

The House Committee on Rules offers 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 subject to exceptions; to provide for apportionment of damages in  
10 negligent security actions; to provide for the recovery of special damages for medical and  
11 healthcare expenses in personal injury and wrongful death cases; to provide for construction;  
12 to provide for definitions; to provide for related matters; to provide for an effective date and  
13 applicability; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 68 (SUB)

- 1 -



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

45 (2) If counsel is entitled to the opening and concluding arguments, then counsel shall not  
46 be allowed to argue the worth or monetary value of noneconomic damages during such  
47 counsel's concluding argument unless counsel has argued the worth or monetary value  
48 of noneconomic damages during such counsel's opening argument, and such counsel shall  
49 not argue a different worth or monetary value of noneconomic damages in concluding  
50 arguments than was argued in such counsel's opening argument.

51 (d) If counsel elicits any testimony, or makes any argument or reference, prohibited by this  
52 Code section in the hearing of the jury or one or more prospective jurors, the court shall  
53 take remedial measures as provided in Code Section 9-10-185 or shall, with respect to  
54 prospective jurors, excuse the prospective jurors.

55 (e) Nothing in this Code section shall be construed to prohibit counsel from asking  
56 prospective jurors during voir dire whether they could return a verdict that does not award  
57 any damages or a verdict in excess of some unspecified amount, provided that such  
58 question is supported by the evidence. In the trial of a civil action for personal injuries,  
59 counsel shall be allowed to argue the worth or monetary value of pain and suffering to the  
60 jury; provided, however, that any such argument shall conform to the evidence or  
61 reasonable deductions from the evidence in the case."

62 **SECTION 2.**

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

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

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

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

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

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

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

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

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

93 ~~the 90 days provided in this paragraph~~ following the conclusion of briefing on such  
 94 motion.

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

97 (3) If the court has not ruled on the motion to dismiss within 90 days following the  
 98 conclusion of briefing on such motion, the ~~The court may upon its own motion or upon~~  
 99 motion of a party, and for good cause shown, terminate or modify the stay imposed by  
 100 this subsection but shall not extend such stay; provided, however, that such remedy shall  
 101 not preclude any other remedy available for the failure to timely rule on such motion,  
 102 including, but not limited to, a writ of mandamus.

103 (4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of  
 104 subsection (b) of this Code section; ~~or if any party needs discovery in order to identify~~  
 105 persons who may be joined or substituted as proper parties; or if any party needs  
 106 discovery in order to establish the jurisdiction of the court, limited discovery needed to  
 107 respond to such defenses, to or identify such persons, or to establish such jurisdiction  
 108 shall be permitted until the court rules on such motion notwithstanding the stay imposed  
 109 by this subsection.

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

113 **SECTION 3.**

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

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

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

120 (A) By filing a written notice of dismissal at any time before ~~the first witness is sworn~~  
 121 the sixtieth day following the date the opposing party serves an answer; or

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

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

128 ~~(2)~~(3) **By order of court.** Except as provided in paragraph (1) of this subsection, an  
 129 action shall not be dismissed upon the plaintiff's motion except upon order of the court  
 130 and upon the terms and conditions as the court deems proper. If a counterclaim has been  
 131 pleaded by a defendant prior to the service upon him or her of the plaintiff's motion to  
 132 dismiss, the action shall not be dismissed against the defendant's objection unless the  
 133 counterclaim can remain pending for independent adjudication by the court. Unless the  
 134 court order states otherwise, a dismissal under this paragraph is without prejudice.

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

137 **SECTION 4.**

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

140 "9-15-16.

141 (a) In any civil action, no party shall recover the same attorney's fees, court costs, or  
 142 expenses of litigation more than once pursuant to one or more statutes authorizing awards

143 of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes  
144 authorize such awards for compensatory or punitive purposes, unless the statute or statutes  
145 specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of  
146 litigation.

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

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

153 **SECTION 5.**

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

157 "(d)(1) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat  
158 of a motor vehicle which has a seat safety belt or belts shall not be considered evidence  
159 of negligence or causation, shall not otherwise be considered by the finder of fact on any  
160 question of liability of any person, corporation, or insurer, shall not be any basis for  
161 cancellation of coverage or increase in insurance rates, and shall not may be considered  
162 in any civil action as evidence admissible on the issues of negligence, comparative  
163 negligence, causation, assumption of risk, or apportionment of fault or for any other  
164 purpose and may be evidence used to diminish any recovery for damages arising out of  
165 the ownership, maintenance, occupancy, or operation of a motor vehicle; provided,  
166 however, that this paragraph shall not prevent a court from determining the admissibility  
167 of such evidence pursuant to Code Section 24-4-403 or any other statutory or common  
168 law rule of evidence.

169 (2) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of  
170 a motor vehicle which has a seat safety belt or belts shall not be any basis for a  
171 cancellation of insurance coverage or an increase in insurance rate."

172 **SECTION 6.**

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

176 "ARTICLE 5

177 51-3-50.

178 As used in this article, the term:

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

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

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

184 (C) Arises from an alleged failure to keep the premises and approaches safe from the  
185 wrongful conduct of third persons.

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

189 (3) 'Particularized warning of imminent wrongful conduct by a third person' means  
190 information actually known to an owner or occupier and deemed credible by the owner  
191 or occupier, which causes the owner or occupier to consciously understand that a third  
192 person is likely to imminently engage in wrongful conduct on the premises that poses a

193 clear danger to the safety of persons upon the premises, such information being specific  
194 as to the identity of the third person, the nature and character of the wrongful conduct, the  
195 degree of dangerousness of the wrongful conduct, and the location, time, and  
196 circumstances of the wrongful conduct.

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

199 (5) 'Prior occurrences of substantially similar wrongful conduct' means prior occurrences  
200 of wrongful conduct which are sufficiently similar in nature and character, degree of  
201 dangerousness, proximity, location, time, and circumstances to the wrongful conduct  
202 from which a claim of negligent security arises to lead a reasonable person in the position  
203 of the owner or occupier to apprehend that such wrongful conduct is reasonably likely to  
204 occur upon the premises, to understand the risk of injury to persons upon the premises  
205 presented by such wrongful conduct, and to understand that a specific and known  
206 physical condition of the premises has created a risk of such wrongful conduct on the  
207 premises that is substantially greater than the general risk of such wrongful conduct in the  
208 vicinity of the premises.

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

212 (7) 'Third person' means any person other than an owner or occupier or a security  
213 contractor or a person under the direction, control, or supervision of an owner or occupier  
214 or security contractor.

215 (8) 'Wrongful conduct' means:

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

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

220 51-3-51.

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

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

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

227 (B) Reasonably should have known that a third person was reasonably likely to engage  
228 in such wrongful conduct upon the premises, based on:

229 (i) Prior occurrences of substantially similar wrongful conduct upon the premises of  
230 which the owner or occupier had actual knowledge;

231 (ii) Prior occurrences of substantially similar wrongful conduct upon the property  
232 adjoining the premises, or otherwise occurring within 500 yards of the premises, of  
233 which the owner or occupier had actual knowledge; or

234 (iii) Prior occurrences of substantially similar wrongful conduct by the third person  
235 whose wrongful conduct caused the injury, if the owner or occupier knew or should  
236 have known, by clear and convincing evidence, that such third person was or would  
237 be upon the premises and if the owner or occupier had actual knowledge of such prior  
238 occurrences of substantially similar wrongful conduct;

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

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

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

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

251 51-3-52.

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

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

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

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

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

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

270 51-3-53.

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

275 (b) Nothing in this article shall be construed to limit or otherwise affect any cause of action  
276 brought pursuant to Code Section 51-1-56 or any other applicable law or theory of recovery  
277 otherwise recognized by law, including, but not limited to, negligence and nuisance, in  
278 connection with an alleged violation of Code Section 16-5-46.

279 (c) Nothing in this article shall be construed to limit or otherwise affect any claim or  
280 remedy for breach of contract or any other claim, remedy, or cause of action not arising  
281 under Article 1 of this chapter.

282 51-3-54.

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

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

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

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

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

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

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

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

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

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

310 51-3-55.

311 (a) No owner or occupier shall be required to exercise extraordinary care to keep persons  
312 on or around any premises safe from wrongful conduct by a third person, and no owner or  
313 occupier shall be required to assume the responsibilities and obligations of government for  
314 law enforcement and public safety.

315 (b) In any action for negligent security, in assessing whether an owner or occupier has  
316 breached a duty to exercise ordinary care to keep persons on or around any premises safe  
317 from wrongful conduct by a third person, the trier of fact shall consider the security  
318 measures employed by the owner or occupier at the time of the injury from which the claim  
319 of negligent security arises, the need for additional or other security measures, the  
320 practicality of additional or other security measures, whether additional or other security

321 measures would have prevented the injury, the respective responsibilities of owners or  
322 occupiers with respect to the premises and government with respect to law enforcement and  
323 public safety, and any other relevant circumstances.

324 51-3-56.

325 In any action for negligent security:

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

329 (A) The owner or occupier;

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

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

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

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

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

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

343 (3) If a jury fails as the trier of fact to apportion a reasonable degree of fault to the third  
344 person whose wrongful conduct was a cause of the injury from which the claim of  
345 negligent security arises, the trial court shall set aside the verdict of the jury and order a  
346 retrial of liability and damages. There shall be a rebuttable presumption that an

347 apportionment of fault is unreasonable if the total percentage of fault apportioned to all  
348 third persons for their wrongful conduct is less than the total percentage of fault  
349 apportioned to all owners or occupiers, security contractors, and other persons and  
350 entities that did not engage in wrongful conduct.

351 51-3-57.

352 (a) If a security contractor assumes and undertakes a duty to invitees and licensees to keep  
353 all or part of a premises of an owner or occupier safe from the wrongful conduct of a third  
354 person, the security contractor may be liable for negligent security only in the same  
355 manner, to the same extent, and subject to the same limitations and provisions applicable  
356 to an owner or occupier contained in this article. In no event shall a security contractor be  
357 subject to liability for negligent security to an extent greater than the liability for negligent  
358 security of an owner or occupier.

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

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

363 **SECTION 7.**

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

366 "51-12-1.1.

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

370 (b) Special damages for medical and healthcare expenses shall be limited to the reasonable  
371 value of medically necessary care, treatment, or services, and the amount of such special  
372 damages shall be determined by the trier of fact.

373 (c) If the plaintiff in any such civil action has any form of public or private health  
374 insurance, including benefits under a governmental workers' compensation program,  
375 evidence relevant to the determination of the reasonable value of medically necessary care,  
376 treatment, or services pursuant to subsection (b) of this Code section shall include both the  
377 amounts charged for past, present, or future medical and healthcare expenses and the  
378 amounts actually necessary to satisfy such charges pursuant to the insurance contract or the  
379 applicable governmental workers' compensation program, regardless of whether the health  
380 insurance has been used, is used, or will be used to satisfy such charges.

381 (d) In any claim for medical and healthcare expenses rendered under a letter of protection  
382 or any other arrangement by which a healthcare provider renders treatment in exchange for  
383 a promise of payment for the plaintiff's medical and healthcare expenses from any  
384 judgment or settlement of a civil action to recover damages resulting from injury or death  
385 to a person, regardless of how such arrangement is referred to, the following shall be  
386 relevant and discoverable:

387 (1) A copy of the letter of protection;

388 (2) All charges for the plaintiff's medical and healthcare expenses, which shall be  
389 itemized and, to the extent applicable, coded according to generally accepted medical  
390 billing practices;

391 (3) If the healthcare provider sells the accounts receivable for the plaintiff's medical and  
392 healthcare expenses to a third party at less than the invoice price:

393 (A) The name of the third party; and

394 (B) The dollar amount for which the third party purchased such accounts receivable;

395 and

396 (4) Whether the claimant was referred for treatment under a letter of protection or other  
 397 similar arrangement and, if so, the identity of the person who made the referral.

398 (e) It is the intent of the General Assembly that this Code section abrogates the common  
 399 law collateral source rule to the extent necessary to introduce the evidence described in this  
 400 Code section; provided, however, that nothing in this Code section shall be construed or  
 401 applied to prevent the court from issuing appropriate jury instructions to clarify the role of  
 402 collateral source payments and to prevent potential jury confusion regarding the effect of  
 403 collateral source payments on the plaintiff's recovery.

404 (f) Nothing in this Code section shall be construed or applied to limit the right of a plaintiff  
 405 or defendant to present evidence or testimony, or both, challenging the reasonableness of  
 406 medical and healthcare expenses, whether incurred or projected future expenses, or the  
 407 medical necessity of any treatment."

#### 408 **SECTION 8.**

409 Said title is further amended in said article by adding a new Code section to read as follows:  
 410 "51-12-15.

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

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

422 (2) If the trier of fact finds in the first phase of the trial that any defendant is at fault for  
 423 the plaintiff's injuries or wrongful death, the trial shall be recommenced immediately with  
 424 the same judge and the same jury. In the second phase of the trial, the trier of fact shall  
 425 determine all compensatory damages to be awarded to the plaintiff, if any, and the  
 426 evidence and arguments of counsel shall be limited to this issue; and

427 (3) If the trier of fact finds in the second phase of the trial that any compensatory  
 428 damages are to be awarded to the plaintiff, the trial may be recommenced immediately  
 429 with the same judge and the same jury for such further proceedings as may be required,  
 430 including, but not limited to, proceedings provided for in subsection (d) of Code Section  
 431 51-12-5.1 concerning punitive damages and proceedings to determine liability for, and  
 432 the amount of, any attorney's fees, court costs, or expenses of litigation that may be  
 433 awarded by the trier of fact as provided by law.

434 (b) The court may reject an election by any party made pursuant to subsection (a) of this  
 435 Code section and order the concurrent trial of fault and damages only upon motion by any  
 436 party in opposition to such election and upon the court's determination that:

437 (1) The plaintiff, or if the plaintiff is the legal guardian of a minor, the minor, was  
 438 injured by an alleged sexual offense and would be likely to suffer serious psychological  
 439 or emotional distress as a result of testifying more than once in a bifurcated proceeding;  
 440 or

441 (2) The amount in controversy is less than \$150,000.00."

442 **SECTION 9.**

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

445 (b) Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on  
 446 or after the effective date of this Act, and any prior causes of action shall be governed by  
 447 prior law. It is the intention of the General Assembly that all other provisions of this Act

448 shall apply to causes of action pending on the effective date of this Act, unless such  
449 application would be unconstitutional.

450

**SECTION 10.**

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