

From the Atlanta Business Chronicle

:http://www.bizjournals.com/atlanta/blog/capitol_vision/2013/10/high-profile-panel-backs-tort-reform.html

Oct 22, 2013, 3:07pm EDT Updated: Oct 22, 2013, 5:34pm EDT

High-profile panel backs tort reform



[Dave Williams](#)

Staff Writer- Atlanta Business Chronicle

The medical tort reform issue in Georgia has turned into a dispute between two former attorneys general.

[Thurbert Baker](#), who served in the position from 1997 until 2011, told a state Senate subcommittee Tuesday that a bill before the General Assembly scrapping the current litigation-based system is constitutional because it would be replaced by a new system not subject to the common-law right to trial by jury.

"Senate Bill 141 replaces what has been a tort system with an administrative process," said Baker, now a partner in the Atlanta office of McKenna Long & Aldridge LLP. "[It] would create a system that would supplant ... common law."

Baker's remarks contradicted testimony his predecessor in the attorney general's office, [Mike Bowers](#), gave the subcommittee last month.

Bowers, attorney general from 1982 until 1997, said the legislation would take away the constitutional right of Georgians who believe they are victims of medical malpractice from having a jury hear their case, determine whether negligence has occurred and, if so, award compensation.

Under the bill, introduced in the Senate last winter, patients would submit medical malpractice claims to a review board of medical professionals instead of hiring a lawyer to file suit.

The board, made up of specialists in the type of injury involved, would determine whether the patient was harmed by an avoidable medical error. If so, the patient would be compensated based on a formula that takes into account what victims historically have received for similar injuries.

The bill's supporters base the legal case for its passage on a state Supreme Court ruling during the 1920s that upheld the constitutionality of Georgia's workers' compensation system.

While Georgians' have a common-law right to trial by jury dating from the state's first Constitution in the late 1700s, the court ruled that right did not apply to workers' compensation because it was a new system for determining legal claims established by the General Assembly subsequent to the adoption of the Constitution, Alexander "Sasha" Volokh, an associate law professor at Emory University, testified Tuesday.

Volokh argued that the "patient compensation system" contemplated in the Senate bill meets the definition of a "new statutory proceeding" set by the court in the workers' compensation case.

[Randy Evans](#), also a partner at McKenna Long & Aldridge, argued further that a much more recent Georgia Supreme Court ruling essentially forces the legislature either to overhaul the medical tort reform system or do nothing.

In 2010, the court declared that putting a cap on awards for non-economic damages in medical malpractice lawsuits is an unconstitutional violation of citizens' right to trial by jury.

Thus, according to Evans, no legislative reforms that stay within the jury-based system would pass muster with the court.

"The court is not going to permit any more tinkering," he said. "You're left with the remedy of making a transformative change."

Dave Williams covers Government