

Senate Bill 586

By: Senators Shafer of the 48th, Hill of the 4th, Lee of the 29th, Smith of the 52nd, Moody of the 27th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 51-1-27 of the Official Code of Georgia Annotated, relating to  
2 recovery for medical malpractice, so as to provide a short title; to provide for legislative  
3 findings; to provide for the degree of care expected of medical professionals in an emergency  
4 room setting; to provide for the consideration by the jury or other trier of fact of certain  
5 factors affecting such care in determining whether such degree or standard of care was met;  
6 to provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Emergency Room Protection Act of 2004."

11 **SECTION 2.**

12 The General Assembly finds that emergency rooms provide a critically important public  
13 service in caring for the emergency medical needs of the citizens of this state. The General  
14 Assembly further finds that emergency room physicians are often called upon to make  
15 immediate decisions concerning the provision of medical care to seriously ill or injured  
16 patients without the benefit of family medical history or other medical records of the patient.  
17 The General Assembly further finds that rising medical malpractice insurance costs for  
18 liability arising from the provision of said care potentially jeopardizes the continued  
19 availability of quality emergency room care. The General Assembly further finds that the  
20 interests of the state are served by limiting the liability of emergency room physicians by  
21 defining the standard of care and skill applicable to emergency room physicians and by  
22 prescribing circumstances that shall be considered by a jury or other trier of fact in any tort  
23 action arising from the provision of said care.

**SECTION 3.**

Code Section 51-1-27 of the Official Code of Georgia Annotated, relating to recovery for medical malpractice, is amended by striking the Code section in its entirety and inserting in lieu thereof a new Code Section 51-1-27 to read as follows:

"51-1-27.

(a) A person professing to practice surgery or the administering of medicine for compensation must bring to the exercise of his or her profession a reasonable degree of care and skill. The degree of care and skill required of a physician in an emergency room setting shall be that degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances. Any injury resulting from a want of such care and skill shall be a tort for which a recovery may be had.

(b) In deciding whether a physician met the standard of care and skill of his or her profession when treating a patient in an emergency room setting, a jury or other trier of fact shall consider all relevant circumstances that the physician faced when treating the patient, including, but not limited to, whether any emergency circumstances were involved with the patient's condition; whether the physician had access to the patient's relevant medical history; all other circumstances surrounding the operation of the emergency facility, including the number of patients seeking care; and whether there was a physician-patient relationship between the physician and the patient predating the care at issue."

**SECTION 4.**

This Act shall become effective on July 1, 2004.

**SECTION 5.**

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