

House Bill 1419

By: Representatives Stephenson of the 60<sup>th</sup>, Post 1, Shaw of the 143<sup>rd</sup>, Channell of the 77<sup>th</sup>,  
Mosby of the 59<sup>th</sup>, Post 3, Watson of the 60<sup>th</sup>, Post 2, 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 legislative  
5 findings; to provide for immunity for certain hospitals who have independent contractor  
6 relationships with certain health care providers; to provide for related matters; to provide for  
7 an effective date and applicability; to repeal conflicting laws; 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 located on the main hospital campus that meets one of the following requirements:

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

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

26 (2) 'Emergency medical condition' means:

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

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

6 (ii) Serious impairment to bodily functions; or

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

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

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

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

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

17 (4) 'Hospital' means a facility which has a valid permit or provisional permit issued by  
 18 the Department of Human Resources under Chapter 7 of Title 31 and which operates a  
 19 dedicated emergency department that provides care or assistance, including but not  
 20 limited to emergency care, to individuals seeking medical treatment. Such term shall also  
 21 include any employee of such hospital who provides care or assistance to such  
 22 individuals within the scope of his or her employment, whether or not such person is a  
 23 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 come to a dedicated emergency department,  
2 without regard to the financial or insurance status of such individuals. Hospitals and other  
3 health care providers have complied with these laws to their financial detriment and under  
4 the well-founded apprehension of increased liability. Due in large part to fear of such  
5 liability, hospitals are experiencing extreme difficulty attracting a sufficient number of  
6 physicians and other health care professionals to maintain an effective team of  
7 professionals, including on-call physicians, to provide needed care and assistance to  
8 citizens of this state. As a result, many hospitals are being forced to close their emergency  
9 departments or forego other needed improvements in order to financially support such  
10 emergency services and their attendant liability. The shortage of these emergency  
11 providers poses a serious threat to the health, welfare, and safety of the citizens of Georgia.  
12 Nevertheless, it is also recognized that patients who have been injured by negligence must  
13 be afforded appropriate access to legal remedies for their injuries. The Georgia General  
14 Assembly therefore concludes that certain steps must be taken to preserve Georgia citizens'  
15 access to emergency care on the one hand, while on the other hand provide appropriate  
16 remedies for patients who are negligently injured.

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

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

- 27 (1) Unrelated to the original medical condition for which the individual sought care or  
28 assistance;
- 29 (2) Which occurs more than 24 hours after the hospital or health care provider began  
30 rendering such care or assistance; or
- 31 (3) To a pregnant woman in active labor who has previously received prenatal care from  
32 such hospital or health care provider for such pregnancy."

## 33 SECTION 2.

34 Said title is further amended by adding a new Code section immediately following Code  
35 Section 51-2-4, relating to liability for torts of an independent employee, to read as follows:

1 "51-2-4.1.

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

3 (1) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,  
4 35, or 39 of Title 43 who provides care or assistance to an individual within the scope of  
5 the health care provider's licensure.

6 (2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the  
7 Department of Human Resources under Chapter 7 of Title 31.

8 (b) Notwithstanding the provisions of Code Section 51-2-5, no hospital shall be  
9 vicariously liable for the acts or omissions of a health care provider identified as an  
10 independent contractor."

11 **SECTION 3.**

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

16 **SECTION 4.**

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