

Senate Bill 133

By: Senators Price of the 56th, Johnson of the 1st, Golden of the 8th, Hamrick of the 30th,
Balfour of the 9th and others

AS PASSED SENATE

**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 reduction of earnings to present value; to
10 change certain provisions regarding unliquidated damages; to provide for related matters; to
11 provide for effective dates and applicability; to repeal conflicting laws; and for other
12 purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

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

17 **SECTION 2.**

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

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."

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 "Reserved."

28 SECTION 9.

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

31 "51-12-13.

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

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

3 **SECTION 10.**

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

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

12 **SECTION 11.**

13 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon
14 its approval by the Governor or upon its becoming law without such approval. This Act shall
15 apply only to causes of action arising on or after the effective date of this Act. Any cause of
16 action arising prior to that date shall continue to be governed by the law in effect at the time
17 such cause of action arose.

18 (b) Section 3 of this Act shall become effective upon its approval by the Governor or upon
19 its becoming law without such approval.

20 **SECTION 12.**

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