Executive Summary and Tort Reform Legislation Overview

Current Georgia law unfortunately incentivizes excessive lawsuits, harms the ability of our job creators to start, operate, and grow their businesses, and ultimately results in higher prices for hardworking Georgians. It is abundantly clear the status quo is undermining the future of our people and our economy.

Governor Kemp's tort reform package levels the playing field in our courtrooms, bans hostile foreign powers from taking advantage of consumers and legal proceedings, aims to stabilize insurance costs for businesses and consumers, increases transparency and fairness, and ensures Georgia continues to be the best place to live, work, and raise a family.

These much-needed reforms strike the right balance by protecting every Georgian's constitutional right to civil justice while also bringing Georgia more in line with the legal environments of our neighboring states that we compete with for jobs and investment.

Above all, Governor Kemp's tort reform package puts families and consumers first by tackling the hidden costs we all pay thanks to Georgia's current tort laws.

Below are the specific policy areas addressed by the legislation.

1. **Reevaluating the Standard for Negligent Security Liability ("Premises Liability").**

   The Problem: Businesses of all sizes—but particularly small businesses—are shutting their doors due to skyrocketing commercial property insurance costs to cover the risk of a business being held liable for the criminal acts of a third party. Businesses have a duty to take care of their customers and keep them safe, but currently businesses face enormous liability for things that are totally outside their control. Governor Kemp highlighted some of these examples in his State of the State Address to begin this year's legislative session.

   The Solution: Governor Kemp's legislation ensures businesses should only be liable for what they directly control. If signed into law, the legislation would hold property owners liable for failures to keep their property safe for their customers and the public, but protect establishments for simply opening their doors and employing hardworking Georgians in communities and neighborhoods that need them.

2. **Truthful Calculation of Medical Damages in Personal Injury Cases ("Phantom Damages")**

   The Problem: Under current law, the jury is prevented from knowing how much a plaintiff—or a plaintiff's insurer—actually paid for medical costs. This inflates the true cost of damages, which gets passed down to consumers.

Plaintiffs that are successful in litigation should always be made whole, and have their costs covered. However, awarding plaintiffs—and in turn, their attorneys—more than their true costs distorts our judicial system and incentivizes frivolous litigation that ultimately impacts every person in this state seeking care. Our civil justice system should make victims whole, not award "profit margins" for accidents.

The Solution: This bill requires the plaintiff to only seek damages in the amount actually paid (or will be paid in the future) for a medical bill, rather than the inflated amount that is currently introduced in evidence.

3. Eliminating the Ability to Arbitrarily Anchor Pain and Suffering Damages to a Jury ("Anchoring").

The Problem: When a plaintiff brings a lawsuit, some of their damages are already quantifiable—bills, lost income, etc. But Georgia law also allows plaintiffs to recover damages for pain and suffering, emotional distress, and other "non-economic" damages. It has been a staple of our law that these non-economic damages should be left to the jury to decide. Recently, however, we have repeatedly seen attorneys—on both sides—attempt to "anchor" the jury's mind to irrelevant or arbitrary amounts for these damages, often resulting in enormous windfall awards.

The Solution: Georgia law currently gives the jury sole discretion to determine damages for pain and suffering. This portion of the bill will prohibit the use of anchoring tactics by attorneys in closing arguments so the jury can use their own discretion—rather than inflated, artificial benchmarks like the cost of fighter jets, or the number of miles a truck drove, or the salary of a professional athlete—all of which are real examples from cases.

This bill does NOT place ANY limit on the jury's discretion. Rather, the Governor's legislation protects the jury's decision making from irrelevant and improper arguments from counsel.

4. Bifurcated Trials

The Problem: When an accident occurs, current Georgia law allows the harmed to recover damages only when someone else is at fault. Liability and damages are two distinct questions, but right now, the jury has to consider them both at the same time and attorneys often try to blur the distinction. Separating the question of liability from the issue of damages ensures defendants are judged for their actions, not for the extent of the plaintiff's injuries.

The Solution: The bill permits a party in a tort case to move for bifurcation of the trial, so that liability must be established before the jury hears evidence detailing the extent of the plaintiff's damages. This clarifies important procedure in the courtroom and gives both sides of a case the same opportunity to have their arguments heard.

5. **Allowing a Jury to Know Whether the Plaintiff Wore Their Seatbelt ("Admissible Seatbelt Evidence").**

The Problem: Seatbelt use is required by law in Georgia, because we all know that seatbelts keep individuals and families safe in the event of an accident. However, the law prohibits a defendant in an automobile accident case from telling the jury that the other driver was not wearing a seatbelt. This is not only unfair, it defies common sense. Every Georgian with auto insurance is paying the additional cost of those involved in auto accidents who recklessly chose not to wear a seatbelt.

The Solution: Remove the current exclusion from the evidence code that prevents the defendant from showing evidence the plaintiff was not wearing his or her seatbelt in an auto accident. Allowing admission of seatbelt evidence at trial to be used by the defense to mitigate damages, particularly where the plaintiff's failure to use this essential safety feature results in significantly worse injuries for the plaintiff.

6. **Eliminating Double Recovery of Attorney's Fees.**

The Problem: A court can award attorney's fees to plaintiff's counsel or defense counsel under certain circumstances in a personal injury lawsuit. A separate provision under Georgia's contract code allows attorney's fees to be awarded to an insured for a "bad faith" denial of insurance coverage in a lawsuit. These two code provisions for attorney's fees were intended to apply separately in different types of cases. Despite the law's original intent, courts have interpreted the attorney's fees provision in the contract code to apply to personal injury cases as well, allowing for an instance where plaintiff's counsel can recover their fees twice for the same lawsuit – an unfair windfall.

The Solution: It is common sense that attorneys should not be awarded the same fees twice in one case. The Governor's legislation closes this loophole, and still allows courts to award attorney fees—but only once. An exception to this rule will be where a statute clearly permits double recovery of fees, costs, and expenses.

7. Eliminating Plaintiff Dismissal During Trial.

The Problem: Currently, plaintiffs have the option to dismiss their case without prejudice all the way up until after the jury is picked and the parties have given opening statements. This standard unfairly allows the plaintiff to refile in or "cherry pick" a more favorable jurisdiction to them after the defense has already racked up the cost of preparing and beginning the trial.

The Solution: Our bill adopts the same standard followed in the federal rules of civil procedure for voluntary dismissals without prejudice: only allowing them up until responsive pleadings have been filed. Plaintiffs should not get multiple bites at the apple, and this bill ensures that once a plaintiff starts a case, it gets resolved.

8. Motion to Dismiss Timing Changes

The Problem: Under the current rules, even if defendants file a motion to dismiss in response to a baseless lawsuit, they must still prepare and file an answer, and may also have to respond to extensive discovery requests, before their motion is ruled on. Preparing an answer and discovery responses can be very expensive and time consuming.

The Solution: This piece of the bill would change the civil practice act to mirror the Federal Rules of Civil Procedure and allow a defendant to file a motion to dismiss in lieu of an answer. It also makes sure judges rule on a motion to dismiss before discovery responses are due. This ensures meritorious cases move forward, while keeping frivolous cases from racking up legal fees and clogging our courts.

9. Third Party Litigation Funding

The Problem: Third-party litigation financing is a multi-billion dollar a year industry, and we know Georgia is a large market for these companies—but right now the industry is extremely opaque, completely unregulated, and rife for potential abuse. Litigation funders prey on vulnerable plaintiffs through enormous interest rates, and foreign actors may fund litigation to obtain the trade secrets of a Georgia business, or to advance their own political interests against the interests of the citizens of this state.

The Solution

First and foremost, our legislation bans hostile foreign adversaries from using our litigation climate to undermine our vital security and economic interests.

Second, the Governor's package seeks to protect consumers from predatory lenders that want to take advantage of litigants in vulnerable situations by

prohibiting litigation funders from having any input into the litigation strategy or from taking the plaintiff's whole recovery and making sure plaintiffs are aware of their rights. The plaintiff's interests—not the interests of outside investors—should always come first. When an injured plaintiff gets the verdict they deserve, they should not lose it all to astronomical interest rates or bogus fees that they may not be aware they are obligated to pay.

Third, litigation financiers who wish to operate in Georgia will be required to register with the Department of Banking and Finance, which will ensure these funders are helping plaintiffs and abiding by the law, not taking advantage of consumers and courtrooms alike.

Fourth, the legislation increases transparency for all parties by allowing the involvement of a litigation financier in a case to be discoverable during litigation.