



DAVIES HOTHEM
— INJURY LAW —

*By Kristy Davies, Esq.
Davies Hothem Injury Law
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The Myth of Tort Reform and Insurance Premiums

I solemnly swear to support the Constitution of the State of Georgia and the Constitution of the United States. That is the oath I've taken several times over my career as I was admitted to practice in various federal and state courts. Everything I tell you in this article is anchored on that solemn promise and my deep conviction that there is no greater honor in how I use my license to practice law - **to fight for people whose lives will never be the same because of an injury that could have been prevented.** If you live in Georgia, I am urging you to consider the devastating effect Governor Brian Kemp's tort reform package (SB 68 and SB 69) introduced on January 30, 2025 will have on anyone who suffers an injury due to someone else's negligence in this state. Despite Kemp's claims, this legislation will do nothing but increase profits for the insurance industry and erode your constitutional right to have civil matters heard by a jury. Stay with me as I unpack the misleading soundbites and explain the devastating impact this bill will have on Georgians (and the families) who suffer catastrophic injury and death due to no fault of their own.

Tort reform is a general term that seeks to limit a person's right to civil justice and/or limits the amount of damages they can recover for their injuries. I think it's important to note that Georgia previously experienced a major tort reform overhaul curtailing the rights of injury victims in 2005. Now, the civil justice system is under another attack based on Governor Kemp's unsupported claims that large jury verdicts are raising the costs of insurance premiums, so much so that Georgia businesses are suffering huge losses (and closing their doors), even though the Georgia Department of Economic Development reports Georgia is the No. 1 State for Business for the 10th Consecutive Year.¹

Just last year, **the insurance industry reported a \$95 billion dollar gain.**² Travelers reported fourth quarter net income in 2024 alone was 2.082 billion.³ Allstate reported a net income

¹ <https://georgia.org/press-release/georgia-no-1-state-business-10th-consecutive-year>

² <https://www.insurancebusinessmag.com/us/news/breaking-news/us-insurers-report-95-billion-gain-in-1h2024-driven-by-strong-premium-growth--verisk-504598.aspx>

³ <https://investor.travelers.com/newsroom/press-releases/news-details/2024/Travelers-Reports-Excellent-Third-Quarter-and-Year-to-Date-Results/default.aspx#:~:text=Travelers%20Reports%20Excellent%20Third%20Quarter%20and%20Year%2Dto%2DDate%20Results,-October%2017%2C%202024&text=Strong%20third%20quarter%20net%20income,quarter%20to%20a%20strong%2093.2%25.>

of 1.2 billion in the third quarter of 2024.⁴ Progressive reported a net income of 942 million.⁵ At GEICO, pre-tax earnings “increased from 1.1 billion to \$2 billion in the third quarter, and from \$2.3 billion to \$5.8 billion in 9M 2024.”⁶ Make no mistake, insurance premiums are set by insurance companies and recent investigations nationwide have unveiled numerous fraudulent campaigns to increase premiums and profits:

- **Liberty Mutual ordered to repay 7.7 million for overcharging policyholders on auto insurance premiums (2024)**⁷
- **\$25 million settlement against Allstate for inflating premiums and unfairly denying claims (2024)**⁸
- **Texas Attorney General sues Allstate for illegally collecting and selling consumer data in order to increase insurance premiums (January 2025)**⁹
- **State Farm pays \$65 million for overcharging on life insurance policies (2024)**¹⁰

Despite the fact the insurance industry has a proven history of fraudulent schemes to increase premiums and profits, Governor Kemp argues that large jury verdicts are the reason for rising premiums. While the evidence above supports a very different reality for premium costs, I would like to address the reason why large jury verdicts happen to begin with, especially when the inherent purpose of insurance is to protect people and businesses when losses occur and the unthinkable happens.

In short, jury verdicts are a product of the insurance industry’s own doing. From someone who has stood before many juries, both in the criminal and civil justice system, and fought in those trenches for nearly 15 years – large jury verdicts are born after the victim has endured an average of two grueling years of litigation reliving the worse moment of their life and the insurance

⁴ <https://www.insurancebusinessmag.com/us/news/breaking-news/allstate-reports-1-2-billion-net-income-in-q3-2024-512113.aspx#:~:text=Insurance%20News,-By%20Kenneth%20Araullo&text=The%20Allstate%20Corporation%20released%20its,the%20same%20quarter%20last%20year.>

⁵ <https://www.nasdaq.com/articles/progressive-corporation-reports-strong-growth-december-2024-quarterly-financial-results>

⁶ <https://www.reinsurancene.ws/geico-performance-offsets-q324-losses-at-berkshire-hathaways-primary-reinsurance-units/#:~:text=At%20GEICO%2C%20premiums%20written%20rose,force%20over%20the%20past%20year>

⁷ <https://mn.gov/commerce/news/?id=17-597285>

⁸ <https://www.reuters.com/legal/litigation/us-court-approves-25-mln-allstate-settlement-insurance-rate-class-action-2024-05-29/>

⁹ <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-allstate-and-arity-unlawfully-collecting-using-and-selling-over-45#:~:text=Texas%20Attorney%20General%20Ken%20Paxton,or%20sell%20their%20sensitive%20data.>

¹⁰ <https://www.wglt.org/local-news/2024-06-21/state-farm-pays-65-million-to-settle-life-insurance-overcharge-suit>

company has **rejected** the opportunity to resolve the claim. Juries are NOT conjured out of thin air within days of an alleged injury. Jury verdicts are **unanimous** decisions made by 12 people **chosen** by the interested parties – both the victim AND the insurance company – to hear the evidence, follow the law as instructed by the Court, and render a verdict. When someone suffers catastrophic injury or death, there is NOTHING preventing an insurance company from avoiding litigation and settling the claim for the policy limit.

Governor Kemp claims his tort reform package will “level the playing field in our courtrooms.” Again, this could not be further from reality. The new bill allows a defendant to delay filing an answer (response to a lawsuit) from 30 to 90 days,¹¹ which only adds another tool to the arsenal of the insurance industry’s delay tactics. It also eliminates the recovery of attorney’s fees and costs of litigation even if the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.¹² Ironically, these fees are still allowed in a breach of contract claim, just not a claim involving death or injury.

On top of incentivizing stubborn litigiousness, the bill would then prevent a plaintiff from asking the jury for a specific sum to compensate them for physical, mental, and emotional pain and suffering.¹³ In other words, a quadriplegic mother rear-ended by a tractor trailer that never hit the brakes at 75 miles per hour would be prevented from looking the jury in the eye and saying, “this is what I’ve suffered and will deal with for the rest of my life, and this is what I’m asking you to award.” Put another way, neither the plaintiff, nor their attorney, despite the **constitutional right to be heard by a jury**, can tell the jury what he or she believes to be the value of their pain and suffering.

As if this is not enough, the bill also limits the amount of medical expenses an injured person may be compensated for, abolishing what is called the “collateral source rule.”¹⁴ The effect would be the creation of two different classes of plaintiffs – those with health insurance and those without health insurance. If someone has health insurance, damages will be capped at what was paid by the health insurance company, instead of the full amount billed by the medical provider. If someone does not have health insurance, damages would be the full amount billed by the medical provider. As a result, those without health insurance will be allowed to claim more in damages than those who have already paid premiums to health insurance companies for their health insurance benefits. **For those with health insurance, the victim and their attorney will be forced to spend years of hard work simply to recover for the health insurance company**, as most health insurance contracts require reimbursement out of the settlement or judgment for benefits paid as a result of the injury. The result? More money in the insurance industry’s pocket.

¹¹ Senate Bill 68, Section 2, to revise O.C.G.A. 9-11-12.

¹² Senate Bill 68, Section 5, to revise O.C.G.A. 13-6-11.

<https://www.legis.ga.gov/api/legislation/document/20252026/230894>

¹³ Senate Bill 68, Section 1, to revise O.C.G.A. 9-10-184.

<https://www.legis.ga.gov/api/legislation/document/20252026/230894>

¹⁴ Senate Bill 68, Section 8. <https://www.legis.ga.gov/api/legislation/document/20252026/230894>

Not only will the tort reform package increase profits for the insurance industry, it is a serious threat to every Georgian's **right to be heard by a jury** in the civil justice system under the Seventh Amendment of the United States Constitution and Article 1, § 1 of Georgia's Constitution, which provides "the right to trial by jury shall remain inviolate." As noted above, this legislation incentivizes delay tactics through new motion rules and then eliminates the recovery of attorney's fees to penalize frivolous, bad faith, and stubbornly litigious behavior. Once you get to trial, the victim and their attorney are now gagged – unable to ask the jury for a specific amount of money for pain and suffering; yet if the victim has health insurance, she can ask for those expenses only to turn around and reimburse the health insurance company. If this is not enough, the legislation would dictate the order in which the victim can present their evidence to the jury, requiring evidence of liability and damages to be presented in two different phases, resulting in an unnecessarily longer and more expensive endeavor for everyone involved, including especially the Court and the jury. Nothing – absolutely nothing – about this legislation will preserve Georgian's right to have their story heard by a jury.

Finally, a significant portion of the bill claims to protect business owners, but the reality is business owners like hotels and apartment complexes would be insulated from liability for dangerous criminal activity on their property – creating a refuge for human trafficking, gang, and drug activity. According to the Office of Attorney General human trafficking touches "every corner of the globe including our state and local communities."¹⁵ It is the "fastest growing illegal industry in the world" and "the average victim is a 6th to 8th grade girl."¹⁶ Hotels and apartment complexes are common venues for human trafficking and gang activity. In 2022, more than 250 apartment complexes in Atlanta were under investigation for persistently dangerous criminal activity.¹⁷

Ironically, Georgia First Lady Marty Kemp introduced legislation this session to "close a loophole" in criminal penalties for human traffickers.¹⁸ (SB 42). This bill, according to Marty Kemp, will "ensure proper penalties for offenders and secure greater justice for their victims."¹⁹ There is clearly no debate that human trafficking is a major concern for Georgia and that the victims of human trafficking deserve justice. If the goal is to crack down on human trafficking and ensure justice, why would Governor Kemp introduce a tort reform bill that overhauls the ability of these victims to hold hotels and apartment complexes, many of them owned by out-of-state private equity firms,²⁰ liable for civil damages. Specifically, unless the owner has "particularized warning" and knows that "on X date, at X time, and at X location, X is going to do X," the owner

¹⁵ <https://law.georgia.gov/key-issues/human-trafficking>

¹⁶ *Id.*

¹⁷ <https://www.fultoncountyga.gov/news/2022/07/15/fulton-da-plans-crackdown-on-dangerous-apartment-complexes>

¹⁸ <https://gov.georgia.gov/press-releases/2025-01-29/first-lady-marty-kemp-introduces-tenth-anti-human-trafficking-bill>

¹⁹ *Id.*

²⁰ <https://news.gsu.edu/2024/02/26/researchers-find-three-companies-own-more-than-19000-rental-houses-in-metro-atlanta/>; <https://www.multiphasingnews.com/top-10-apartment-owners-in-atlanta/>

would not be liable for injuries caused by criminal activity.²¹ An apartment complex could freely lease an apartment to a known sex trafficker and be insulated from liability for injuries to dozens of girls trafficked through the complex, as long as the owner is left to their imagination about the horrific details.

The irrefutable truth is that Governor Kemp's bill is for the insurance industry and big business, not hard-working Georgians, who may lose their livelihood, quality of life, or a loved one due to a preventable injury. This is political. This is Governor Kemp's platform for the next phase of his political career, to secure endorsements from the deep pockets of big business and the insurance industry. Do not be fooled and believe that this legislation eroding your constitutional right to be heard before a jury will reduce your premiums and save you money. Do not be a pawn of the industry and enable it to profit billions while simultaneously insulating itself from responsibility to pay claims and keep their property safe.

This is a call to action. YOU have the right and power to call your elected representatives and tell them to vote NO to SB 68 and 69. Tell your officials that this tort reform package erodes your constitutional rights and to vote NO.

You can find your representatives and contact information at the links below:

<https://www.legis.ga.gov/members/house>

<https://www.legis.ga.gov/members/senate>

²¹ Senate Bill 68, Article 5. <https://www.legis.ga.gov/api/legislation/document/20252026/230894>