

House Bill 1508

By: Representatives Campbell of the 39<sup>th</sup> and Willard of the 40<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 9 of the Official Code of Georgia Annotated, relating to  
2 arbitration, so as to require that all medical malpractice claims be submitted to a medical  
3 malpractice review panel; to provide for definitions; to provide for creation of medical  
4 malpractice review panels; to provide for random selection of members; to provide for an  
5 oath; to provide for the submission of evidence; to provide for submission of a nonbinding  
6 opinion and award of damages; to provide for a demand for trial following a panel's  
7 decision; to provide for admissibility of a panel's finding; to provide that panel members may  
8 be called to testify at trial; to provide for the assessment of the fees of arbitration under  
9 certain conditions; to provide for the compensation of panel members; to provide for related  
10 matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 9 of Title 9 of the Official Code of Georgia Annotated, relating to arbitration, is  
14 amended by inserting at the end thereof a new article to be designated Article 3 to read as  
15 follows:

16 style="text-align:center">"ARTICLE 3

17 9-9-90.

18 (a) As used in this article, the term:

19 (1) 'Health care provider' means a person, corporation, facility, or institution licensed by  
20 this state to provide health care or professional services as a physician, hospital, clinic,  
21 nursing home, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor,  
22 physical therapist, psychologist, or acupuncturist, or an officer, agent, or employee  
23 thereof acting in the course and scope of his or her employment.

1 (2) 'Medical malpractice claim' means any claim for damages resulting from the death  
2 of or injury to any person arising out of:

3 (A) Health, medical, dental, or surgical service, diagnosis, prescription, treatment, or  
4 care rendered by a person authorized by law to perform such service or by any person  
5 acting under the supervision and control of a lawfully authorized person; or

6 (B) Care or service rendered by any public or private hospital, nursing home, clinic,  
7 hospital authority, facility, or institution, or by any officer, agent, or employee thereof  
8 acting within the scope of his or her employment.

9 9-9-91.

10 (a) Prior to trial, all medical malpractice claims against health care providers, other than  
11 claims for which a valid agreement for submission to a lawfully binding arbitration  
12 procedure has been reached, shall be referred by the judge to whom the civil action is  
13 assigned to a medical malpractice review panel as provided in this article.

14 (b) Each medical malpractice review panel convened in any such action shall be composed  
15 of five voting members and shall include three physicians licensed to practice in this state,  
16 at least one of whom shall be from one of the health care disciplines involved in such  
17 action, and two attorneys licensed to practice in this state. All physicians who hold a  
18 license to practice medicine in this state and who are engaged in the active practice of  
19 medicine in this state and all attorneys who hold a license to practice in this state and who  
20 have had at least three years' trial experience shall be available for selection to such panel.

21 (c) The members of each medical malpractice review panel shall be selected in the  
22 following manner:

23 (1) The clerk of the court shall compile and keep current two separate lists as follows:

24 (A) A list of all physicians engaged in the active practice of medicine in this state; and

25 (B) A list of all attorneys engaged in the active practice of law in this state and who are  
26 admitted to the State Bar of Georgia;

27 (2) The members of the panel shall be selected by the clerk of the court at random from  
28 the appropriate list;

29 (3) Each party shall have one peremptory challenge to the attorneys selected;

30 (4) Members selected at random shall be designated by the court to serve unless  
31 disqualified by reason of close relationship with or personal bias toward any party to the  
32 action;

33 (5) Any member so selected shall serve upon the panel unless for good cause shown he  
34 or she is excused by the court. The court shall excuse a member from serving only if it  
35 finds, on the basis of facts set forth in an affidavit submitted by such member, that such

1 service would constitute an unreasonable burden or undue hardship, or that such service  
2 would give rise to a conflict of interest; and

3 (6) After a name has been struck by one of the parties or a member excused by the court,  
4 the clerk shall select a substitute member from the same list.

5 9-9-92.

6 The clerk of the court in which the civil action has been filed shall be responsible for the  
7 administration of the procedures of selection of candidates for service on a medical  
8 malpractice review panel.

9 9-9-93.

10 The scheduling of a case for a hearing before a medical malpractice review panel shall not  
11 remove the case from assignment to a judge, discovery, or motions practice for regular  
12 court procedures. From the time of filing until the review panel hearing date, the parties  
13 may conduct discovery.

14 9-9-94.

15 Before entering upon his or her duties, each member of the panel shall subscribe before a  
16 notary public the following oath:

17 'I, (name), do solemnly swear/affirm that I will faithfully perform the duties of medical  
18 malpractice review panel member to the best of my ability and without partiality or  
19 favoritism of any kind. I acknowledge that I represent neither side and that it is my  
20 lawful duty to serve with complete impartiality and to render a decision in accordance  
21 with law and the evidence.'

22 The original of each oath shall be attached to the opinion rendered by the panel.

23 9-9-95.

24 (a) The evidence to be submitted to the medical malpractice review panel shall be  
25 promptly submitted to the panel and parties in written form only. Evidence may consist  
26 of medical charts, X-rays, laboratory tests, excerpts of treatises, depositions of witnesses  
27 including the parties, affidavits and reports of medical experts, and any other form of  
28 evidence deemed allowable by the medical malpractice review panel.

29 (b) Depositions of the parties and witnesses may be taken prior to the convening of the  
30 medical malpractice review panel.

31 (c) Upon request of any party, or upon request of any two panel members, the clerk of the  
32 superior court shall issue subpoenas and subpoenas duces tecum in aid of the taking of  
33 depositions and the production of documentary evidence for inspection or copying.

1 (d) All evidence considered by the medical malpractice review panel shall constitute a part  
2 of the record in the superior court.

3 (e) Evidence will be considered by the panel which, in its opinion, possesses probative  
4 value commonly accepted by reasonable, prudent persons in the conduct of their affairs.

5 (f) The panel shall have the right and duty to request and procure all necessary  
6 information. Both parties shall have full access to any material obtained by or submitted  
7 to the medical malpractice review panel and shall be given a reasonable opportunity to  
8 rebut any such materials submitted to the panel.

9 (g) Thirty days prior to the panel hearing date, each party shall specify in writing and  
10 provide to each party copies of all documents to be tendered into evidence. Documents  
11 unobjected to in writing by the opposing party within 20 days shall be deemed  
12 authenticated but subject to objections as to admissibility at the time of the hearing.

13 (h) Formal rules of evidence shall not apply and all proceedings of the panel shall be  
14 expeditious and informal.

15 (i) The chairperson of the panel shall advise the panel relative to any legal question  
16 involved in the review proceeding and shall prepare the opinion of the panel as provided  
17 in Code Section 9-9-96.

18 (j) Parties to the case and their counsel may not initiate communication out of court with  
19 members of the panel on the subject matter of its inquiry and report or cause or solicit  
20 others to do so, except through ordinary discovery proceedings.

21 9-9-96.

22 (a) A majority vote of the medical malpractice review panel shall be required to decide all  
23 matters before it.

24 (b) The medical malpractice review panel shall have the sole duty of making a finding as  
25 to whether or not in its opinion the evidence supports the conclusion that the defendant or  
26 defendants acted or failed to act within the applicable standards of care. After reviewing  
27 all evidence, the panel shall within 30 days confer and return to the judge of the superior  
28 court to whom the civil action is assigned a written award for one party or the other, which  
29 shows the damages, if any, and which shows any dissent. The award shall be published to  
30 the parties. No written findings of fact or conclusions of law shall be required.

31 9-9-97.

32 Following a medical malpractice review panel hearing, any party may file a demand for  
33 trial within 30 days after the rendering of the opinion by the panel. Filing such demand for  
34 trial shall entitle all parties to a de novo trial of all issues of fact or of law which were  
35 raised or could have been raised before the panel. Such case shall be tried before the judge

1 to whom the case has been assigned in the ordinary procedure and course of time as if no  
2 panel review had been held.

3 9-9-98.

4 (a) Any document or other evidence generated in connection with a medical malpractice  
5 review panel proceeding shall be subject to discovery.

6 (b) The opinion reached and report issued by the medical malpractice review panel shall  
7 be admissible as prima-facie evidence in the pending superior court action brought by the  
8 claimant, but such opinion shall not be conclusive. The jury shall be instructed in general  
9 terms that the opinion of the review panel shall be considered and evaluated in the same  
10 manner as any other expert testimony. Any member of the panel may be called by any  
11 party and may be cross-examined as to the content of the panel's report.

12 (c) Members of a medical malpractice review panel shall have immunity from civil or  
13 criminal liability for all communications, findings, opinions, and conclusions made in the  
14 course and scope of their duties prescribed by this article.

15 9-9-99.

16 If the party demanding a jury trial does not achieve:

17 (1) A reversal of the medical malpractice review panel award; or

18 (2) An increase or decrease of damages by 15 percent of the panel's award,

19 then the demanding party shall be assessed the costs incurred by the medical malpractice  
20 review panel.

21 9-9-100.

22 If a medical malpractice review panel convenes for more than one day of hearings, then for  
23 every day in excess thereof each member of the panel shall receive reasonable  
24 compensation based on the extent and duration of services rendered."

25 **SECTION 2.**

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