

The Senate Committee on Judiciary offered the following substitute to SB 68:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 40, and 51 of the Official Code of Georgia Annotated, relating to civil
2 practice, motor vehicles, and torts, respectively, so as to provide for substantive and
3 comprehensive revision of provisions regarding civil practice, evidentiary matters, damages,
4 and liability in tort actions; to provide limitations relative to evidence of noneconomic
5 damages; to provide for timing of answers and discovery; to provide for dismissals of civil
6 actions; to provide for attorney's fees, court costs, and litigation expenses; to provide for
7 admissibility of evidence related to seat safety belts; to provide for trial procedures; to
8 provide for a negligent security cause of action; to provide for exclusive remedies for
9 negligent security actions; to provide for apportionment of damages in negligent security
10 actions; to provide for limitations relative to special damages; to provide for definitions; to
11 provide for related matters; to provide for an effective date and applicability; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14

SECTION 1.

15 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
16 revising Code Section 9-10-184, relating to value of pain and suffering may be argued, as
17 follows:

18 "9-10-184.

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

20 (1) 'Economic damages' means pecuniary damages recoverable in tort for bodily injury
21 or wrongful death, including, but not limited to, damages for past and future medical
22 expenses; costs of rehabilitation; costs of therapy; loss of wages; loss of income; loss of
23 earning capacity; loss of services performed by the injured or deceased person as a result
24 of the injury or death, including domestic and other necessary services performed without
25 compensation; and funeral or burial expenses.

26 (2) 'Noneconomic damages' means all damages recoverable in tort for bodily injury or
27 wrongful death other than economic damages, including, but not limited to, damages for
28 physical or emotional pain, discomfort, anxiety, hardship, distress, suffering,
29 inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment
30 of life, loss of society and companionship, loss of consortium, injury to reputation, and
31 in wrongful death cases, the nonpecuniary elements of the full value of life.

32 (b) Except as otherwise provided in subsection (c) of this Code section, in the trial of any
33 action to recover damages for bodily injury or wrongful death, counsel shall not argue the
34 worth or monetary value of noneconomic damages, and counsel shall not, in the hearing
35 of the jury or any prospective juror, elicit any testimony regarding, or make any reference
36 to, any specific amount or range of amounts of noneconomic damages, the measure of such
37 damages being the enlightened conscience of an impartial jury.

38 (c) In the trial of any action to recover damages for bodily injury or wrongful death,
39 counsel for any party shall be allowed to argue the worth or monetary value of
40 noneconomic damages only after the close of evidence and at the time of such party's first

41 opportunity to argue, provided that such argument shall be rationally related to the
 42 evidence of noneconomic damages and shall not make reference to objects or values having
 43 no rational connection to the facts proved by the evidence.

44 (d) If counsel elicits any testimony, or makes any argument or reference, prohibited by this
 45 Code section in the hearing of the jury or one or more prospective jurors, the court shall
 46 take remedial measures as provided in Code Section 9-10-185 or shall, with respect to
 47 prospective jurors, excuse the prospective jurors. In the trial of a civil action for personal
 48 injuries, counsel shall be allowed to argue the worth or monetary value of pain and
 49 suffering to the jury, provided, however, that any such argument shall conform to the
 50 evidence or reasonable deductions from the evidence in the case."

51 **SECTION 2.**

52 Said title is further amended in Code Section 9-11-12, relating to answer, defenses, and
 53 objections, when and how presented and heard, when defenses waived, and stay of discovery,
 54 by revising subsections (a), (e), and (j) as follows:

55 **"(a) When answer presented.**

56 (1) Except as provided in paragraph (2) of this subsection, a defendant shall serve his
 57 an answer within 30 days after the service of the summons and complaint upon him the
 58 defendant, unless otherwise provided by statute. A cross-claim or counterclaim shall not
 59 require an answer, unless one is required by order of the court, and shall automatically
 60 stand denied.

61 (2) Unless the court sets a different time, serving a motion under this Code section alters
 62 the time for serving an answer pursuant to paragraph (1) of this subsection as follows:

63 (A) If the court denies the motion or postpones its disposition until trial, the answer
 64 shall be served within 15 days after notice of the court's action; or

65 (B) If the court grants a motion for a more definite statement, the answer shall be
 66 served within 15 days after the more definite statement is served."

67 "(e) **Motion for more definite statement.** If a pleading to which a responsive pleading
68 is permitted is so vague or ambiguous that a party cannot reasonably be required to frame
69 a proper responsive pleading, ~~he shall nevertheless answer or respond to the best of his~~
70 ~~ability, and he~~ such party may move for a more definite statement. The motion shall point
71 out the defects complained of and the details desired. If the motion is granted and the order
72 of the court is not obeyed within 15 days after notice of the order, or within such other time
73 as the court may fix, the court may strike the pleading to which the motion was directed or
74 make such order as it deems just."

75 "(j) **Stay of discovery.**

76 (1) If a party files a motion to dismiss before ~~or at the time of~~ filing an answer and
77 pursuant to the provisions of this Code section, discovery shall be stayed ~~for 90 days after~~
78 ~~the filing of such motion or until the ruling of the court on such motion;~~ provided,
79 however, that, if a defendant files an answer before the ruling of the court on such
80 motion, the stay imposed by this subsection shall immediately terminate with respect to
81 such defendant, whichever is sooner. The court shall decide the motion to dismiss within
82 ~~the 90 days provided in this paragraph~~ of the filing of such motion.

83 (2) The discovery period and all discovery deadlines shall be extended for a period equal
84 to the duration of the stay imposed by this subsection.

85 (3) If the court has not ruled on the motion to dismiss within 90 days, the ~~The~~ court may
86 ~~upon its own motion or upon motion of a party, and for good cause shown,~~ terminate or
87 modify the stay imposed by this subsection ~~but shall not extend such stay.~~

88 (4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of
89 subsection (b) of this Code section; ~~or if any party needs discovery in order to identify~~
90 ~~persons who may be joined or substituted as proper parties; or if any party needs~~
91 discovery in order to establish the jurisdiction of the court, limited discovery needed to
92 respond to such defenses, to or identify such persons, or to establish such jurisdiction

93 shall be permitted ~~until the court rules on such motion~~ notwithstanding the stay imposed
 94 by this subsection.

95 (5) The provisions of this subsection shall not modify or affect the provisions of
 96 paragraph (2) of subsection (f) of Code Section 9-11-23 or any other power of the court
 97 to stay discovery."

98 **SECTION 3.**

99 Said title is further amended in Code Section 9-11-41, relating to dismissal of actions and
 100 recommencement within six months, by revising subsection (a) as follows:

101 "(a) **Voluntary dismissal; effect.:**

102 (1) **By plaintiff; by stipulation.** Subject to the provisions of subsection (e) of Code
 103 Section 9-11-23, Code Section 9-11-66, and any statute, an action may be dismissed by
 104 the plaintiff, without order or permission of court:

105 (A) By filing a written notice of dismissal at any time before ~~the first witness is sworn~~
 106 the sixtieth day following the date the opposing party serves either an answer or a
 107 motion for summary judgment, whichever occurs first; or

108 (B) By filing a stipulation of dismissal signed by all parties who have appeared in the
 109 action.

110 (2) **Effect.** A dismissal under paragraph (1) of this subsection is without prejudice,
 111 except that if the plaintiff previously dismissed any federal or state court action based on
 112 or including the same claim, such notice or stipulation operates as an adjudication upon
 113 the merits.

114 ~~(2)~~(3) **By order of court.** Except as provided in paragraph (1) of this subsection, an
 115 action shall not be dismissed upon the plaintiff's motion except upon order of the court
 116 and upon the terms and conditions as the court deems proper. If a counterclaim has been
 117 pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to
 118 dismiss, the action shall not be dismissed against the defendant's objection unless the

119 counterclaim can remain pending for independent adjudication by the court. Unless the
120 court order states otherwise, a dismissal under this paragraph is without prejudice.

121 ~~(3) **Effect.** A dismissal under this subsection is without prejudice, except that the filing~~
122 ~~of a second notice of dismissal operates as an adjudication upon the merits."~~

123 **SECTION 4.**

124 Said title is further amended in Chapter 15, relating to court and litigation costs, by adding
125 a new Code section to read as follows:

126 "9-15-16.

127 (a) In any civil action, no party shall recover the same attorney's fees, court costs, or
128 expenses of litigation more than once pursuant to one or more statutes authorizing awards
129 of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes
130 authorize such awards for compensatory or punitive purposes, unless the statute or statutes
131 specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of
132 litigation.

133 (b) In any civil action, if a party seeks to recover attorney's fees pursuant to any statute
134 authorizing an award of reasonable attorney's fees, a contingent fee agreement between
135 such party and such party's attorney shall not be admissible as proof of the reasonableness
136 of the fees.

137 (c) Nothing in this Code section shall limit or diminish any contractual right to recover
138 attorney's fees, court costs, or expenses of litigation."

139 **SECTION 5.**

140 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, is amended
141 in Code Section 40-8-76.1, relating to use of safety belts in passenger vehicles, by revising
142 subsection (d) as follows:

143 "(d)(1) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat
 144 of a motor vehicle which has a seat safety belt or belts shall not be considered evidence
 145 of negligence or causation, shall not otherwise be considered by the finder of fact on any
 146 question of liability of any person, corporation, or insurer, shall not be any basis for
 147 cancellation of coverage or increase in insurance rates, and shall not may be considered
 148 in any civil action as evidence admissible on the issues of negligence, comparative
 149 negligence, causation, assumption of risk, or apportionment of fault or for any other
 150 purpose and may be evidence used to diminish any recovery for damages arising out of
 151 the ownership, maintenance, occupancy, or operation of a motor vehicle.
 152 (2) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of
 153 a motor vehicle which has a seat safety belt or belts shall not be any basis for a
 154 cancellation of insurance coverage or an increase in insurance rate."

155

SECTION 6.

156 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended in Chapter 3,
 157 relating to liability of owners and occupiers of land, by adding a new article to read as
 158 follows:

159

"ARTICLE 5160 51-3-50.161 As used in this article, the term:

162 (1) 'Negligent security' means any claim against an owner or occupier, or against a
 163 security contractor, that:

164 (A) Sounds in tort or nuisance, including, but not limited to, any claim under Article 1
 165 of this chapter;

166 (B) Seeks to recover damages for bodily injury or wrongful death; and

167 (C) Arises from an alleged failure to keep persons on or around any premises safe from
168 the wrongful conduct of any third person.

169 (2) 'Owner or occupier' means any person that owns, leases, occupies, operates,
170 maintains, or manages real property of any kind or any director, officer, employee, or
171 agent of such person.

172 (3) 'Particularized warning of imminent wrongful conduct by a third person' means
173 information actually known to an owner or occupier and deemed credible by the owner
174 or occupier, which causes the owner or occupier to consciously understand that a third
175 person is likely to imminently engage in wrongful conduct on the premises that poses a
176 clear danger to the safety of persons upon the premises, such information being specific
177 as to the identity of the third person, the nature and character of the wrongful conduct, the
178 degree of dangerousness of the wrongful conduct, and the location, time, and
179 circumstances of the wrongful conduct.

180 (4) 'Premises' means the real property that is owned, leased, occupied, operated,
181 maintained, or managed by an owner or occupier.

182 (5) 'Prior occurrences of substantially similar wrongful conduct' means prior occurrences
183 of wrongful conduct which are sufficiently similar in nature and character, degree of
184 dangerousness, proximity, location, time, and circumstances to the wrongful conduct
185 from which a claim of negligent security arises to lead a reasonable person in the position
186 of the owner or occupier to apprehend that such wrongful conduct is reasonably likely to
187 occur upon the premises, to understand the risk of injury to persons upon the premises
188 presented by such wrongful conduct, and to understand that a specific and known
189 physical condition of the premises has created a risk of such wrongful conduct on the
190 premises that is substantially greater than the general risk of such wrongful conduct in the
191 vicinity of the premises.

192 (6) 'Security contractor' means any person that contracts with an owner or occupier to
193 provide protective or security services upon any premises or any director, officer,
194 employee, or agent of such person.

195 (7) 'Third person' means any person other than an owner or occupier or a security
196 contractor.

197 (8) 'Wrongful conduct' means:

198 (A) Any violation of a law of this state or an ordinance of any political subdivision
199 thereof that is punishable as a felony or misdemeanor, regardless of whether such
200 violation results in an arrest, citation, accusation, indictment, or conviction; or

201 (B) Any other conduct that amounts to an intentional, or willful and wanton, tort.

202 51-3-51.

203 Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for
204 negligent security arising from any injury sustained by any person upon the premises of the
205 owner or occupier as an invitee if the plaintiff proves that:

206 (1) The wrongful conduct by a third person that caused the injury sustained by the invitee
207 was reasonably foreseeable because the owner or occupier:

208 (A) Had particularized warning of imminent wrongful conduct by a third person; or

209 (B) By clear and convincing evidence, reasonably should have known that a third
210 person was reasonably likely to engage in such wrongful conduct upon the premises,
211 based on:

212 (i) Prior occurrences of substantially similar wrongful conduct upon the premises of
213 which the owner or occupier knew;

214 (ii) Prior occurrences of substantially similar wrongful conduct upon the property
215 adjoining the premises, or otherwise occurring within 500 yards of the premises, of
216 which the owner or occupier knew; or

217 (iii) Prior occurrences of substantially similar wrongful conduct by the third person
218 whose wrongful conduct caused the injury, if the owner or occupier knew such third
219 person was or would be upon the premises and knew of such prior occurrences of
220 substantially similar wrongful conduct;

221 (2) The injury sustained by the invitee was a reasonably foreseeable consequence of such
222 wrongful conduct by a third person;

223 (3) Such wrongful conduct by a third person was a reasonably foreseeable consequence
224 of such third person exploiting a specific physical condition of the premises known to the
225 owner or occupier, which created a reasonably foreseeable risk of wrongful conduct on
226 the premises that was substantially greater than the general risk of wrongful conduct in
227 the vicinity of the premises;

228 (4) The owner or occupier failed to exercise ordinary care to remedy or mitigate such
229 specific and known physical condition of the premises and to otherwise keep the premises
230 safe from such wrongful conduct by a third person; and

231 (5) Such failure of the owner or occupier to exercise ordinary care was a proximate cause
232 of the injury sustained by the invitee.

233 51-3-52.

234 Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for
235 negligent security arising from any injury sustained by any person upon the premises of the
236 owner or occupier as a licensee if the plaintiff proves that:

237 (1) The wrongful conduct by a third person that caused the injury sustained by the
238 licensee was reasonably foreseeable because the owner or occupier had particularized
239 warning of imminent wrongful conduct by a third person;

240 (2) The injury sustained by the licensee was a reasonably foreseeable consequence of
241 such wrongful conduct by a third person;

242 (3) Such wrongful conduct by a third person was a reasonably foreseeable consequence
243 of such third person exploiting a specific physical condition of the premises known to the
244 owner or occupier, which created a reasonably foreseeable risk of wrongful conduct on
245 the premises that was substantially greater than the general risk of wrongful conduct in
246 the vicinity of the premises;

247 (4) The owner or occupier willfully and wantonly failed to exercise any care to remedy
248 or mitigate the specific and known physical condition of the premises and to otherwise
249 keep the premises safe from such wrongful conduct by a third person; and

250 (5) Such failure of the owner or occupier to exercise any care was a proximate cause of
251 the injury sustained by the licensee.

252 51-3-53.

253 (a) Except as otherwise provided in subsections (b) and (c) of this Code section, the
254 provisions of this article shall be the sole and exclusive remedy for negligent security
255 against owners or occupiers, and no owner or occupier shall be liable for negligent security
256 except as provided in this article.

257 (b) Nothing in this article shall be construed to limit any cause of action brought pursuant
258 to Code Section 51-1-56 relating to a violation of Code Section 16-5-46.

259 (c) Nothing in this article shall be construed to limit or otherwise affect any claim or
260 remedy for breach of contract.

261 51-3-54.

262 Notwithstanding Code Sections 51-3-51 and 51-3-52, no owner or occupier shall be liable
263 for negligent security:

264 (1) Arising from an injury sustained by a person upon the premises of the owner or
265 occupier as a trespasser;

266 (2) Arising from an injury sustained by a person not upon the premises of the owner or
267 occupier;

268 (3) Arising from the wrongful conduct of a third person, if such wrongful conduct did
269 not occur upon the premises and in a place from which the owner or occupier had the
270 legal right and authority to exclude such third person;

271 (4) Arising from the wrongful conduct of a third person, if such third person was upon
272 the premises as a tenant or as a guest of a tenant, if the owner or occupier had
273 commenced eviction proceedings against such tenant at the time of the wrongful conduct;

274 (5) Arising from an injury sustained by a third person upon the premises of the owner
275 or occupier as an invitee or a licensee, if such person:

276 (A) Came upon the premises for the purpose of committing any violation of a law of
277 this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that is
278 punishable as a misdemeanor; or

279 (B) Was engaged at the time of the injury in the commission of any violation of a law
280 of this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that
281 is punishable as a misdemeanor, provided that this subparagraph shall not apply to a
282 victim of a violation of Code Section 16-5-46;

283 (6) Arising from an injury sustained upon premises that is used as a single-family
284 residence; or

285 (7) Based on a particularized warning of imminent wrongful conduct by a third person,
286 if the owner or occupier made any reasonable effort to provide such information to law
287 enforcement personnel, provided that calling 9-1-1 or otherwise making a report about
288 such information to law enforcement personnel shall be deemed a reasonable effort.

289 51-3-55.

290 (a) No owner or occupier shall be required to exercise extraordinary care to keep persons
291 on or around any premises safe from wrongful conduct by a third person, and no owner or

292 occupier shall be required to assume the responsibilities and obligations of government for
293 law enforcement and public safety.

294 (b) In any action for negligent security, in assessing whether an owner or occupier has
295 breached a duty to exercise ordinary care to keep persons on or around any premises safe
296 from wrongful conduct by a third person, the trier of fact shall consider the security
297 measures employed by the owner or occupier at the time of the injury from which the claim
298 of negligent security arises, the need for additional or other security measures, the
299 practicality of additional or other security measures, whether additional or other security
300 measures would have prevented the injury, the respective responsibilities of owners or
301 occupiers with respect to the premises and government with respect to law enforcement and
302 public safety, and any other relevant circumstances.

303 51-3-56.

304 In any action for negligent security:

305 (1) If the trier of fact finds that any defendant is liable to the plaintiff, the trier of fact
306 shall make an apportionment of fault under Code Section 51-12-33, and in making such
307 an apportionment, the trier of fact shall reasonably apportion fault to:

308 (A) The owner or occupier;

309 (B) Any third person whose wrongful conduct was a cause of the injury from which
310 the claim of negligent security arises; and

311 (C) Any other persons to whom fault otherwise should be apportioned under Code
312 Section 51-12-33;

313 (2) In connection with an apportionment of fault under Code Section 51-12-33, no party
314 shall offer evidence, or make an argument or other comment in the hearing of any juror
315 or prospective juror, concerning:

316 (A) Any sentence of imprisonment or probation, fine, or other punishment that has
317 been, or could be, imposed in a criminal prosecution of any third person for the
318 wrongful conduct from which the claim of negligent security arises;

319 (B) The financial resources of any party or nonparty; or

320 (C) The effect of an apportionment of fault upon any award of damages to the plaintiff;
321 and

322 (3) If a jury fails as the trier of fact to apportion a reasonable degree of fault to the third
323 person whose wrongful conduct was a cause of the injury from which the claim of
324 negligent security arises, the trial court shall set aside the verdict of the jury and order a
325 retrial of liability and damages. There shall be a rebuttable presumption that an
326 apportionment of fault is unreasonable if the total percentage of fault apportioned to all
327 third persons for their wrongful conduct is less than the total percentage of fault
328 apportioned to all owners or occupiers, security contractors, and other persons and
329 entities that did not engage in wrongful conduct.

330 51-3-57.

331 (a) If a security contractor assumes and undertakes a duty to invitees and licensees to keep
332 all or part of a premises of an owner or occupier safe from the wrongful conduct of a third
333 person, the security contractor may be liable for negligent security only in the same
334 manner, to the same extent, and subject to the same limitations and provisions applicable
335 to an owner or occupier contained in this article. In no event shall a security contractor be
336 subject to liability for negligent security to an extent greater than the liability for negligent
337 security of an owner or occupier.

338 (b) No security contractor shall be liable for negligent security except as provided in this
339 Code section.

340 (c) Nothing in this Code section shall limit or otherwise affect any claim or remedy of an
341 owner or occupier for breach of contract."

342

SECTION 7.

343 Said title is further amended in Article 1 of Chapter 12, relating to general provisions relative
344 to damages, by adding a new Code section to read as follows:

345 "51-12-1.1.

346 (a) In any civil action to recover damages resulting from injury or death to a person,
347 special damages for medical and healthcare expenses shall be recoverable only as provided
348 in this Code section.

349 (b) Special damages for medical and healthcare expenses shall be limited to the expenses
350 of medically necessary care, treatment, or services, and the amount of such special
351 damages shall be limited to:

352 (1) Amounts paid by or on behalf of the plaintiff to healthcare providers for reasonable
353 and customary care, treatment, or services;

354 (2) Amounts necessary to satisfy the incurred but unpaid charges for reasonable and
355 customary care, treatment, or services due from the plaintiff or a third party on behalf of
356 the plaintiff; and

357 (3) With respect to medical and healthcare expenses not yet incurred, such amounts as
358 are actually necessary to satisfy future charges for medically necessary care, treatment,
359 or services.

360 (c) If the plaintiff in any such civil action has any form of public or private health
361 insurance, including benefits under a governmental workers' compensation program,
362 charges for medically necessary care, treatment, or services under paragraph (2) or (3) of
363 subsection (b) of this Code section shall be the amount by which such charges may be
364 satisfied by the claimant's health insurance in addition to the amount representing the
365 plaintiff's responsibility for the portion of the charges under the insurance contract or
366 applicable governmental program, regardless of whether the health insurance has been
367 used, is used, or will be used to satisfy the charges.

368 (d) If the trier of fact renders a verdict awarding any damages pursuant to subsection (b)
369 of this Code section, and if the plaintiff's charges for medically necessary care, treatment,
370 or services were satisfied in full or in part by any form of public or private health insurance
371 for which the plaintiff paid one or more premiums, upon submission by the plaintiff of
372 documentation demonstrating the payment of such premiums within 30 days of the date of
373 the verdict, the court shall add to the verdict the cost of such premiums for each month in
374 which such damages were incurred from the month of the incident giving rise to the action
375 until the earlier of:

376 (1) The final treatment for the plaintiff's injuries for which such damages were awarded
377 pursuant to subsection (b) of this Code section; or

378 (2) The conclusion of the trial.

379 (e) The premium costs reimbursed pursuant to subsection (d) of this Code section shall not
380 exceed the damages awarded pursuant to subsection (b) of this Code section that were
381 incurred in the corresponding month.

382 (f) If the court provides for the recovery of premium costs pursuant to subsection (d) of
383 this Code section, the defendant shall have 15 days to petition the court to review the
384 accuracy of such premium costs before judgment is entered.

385 (g) Nothing in this Code section shall be construed to limit the right of a plaintiff or
386 defendant to present evidence or testimony, or both, challenging the reasonableness of
387 medical and healthcare expenses, whether incurred or projected future expenses, or the
388 medical necessity of any treatment."

389 **SECTION 8.**

390 Said title is further amended in said article by adding a new Code section to read as follows:

391 "51-12-15.

392 In any action to recover for damages for bodily injury or wrongful death, any party may
393 elect, by written demand prior to the entry of the pretrial order, to have fault and any award
394 of damages determined at trial in the following manner:

395 (1) In the first phase of the trial, the trier of fact shall determine the fault of each
396 defendant, and if the trier of fact finds that any defendant is at fault for the plaintiff's
397 injuries or wrongful death, the trier of fact shall further determine through an appropriate
398 form of the verdict the percentages of fault of all persons or entities that contributed to
399 such injuries or wrongful death as provided in Code Section 51-12-33, prior to any
400 determination of the total amount of damages to be awarded, if any such findings are
401 required. The evidence and arguments of counsel in the first phase of the trial shall be
402 limited to the issues provided for in this paragraph:

403 (2) If the trier of fact finds in the first phase of the trial that any defendant is at fault for
404 the plaintiff's injuries or wrongful death, the trial shall be recommenced. In the second
405 phase of the trial, the trier of fact shall determine all compensatory damages to be
406 awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be
407 limited to this issue; and

408 (3) If the trier of fact finds in the second phase of the trial that any compensatory
409 damages are to be awarded to the plaintiff, the trial may be recommenced for such further
410 proceedings as may be required, including, but not limited to, proceedings provided for
411 in subsection (d) of Code Section 51-12-5.1 concerning punitive damages and
412 proceedings to determine liability for, and the amount of, any attorney's fees, court costs,
413 or expenses of litigation that may be awarded by the trier of fact as provided by law."

414

SECTION 9.

415 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
416 law without such approval.

417 (b) Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on
418 or after the effective date of this Act, and any prior causes of action shall be governed by
419 prior law. It is the intention of the General Assembly that all other provisions of this Act
420 shall apply to causes of action pending on the effective date of this Act, unless such
421 application would be unconstitutional.

422

SECTION 10.

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