

The House Committee on Judiciary offers the following substitute to HB 1399:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to depositions and discovery, and Article 3 of Chapter 9 of Title 24 of the Official
3 Code of Georgia Annotated, relating to examination of witnesses, so as to change certain
4 provisions relating to medical malpractice civil actions; to create provisions regarding expert
5 opinions in medical malpractice civil actions; to change provisions relating to opinions of
6 experts; to create provisions concerning discovery, scheduling of matters and trials, and
7 attorney fees and expenses in medical malpractice civil actions; to provide for related
8 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
13 depositions and discovery, is amended by adding a new Code section to read as follows:

14 "9-11-37.1.

15 (a) The provisions of this Code section and this article shall apply to any civil action in
16 which the plaintiff alleges medical malpractice as defined in Code Section 9-3-70;
17 provided, however, where there is any conflict between the provisions of this Code section
18 and other provisions of this article, the provisions of this Code section shall control the
19 proceedings.

20 (b) Within 30 days of the filing of the last answer in the civil action, the parties shall
21 submit a joint scheduling order specifically setting forth the time period in which
22 discovery, including the designation and depositions of all expert witnesses, shall be
23 completed and setting a date certain for the filing of a consolidated pretrial order. Said
24 scheduling order may be amended by agreement of the parties or order of the court. If the
25 parties are unable to agree to a joint scheduling order, each party may file, within 30 days
26 of the filing of the last answer in the civil action, a proposed scheduling order. Thereafter,

1 the trial court shall enter a scheduling order for the completion of discovery, including the
 2 designation and depositions of all expert witnesses, and the filing of a consolidated pretrial
 3 order. Nothing contained in this Code section shall prohibit any party from conducting any
 4 discovery authorized by Georgia law prior to the entry of the scheduling order required by
 5 this subsection.

6 (c) If any party requests a special setting for trial, and the trial court determines that a
 7 special setting is justified, then the trial court shall specially set the civil action for a date
 8 certain for trial. The civil action shall be set for trial no later than two years after the filing
 9 of the last answer in the civil action unless otherwise ordered by the court.

10 (d) All parties shall be given a minimum of 45 days' notice of the special setting of any
 11 civil action for trial pursuant to subsection (c) of this Code section.

12 (e) If any party files a notice of appeal as allowed by law, the time periods set forth in this
 13 Code section shall be stayed and shall recommence running on the date that the record is
 14 returned from any appellate court to the trial court following any such appeal."

15 SECTION 2.

16 Article 3 of Chapter 9 of Title 24 of the Official Code of Georgia Annotated, relating to
 17 examination of witnesses, is amended by striking Code Section 24-9-67, relating to opinions
 18 of experts, and inserting in lieu thereof the following:

19 "24-9-67.

20 Except as provided in Code Section 24-9-67.1, the The opinions of experts on any question
 21 of science, skill, trade, or like questions shall always be admissible; and such opinions may
 22 be given on the facts as proved by other witnesses."

23 SECTION 3.

24 Said article is further amended by adding a new Code section to read as follows:

25 "24-9-67.1.

26 (a) In a civil action for medical malpractice as defined in Code Section 9-3-70, the
 27 opinions of an expert as to the standard of care of the defendant whose conduct is at issue
 28 shall be admissible only if, at the time the act or omission is alleged to have occurred or at
 29 the time the witness testifies, the expert witness:

30 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
 31 and was practicing or teaching or some combination thereof his or her profession for at
 32 least three of the last five years immediately preceding such time; and

33 (2) Meets at least one of the following criteria:

34 (A) The expert shares at least one specialty certification with the defendant;

1 (B) The expert has experience in the diagnosis or treatment of the condition at issue,
2 the performance of the procedure or procedures at issue, or the provision of the services
3 at issue; or

4 (C) The expert has experience in an area of practice or specialty that diagnoses, treats,
5 or cares for patients under similar conditions or circumstances as are at issue.

6 (b) Any objection to the qualification of the expert witness to provide such testimony shall:

7 (1) Be made no later than 30 days after the completion of the witness's deposition or
8 prior to the date of any pretrial hearing, whichever is earlier;

9 (2) Be made by written motion; and

10 (3) Set forth with specificity the factual and legal basis of the objection.

11 (c) Nothing in this Code section shall prohibit a health care provider from testifying as to
12 the standard of care of another health care provider with different licensure or certification
13 if the individual meets the criteria set forth in subsection (a) of this Code section. As used
14 in this subsection, the term 'health care provider' means a professional who is licensed
15 under Chapter 4 of Title 26 or Chapter 9, 11, 11A, 26, 30, 33, 34, or 44 of Title 34.

16 (d) This Code section shall not apply to Code Section 9-11-9.1 and shall not be construed
17 to alter the competency requirements of any expert testifying by affidavit for purposes of
18 Code Section 9-11-9.1.

19 (e) For each defendant whose conduct is at issue, the plaintiff shall identify at least one
20 expert who meets the requirements of subsection (a) of this Code section no later than six
21 months after the filing of the last defendant's answer; provided, however, that the court
22 shall be authorized to extend the time for the identification of an expert witness upon good
23 cause shown.

24 (f) Nothing in this Code section shall be construed to prohibit the plaintiff from identifying
25 additional expert witnesses as to the standard of care of any defendant beyond the
26 six-month period set forth in subsection (e) of this Code section.

27 (g) If the plaintiff fails to designate an expert as required by subsection (e) of this Code
28 section, then the civil action as to that defendant shall be dismissed without prejudice by
29 the trial court.

30 (h) Any objection to the qualifications of an expert witness designated by the plaintiff as
31 required by subsection (e) of this Code section shall be asserted pursuant to the
32 requirements of subsection (b) of this Code section. If the court rules that the expert does
33 not meet the criteria of subsection (a) of this Code section, then the court shall issue an
34 order requiring the plaintiff to identify an expert meeting the requirements of subsection
35 (a) of this Code section within a time period determined by the court which shall not be less
36 than 45 days. If the plaintiff fails to do so, the civil action as to that defendant shall be
37 dismissed without prejudice.

1 (i) An order dismissing any defendant or the entire civil action pursuant to subsection (g)
2 or (h) of this Code section shall be subject to review by direct appeal pursuant to Code
3 Section 5-6-34 upon the filing of a timely notice of appeal following the entry of the order.
4 If such an order is appealed, the statute of limitations, the statute of repose, and the
5 six-month renewal period shall be tolled until the civil action is remitted to the trial court."

6 **SECTION 4.**

7 This Act shall become effective on July 1, 2004, and shall apply to any civil action arising
8 on or after July 1, 2004.

9 **SECTION 5.**

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