

Senate Bill 576

By: Senators Smith of the 52nd, Unterman of the 45th, Price of the 56th, Thomas of the 54th, Tolleson of the 18th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 9-10-31 of the Official Code of Georgia Annotated, relating to
2 actions against certain codefendants residing in different counties, to amend Code Section
3 24-9-67 of the Official Code of Georgia Annotated, relating to opinions of experts, and
4 Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to damages, so as
5 to revise certain provisions relating to tort actions; to change provisions relating to venue
6 involving joint or joint and several tort-feasors; to provide for standards in admitting expert
7 testimony in professional malpractice actions; to change provisions relating to recovery
8 against joint tort-feasors; to change provisions relating to comparative negligence; to provide
9 for related matters; to provide for an effective date and applicability; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 "9-10-31.

16 (a) Joint or joint and several tort-feasors, obligors, or promissors, or joint contractors or
17 copartners, residing in different counties, may be subject to an action as such in the same
18 action in any county in which one or more of the defendants ~~reside. If, however, the court~~
19 ~~determines prior to the commencement of trial that:~~ who are joint tort-feasors, obligors, or
20 promissors, or joint contractors or copartners reside.

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

23 ~~(2) As a matter of law, no defendant residing in the county in which the action is brought~~
24 ~~is a proper party;~~

1 ~~the action shall be transferred to the county and court which the plaintiff elects in which~~
 2 ~~venue is proper. The burden of proof on the issue of venue shall be on the party claiming~~
 3 ~~improper venue by a preponderance of evidence.~~

4 (b) If, at any time, all defendants who reside in the county in which an action is pending
 5 are discharged from liability ~~before the commencement of trial~~ including, but not limited
 6 to, discharge by way of directed verdict or jury verdict, a nonresident defendant may
 7 require that the case be transferred to a county and court in which venue would otherwise
 8 be proper. If venue would be proper in more than one county, the ~~plaintiff may elect from~~
 9 ~~among the counties in which venue is proper the county~~ trial court where the action has
 10 been pending shall determine the county and the court in which the action shall proceed.

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

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

17 (e)(c) Nothing in this Code section shall be deemed to alter or amend the pleading
 18 requirements of Chapter 11 of this title relating to the filing of complaints or answers.

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

20 SECTION 2.

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

23 "24-9-67.

24 (a) ~~The opinions of experts on any question of science, skill, trade, or like questions shall~~
 25 ~~always be admissible; and such opinions may be given on the facts as proved by other~~
 26 ~~witnesses. As used in this Code section, the term 'professional malpractice action' means~~
 27 an action involving any profession listed in Code Section 9-11-9.1, including, but not
 28 limited to, medical malpractice actions as defined in Code Section 9-3-70.

29 (b) If scientific, technical, or other specialized knowledge will assist the trier of fact to
 30 understand the evidence or to determine a fact in issue, a witness qualified as an expert by
 31 knowledge, skill, experience, training, or education may testify thereto in the form of an
 32 opinion or otherwise, if:

33 (1) The testimony is based upon scientific facts or data which has been admitted into
 34 evidence;

35 (2) The testimony is the product of reliable principles and methods; and

36 (3) The witness has applied the principles and methods reliably to the facts of the case.

1 (c) In professional malpractice actions, the opinions of an expert who is otherwise
 2 qualified as to the acceptable conduct of the professional whose conduct is at issue shall
 3 be admissible only if, at the time the act or omission is alleged to have occurred, such
 4 expert:

5 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
 6 in the state in which such expert was practicing or teaching in the profession at such time;

7 and

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

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

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

16 (C) Any combination of the active practice or the teaching of his or her profession in
 17 a manner which meets the requirements of subparagraphs (A) and (B) of this paragraph
 18 for at least three of the last five years immediately preceding such time.

19 (d) The admissibility of proposed expert testimony under this Code section may be
 20 addressed before trial and the court may hold evidentiary or other hearings in connection
 21 with the disposition of such issues.

22 (e) An affiant under Code Section 9-11-9.1 shall not be deemed an expert competent to
 23 testify if his or her opinions would not be admissible in the action at issue under this Code
 24 section."

25 SECTION 3.

26 Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to damages, is
 27 amended by striking Code Section 51-12-31, relating to recovery against joint trespassers,
 28 and inserting in its place a new Code Section 51-12-31 to read as follows:

29 "51-12-31.

30 Except as provided in Code Section 51-12-33, where an action is brought jointly against
 31 several ~~trespassers~~ tort-feasors, the plaintiff may recover damages for ~~the greatest injury~~
 32 ~~done~~ an injury caused by any of the defendants against ~~all of them~~ only the defendant or
 33 defendants liable for the injury pursuant to subsection (b) of Code Section 51-12-33. In its
 34 verdict, the jury may specify the particular damages to be recovered of each defendant.
 35 Judgment in such a case must be entered severally."

1 effective date of this Act. Any cause of action arising prior to that date shall continue to be
2 governed by the laws in effect at the time such cause of action arose.

3 **SECTION 6.**

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