

SENATE BILL 191¹: MOTOR VEHICLES AND TRAFFIC;
AUTHORIZING JOINDER OF MOTOR CARRIERS AND THEIR
INSURANCE CARRIERS IN TORT AND CONTRACT CAUSES
OF ACTION; PROVISIONS; REPEAL

Amending O.C.G.A. § 40-1-112

First signature: Senator Shawn Still (48th)

Co-Sponsors: Senator Kennedy (18th), Senator Gooch (51st), Senator Robertson (29th), Senator Anavitarte (31st), Senator Watson (1st), Senator Cowsert (46th), Senator Anderson (24th), Senator Albers (56th), Senator Dolezal (27th), Senator Dixon (45th), Senator Ginn (47th)

Summary: “A BILL to be entitled an Act to Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to repeal provisions authorizing joinder of motor carriers and their insurance carriers in tort and contract causes of action; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: Senate Read Second Time.³

TEXT OF SENATE BILL 191⁴

SECTION 1.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended in Code Section 40-1-112, relating to insurance of motor carriers, by revising subsection (c) as follows:

~~“(c) It shall be permissible under this part for any person having a cause of action arising under this part to join in the same action the motor carrier and the insurance carrier, whether arising in tort or contract.”~~

SECTION 2.

¹ S.B. 191 (Senate Committee on Transportation), 158th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), available at <https://www.legis.ga.gov/legislation/64475> (last visited Oct. 1, 2023).

² 2023-2024 Regular Session S.B. 191, *Motor Vehicles and Traffic; authorizing joinder of motor carriers and their insurance carriers in tort and contract causes of action; provisions; repeal*, Ga. Gen. Assemb., <https://www.legis.ga.gov/legislation/64475> (last visited Oct. 1, 2023) [hereinafter S.B. 191].

³ *Id.*

⁴ S.B. 191.

Said title is further amended in Code Section 40-2-140, relating to Department of Public Safety to administer provisions, and registration, insurance and fee requirements of motor carriers, by revising paragraph (4) of subsection (d) as follows:

~~“(4) Any person having a cause of action, whether arising in tort or contract, under this Code Section may join in the same cause of action the motor carrier and its insurance carrier.”~~

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR’S RATIONALE

In Georgia, once the at-fault driver’s policy reaches its limit, or the defendant cannot be served, the plaintiff can join the trucker at fault and the insurer for damages under the current law.⁵ Insurance carriers are then required to represent themselves in these lawsuits, instead of the truckers at fault representing themselves.⁶ Thus, sponsors of Senate Bill 191 argue that insurance carriers will not want to be in the state of Georgia because of the liability they will face if a trucker is in an accident.⁷ Senator Still, the sponsor of Senate Bill 191, addressed in an April 2023 interview that the largest carrier for commercial trucking in Georgia canceled their insurance policies with every policy holder in the state.⁸ Senate Bill 191 would protect companies doing business in Georgia by ensuring they have reasonably priced insurance policies.⁹ As a result, Senator Still believes delivery costs would go down as well because trucks would pay less for insurance policies which would help small businesses in Georgia.¹⁰

The history behind allowing an insurer to be joined in the claims was that Georgia had interstate trucking companies and when an accident

⁵ *Georgia Bill Would End Direct Action Suits Against Truckers in Accidents* Insurance Journal (Feb. 28, 2023)

<https://www.insurancejournal.com/news/southeast/2023/02/28/709819.htm>.

⁶ *Id.*

⁷ Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

occurred it was difficult to locate the out-of-state trucking companies.¹¹ Sponsors for the Bill argue that this does not need to be in place anymore and that because of modern technology, such as the internet, it is not hard to find the company responsible for the injury.¹² The current law is for those injured in trucking accidents to join the insurance carrier and the driver of the vehicle if a lawsuit were to ensue.¹³ Senator Still argued that instead of being able to join the insurance company, after an accident occurs the plaintiff should go after the policy that the trucker at fault has.¹⁴ Currently in Georgia, if a driver of a commercial vehicle is at fault, then that driver can seek damages from the defendants policy, or go after the defendants company and can include the insurance carrier in the suit.¹⁵ Senator Still, advocating for Senate Bill 191, wants to change this to ensure insurance companies cannot also be included in the suit.¹⁶

Senator Still addressed a pertinent reason for his introduction of this Bill. The reason was that trucking insurance is expensive for truckers in Georgia.¹⁷ Senator Still stated that if this bill were to be passed, trucking insurance would most likely go down which would help smaller trucking businesses to have more affordable delivery fees for their products.¹⁸ Bob Fuller, an attorney in support of Senate Bill 191, spoke on the importance of this bill because ninety-two percent of trucking companies operate less than six trucks which is considered a small business, so small businesses are the ones affected by the current law and they make up most of the trucking company businesses.¹⁹

Small insurance companies face another repercussion of the current law because they cannot afford this type of procedural rule.²⁰ Due to the current

¹¹ Georgia State Senate, Senate Committee on Transportation, VIMEO, (Feb. 22, 2023), <https://vimeo.com/showcase/8822007>.

¹² Video Telephone Interview with Sen. Shawn Still Georgia Representative 48th District (September 18th 2023).

¹³ *Committee Recommends Steps to Add Truck Drivers* Chatsworth Times (Dec. 14, 2023).<https://plus.lexis.com/api/permalink/7e761225-ab50-4ab0-a339-609764add96b/?context=1530671>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

¹⁸ *Id.*

¹⁹ Georgia State Senate, *supra* note 11.

²⁰ *Id.*

law, trucking insurance rates in Georgia have gone up significantly.²¹ Trucking insurance rates in Georgia are 66.6% higher than the national average according to Attorney Mike Iverson who is in support of the Bill.²² Senator Still agrees with this and stated that companies have left Georgia due to the high rates, and would be incentivized to return to the state if insurance rates were lower.²³ As of right now, Georgia only has five major carriers to offer trucking insurance.²⁴ Senator Still stated Georgia is the largest state to not have some form of this bill enacted so the goal of this bill is to be the least intrusive way to bring insurance trucking companies back to the state of Georgia.²⁵

In 2023, an independent insurance agency, Bravo Policy, stated that Georgia has an average insurance premium of \$15,200 and ranked sixth highest in the country in commercial insurance rates.²⁶ Georgia ranks second highest for commercial insurance rates in the south, behind Louisiana.²⁷ Louisiana ranks second highest in the country with an average rate of \$19,736 and ranks first in the south for highest commercial insurance rates.²⁸ Mark Bardrak, an attorney in Atlanta, who is in favor of the bill says that the real benefit to plaintiff's is that the jury is not told any liability limits, they just see the name of the insurance company on the verdict form.²⁹

OPPOSITION'S RATIONALE

The opposition's rationale is that the current law allows plaintiffs to be ensured compensation when they are involved in a trucking accident.³⁰ Attorney Brandon Peak spoke for the opposition in a Senate Committee

²¹ *Id.*

²² *Id.*

²³ Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Alex Anteau, *Georgia Bill Would End Practice of Motor & Insurance Carriers Legal Joinders* Property Casualty 360 (February 27, 2023), <https://www.propertycasualty360.com/2023/02/27/trucking-companies-and-trial-lawyers-debate-georgia-bill-to-repeal-joinder-of-motor-and-insurance-carriers-in-senate-committee-414-234674/?slreturn=20231120215942>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

Transportation Meeting on Senate Bill 191.³¹ He began by explaining that the current law has nothing to do with increasing the jury verdicts because the amount a plaintiff can recover is going to be limited regardless of the current law in place.³² He told a story of a client he represented who was killed by a tractor trailer and whose daughter watched her die.³³ As their attorney, he reached out to the trucking company and asked them to pay for the damages.³⁴ The answer to compensating the victim was no, the driver fled, and they tried to track him down.³⁵ If an incident such as this happens right now in Georgia, attorneys for victims of trucking accidents can utilize the current statute to join the insurance carrier in the claim. Attorney Brandon Peak explained that instead of expelling energy on finding the trucking company, this ensures that the victims retain some compensation for an accident when the trucker is at fault.³⁶

Attorney Dan Snipes argued that insurance rates will be high in Georgia regardless of the changing of the current law due to the heavy traffic through the state.³⁷ He said that insurance companies are opposing the current law because it is an obstacle, but Senate Bill 191 will not necessarily fix the problems we are currently facing with high trucking insurance rates.³⁸

The opposition explains Senate Bill 191 is a procedural barrier.³⁹ A procedural barrier means there are plaintiffs that will not have a way through the legal system to sue after an accident with a trucker even if they have a valid claim because they cannot locate the trucker and will no longer be able to join the insurance carrier.⁴⁰ The opposition argues that Senate Bill 191 limits plaintiffs to bring claims when they are injured by a trucking accident, and the passage of this bill will take away claims from plaintiffs solely based on a procedural defect.⁴¹

³¹ Georgia State Senate, *supra* note 11.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Georgia State Senate, *supra* note 11.

³⁷ Alex Anteau, *Georgia Bill Would End Practice of Motor & Insurance Carriers Legal Joinders* Property Casualty 360 (February 27, 2023), <https://www.propertycasualty360.com/2023/02/27/trucking-companies-and-trial-lawyers-debate-georgia-bill-to-repeal-joinder-of-motor-and-insurance-carriers-in-senate-committee-414-234674/?slreturn=20231120215942>.

³⁸ *Id.*

³⁹ Georgia State Senate, *supra* note 11.

⁴⁰ *Id.*

⁴¹ *Id.*

An example of the statute Georgia currently has, called a direct-action statute, is the case of Kip Holland who was walking along a highway in Gainesville Georgia when a truck driver's loaded trailer fatally rolled on top of him.⁴² The truck driver suffered a medical problem while driving which caused the accident.⁴³ In February of 2020, a jury awarded Kip Holland's mother and the estate \$21 million after they sued the truck driver and the insurance company of the truck driver using Georgia's direct action statute.⁴⁴ In the case of *Holland v. Cypress Ins. Co.* the court states that the joinder of insurance companies in Georgia allows for direct action suits against insurance companies who engage in interstate trucking.⁴⁵ The attorney for the insurance company argued that because Georgia allowed the insurance company to be sued in this case, the jurors felt they could give a higher amount of damages and therefore became reckless in their judgment.⁴⁶ The attorney for Kip Holland's family countered the statement by stating that the insurance company's liability is a coextensive or coexistent liability from the trucker.⁴⁷

An independent insurance agency, Bravo Policy, points out that insurance prices are affected by numerous factors.⁴⁸ The opposition argues that Georgia's statute is not the only factor for high insurance rates.⁴⁹ There are some areas of Georgia, such as Atlanta, where it is riskier to drive and can affect insurance prices as well.⁵⁰ Members of the Trial Lawyers Association also point out that trucking insurance companies still make billions of dollars in Georgia and that it is just as likely that insurance rates

⁴² Rosie Manins, *11th Circ. Hints \$21M Verdict Over Ga. Trucking Death Is Ok* (February 08, 2022), <https://plus.lexis.com/api/permalink/05834570-1399-465f-9460-21fadabf62b6/?context=1530671>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Holland v. Cypress Ins. Co.*, No. 20-13538, 2022 U.S. App. LEXIS 12842 (11th Cir. May 12, 2022).

⁴⁶ Rosie Manins, *11th Circ. Hints \$21M Verdict Over Ga. Trucking Death Is Ok* (February 08, 2022), <https://plus.lexis.com/api/permalink/05834570-1399-465f-9460-21fadabf62b6/?context=1530671>.

⁴⁷ *Id.*

⁴⁸ Alex Anteau, *Georgia Bill Would End Practice of Motor & Insurance Carriers Legal Joinders* Property Casualty 360 (February 27, 2023), <https://www.propertycasualty360.com/2023/02/27/trucking-companies-and-trial-lawyers-debate-georgia-bill-to-repeal-joinder-of-motor-and-insurance-carriers-in-senate-committee-414-234674/?slreturn=20231120215942>.

⁴⁹ *Id.*

⁵⁰ *Id.*

stay the same, and that this bill would just take away plaintiff's relief.⁵¹

IMPLICATIONS IN GEORGIA

An implication in favor of the bill is that insurance companies will come back to doing business in Georgia.⁵² The insurance companies that have left the state because of the current law whereby the companies could be joined in the suits could come back to the state and continue doing business here.⁵³ Additionally, if truckers are then paying less for insurance, delivery rates could go down as an effect of the drivers paying less money to deliver goods.⁵⁴ This could help the trucking industry, as well as the overall business industry if delivery costs went down.⁵⁵

Georgia is labeled a direct-action state which is defined as a state where you can sue the insurance company directly instead of suing the person who caused the accident or harm.⁵⁶ Other states surrounding Georgia do not have direct action.⁵⁷ One example is Alabama, where a victim files against the truck driver themselves, and potentially their employer under vicarious liability.⁵⁸ The insurance company of the truck driver or trucking company could potentially be liable for damages to the victim but is not joined in the actual lawsuit.⁵⁹

An implication that the opposition argues if this bill is passed is that there will be some lost opportunities for claims.⁶⁰ This bill protects the plaintiffs that either cannot sue the trucking company or cannot get the compensation they deserve from the trucking company after an accident.⁶¹ Due to modern technology, the goal is that most plaintiffs will be able to

⁵¹ *Id.*

⁵² Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Video Telephone Interview with Sen. Shawn Still, Georgia Representative 48th District (September 18th, 2023).

⁵⁷ *Id.*

⁵⁸ Home Law Injury & Accident Lawyers *Can I Sue A Semi Truck Driver for Causing An Accident in Alabama?* <https://howe.law/sue-a-semi-truck-driver-for-causing-an-accident-in-alabama/>.

⁵⁹ *Id.*

⁶⁰ Georgia State Senate, *supra* note 11.

⁶¹ *Id.*

accurately locate and sue the trucking company without needing to include the insurance company, but there will still be some plaintiffs that cannot and the law that Georgia has in place now still protects plaintiff's and their claims.⁶²

A last implication in Georgia is that this bill does not have the suggested effects on insurance rates as the sponsors hoped, and the prices will continue to stay the same while only targeting truckers to remain liable for the claims that plaintiffs in accidents have.

LEGISLATIVE GENEALOGY

Senate Bill 191 was introduced on February 15th, 2023.⁶³ It went to Senate Committee on Transportation on February 16th, 2023 and was favorably voted for in Senate Committee on Transportation on February 23, 2023. On February 27th, 2023, it was read a second time.⁶⁴

Prepared by: Madeline Deye

⁶² *Id.*

⁶³ S.B 191 Status Sheet *supra* note 2.

⁶⁴ S.B 191 Status Sheet *supra* note 2.