

Tort Reform

Principles:

Tort reforms should accomplish the following goals:

- Provide a fair and efficient legal system.
- Reduce the prevalence of legal abuse and fraudulent claims filed.
- Ensure patients have access to fair and reasonable compensation for legitimate medical injuries.
- Reduce liability insurance premiums for health care providers.
- Reduce the rates of preventable patient injuries.

Recommendation:

- Cap premises liability.
- Limit nuclear verdicts and reinstate medical liability caps.
- Replace Georgia's current expensive and ineffective malpractice system with one that reduces medical errors, enhances patient access to fair compensation for legitimate medical injuries and lowers liability insurance premiums for health care providers.

Facts:

- In 2019, the annual cost and compensation resulting from Georgia's tort system was nearly \$13.4 billion, or over \$3,600 per household. This accounted for 2.5% of Georgia's GDP.¹
- Georgia has the sixth highest auto insurance premiums nationally, with an average of \$1,936 (\$1,517 was the national average). From 2011-2017, auto premiums increased by 54% in Georgia, compared to an increase of 22% nationwide.²
- In 2019, there was \$144.9 million in medical malpractice payouts in Georgia, or \$13.65 per capita. Only Florida (\$335.7 million) had a higher total payout in medical malpractice claims among southeastern states.³

Overview:

In 2019-2020, Georgia appeared for the first time among the nation's "Judicial Hellholes" by the American Tort Reform Foundation.⁴ Georgia was ranked sixth, just behind municipalities and states such as Philadelphia, California, New York City, Louisiana and St. Louis. These "Judicial Hellholes" were defined as areas "where judges in civil cases systematically apply laws and court procedures in an unfair and unbalanced manner, generally to the disadvantage of defendants." Often, these cases center on corporate liability and medical malpractice.

As the report states:

A newcomer to the list of Judicial Hellholes, Georgia makes an appearance due to the courts' dramatic expansion of premises liability and nuclear jury verdicts. Medical liability is on the rise following the Georgia Supreme Court's decision to strike down commonsense reforms. Several

¹ "2019 Lawsuit Climate Survey: Ranking the States," accessed September 19, 2020, <https://www.instituteforlegalreform.com/states/georgia>

² Car Insurance Rates by State, 2020 edition, accessed September 19, 2020, <https://www.insure.com/car-insurance/car-insurance-rates.html>

³ Diederich Healthcare 2020 Medical Malpractice Payout Analysis, <https://www.diederichhealthcare.com/the-standard/2020-medical-malpractice-payout-analysis/>

⁴ <http://www.judicialhellholes.org/>

important cases also are pending before the high court. It has the opportunity to realign itself in a fair and just manner or further solidify the state's status as a Judicial Hellhole.⁵

The U.S. Chamber of Commerce Institute for Legal Reform ranked Georgia 41st nationally in its 2019 lawsuit climate survey, identifying how fair and reasonable a state's legal system is perceived to be by business leaders. Notably, this was the state's lowest rank in the history of the survey.⁶

Contributing to this recent decline in perception have been a number of high-profile premises liability verdicts against defendants in Georgia:

- A \$35 million verdict reached after a man was assaulted at a bus stop outside Six Flags Over Georgia, with Six Flags being held responsible for paying 92% of the damages.
- \$81 million awarded to a plaintiff who was shot by carjackers in a Kroger parking lot in DeKalb County, with Kroger responsible for paying 85% of damages despite the presence of onsite security.
- A \$43 million verdict awarded against CVS after a plaintiff was shot after business hours in the parking lot of a CVS Pharmacy.
- \$125 million awarded to the family of a deceased tenant, after they successfully argued that unsuitable living conditions (including the lack of air conditioning) led to the tenant's death rather than underlying health factors.

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There have also been significant medical malpractice verdicts during this period:

- In 2018, there was a \$31 million verdict for a botched circumcision in Clayton County.
- Also in 2018, in Chatham County, an \$18 million verdict for failure to diagnose spine abscesses (the largest in county history).
- In 2017, there was a \$26 million verdict for negligence in treating complications from surgery.

One recommendation is Georgia should replace its current expensive and ineffective malpractice system with one that reduces medical errors, enhances patient access to fair compensation for legitimate medical injuries and lowers liability insurance premiums for healthcare providers.

For nearly two decades, the Georgia Public Policy Foundation has called for significant medical malpractice reform, with an emphasis on reducing litigation and improving patient safety.⁷ Most of the reforms eliminate the expensive and inefficient court system, relying instead on workers' compensation-type system where the focus is on compensating victims rather than proving negligence in a court of law.

The Patients' Compensation System⁸ (PCS) is one alternative to adversarial medical malpractice litigation. It is designed to provide patients with fair and timely compensation for avoidable medical injuries without the expense and delay of the court system. PCS focuses on improving the overall quality of patient care by encouraging reporting and analysis of medical errors so the medical community can learn from its mistakes.

Finally, Philip K. Howard, founder and chairman of Common Good, has proposed health courts⁹ where

⁵ https://www.judicialhellholes.org/wp-content/uploads/2019/12/ATRA_JH19_layout_FINAL.pdf

⁶ "2019 Lawsuit Climate Survey: Ranking the States," accessed September 19, 2020,

<https://www.instituteforlegalreform.com/states/georgia>

⁷ "The Need for Mandatory Medical Review Panels," Georgia Public Policy Foundation, November 2003

⁸ "Patients' Compensation System," Georgia Public Policy Foundation, October 2011, <http://bit.ly/1rgukbZ>

⁹ "Establish Health Courts," Common Good, <http://www.commongood.org/pages/establish-health-courts>

“expert judges with special training would resolve health care disputes. As with existing administrative courts in other areas of law – for tax disputes, workers’ compensation, and vaccine liability, among others – there would be no juries. Each ruling could be appealed to a new medical appeals court.” This is similar to medical malpractice review panels¹⁰ the Georgia Public Policy Foundation has studied in the past.

There is bipartisan agreement that the current medical malpractice system isn’t working. This is clearly a state issue where Georgia could be a leader. The status quo is unacceptable:

- From a social justice perspective, it is unacceptable that most victims, especially the poor and elderly, are not compensated for their injuries.
- From a patient safety perspective, it is unacceptable that patients today are no safer than they were in the 1970s.
- From a cost perspective, it is unacceptable that medically unnecessary costs are increasing the cost of health care.

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In 2018, Georgia voters approved a constitutional amendment for the creation of a business court with statewide jurisdiction. This court, which began operations in August 2020, is designed to offer corporations and business owners a quicker resolution process outside of the Superior Courts and State Courts, which are often backlogged with criminal and domestic cases and can take years.¹¹

The Georgia State-wide Business Court focuses exclusively on cases involving corporate litigation, contract violations, mergers and other complex lawsuits involving two business entities; it will not hear personal injury cases or residential landlord-tenant cases. Notably, both parties must agree to have their case heard before the court, amid concerns its design would favor corporations over small business owners.

Several reforms we propose have their particular strengths and weaknesses, but all would be preferable to Georgia’s current system. Georgia should commit to having a fair and open debate on this issue to determine the best, most effective reform.

About the [Georgia Public Policy Foundation](#). Established in 1991, the Foundation is a trusted, independent resource for voters and elected officials. The Foundation provides actionable solutions to real-life problems by bringing people together. Nothing written here is to be construed as necessarily reflecting the views of the Georgia Public Policy Foundation or as an attempt to aid or hinder the passage of any bill before the U.S. Congress or the Georgia Legislature.

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¹⁰ “Mandatory Medical Review Panels Should Address Georgia Malpractice Crisis,” GPPF, 2003, <http://bit.ly/1XHkMk8>

¹¹ <https://www.georgiabusinesscourt.com/>