

Senate Bill 432

By: Senators Price of the 56th, Johnson of the 1st, Seabaugh of the 28th, Balfour of the 9th,
Thomas of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to limit
2 liability and damages in certain circumstances; to provide for limited liability for certain
3 health care providers for treatment of certain emergency conditions under certain
4 circumstances; to change certain provisions relating to damages; to provide for financial
5 limitations with respect to certain damages; to provide for legislative findings; to provide for
6 related matters; to provide for an effective date and applicability; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
11 a new Code section immediately following Code Section 51-1-29.3, relating to immunity for
12 operators of external defibrulators, to be designated Code Section 51-1-29.4 to read as
13 follows:

14 "51-1-29.4.

15 (a) As used in this Code section, the term:

16 (1) 'Dedicated emergency department' means any department or facility of the hospital,
17 regardless of whether it is located on or off the main hospital campus, that meets one of
18 the following requirements:

19 (A) It is held out to the public, by name, posted signs, advertising, or other means, as
20 a place that provides care for emergency medical conditions on an urgent basis without
21 requiring a previously scheduled appointment; or

22 (B) During the calendar year immediately preceding the calendar year in which a
23 determination under this Code section is being made, based upon a representative
24 sample of patient visits that occurred during that calendar year, it provided at least
25 one-third of all of its outpatient visits for the treatment of emergency medical
26 conditions on an urgent basis without requiring a previously scheduled appointment.

1 (2) 'Emergency medical condition' means:

2 (A) A medical condition manifesting itself by acute symptoms of sufficient severity,
3 including severe pain, such that the absence of immediate medical attention could
4 reasonably be expected to result in:

5 (i) Placing the health of the individual, or, with respect to a pregnant woman, the
6 health of the woman or her unborn child, in serious jeopardy;

7 (ii) Serious impairment to bodily functions; or

8 (iii) Serious dysfunction of any bodily organ or part; or

9 (B) With respect to a pregnant woman who is having contractions:

10 (i) That there is inadequate time to affect a safe transfer to another hospital before
11 delivery; or

12 (ii) That transfer may pose a threat to the health or safety of the woman or the unborn
13 child.

14 (3) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,
15 35, or 39 of Title 43 who provides care or assistance to an individual within the scope of
16 such health care provider's licensure, either voluntarily or at the request of a hospital,
17 including but not limited to any health care provider who is 'on call' to a hospital.

18 (4) 'Hospital' means a facility which has a valid permit or provisional permit issued by
19 the Department of Human Resources under Chapter 7 of Title 31 and which operates an
20 emergency room that provides care or assistance, including but not limited to emergency
21 care, to individuals seeking medical treatment. Such term shall also include any employee
22 of such hospital who provides care or assistance to such individuals within the scope of
23 his or her employment, whether or not such person is a health care provider.

24 (5) 'Noneconomic damages' means damages for physical and emotional pain, discomfort,
25 anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental
26 anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss
27 of consortium, injury to reputation, and all other nonpecuniary losses of any kind or
28 nature. This term does not include past or future:

29 (A) Medical expenses, including rehabilitation and therapy;

30 (B) Wages;

31 (C) Income;

32 (D) Funeral and burial expenses;

33 (E) The value of services performed by the injured in the absence of the injury or
34 death; or

35 (F) Other monetary expenses.

36 (b) The General Assembly makes the following findings: Georgia hospitals operating
37 dedicated emergency departments are required by both state and federal law to provide

1 examination and treatment to individuals who are in an emergency medical condition who
2 come to a dedicated emergency department, without regard to the financial or insurance
3 status of such individuals. Hospitals and other health care providers have complied with
4 these laws to their financial detriment and under the well-founded apprehension of
5 increased liability. Due in large part to fear of such liability, hospitals are experiencing
6 extreme difficulty attracting a sufficient number of physicians and other health care
7 professionals to maintain an effective team of professionals, including on-call physicians,
8 to provide needed care and assistance to citizens of this state who are in an emergency
9 medical condition. As a result, many hospitals are being forced to close their emergency
10 departments or forgo other needed improvements in order to financially support such
11 emergency services and their attendant liability. The shortage of these emergency
12 providers poses a serious threat to the health, welfare, and safety of the citizens of Georgia.
13 Nevertheless, it is also recognized that emergency patients who have been injured by
14 negligence must be afforded appropriate access to legal remedies for their injuries. The
15 Georgia General Assembly therefore concludes that certain steps must be taken to preserve
16 Georgia citizens' access to emergency care on the one hand, while on the other hand
17 provide appropriate remedies for emergency patients who are negligently injured.

18 (c) Without waiving or affecting and cumulative of any existing immunity from any
19 source, unless it is established that injuries or death were caused by gross negligence or
20 willful or wanton misconduct, no hospital or health care provider that renders care or
21 assistance in or at the request of a hospital or a health care provider to an individual who
22 comes to a dedicated emergency department for treatment of a medical condition, whether
23 such care or assistance is rendered gratuitously or for a fee, shall be held liable for
24 noneconomic damages to or for the benefit of any claimant arising out of any act or
25 omission in rendering such care or assistance.

26 (d) The limitation on liability provided in subsection (c) of this Code section shall not
27 apply to any act or omission in rendering care or assistance:

28 (1) Unrelated to the original medical condition for which the individual sought care or
29 assistance; or

30 (2) Which occurs more than 24 hours after the hospital or health care provider began
31 rendering such care or assistance."

32 SECTION 2.

33 Said title is further amended by adding a new Code section immediately following Code
34 Section 51-12-33, relating to apportioning a damage award according to the degree of fault,
35 to be designated Code Section 51-12-34, to read as follows:

1 "51-12-34.

2 (a) As used in this Code section, the term 'noneconomic damages' means damages for
3 physical and emotional pain, discomfort, anxiety, hardship, distress, suffering,
4 inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of
5 life, loss of society and companionship, loss of consortium, injury to reputation, and all
6 other nonpecuniary losses of any kind or nature. This term does not include past or future:

7 (1) Medical expenses, including rehabilitation and therapy;

8 (2) Wages;

9 (3) Income;

10 (4) Funeral and burial expenses;

11 (5) The value of services performed by the injured in the absence of the injury or death;

12 or

13 (6) Other monetary expenses.

14 (b) The General Assembly finds that certain aspects of Georgia's current civil justice
15 system are adversely affecting patient access to health care services, quality patient care,
16 and cost-efficient health care; that the health care liability system is a costly, volatile, and
17 unpredictable mechanism for resolving claims of health care liability and compensating
18 injured patients; and is a deterrent to the sharing of information among health care
19 professionals which sharing would improve patient safety and quality of care. The General
20 Assembly further finds that in the public interest, it continues to be the responsibility of the
21 state to take measures to facilitate an environment which promotes competition among
22 current health and liability insurers and encourages additional competitors to enter the
23 market and to contain health insurance and professional liability insurance costs and
24 thereby provide reasonable assurance of affordable health and professional liability
25 insurance for the benefit of all Georgians. It is the purpose of this Code section to
26 implement reasonable, comprehensive, and effective health care liability designed to:

27 (1) Improve the availability of health care services in cases in which health care liability
28 actions have been shown to be a factor in the decreased availability of services;

29 (2) Reduce the incidence of defensive use of unnecessary tests and procedures and
30 reduce the rate of increase of the future cost of health care liability insurance, both of
31 which contribute to the escalation of health care costs;

32 (3) Ensure that persons with meritorious health care injury claims receive fair and
33 equitable compensation, including reasonable noneconomic damages;

34 (4) Improve the fairness and cost effectiveness of our current judicial liability system to
35 resolve disputes over, and provide compensation for, health care liability by reducing
36 uncertainty in the amount of compensation provided to injured individuals; and

1 (5) Provide an increased sharing of information in the health care system which will
2 reduce unintended injury and improve patient care.

3 (c) In any verdict returned or judgment entered in an action for medical malpractice, as
4 defined in Code Section 9-3-70, including an action for wrongful death, the total amount
5 recoverable for any injury to, or death of, a claimant for noneconomic damages shall not
6 exceed \$250,000.00, regardless of the number of parties against whom the action is
7 brought, the number of separate claims or actions brought, or the number of parties
8 bringing such claims or actions, with respect to an act or series of acts of malpractice.

9 (d) In any such action for medical malpractice, the jury shall not be informed about the
10 maximum award for noneconomic damages. An award for noneconomic damages in
11 excess of \$250,000.00 shall be reduced by the court either before the entry of judgment or
12 by amendment of the judgment after entry of judgment, and such reduction shall be made
13 before accounting for any other reduction in damages required by law.

14 (e) In any such action for medical malpractice, if an award of future damages equaling or
15 exceeding \$250,000.00 is made against any party in the action, the trial court shall, upon
16 the request of any party, issue an order providing that such damages be paid by periodic
17 payments. Such periodic payments shall be funded through an annuity policy with the
18 premium for such annuity equal to the amount of the award for future damages."

19 **SECTION 3.**

20 This Act shall become effective upon its approval by the Governor or upon its becoming law
21 without such approval. This Act shall apply only to causes of action arising on or after the
22 effective date of this Act. Any cause of action arising prior to that date shall continue to be
23 governed by the laws in effect at the time such cause of action arose.

24 **SECTION 4.**

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