

Georgia Tort Laws in Comparison to Texas and Louisiana

	Georgia	Texas	Louisiana
Statute of Limitations	Two years from the date of injury or death § 9-3-71(a)	Two years from the date of breach, tort, or from the completion of treatment. § 74.251(a)	One year from date of the alleged act, omission, or neglect, or one year from date of discovery of the alleged act, omission, or neglect. Wrongful death action must be brought within one year of death of the decedent. La. Rev. Stat. Ann. § 9:5628
Statute of Repose	In no event may an action for medical malpractice be brought more than five years after the date on which the negligent or wrongful act or omission occurred. § 9-3-71(b)	A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. § 74.251(b)	In all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect. La. Rev. Stat. Ann. § 9:5628
Expert Reports	No law.	Must be filed within 120 days of filing a health care liability claim with certain procedural requirements. § 74.351	No expert reports – panel’s report is considered expert opinion. La. Rev. Stat. Ann. § 40:1299.47
Pre-judgment Interest	Pre-judgment interest not allowed unless defendant rejects a formal pre-trial demand by claimant and judgment is equal to or greater than demand. § 51-12-14	Pre-judgment interest accrues from the date of injury through one day prior to entry of judgment. § 41.001(5) & 41.007	Pre-judgment interest is awarded in tort actions from the date of judicial demand until judgment. La. Rev. Stat. Ann. § 13:4203
Expert Testimony	Competent expert affidavit stating factual basis for at least one negligent act or omission necessary § 9-11-9.1	Expert testimony necessary to establish prima facie case of medical malpractice. Certain requirements for experts. (See, <i>Duff v.</i>	The panel’s report is considered expert opinion. La. Rev. Stat. Ann. § 40:1299.47

		<i>Yelin</i> , 721 S.W.2d 365 (Tex. App. 1986))	
Damage Caps	Compensatory damages cap held unconstitutional. (See, <i>Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt</i> , 2010 WL 1004996 (Ga. March 22, 2010)) Punitive damages allowed only for willful misconduct or conscious indifference. Except for intentional harm, punitive damages capped at \$250,000. § 51-12-5.1(g)	Wrongful death cap of \$500,000. §74. 303 (a) Noneconomic damages capped at \$250,000 of physicians and providers. Noneconomic damages capped at \$250,000 for institutions. Total cap of \$750,000 for all noneconomic damages . § 74.301 (Caps in 1977 dollars, adjusted annually for inflation § 74. 303(a)) Tex. Const. art. III, § 66	Each qualified health care provider's damages are capped at \$100,000 per patient per incident. Orders in excess of \$100,000 per provider are paid out of the fund. The claimant's total recovery is capped at \$500,000 plus future medical costs. La. Rev. Stat. Ann. § 40:1299.42 No punitive damages, except as specifically authorized by statute. La. Rev. Stat. Ann. § 40:1299.47
Arbitration/Panel	Arbitration by agreement of both parties and petitioned to superior court. § 9-9-62 No Medical Malpractice Panel.	No mandated arbitration or screening panel. However, legislature has authorized counties to adopt alternative dispute resolution systems. §§ 152.001 to 152.004	Arbitration is allowed but not mandated. All malpractice claims against qualified health care providers, other than claims submitted to arbitration, must be reviewed by medical review panel. La. Rev. Stat. Ann. § 40:1299.47
Contributory or Comparative Negligence	No recovery if plaintiff is greater than 50% responsible for injury claimed. If less than 50% responsible - damages are reduced by % of fault. § 51-12-33(a)&(g)	No recovery if plaintiff is greater than 50% responsible for injury claimed. If less than 50% responsible - damages are reduced by % of fault. §33.001 to 33.012	In all cases except those of intentional tort, a claimant's recovery is reduced by his % of fault. La. Civ. Code Ann. Art. 2323
Joint and Several Liability	No joint liability. Damages apportioned based upon % of fault (non-parties fault must be considered) § 51-12-33	Defendant may be held jointly liable only if fault is greater than 50%. § 33.013	No joint liability. Damages apportioned based upon % of fault. La. Civ. Code Ann. Art. 2324
Vicarious Liability	Hospital not liable unless actual agency or	Requirements necessary to establish	Hospitals liable if actual agency, as

	employment relationship exists § 51-2-5.1	hospital liability for an independent contractor. (See, <i>Baptist Memorial Hospital System v. Sampson</i> , 969 S.W.2d 945, (Tex. 1998))	demonstrated by control, rather than apparent agency. (See, <i>Royer v. St. Paul Fire & Marine Insurance Co.</i> , 502 So. 2d 232 (La. Ct. App. 1987))
Contributions	No right of contribution available. May be asserted as cross-claim in underlying action or brought as a separate lawsuit. § 51-12-33 <i>Greenhorne & O'Mara, Inc. v. City of Atlanta</i> , 679 S.E.2d 818 (Ga. Ct. App. 2009)	A jointly and severally liable defendant that pays more than proportionate share has right to contribution. § 33.015	No right of contribution available. LSA C.C.P. Ch. 7, § 3
Attorneys' Fees	No limitation	No limitation	No limitation
Periodic Payments	At request of any party, future damages of \$350,000+ are paid by annuity policy with cost equal to the amount of the award for future damages. § 51-13-1(f)	If future damages are \$100,000+, the court must order periodic payment of future medical costs if any party requests it, and may order periodic payment of other future damages on request as well. Future payments may be funded by an annuity contract. §§ 74.502, .503, & .505	Amounts paid by state for future medical care and related costs paid by the Patient's Compensation Fund as incurred. La. Rev. Stat. Ann. § 40:1299.43(A)
Collateral Source Rule	Claimant's recovery cannot be reduced by benefits paid from a source other than tortfeasor.	Claimant's recovery cannot be reduced by benefits paid from a source other than tortfeasor. (See, <i>National Freight, Inc. v. Snyder</i> , 191 S.W.3d 416, 423 (Tex. App. 2006))	Plaintiff's recovery may not be diminished because of benefits received by the plaintiff from other sources. (See, <i>Frederick v. Woman's Hospital</i> , 626 So. 2d 467 (La. Ct. App. 1993))
Patient Compensation Fund and Physician Insurance	None	None	The Louisiana Medical Malpractice Act established Patient's Compensation Fund. State health care providers are

			<p>automatically covered by fund. Private health care providers may join fund if they file proof of malpractice liability insurance of at least \$100,000/claim and pay a surcharge. Each qualified health care provider's damages are capped at \$100,000 per patient per incident. Orders in excess of \$100,000 per provider are paid out of the fund. The claimant's total recovery is capped at \$500,000 plus future medical costs. Future medical costs are covered by the fund.</p> <p>La. Rev. Stat. Ann. §§ 40:1299.38 & 40:1299.42 & 40:1299.44</p>
Immunities	<p>Georgia waived sovereign immunity for torts of state officers and employees acting within scope of their official duties or employment, subject to certain exceptions and limitations.</p> <p>§ 50-21-23</p>	<p>Partial waiver of sovereign immunity in a limited class of tort cases.</p> <p>§ 101.021</p>	<p>No immunity from damages arising from medical malpractice. La. Rev. Stat. Ann. §§ 39:1538 and 39:1539</p>