



2020

capitol watch

Legislative Day 25

The first week of March at the Georgia General Assembly was far from quiet. From heated tort reform discussions to endless PBM legislation and daylight savings time referendums, it was certainly a busy week... not to mention qualifying for 2020 election season upon us. You can view the full list below under the heading "Who's In and Who's Out."

The race is on as Crossover Day is quickly approaching. Legislators will be in session Monday, Tuesday, and Thursday (Crossover Day) next week. Any currently active legislation must be passed in its originating chamber by Thursday at 11:59 pm in order to continue moving in this session. Any legislation that does not pass by 11:59 pm on Thursday will be dead.

Tort Reform Legislation

Call to Action - We Need Your Help!

SB 415, by Sen. Steve Gooch, will likely be voted on in the Senate next week prior to crossover. We are asking for a 'Call to Action' on SB 415. As a note, please review the Executive Summary below and specifically Sections 1 and 7 which pertain to bifurcation in civil trials and 'Phantom Damages.'

Please reach out to the following Senators and tell them to support this legislation as Medical Malpractice premiums continue to climb by a large margin and this would help in stopping this.

- Sen. Bruce Thompson - (404) 656-0065
- Sen. Tyler Harper - (404) 463-5263
- Sen. Jack Hill - (404) 656-5038
- Sen. Renee Unterman - (404) 463-1368
- Sen. Jeff Mullis - (404) 651-6768

- Sen. Brandon Beach - (404) 463-1378

Please call these Senators and tell them to support Senate Bill 415!

Part One: Civil Practice Reforms

- **Section 1-1:** Allows the statute of limitations to run even while a criminal is being prosecuted for a crime that caused harm to an individual. Currently, the statute of limitations is tolled until criminal prosecution is complete, which may take up to six years.
- **Section 1-2:** A judge must provide jury instructions in writing rather than orally.
- **Section 1-3:** Requires disclosure of third-party agreements
- **Section 1-3A:** Allows trial bifurcation in civil trials
- **Section 1-4:** Prohibit judges from informing a jury that if the plaintiff is found 50% or more at fault, the plaintiff is barred from recovery.

Part Two: Jury Selection

During jury selection, insurance companies will not be mentioned within earshot of other jurors. Instead, potential jurors will complete a questionnaire to determine whether any relationship exists with an insurance company who has a stake in the outcome of the litigation.

Part Three: Joint Airport Authority Immunity

Provides immunity for municipal corporations when a joint airport authority exists with a city to the same level as immunity for joint county airport authorities.

Part Four: Trucking Reforms

- **Section 4-1 and 4-2: Direct action against insurers in trucking cases:** Currently, plaintiffs may directly name a motor trucking insurance carrier as a party in a trucking case. The provision prohibits personal injury lawyers from suing motor trucking insurance carriers prior to the adjudication of a case against the trucking company. Georgia is in a minority of states with its current law.
- **Section 4-3 and 4-4: Presumption of qualification with valid Commercial Driver's License:** A person should be presumed to possess the qualifications necessary to be hired and entrusted to drive a commercial motor vehicle if the person has a commercial driver license issued by a state in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses, if the person's license is not suspended, revoked, or cancelled and if the person is not disqualified from driving a commercial motor vehicle.

Part Five: Seatbelt Nonuse Evidence

Under Georgia law, evidence that someone failed to wear a seat belt in a motor vehicle accident is concealed from the jury even though the jury must determine the cause of the injury and the fault of those involved. The law expressly forbids its introduction despite the overwhelming probative value of the evidence and this intrudes upon the jury's role. It is a matter of fundamental fairness to provide all relevant evidence to juries so they will be capable of making an informed decision. Currently, a motorcycle helmet, which is also a safety device used to mitigate injury, is permitted to be introduced as evidence.

Part Six: Georgia Medical Funding Act

Require disclosure of all funding documents to juries and insurers when medical services are funded by third parties in any case.

Part Seven A: Tort Reforms

- **Section 7-1 Statute of repose in failure to warn cases:** A statute of repose is a period of time in which a plaintiff may file a lawsuit. The legislature enacted a 10-year statute of repose in product liability cases and made no exceptions. But the courts created a “failure to warn” exception not authorized by the legislature. The judicially imposed exception in failure to warn cases – “constructive notice” – effectively renders the 10-year statute of repose against manufacturers meaningless. Georgia should revive the actual notice standard and limit claims to 10 years as the statute was originally intended by the legislature.
- **Section 7-2 Landowner liability protection:** Landowners are currently being sued as a result of third-party criminal activity occurring on their property when the landowner neither permitted nor had any knowledge of the criminal conduct, and in many cases had taken steps to prevent it by implementing security mechanisms. Runaway verdicts against innocent landowners have been the result, which we believe have caused businesses to abandon high crime areas and the creation of food deserts and other economic vacuums.
- **Section 7A-1 Truth in damages:** Currently under Georgia law, a defendant is prohibited from telling a jury how much medical treatment actually costs for a plaintiff’s injuries. The plaintiff is able to introduce evidence of the initial billed amount by a medical provider when the actual amount paid to fully satisfy the debt (usually via health insurance coverage) is substantially lower in most cases. Even when no one actually pays the “billed amount,” the plaintiff is permitted to use an inaccurate, inflated number to quantify the cost of the plaintiff’s medical treatment. The same “phantom” number is then used as a multiplier for non-economic damages. This results in vastly inflated recoveries.
- **Section 7A-2 Punitive damages cap:** A \$250,000 cap on punitive damages exists for all claims except products liability claims. But products liability claims involve manufacturers and manufacturers provide jobs. Georgia should aim to level the playing field by extending the benefits of the punitive damages cap to all industries, including job-creating product manufacturers. Georgia is not a state who has traditionally picked winners and losers. And remember, punitive damages do not compensate the plaintiff—to even get punitive damages, the jury must first fully compensate the plaintiff.

Part Seven B: Asbestos Bankruptcy Transparency

In asbestos cases, plaintiffs have successfully made multiple claims for the same asbestos-related injuries, which results in recoveries against multiple companies for the same injury. Legislation would simply require the plaintiff to disclose all exposures which will provide for proper and equitable allocation of fault.

Georgia’s medical malpractice severity & frequency trend higher than nationwide average.

- Aggregate severity of claims paid in Georgia has continuously increased since 2010, and has increased 46% in the last 5 years
- In 2018, average severity in Georgia was 23% higher than nationwide
- According to data from the National Practitioners Data Bank, Georgia is the 9th worst state in terms of severity and the highest in the Southeast
- Since 2016 there has been a 47% increase in the number of paid claims, even while the national average has decreased

Georgia’s entire legal environment has declined as well.

- Georgia’s legal climate is ranked 41st according to the U.S. Chamber
- Georgia is on the American Tort Reform Association’s “Judicial Hellhole” watchlist
- Georgia families now pay \$3,631 per household in annual tort costs

The tort environment disproportionately hurts rural and poor urban areas and makes Georgia less attractive to new physicians.

- Lower income patients and higher medical liability premiums results in fewer physicians in rural Georgia
- Physicians in Georgia generally pay more for medical liability insurance than their peers in competitor states, like North Carolina

What Can Be Done?

- Eliminate phantom damages
- Mandatory trial bifurcation at motion of any party
- Prohibition of "anchoring"
- Mandatory scheduling orders for damages exceeding \$150,000
- Limit attorney's fees

House Floor and Committee Actions of the Week

HB 789, by Rep. Mark Newton, amends to create a surprise bill rating system based upon the number of certain physician specialty groups contracted with a hospital within a health insurer's network. The House approved the measure by a 170-1 vote, and it moves to the Senate for further consideration.

HB 816, by Rep. Karen Mathiak, seeks to allow chiropractors and physicians the ability to form professional corporations. Currently, they are limited to forming Limited Liability Companies with one another. This bill passed the House 161-5 where it awaits committee assignment in the Senate.

HB 888, by Rep. Lee Hawkins, is the Surprise Billing Consumer Protection Act similar to Sen. Chuck Hufstetler's **SB 359** which recently passed in the Senate. The House approved the measure by a 164-4 vote, and it moves to the Senate for further consideration.

HB 932, by Rep. Houston Gaines, amends the Georgia Podiatry Practice Act to change certain provisions relating to podiatric medicine and surgery. The bill also allows for Doctors of Podiatric Medicine to join professional corporations with Doctors of Medicine or Doctors of Osteopathy. The House approved the measure by a 167-0 vote, and it moves to the Senate for further consideration.

HB 918, by Representative Sharon Cooper, addresses pharmacy practices and eliminates steering practices by pharmacy benefit managers to certain pharmacies and mail order and seeks to reign in audit processes on pharmacies by pharmacy benefit managers in. HB 918 passed the House Floor with a vote of 169-0 and moves onto the Senate where it awaits further consideration.

HB 946, by Representative David Knight, seeks a comprehensive set of revisions to Georgia's regulations of Pharmacy Benefit Managers (PBM). The bill addresses pharmacy benefit managers from denying payment when a patient is not utilizing one of the pharmacy benefit manager's pharmacies. It also seeks to address steering in state contracts for healthcare and eliminates the use of spread pricing, which has cost Georgia roughly \$93 million in years 2018 and 2019. This bill passed the House Floor with a vote of 165-1. It now moves to the Senate where it awaits further consideration.

HB 947, by Representative Knight, also addresses PBM issues and requires that the Department of Community Health engage a third-party actuary to conduct a study of the potential savings if the state were to carve out pharmacy benefits from the state's Medicaid CMO contracts. This bill also passed the House Floor with a vote of 168-0.

House Legislation Race to Crossover

HB 864, by Rep. Bonnie Rich, looks to implement new taxes on vaping. It looks to tax vape products under new special rates and establishes a state regulatory scheme requiring licensure for manufacture and sale of modified vaping. The bill passed the House Ways & Means Committee unanimously and will move to House Rules.

HB 994, by Rep. Bert Reeves, amends code to provide for enhanced enforcement of gang related crime. The legislation was passed out of committee via substitute language to clarify that individuals ages 13-17 are not subject to begin in adult court. Significantly altering original language, that would have caused a child between the ages of 13-17 to be tried as an adult. The bill also gives courts the ability to require individuals divest from corporations or enterprises in the state when found guilty of gang related violations. Issues remain surrounding the definition of 'gang' pertaining to the identifiers in the legislation. We expect to see additional changes in this legislation as it moves through the process.

HB 996, by Rep. Sharon Cooper, seeks to amend the Cosmetic Laser Services Act to include energy based medical procedures using an ultrasound, cryolipolysis, microwave, or radio frequency device that is not expected or intended to remove, burn, or vaporize the live epidermal surface of the skin. The House Regulated Industries committee voted Do Pass where it awaits in House Rules.

HB 1024, by Rep. Mark Newton, seeks to amend Georgia's Certificate of Need laws. It proposes to provide for free-standing emergency departments under the state's CON program and provide for an exemption from CON for those with one inpatient beds for behavioral health patients and for free-standing emergency departments in rural counties. This bill was referred to the House Special Committee on Access to Quality Healthcare where it awaits further consideration.

HB 1027, by Rep. Lee Hawkins, seeks to amend code section relating to regulation and licensure of pharmacy benefit managers. New definitions are added and it further proposes to require that pharmacy benefit managers annually report aggregate amounts of all pharmacy rebates but also to calculate enrollee's defined cost sharing for each prescription drug at the point of sale based on a price that is reduced by an amount equal to at least 80 percent of all rebates received, or to be received, in conjunction with the dispensing or administration of the prescription drug. This bill was heard only in the Access to Quality Healthcare Committee where it awaits a vote on Monday morning.

HB 1032, by Rep. Matt Hatchett, seeks to amend Georgia's Certificate of Need ("CON") Laws and specifically provide an exemption for ambulatory surgery centers which perform medical procedures in non-sterile procedure rooms and not in ORs and have a letter of determination from the Department of Community Health so that such would not be subject to CON review. The House Committee on Access to Quality Healthcare is expected to hold a vote on this Monday morning.

HB 1060, by Rep. Ginny Ehrhart, also known as the Vulnerable Child Protection Act which affects minors, would not apply to medical decisions of parents or guardians of infants born with so-called disorders of sex development. Basically, this bill would allow for the continued genital mutilation of intersex infants while working to make it illegal for doctors to treat their young transgender patients. The bill sits in the House Health and Human Services Committee where it awaits further consideration.

HB 1077, by Rep. Tom Kirby, seeks to amend the Georgia Administrative Procedures Act to remove from the definition of the term "agency" the exemption for the State Board of Workers' Compensation. The bill currently sits in the House Industry and Labor Committee where it awaits further consideration.

HB 1079, by Rep. Kim Schofield seeks to replace submissions of the 1115 Medicaid waiver request to the federal government with a state plan amendment to authorize Medicaid expansion. The amendment is proposed to increase the income threshold of individuals to 138 percent of the federal poverty level. It also seeks to amend to make changes to a Section 1332 innovation waivers under the Patient Protection and Affordable Care Act. This bill was referred to the House Special Committee on Access to Quality Healthcare.

HB 1089, by Rep. Tom McCall, seeks to streamline the process of litigation and reduce costs for Georgia's industries, small businesses and citizens. This bill is similar to **SB 415** by Sen. Steve Gooch. A few of the key points include:
Addressing the tolling of limitations for tort actions while criminal prosecution is pending. otherwise terminated.

- Amendments regarding the value of pain and suffering in the trial of a civil action for personal injuries so that counsel is prohibited from allowing to argue directly or by analogy a specific worth or monetary value of pain and suffering or the value of any life in any wrongful death action to the jury.
- Amendments regarding consolidation and severance of proceedings so that upon motion of any party in an action in tort wherein the plaintiff seeks damages exceeding \$150,000.00 and the defendant disputes liability, the court is required to order separate trials for the issue of liability and the issue of damages, unless the court for good cause shown orders a single trial. Evidence relating solely to compensatory damages is not admissible until the trier of fact has determined that the defendant is liable; the trier of fact which tries the issues relating to the liability is required to try the issues relating to damages.

This bill was referred to the House Special Committee on Access to the Civil Justice System.

HB 1092, by Rep. Alan Powell, seeks to address scope of practice for APRNs so that they can order radiological tests and the nurses would work under the protocols of their physicians. This bill was referred to the House Regulated Industries Committee.

HR 1282, by Rep. Shelly Hutchinson, would create a House Study Committee on evaluating, simplifying, and eliminating duplication of regulatory requirements for mental health and social services providers. The resolution resides in the House Special Rules Committee where it awaits further consideration.

Senate Floor and Committee Actions of the Week

SB 303, by Sen. Ben Watson, seeks to enact the 'Georgia Right to Shop Act.' As it stands, the bill is a transparency measure to allow consumers to have a better understanding of their health care costs through a series of quality metrics. The way in which those metrics are written would ultimately be up to the Insurance Commissioner to promulgate. The House Committee on Access to Quality Healthcare continues to hold the bill for further consideration.

SB 313, by Sen. Dean Burke, seeks to amend current law regarding the licensure and regulation of pharmacy benefit managers. A substitute, passed out of committee earlier in the week, contains a number of changes including changes to the requirements that the Pharmacy Benefits Manager ("PBM") be an actively practicing physician. The bill passed the Senate 52-0 and moves onto the House where it awaits a committee assignment.

SB 323, by Sen. Kay Kirkpatrick, would establish standards for sedation in dentist and physician offices. This bill passed the Senate 53-0, moves to the House where it awaits further consideration.

SB 347, by Sen. Gloria Butler, would require hospitals to install surgical smoke evacuation equipment in all surgery rooms. The Senate Health and Human Services committee heard testimony from nurses who have suffered negative health effects due to their exposure to surgical smoke, which they explained has been added to the lists of harmful substances. Opponents of the bills including the Georgia Hospital Association and Georgia Chamber noted that while they have committed to workforce safety and surgical smoke evacuation systems are present in many hospitals, the bill is essentially an unfunded mandate. The committee took no action on the bill but would continue dialogue on the issue.

SB 372, by Sen. Blake Tillery, is a Department of Public Health cleanup bill, passed 52-0. The legislation brings the state up to speed with procedures that the Department has already been implementing in accordance with state law. The bill now awaits committee assignment in the House.

SB 395, by Sen. Ben Watson, seeks to increase the standard of indigency for hospital authority trusts. It would also provide more flexibility in how investments by hospital authorities are made. This bill passed 52-0 and awaits committee assignment in the House.

Senate Legislation Race to Crossover

SB 311, by Sen. Kay Kirkpatrick, relates to patient brokering within the recovery housing industry. As it stands, recovery homes are not regulated as they do not provide services. The bill would prohibit kickbacks and referrals within the industry and outlaws fraudulent marketing techniques designed to deceive individuals into expensive long-term recovery facilities. The Senate Health and Human Services committee recommended the bill Do Pass.

SB 423, by Sen. John Albers, also known as the Max Gruver Act seeks to reduce and prevent hazing within Georgia's universities and college systems. This bill establishes criminal penalties for anyone who carries out a hazing ritual on any minor or student. The legislation has been assigned to the Senate Judiciary Committee where it awaits consideration.

SB 433, by Sen. Burt Jones, seeks to require disclosure of diabetes prescription drug pricing as well as drug manufacturer and pharmacy benefits manager report forms and insurer pricing reports. This bill sits in the Senate Insurance and Labor Committee where it awaits further consideration.

SB 427, by Sen. Jeff Mullis, seeks to insert a new code section to address pharmacy benefits under the Department of Community Health. It requires that the Department to engage an actuary to conduct an actuarial study which is to be completed no later than December 1, 2020. The purpose is review of the fiscal impact of carving out the pharmacy benefits from the state's current Medicaid care management organizations and providing pharmacy benefits to care management organization members exclusively through the Department's Medicaid fee-for-service program. If the results of the actuary review find that the savings to the state and federal government combine to be \$20 million or more, than the Department is to provide pharmacy benefits for a care management organization's members; if the savings are found to be annual savings of at least \$10 million but less than \$20 million then the Department has the authority but not the obligation to proceed with the carve out of the pharmacy benefits. This bill was referred to the Senate Health and Human Services Committee where it awaits further consideration.

SB 481, by Sen. Matt Brass, amends multiple Code Sections to add language clarifying that certain definitions of marijuana or THC related products. Specifically they would apply to products approved by the federal Food and Drug Administration. This bill was referred to the Senate Regulated Industries Committee.

SB 482, by Sen. Dean Burke, seeks to create a new Code Section to mandate a state all-payer claims database within the Office of Health Strategy and Coordination. This bill creates an advisory committee to develop a framework for the implementation and operation of the database. This bill was referred to the Senate Health and Human Services Committee.

SB 483, by Sen. Matt Brass, seeks to creates a new Code Section to provide that DCH must provide Medicaid reimbursement at 100% of cost for any behavioral rehabilitation joint venture in the second year of the operation of the venture. Additionally, the bill specifies that any proceeds from the rural health tax credit shall not count against a hospital's cap.

SR 193, by the late Sen. Greg Kirk, seeks to transfer oversight of the Division of Developmental Disabilities, within Department of Behavioral Health and Developmental Disabilities over to the Department of Community Health. While the committee voted favorably on the measure, it currently sits in Senate Rules where we do not expect much movement.

Who's In and Who's Out

Below is a list of Representatives and Senators who are either retiring from the Georgia General Assembly or running for one of the many Congressional District up for grabs in the 2020 election.

STATE HOUSE

Dist. 1 - Colton Moore
Dist. 8 - Matt Gurtler (running for 9th CD)
Dist. 9 - Kevin Tanner (running for 9th CD)
Dist. 18 - Kevin Cooke (running for 14th CD)
Dist. 20 - Michael Caldwell (running for SD 21-Brandon Beach district)
Dist. 21 - Scot Turner
Dist. 26 - Marc Morris
Dist. 33 - Tom McCall
Dist. 57 - Pat Gardner.
Dist. 99 - Brenda Lopez Romero (running for 7th CD)
Dist. 131 - Ken Pullin

STATE SENATE

Dist. 3 - William Ligon
Dist. 8 - Ellis Black
Dist. 23 - Jesse Stone
Dist. 31 - Bill Heath
Dist. 41 - Steve Henson
Dist. 45 - Renee Unterman (running for 7th CD)
Dist. 48 - Zahra Karinshak (running for 7th CD)
Dist. 50 - John Wilkinson (running for 9th CD)

News of the Week

Atlanta Journal Constitution

Kemp's anti-gang bill amended after swell of opposition...[Read More Here](#)

Georgia Health News

Gov. Brian Kemp said Monday night that two individuals in the state are confirmed as having the virus, known as COVID-19. The two are in the same household, and one had traveled recently to Milan, Italy, where there is a significant outbreak of the disease...[Read More Here](#)

Watch the General Assembly LIVE! Each day that the General Assembly is in session, you can watch the proceedings live via the internet at: <http://www.legis.state.ga.us/>. Click the Live Broadcast option. You can also watch the *Prime Time Lawmakers* daily broadcast on Georgia Public Broadcasting each evening the General Assembly is in session.

Find Your Legislators

If you have personal relationships with any state elected officials, please help us by making us aware of these crucial relationships.

More information: Please reach out to our office at 770.435.5586 or reach out to us personally via our cell phones.

Thank you for taking time out of your busy schedules to help protect our interests and our patients!

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