



## Client Alert



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Contact Attorney Regarding  
This Matter:

Robert T. Strang, III  
404.873.8582 - direct  
404.873.8583 - fax  
[robert.strang@agg.com](mailto:robert.strang@agg.com)

### **Governor Perdue Announces Additional Tort Reform Proposals To Attract Biotech Firms**

Almost four years after approving the initial round of tort reform legislation, Governor Perdue recently announced plans to introduce legislation changing how and when lawsuits can be filed in Georgia state courts. The two pieces of legislation are admittedly designed to make Georgia more attractive to businesses, especially those in the biotech industry.

The first proposal would severely limit the ability to sue pharmaceutical and medical device companies based in Georgia for product liability if the product in question received Food and Drug Administration approval. Governor Perdue noted that "FDA approval should mean something . . . it certainly should imply protection from tort lawsuits." It is anticipated that the proposed legislation will focus on design defects and failure to warn which are two of the most active areas of biotech product liability litigation. In order to qualify, companies must have their corporate headquarters in Georgia or employ 200 employees in manufacturing or research and development in the state. Companies would lose protection if it were determined the company perpetrated a fraud on the FDA or if the drug/medical device was used in an off-label manner and the plaintiff sues on a design defect theory.

The timing of the Governor Perdue's proposal limiting biotech product liability exposure follows a recent decision by the Georgia Supreme Court finding that a vaccine manufacturer could be held liable for defective design if it is determined, on a case by case basis, that the particular vaccine was unavoidably unsafe. American Home Products Corp. et al. v. Ferrari et al., 284 Ga. 384 (2008). Many believe that the much anticipated decision of U.S. Supreme Court in Wyeth v. Levine, which has been argued and will be decided in the next six months, will finally resolve whether an FDA-approved drug label can be subject to state product liability tort actions.

The second measure would implement a loser-pays requirement that is intended to discourage frivolous lawsuits. If a claim is dismissed "at the earliest possible stage," then the losing side would be responsible for paying the prevailing party's legal fees. Further, if the attorney fails to notify the client of this provision, the attorney would be responsible for paying the award. Lastly, the proposed legislation would ensure that the legal merits of a complaint have been tested prior to the initiation of discovery. Governor Purdue explained that "this will free up our courts to pursue justice in cases with merit, protect

Arnall Golden Gregory LLP  
Attorneys at Law  
171 17th Street NW  
Suite 2100  
Atlanta, GA 30363-1031  
404.873.8500  
[www.agg.com](http://www.agg.com)



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our existing businesses that provide jobs for Georgians and attract new investment.”

While Governor Perdue did not provide details regarding how “the legal merits of a complaint will be tested” or precisely what is meant by “the earliest possible stage” of litigation, these provisions, if passed, will provide defendants with additional resources in which to combat frivolous claims and provide a tangible disincentive to attorneys for filing such lawsuits.

A full copy of Governor Perdue’s speech regarding the proposed legislation can be found at: <http://gov.georgia.gov>.

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