

House Bill 1339

By: Representatives Westmoreland of the 86th, Butler of the 88th, Post 1, Burmeister of the 96th, Rice of the 64th, Manning of the 32nd, and others

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
10 provisions for torts, is amended by adding a new Code section immediately following Code
11 Section 51-1-29.3, to be designated Code Section 51-1-29.4 to read as follows:

12 "51-1-29.4.

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

14 (1) 'Emergency medical condition' means:

15 A medical condition manifesting itself by acute symptoms of sufficient severity,
16 including severe pain, such that the absence of immediate medical attention could
17 reasonably be expected to result in:

18 (A) Placing the health of the individual in serious jeopardy;

19 (B) Serious impairment to bodily functions; or

20 (C) Serious dysfunction of any bodily organ or part.

21 (2) 'Health care provider' means any person licensed under Chapters 9, 11, 26, 30, 33,
22 34, 35, or 39 of Title 43 who provides care or assistance to an individual who has an
23 emergency medical condition within the scope of such health care provider's licensure,
24 either voluntarily or at the request of a hospital, including but not limited to any health
25 care provider who is 'on call' to a hospital.

1 (3) 'Hospital' means a facility which has a valid permit or provisional permit issued by
2 the Department of Human Resources under Chapter 7 of Title 31 and which operates an
3 emergency room that provides care or assistance to individuals who have an emergency
4 medical condition. Such term shall also include any employee of such hospital who
5 provides care or assistance to such individuals within the scope of his or her employment,
6 whether or not such person is a health care provider.

7 (4) 'Noneconomic damages' means damages for physical and emotional pain, distress,
8 suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of
9 enjoyment of life, loss of society and companionship, loss of consortium, injury to
10 reputation, and all other nonpecuniary losses of any kind or nature.

11 (b) The General Assembly makes the following findings. Georgia hospitals operating
12 emergency rooms are required by both state and federal law to provide examination and
13 treatment to individuals who are in an emergency medical condition, without regard to the
14 financial or insurance status of such individuals. Hospitals and other health care providers
15 have complied with these laws to their financial detriment and under the well-founded
16 apprehension of increased liability. Due in large part to fear of such liability, hospitals are
17 experiencing extreme difficulty attracting a sufficient number of physicians and other
18 health care professionals to maintain an effective team of professionals, including on-call
19 physicians, to provide needed care and assistance to citizens of this state who are in an
20 emergency medical condition. As a result, many hospitals are being forced to close their
21 emergency rooms or forgo other needed improvements in order to financially support such
22 emergency services and their attendant liability. The shortage of these emergency
23 providers poses a serious threat to the health, welfare, and safety of the citizens of Georgia.
24 Nevertheless, it is also recognized that emergency patients who have been injured by
25 negligence must be afforded appropriate access to legal remedies for their injuries. The
26 Georgia General Assembly therefore concludes that certain steps must be taken to preserve
27 Georgia citizens' access to emergency care, on the one hand, while on the other hand
28 provide appropriate remedies for emergency patients who are negligently injured.

29 (c) Without waiving or affecting and cumulative of any existing immunity from any
30 source, unless it is established that injuries or death were caused by gross negligence or
31 willful or wanton misconduct, no hospital or health care provider that renders care or
32 assistance in or at the request of a hospital or a health care provider to an individual who
33 comes to the hospital with an emergency medical condition, whether such care or
34 assistance is rendered gratuitously or for a fee, shall be held liable for noneconomic
35 damages to or for the benefit of any claimant arising out of any act or omission in rendering
36 such care or assistance.

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

3 (1) Unrelated to the original emergency medical condition; or

4 (2) Which occurs after the patient is stabilized and is capable of receiving medical
5 treatment as a nonemergency patient, unless surgery is required during the same
6 hospitalization as a result of the original emergency medical condition, in which case the
7 limitation on liability provided by subsection (c) of this Code section shall apply to any
8 act or omission in rendering care or assistance which occurs before the stabilization of
9 the patient following such surgery.

10 (e) If a hospital or health care provider furnishes follow-up care to a patient to whom such
11 hospital or health care provider rendered care or assistance described in subsection (c) of
12 this Code section, and a medical condition arises during the course of the follow-up care
13 that is directly related to the original emergency medical condition for which care or
14 assistance was rendered, and the patient files an action based on the medical condition that
15 arises during the course of the follow-up care, there shall be a rebuttable presumption that
16 the medical condition was the result of the original emergency medical condition and that
17 the limitation on liability provided by subsection (c) of this Code section applies with
18 respect to the medical condition that arises during the course of the follow-up care."

19 **SECTION 2.**

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 law in effect at the time such cause of action arose.

24 **SECTION 3.**

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