

## Insights: Alerts

# Officer Exculpation Comes to Georgia: What HB 1185 Means for Georgia Corporations and Their Boards

June 18, 2026

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## Overview

On May 11, 2026, Georgia Governor Kemp signed House Bill 1185 into law, enacting significant reforms to the Georgia Business Corporation Code.<sup>1</sup> The legislation becomes effective July 1, 2026. Among its most consequential provisions, HB 1185 extends to corporate officers the exculpation framework that Georgia law has long afforded to directors — permitting Georgia corporations to eliminate or limit officer liability for monetary damages for breaches of the duty of care.

HB 1185 also introduces several other corporate governance reforms, including the ability to designate the Georgia State-wide Business Court as the exclusive forum for “internal entity claims,” a new derivative standing ownership threshold for public companies (up to 1% of outstanding shares), restrictions on disclosure-only settlements, and reforms to books-and-records inspection demands. “Internal entity claims” are defined broadly to include claims arising under Georgia’s business entity statutes, derivative claims, fiduciary duty claims involving current or former directors, officers, shareholders, members, or partners, valuation proceedings, court-ordered inspection proceedings, and disclosure-based claims, regardless of whether characterized as derivative. This alert focuses on the officer exculpation provision and related practical steps for Georgia public companies, while also identifying considerations relevant to privately held Georgia corporations.

The legislation positions Georgia alongside Delaware, Nevada, and Texas in the ongoing competition among states to provide modern, predictable corporate governance frameworks. For Georgia-incorporated public companies, HB 1185 creates an opportunity to strengthen litigation protections for management teams through a well-established and increasingly standard governance mechanism. For privately held Georgia corporations, several of the same reforms may also be useful in connection with shareholder disputes, financing transactions, recapitalizations, sale processes, and public-company readiness planning.

## What This Means for Georgia Corporations

Under revised O.C.G.A. § 14-2-202(b)(4), Georgia corporations may now include a provision in their articles of incorporation eliminating or limiting officer liability for monetary damages for breach of the duty of care.

### Scope of Protection

- Applies to corporate officers (not just directors)
- Covers monetary damages for breaches of the duty of care
- Companies may include “auto-update” language in the articles amendment so that officer exculpation extends to the fullest extent permitted by the Georgia Business Corporation Code as it exists or may later be amended

## **Statutory Carve-Outs**

As with directors, the provision may not eliminate liability for:

- Appropriation of business opportunities in violation of the officer's duties
- Acts or omissions involving intentional misconduct or knowing violations of law
- Liability for unlawful dividends and distributions under O.C.G.A. § 14-2-832
- Transactions from which the officer received an improper personal benefit

## **Notable Advantages Over Delaware**

Unlike Delaware's Section 102(b)(7), which limits officer exculpation to specified senior officers, named executive officers, and certain persons who agree to be identified as officers for service-of-process purposes, Georgia's HB 1185 uses the broader term "officer" without comparable category limitations. Under the Georgia Business Corporation Code, a corporation has the officers described in its bylaws or appointed by the board in accordance with the bylaws, so the Georgia protection should generally extend to any officer elected or appointed through that framework.

Georgia also differs from Delaware because Delaware excludes derivative claims from officer exculpation, while HB 1185 contains no comparable exclusion. This means Georgia's officer exculpation framework should shield officers from both direct and derivative duty-of-care claims — a materially broader protection than Delaware offers. That distinction is practically important because fiduciary duty challenges to board and officer conduct in M&A, oversight, compensation, and other corporate governance matters are often asserted derivatively on behalf of the corporation. Broader coverage may therefore give Georgia officers a more meaningful path to early dismissal of duty-of-care claims and may reduce the settlement leverage created by naming officers as individual defendants.

## **Implementation Requirements**

- Must be adopted through an amendment to the articles of incorporation
- Requires Board approval followed by shareholder approval
- Statutory default shareholder approval threshold is a majority of votes entitled to be cast
- Critical for public companies: Review your articles to determine whether a supermajority threshold applies for amendments to the articles of incorporation rather than the statutory default— although most officer exculpation amendment proposals have received strong shareholder support in other states, recent experiences in Delaware have shown this to be the single most important factor in whether a proposal will pass
- Since brokers will not be able to vote their clients' shares on this matter without client instructions, public companies should also account for the impact of uninstructed shares, or "broker non-votes", which can impact quorum and approval thresholds; with respect to approval, broker non-votes will have the same effect as no votes
- Public companies should also consider what the reaction of proxy advisory firms ISS and Glass Lewis may be to the proposal
- Private companies should review shareholder agreements, investor rights agreements, voting agreements, and any class or series protective provisions

## **Comparison to Delaware and Other States**

Georgia is not the first state to permit officer exculpation. Delaware amended its General Corporation Law in August 2022 to allow public companies to adopt officer exculpation provisions in their certificates of incorporation, but Delaware limits officer exculpation to direct claims brought by stockholders and specifically excludes derivative claims.

Texas has moved in a more management-protective direction, pairing officer exculpation with a broader package of reforms that includes a codified business judgment rule, a specialized business court, derivative standing thresholds of up to 3%, and other procedural litigation protections.

Nevada has long provided broad statutory protections for directors and officers, generally requiring intentional misconduct, fraud, or a knowing violation of law before monetary liability may be imposed, and recent Nevada legislation further clarifies fiduciary duties and permits jury trial waivers for internal affairs disputes.

Recent changes to the Revised Model Business Corporation Act have included officer exculpation provisions, and several model act states have begun incorporating those provisions into their corporate codes.

## How Georgia Compares

| Provision                 | Georgia HB 1185                | Delaware               | Texas                      | Nevada                                                      |
|---------------------------|--------------------------------|------------------------|----------------------------|-------------------------------------------------------------|
| Officer Exculpation Scope | Direct + derivative claims     | Direct claims only     | Direct + derivative claims | Broad statutory exculpation for directors/officers          |
| Exclusive Forum           | Business Court                 | Court of Chancery      | Business Court             | Proposed business court constitutional amendment is pending |
| Derivative Threshold      | Up to 1%                       | No statutory threshold | Up to 3%                   | No statutory threshold                                      |
| Books & Records           | Narrowed purpose; fee-shifting | Limits scope           | Excludes emails/texts      | No comparable categorical exclusion identified              |

A number of commentators have noted the relatively slow rollout of officer exculpation amendment proposals by Delaware corporations, but the trends have been in favor of more widespread adoption as larger and more widely held Delaware corporations successfully obtain shareholder approval. The Delaware experience with officer exculpation amendment proposals provides useful market precedent for Georgia companies, but the data should be read in context. DragonGC reported that 745 Delaware public companies put officer exculpation amendments to a shareholder vote across the 2022/2023 and 2023/2024 proxy seasons, noting that of those proposals 177 were by Fortune 1000 companies and that 171 of those 177 proposals passed.<sup>2</sup> Mayer Brown, using Deal Point Data, reported that 443 Delaware public companies in major indices had held votes through May 2024, with 88% of proposals approved, an average favorable vote of 89% of shares present, and an average favorable vote of 69% of shares outstanding.<sup>3</sup>

Proxy advisor reaction has generally been manageable. ISS has taken a case-by-case approach. According to Mayer Brown/Georgeson data, ISS recommended “for” approximately 86% of proposals, and 92% of proposals receiving an ISS “against” recommendation still passed. Glass Lewis remains less supportive and generally recommends against officer exculpation absent a compelling rationale and reasonable provisions.<sup>4</sup> Gallagher reported an almost 90% success rate in a sample of approximately 30 proposals in 2025, with failures driven principally by high voting thresholds and low shareholder turnout rather than proxy advisory opposition.<sup>5</sup>

Several Georgia-headquartered, Delaware-incorporated companies have already taken this step. Floor & Decor shareholders approved an officer exculpation amendment at the company’s May 2025 annual meeting, and Southern Company and The Home Depot shareholders approved officer exculpation amendments at their May 2026 annual meetings. Other significant Georgia-headquartered Delaware companies identified in available market datasets as officer exculpation adopters include Acuity Brands and Newell Brands. These examples may be useful comparators for Georgia-incorporated companies evaluating whether to seek comparable protection under HB 1185.<sup>6</sup>

## Considerations for Private Georgia Corporations

Although the most immediate implications of HB 1185 are for public companies, several reforms are also relevant to privately held Georgia corporations, including private equity portfolio companies, venture-backed companies, closely held businesses, family-owned corporations, and companies preparing for an IPO or sale process.

Private Georgia corporations should consider whether to amend their articles of incorporation to extend exculpation to officers, particularly where officers may face duty-of-care claims in connection with financings, recapitalizations, acquisitions, restructurings, or exit transactions. Because shareholder approval is required, private companies should review shareholder agreements, investor rights agreements, voting agreements, class or series voting rights, and any negotiated consent rights before proceeding.

Private companies should also evaluate whether to adopt a Georgia State-wide Business Court exclusive forum provision. Closely held shareholder disputes, fiduciary duty claims, valuation disputes, and inspection demands may benefit from a specialized forum. In private-company settings, however, any forum provision should be coordinated with existing shareholder agreements and dispute resolution provisions, including arbitration clauses, venue provisions, and consent rights.

The books-and-records reforms apply automatically and may be particularly important in private-company disputes, where inspection demands often precede fiduciary duty, minority shareholder, or buyout litigation. By contrast, the derivative standing ownership threshold provision is only available to corporations listed on a national securities exchange, so it is primarily a public-company tool; private companies should evaluate that provision principally in connection with public-company readiness and IPO planning.

## Action Items

1. Review your articles of incorporation and related governance documents. Public companies should determine whether a supermajority threshold applies for charter amendments. Private companies should also review shareholder agreements, investor rights agreements, voting agreements, and any class or series protective provisions.
2. Prepare the officer exculpation charter amendment for the next shareholder approval opportunity. For public companies, this will generally be the next annual meeting. For private companies, timing may depend on the shareholder consent mechanics in the articles, bylaws, and investor agreements. Consider including “auto-update” language so the provision tracks the fullest extent of officer exculpation permitted by the Georgia Business Corporation Code as it exists or may later be amended.
3. For public companies, build in SEC timing. Charter amendments require filing a preliminary proxy statement with the SEC at least 10 calendar days before filing the definitive proxy. Present the officer exculpation amendment as a separate voting item and avoid bundling it with unrelated charter amendments.
4. Frame proxy disclosures carefully. Emphasize that the legislative change addresses the disparity between directors and officers who owe comparable duties; reduced litigation costs and potential D&O insurance benefits; what the exculpation does not cover; and Georgia’s broader scope compared to Delaware.
5. Consider adopting other HB 1185 protections by bylaw amendment on or shortly after July 1, 2026. Public companies should consider an exclusive forum bylaw designating the Georgia Business Court for internal entity claims, and a derivative standing ownership threshold of up to 1%. Private companies should also consider the Business Court forum provision and coordinate it with existing shareholder agreements and any existing dispute resolution clauses.
6. For public companies, consider whether to submit exclusive forum and derivative standing share ownership threshold bylaw amendments for shareholder ratification at the next annual meeting to mitigate potential opposition from proxy advisory firms.
7. Update books-and-records demand response procedures to incorporate the new “proper purpose” standard and reciprocal fee-shifting provisions. No amendment to bylaws or articles of incorporation should be necessary in most

cases. This is relevant for both public and private Georgia corporations.

## Key Takeaways

HB 1185 provides Georgia-incorporated companies with statutory protections that are consistent with — and in certain respects broader than — those available in Delaware and other states. The officer exculpation provision addresses a real and growing litigation exposure for corporate officers, and the Delaware experience in recent proxy seasons demonstrates strong shareholder support for well-framed public-company proposals. Public companies should consider adopting available exclusive forum and derivative standing share ownership threshold bylaw protections as soon as possible, and placing the officer exculpation charter amendment on the agenda for the next annual meeting. Private companies should evaluate officer exculpation, Business Court forum selection, and books-and-records response procedures in light of their shareholder base, investor agreements, and transaction plans.

Please contact [Ben Barkley](#), [David Eaton](#), [Isabelle Dinerman](#) or your primary Kilpatrick contact for further information.

## Footnotes

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<sup>1</sup> Georgia House Bill 1185 (2025-2026 Reg. Sess.), as passed House and Senate, available at <https://www.legis.ga.gov/api/legislation/document/20252026/248645>.

<sup>2</sup> DragonGC, Trends in Officer Exculpation under Amended Delaware Corporation Law: DGCL § 102(b)(7) (Aug. 26, 2024).

<sup>3</sup> Andrew J. Noreuil & Andrew J. Stanger, Developments and Trends in Delaware Officer Exculpation Charter Amendments, Mayer Brown LLP / Harvard Law School Forum on Corporate Governance (June 25, 2024) (citing Deal Point Data).

<sup>4</sup> Id. (citing Georgeson tracking data and ISS/Glass Lewis policy guidance); Glass Lewis, 2026 Benchmark Policy Guidelines — United States.

<sup>5</sup> Lenin Lopez, Officer Exculpation in 2025: What the Latest Vote Results Tell Us, Gallagher (Aug. 2025); see also The Corporate Governance Advisor, Nov./Dec. 2025, Vol. 33, No. 6.

<sup>6</sup> Floor & Decor Holdings, Inc., Form 8-K (filed May 12, 2025); The Home Depot, Inc., Form 8-K (filed May 26, 2026); The Southern Company, Form 8-K (filed May 15, 2026); Acuity Brands, Inc., Form 8-K (filed Jan. 26, 2024); Newell Brands Inc., Form 8-K (filed May 10, 2024).

## Related People

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