall not be construed as  
32 making the state a party at interest and the sole right of the state is to the proceeds as  
33 provided in this paragraph.~~

34 ~~(f)(e)~~ (e) In a tort case in which the cause of action does not arise from product liability, if it  
35 is found that the defendant acted, or failed to act,;

36 (1) With with the specific intent to cause harm, ~~or that the defendant acted or failed to act~~  
37 while;

1 (2) With actual knowledge that harm would occur; or

2 (3) While under the influence of alcohol, drugs other than lawfully prescribed drugs  
3 administered in accordance with prescription, or any intentionally consumed glue,  
4 aerosol, or other toxic vapor to that degree that his or her judgment is substantially  
5 impaired,

6 there shall be no limitation regarding the amount which may be awarded as punitive  
7 damages against ~~an active tort-feasor but such damages shall not be the liability of any~~  
8 ~~defendant other than an active tort-feasor~~ the defendant.

9 ~~(g)(f)~~ For any tort action not provided for by subsection (e) ~~or (f)~~ of this Code section in  
10 which the trier of fact has determined that punitive damages are to be awarded, the amount  
11 which may be awarded in the case shall be limited to a maximum of \$250,000.00.

12 ~~(h) This Code section shall apply only to causes of action arising on or after April 14,~~  
13 ~~1997."~~

#### 14 SECTION 9.

15 Said title is further amended by striking Code Section 51-12-13, relating to reduction of  
16 earnings to present value, by inserting in lieu thereof the following:

17 "51-12-13.

18 ~~(a) It shall be lawful for the~~ The trier of fact, in determining the present value of any future  
19 earnings, annuity, or amounts, to damages, shall reduce the same to the present value upon  
20 the basis of interest calculated at 5 10 percent per annum.

21 (b) An expert witness testifying on the present value of any future damages shall reduce  
22 the same to the present value upon the basis of interest calculated at 10 percent per annum."

#### 23 SECTION 10.

24 Said title is further amended by striking subsection (c) of Code Section 51-12-14, relating  
25 to unliquidated damages, and inserting in lieu thereof the following:

26 "(c) The interest provided for by this Code section shall be at ~~the~~ an annual rate ~~of 12~~  
27 ~~percent per annum~~ equal to the prime rate as published by the Board of Governors of the  
28 Federal Reserve System, as published in statistical release H. 15 or any publication that  
29 may supersede it, on the thirtieth day following the date of the mailing of the written notice  
30 plus 3 percent and shall begin to run from the thirtieth day following the date of the mailing  
31 of the written notice until the date of judgment."

#### 32 SECTION 11.

33 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon  
34 its approval by the Governor or upon its becoming law without such approval. This Act shall

1 apply only to causes of action arising on or after the effective date of this Act. Any cause of  
2 action arising prior to that date shall continue to be governed by the law in effect at the time  
3 such cause of action arose.

4 (b) Section 3 of this Act shall become effective upon its approval by the Governor or upon  
5 its becoming law without such approval and shall apply to any pending action filed on or  
6 after July 1, 1999.

7 **SECTION 12.**

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