

House Bill 1398

By: Representatives Porter of the 119<sup>th</sup>, Bordeaux of the 125<sup>th</sup>, Parrish of the 102<sup>nd</sup>, Jackson of the 124<sup>th</sup>, Post 1, Campbell of the 39<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 24-9-67 of the Official Code of Georgia Annotated, relating to  
2 opinions of experts, so as to provide for standards in admitting expert testimony in  
3 professional malpractice actions; to provide for related matters; to provide for an effective  
4 date and applicability; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Code Section 24-9-67 of the Official Code of Georgia Annotated, relating to opinions of  
8 experts, is amended by striking the Code section and inserting in lieu thereof the following:  
9 "24-9-67.

10 ~~(a) The opinions of experts on any question of science, skill, trade, or like questions shall~~  
11 ~~always be admissible; and such opinions may be given on the facts as proved by other~~  
12 ~~witnesses. As used in this Code section, the term 'professional malpractice action' means~~  
13 ~~an action involving any profession listed in Code Section 9-11-9.1, including, but not~~  
14 ~~limited to, medical malpractice actions as defined in Code Section 9-3-70.~~

15 ~~(b) If scientific, technical, or other specialized knowledge will assist the trier of fact to~~  
16 ~~understand the evidence or to determine a fact in issue, a witness qualified as an expert by~~  
17 ~~knowledge, skill, experience, training, or education may testify thereto in the form of an~~  
18 ~~opinion or otherwise, if:~~

19 ~~(1) The testimony is based upon sufficient facts or data which has been admitted into~~  
20 ~~evidence;~~

21 ~~(2) The testimony is the product of reliable principles and methods; and~~

22 ~~(3) The witness has applied the principles and methods reliably to the facts of the case.~~

23 ~~(c) In professional malpractice actions, the opinions of an expert who is otherwise~~  
24 ~~qualified as to the acceptable conduct of the professional whose conduct is at issue shall~~  
25 ~~be admissible only if, at the time the act or omission is alleged to have occurred, such~~  
26 ~~expert:~~

1 (1) Was licensed by an appropriate regulatory agency to practice his or her profession  
 2 in the state in which such expert was practicing or teaching in the profession at such time;  
 3 and

4 (2) Had actual professional knowledge and experience in the area of practice or specialty  
 5 in which the opinion is to be given as the result of having been regularly engaged in:

6 (A) The active practice of such area of specialty of his or her profession for at least  
 7 three of the last five years immediately preceding such time;

8 (B) The teaching of such area of practice or specialty of his or her profession for at  
 9 least half of his or her professional time as an employed member of the faculty of an

10 educational institution which has been accredited in the teaching of his or her  
 11 profession for at least three of the last five years immediately preceding such time; or

12 (C) Any combination of the active practice or the teaching of his or her profession in  
 13 a manner which meets the requirements of subparagraphs (A) and (B) of this paragraph  
 14 for at least three of the last five years immediately preceding such time.

15 (d) The admissibility of proposed expert testimony under this Code section may be  
 16 addressed before trial and the court may hold evidentiary or other hearings in connection  
 17 with the disposition of such issues.

18 (e) An affiant under Code Section 9-11-9.1 shall not be deemed an expert competent to  
 19 testify if his or her opinions would not be admissible in the action at issue under this Code  
 20 section."

## 21 **SECTION 2.**

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

## 26 **SECTION 3.**

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