

House Bill 1712

By: Representatives Porter of the 119<sup>th</sup>, Bordeaux of the 125<sup>th</sup>, Parrish of the 102<sup>nd</sup>, Burkhalter of the 36<sup>th</sup>, Morris of the 120<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 9, 24, 33, and 51 of the Official Code of Georgia Annotated, relating  
2 respectively to civil practice; evidence; insurance; and torts, so as to provide for substantive  
3 and comprehensive revision of provisions regarding civil practice, evidentiary matters, and  
4 liability in tort actions; to require that a civil case or domestic relations filing information  
5 form be filed with a complaint; to change provisions relating to signing of pleadings and  
6 other documents, representations to the court, and sanctions; to require that a civil case or  
7 domestic relations final disposition form be filed with a judgment; to change provisions  
8 relating to failure to make discovery, sanctions, and expenses; to change provisions relating  
9 to litigation costs and attorney's fees in frivolous actions and defenses; to provide  
10 requirements for the imposition of sanctions; to change provisions relating to opinions of  
11 experts; to create provisions regarding expert opinions in medical malpractice civil actions;  
12 to provide that insurance agents, subagents, and brokers shall be prohibited from entering  
13 into agreements with purchasers or holders of malpractice insurance that restrict such  
14 purchasers or holders from using another agent, subagent, or broker to purchase or renew a  
15 malpractice insurance policy; to provide that medical malpractice insurance insurers must  
16 provide notice to the insured of the insurer's intent to cancel or not to renew such policy or  
17 to increase the premium for such policy; to provide that hospitals shall be insulated from  
18 liability for the acts of emergency room physicians who are independent contractors  
19 providing emergency health care services in a hospital emergency room; to provide for  
20 definitions; to provide for notice requirements regarding independent contractor physicians  
21 to the public; to provide for liability insurance coverage requirements for independent  
22 contractor physicians; to provide for matters related to the standard of care; to provide for  
23 related matters; to provide for an effective date and applicability; to repeal conflicting laws;  
24 and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:



1 (2) The claims, defenses, and other legal contentions therein are warranted by existing  
 2 law or by a nonfrivolous argument for the extension, modification, or reversal of existing  
 3 law or the establishment of new law;

4 (3) The allegations and other factual contentions have evidentiary support or, if  
 5 specifically identified, are likely to have evidentiary support after a reasonable  
 6 opportunity for further investigation or discovery; and

7 (4) The denials of factual contentions are warranted on the evidence or, if specifically  
 8 identified, are reasonably based on a lack of information or belief.

9 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court  
 10 determines that subsection (b) of this Code section has been violated, the court shall,  
 11 subject to this subsection, impose an appropriate sanction upon the attorneys, law firms,  
 12 or parties that have violated subsection (b) of this Code section or are responsible for the  
 13 violation. In the event any attorney, representing the insured, to whom the provisions of  
 14 this subsection may apply is an employee of the insurance company, the provisions of this  
 15 subsection shall also apply to the insurance company.

16 (d) Inapplicability to discovery. Subsections (a) and (b) of this Code section do not apply  
 17 to disclosures and discovery requests, responses, objections, and motions that are subject  
 18 to the provisions of Code Sections 9-11-26 through 9-11-37."

### 19 SECTION 3.

20 Said title is further amended by striking paragraph (2) of subsection (a) of Code Section  
 21 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

22 "(2) Each interrogatory shall be answered separately and fully in writing under oath,  
 23 unless it is objected to, in which event the reasons for objection shall be stated in lieu of  
 24 ~~an answer~~ objecting party shall state the reasons for objection and shall answer to the  
 25 extent the interrogatory is not objectionable. The answers are to be signed by the person  
 26 making them, and the objections signed by the attorney making them. The party upon  
 27 whom the interrogatories have been served shall serve a copy of the answers, and  
 28 objections if any, within 30 days after the service of the interrogatories, except that a  
 29 defendant may serve answers or objections within 45 days after service of the summons  
 30 and complaint upon that defendant. The court may allow a shorter or longer time. The  
 31 party submitting the interrogatories may move for an order under subsection (a) of Code  
 32 Section 9-11-37 with respect to any objection to or other failure to answer an  
 33 interrogatory."



1       "(4) AWARD OF EXPENSES OF MOTION.

2       (A) If the motion is granted, the court shall, after opportunity for hearing, require the  
3       party or deponent whose conduct necessitated the motion or the party or the attorney  
4       advising ~~such conduct or both of them~~ the party to pay to the moving party the  
5       reasonable expenses incurred in obtaining the order, including attorney's fees, unless  
6       the court finds that the opposition to the motion was substantially justified or that other  
7       circumstances make an award of expenses unjust. In the event any attorney,  
8       representing the insured, to whom the provisions of this subparagraph may apply is an  
9       employee of the insurance company, the provisions of this subparagraph shall also  
10      apply to the insurance company.

11      (B) If the motion is denied, the court shall, after opportunity for hearing, require the  
12      moving party or the attorney advising the ~~motion or both of them~~ party to pay to the  
13      party or deponent who opposed the motion the reasonable expenses incurred in  
14      opposing the motion, including attorney's fees, unless the court finds that the making  
15      of the motion was substantially justified or that other circumstances make an award of  
16      expenses unjust. In the event any attorney, representing the insured, to whom the  
17      provisions of this subparagraph may apply is an employee of the insurance company,  
18      the provisions of this subparagraph shall also apply to the insurance company.

19      (C) If the motion is granted in part and denied in part, the court may apportion the  
20      reasonable expenses incurred in relation to the motion among the parties and persons  
21      in a just manner."

22      "(b) *Failure to comply with order.*

23      (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails  
24      to be sworn or to answer a question after being directed to do so by the court in the  
25      county in which the deposition is being taken, the failure may be considered a contempt  
26      of that court.

27      (2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director,  
28      or managing agent of a party or a person designated under paragraph (6) of subsection (b)  
29      of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf  
30      of a party fails to obey an order to provide or permit discovery, including an order made  
31      under subsection (a) of this Code section or Code Section 9-11-35, the court in which the  
32      action is pending may make such orders in regard to the failure as are just and, among  
33      others, the following:

34      (A) An order that the matters regarding which the order was made or any other  
35      designated facts shall be taken to be established for the purposes of the action in  
36      accordance with the claim of the party obtaining the order;

1 (B) An order refusing to allow the disobedient party to support or oppose designated  
2 claims or defenses, or prohibiting him or her from introducing designated matters in  
3 evidence;

4 (C) An order striking out pleadings or parts thereof, or staying further proceedings until  
5 the order is obeyed, or dismissing the action or proceeding or any part thereof, or  
6 rendering a judgment by default against the disobedient party;

7 (D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as  
8 a contempt of court the failure to obey any orders except an order to submit to a  
9 physical or mental examination; or

10 (E) Where a party has failed to comply with an order under subsection (a) of Code  
11 Section 9-11-35 requiring him or her to produce another for examination, such orders  
12 as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party  
13 failing to comply shows that he or she is unable to produce such person for  
14 examination.

15 In lieu of any of the foregoing orders, or in addition thereto, the court shall require the  
16 party failing to obey the order or the attorney advising ~~him, or both,~~ the party to pay the  
17 reasonable expenses, including attorney's fees, caused by the failure, unless the court  
18 finds that the failure was substantially justified or that other circumstances make an  
19 award of expenses unjust. In the event any attorney, representing the insured, to whom  
20 the provisions of this paragraph may apply is an employee of the insurance company, the  
21 provisions of this paragraph shall also apply to the insurance company."

22 "(d) *Failure of party to attend at own deposition or serve answers to interrogatories or*  
23 *respond to request for inspection.*

24 (1) If a party or an officer, director, or managing agent of a party or a person designated  
25 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code  
26 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to  
27 take his or her deposition, after being served with a proper notice, or fails to serve  
28 answers or objections to interrogatories submitted under Code Section 9-11-33, after  
29 proper service of the interrogatories, or fails to serve a written response to a request for  
30 inspection submitted under Code Section 9-11-34, after proper service of the request, the  
31 court in which the action is pending on motion may make such orders in regard to the  
32 failure as are just; and, among others, it may take any action authorized under  
33 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or  
34 in addition thereto, the court shall require the party failing to act or the attorney advising  
35 ~~him, or both,~~ the party to pay the reasonable expenses, including attorney's fees, caused  
36 by the failure, unless the court finds that the failure was substantially justified or that  
37 other circumstances make an award of expenses unjust. In the event any attorney,

1 representing the insured, to whom the provisions of this paragraph may apply is an  
 2 employee of the insurance company, the provisions of this paragraph shall also apply to  
 3 the insurance company.

4 (2) The failure to act described in the provisions of this chapter which relate to  
 5 depositions and discovery may not be excused on the ground that the discovery sought  
 6 is objectionable unless the party failing to act has applied for a protective order as  
 7 provided by subsection (c) of Code Section 9-11-26."

#### 8 SECTION 7.

9 Said title is further amended by striking Code Section 9-11-58, relating to entry of judgment  
 10 and filing of a civil case disposition form, and inserting in lieu thereof the following:

11 "9-11-58.

12 (a) *Signing.* Except when otherwise specifically provided by statute, all judgments shall  
 13 be signed by the judge and filed with the clerk. The signature of the judge shall be followed  
 14 by the spelling of the judge's name and title legibly typed, printed, or stamped. The failure  
 15 of the judgment to have the typed, printed, or stamped name of the judge shall not  
 16 invalidate the judgment.

17 (b) *When judgment entered.* The filing with the clerk of a judgment, signed by the judge,  
 18 constitutes the entry of the judgment, and, unless the court otherwise directs, no judgment  
 19 shall be effective for any purpose until the entry of the same, as provided in this subsection.  
 20 At the time of the filing of the final judgment, a civil case or domestic relations final  
 21 disposition form shall be filed by the prevailing party, or by the plaintiff if the case is  
 22 settled, dismissed, or otherwise disposed of without a prevailing party, or by the judge if  
 23 any of the required information is under seal by the court. The form shall be The clerk of  
 24 court shall not accept, and is not authorized to accept, a judgment or dismissal for filing  
 25 unless it is accompanied by a completed civil case or domestic relations final disposition  
 26 form which is substantially in the form prescribed in Code Section 9-11-133. If any of the  
 27 information required by the civil case or domestic relations final disposition form is sealed  
 28 by the court, the civil case or domestic relations final disposition form shall state that fact  
 29 and the information under seal shall not be provided. The entry of the judgment shall not  
 30 be delayed for the taxing of costs ~~or the filing of the case disposition form.~~"

#### 31 SECTION 8.

32 Said title is further amended by striking subsections (a), (b), and (e) of Code Section 9-15-14,  
 33 relating to litigation costs and attorney's fees assessed for frivolous actions and defenses, and  
 34 inserting in lieu thereof, respectively, the following:

1     "(a) In any civil action in any court of record of this state, ~~reasonable and necessary~~  
 2     ~~attorney's fees and expenses of litigation~~ sanctions under subsection (e) of this Code  
 3     section shall be awarded to any party against whom another party has asserted a claim,  
 4     defense, or other position with respect to which there existed such a complete absence of  
 5     any justiciable issue of law or fact that it could not be reasonably believed that a court  
 6     would accept the asserted claim, defense, or other position. ~~Attorney's fees and expenses~~  
 7     ~~so awarded~~ Sanctions under subsection (e) of this Code section shall be assessed against  
 8     the party asserting such claim, defense, or other position, or against that party's attorney,  
 9     or against both of them in such manner as is just. In the event any attorney, representing  
 10    the insured, to whom the provisions of this subsection may apply is an employee of the  
 11    insurance company, the provisions of this subsection shall also apply to the insurance  
 12    company.

13    (b) The court may shall assess ~~reasonable and necessary attorney's fees and expenses of~~  
 14    ~~litigation~~ sanctions as provided in subsection (e) of this Code section in any civil action in  
 15    any court of record if, upon the motion of any party or the court itself, it finds that ~~an~~  
 16    ~~attorney or a party or an attorney, or both of them,~~ brought or defended an action, or any  
 17    part thereof, that lacked substantial justification or that the action, or any part thereof, was  
 18    interposed for delay or harassment, or if it finds that ~~an attorney or a party or an attorney,~~  
 19    ~~or both of them,~~ unnecessarily expanded the proceeding by other improper conduct,  
 20    including, but not limited to, abuses of discovery procedures available under Chapter 11  
 21    of this title, the 'Georgia Civil Practice Act.' As used in this Code section, 'lacked  
 22    substantial justification' means substantially frivolous, substantially groundless, or  
 23    substantially vexatious. In the event any attorney, representing the insured, to whom the  
 24    provisions of this subsection may apply is an employee of the insurance company, the  
 25    provisions of this subsection shall also apply to the insurance company."

26    "(e)(1) Attorney's fees and expenses under this Code section may be requested by motion  
 27    ~~at any time during the course of the action but not later than 45 days after the final~~  
 28    ~~disposition of the action.~~ A motion for sanctions under this Code section shall be made  
 29    separately from other motions or requests and shall describe the specific conduct alleged  
 30    to violate subsection (a) or (b) of this Code section or subsection (b) of Code Section  
 31    9-11-11.

32    (2) A motion shall not be filed with or presented to the court unless, within 30 days after  
 33    service of the pleading or other document at issue, the movant has delivered to the  
 34    nonmovant written notice of the movant's intent to file the motion. Upon receipt of such  
 35    notice, the nonmovant shall have 21 days to withdraw or appropriately correct the  
 36    challenged pleading or other document. If the nonmovant refuses or fails to withdraw or  
 37    appropriately correct the challenged pleading or other document, the movant shall then

1 have ten days from the date of such refusal or failure to file a motion under this Code  
2 section.

3 (3) If warranted, the court shall award to the party prevailing on the motion the  
4 reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

5 Absent exceptional circumstances, a law firm shall be held jointly responsible for  
6 violations committed by its partners, associates, and employees.

7 (4) On its own initiative, the court may enter an order describing the specific conduct  
8 that appears to warrant sanctions under this Code section and directing an attorney, law  
9 firm, or party to show cause why sanctions should not be imposed. In the event any  
10 attorney, representing the insured, to whom the provisions of this paragraph may apply  
11 is an employee of the insurance company, the provisions of this paragraph shall also  
12 apply to the insurance company.

13 (5) A sanction imposed pursuant to this Code section shall be sufficient to deter  
14 repetition of such conduct or comparable conduct by others similarly situated. Subject  
15 to the limitations in subparagraphs (A) and (B) of this paragraph, the sanction may  
16 consist of or include directives of a nonmonetary nature as described in subparagraph (C)  
17 of this paragraph, an order to pay a penalty into court, or, if imposed on motion and  
18 warranted for effective deterrence, an order to pay a penalty into court or an order  
19 directing payment to the movant of some or all of the reasonable attorney's fees and other  
20 expenses incurred as a direct result of the violation; provided, however, that:

21 (A) Monetary sanctions may not be awarded against a represented party for a violation  
22 of paragraph (2) of subsection (b) of Code Section 9-11-11;

23 (B) Monetary sanctions may not be awarded on the court's initiative unless the court  
24 issues its order to show cause before a voluntary dismissal or settlement of the claims  
25 made by or against the party which is, or whose attorneys are, to be sanctioned; and

26 (C) In addition to any monetary penalties, the court may, in its discretion, impose  
27 additional sanctions as are just and, among others, the following:

28 (i) An order refusing to allow the party to support or oppose designated claims or  
29 defenses or prohibiting him or her from introducing designated matters in evidence;  
30 and

31 (ii) An order striking out pleadings or parts thereof, dismissing the action or  
32 proceeding or any part thereof, or rendering a judgment by default against the  
33 violating party.

34 (6) When imposing sanctions, the court shall describe the conduct determined to warrant  
35 sanctions and explain the basis for the sanction imposed. Sanctions may not be imposed  
36 under subparagraph (C) of paragraph (5) of this subsection unless the court issues its

1 order to show cause before a voluntary dismissal or settlement of the claims made by or  
 2 against the party which is, or whose attorneys are, to be sanctioned."

3 **SECTION 9.**

4 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
 5 striking Code Section 24-9-67, relating to opinions of experts, and inserting in lieu thereof  
 6 the following:

7 "24-9-67.

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

11 **SECTION 10.**

12 Said title is further amended by adding a new Code section to read as follows:

13 "24-9-67.1.

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

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

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

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

23 (B) The expert has experience in the diagnosis or treatment of the condition at issue,  
 24 the performance of the procedure or procedures at issue, or the provision of the services  
 25 at issue; or

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

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

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

31 (2) Be made by written motion; and

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

33 (c) Nothing in this Code section shall prohibit a health care provider from testifying as to  
 34 the standard of care of another health care provider with different licensure or certification  
 35 if the individual meets the criteria set forth in subsection (a) of this Code section. As used

1 in this subsection, the term 'health care provider' means a professional who is licensed  
2 under Chapter 4 of Title 26 or Chapter 9, 11, 11A, 26, 30, 33, 34, or 44 of Title 43.

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

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

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

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

17 (h) Any objection to the qualifications of an expert witness designated by the plaintiff as  
18 required by subsection (e) of this Code section shall be asserted pursuant to the  
19 requirements of subsection (b) of this Code section. If the court rules that the expert does  
20 not meet the criteria of subsection (a) of this Code section, then the court shall issue an  
21 order requiring the plaintiff to identify an expert meeting the requirements of subsection  
22 (a) of this Code section within a time period determined by the court which shall not be less  
23 than 45 days. If the plaintiff fails to do so, the civil action as to that defendant shall be  
24 dismissed without prejudice.

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

### 30 **SECTION 11.**

31 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
32 adding a new Code Section 33-23-40.1 to read as follows:

33 "33-23-40.1.

34 (a) Agents, subagents, and brokers are prohibited from entering into agreements with  
35 purchasers or holders, or prospective purchasers or holders, of malpractice insurance, as  
36 defined in paragraph (8) of Code Section 33-7-3, that restrict the purchaser or holder, or

1 prospective purchaser or holder, of malpractice insurance from using another agent,  
2 subagent, or broker when purchasing or renewing a malpractice insurance policy. Any  
3 such agreement entered into in violation of this subsection shall be null and void. Any  
4 agent, subagent, or broker attempting to enter into such an agreement shall be subject to  
5 license suspension or revocation as determined by the Commissioner.

6 (b) Subsection (a) of this Code section shall not apply to an authorization from a  
7 purchaser or holder, or prospective purchaser or holder, to an insurer designating an agent  
8 to represent him or her for the purpose of procuring malpractice insurance from the insurer;  
9 provided, however, that such authorization may be rescinded at any time by the purchaser  
10 or holder, or prospective purchaser or holder."

## 11 SECTION 12.

12 Title 33 is further amended by adding a new Code Section 33-24-47.2 to read as follows:

13 "33-24-47.2.

14 (a) Each insurer licensed to transact business in this state which issues or issues for  
15 delivery in this state policies or contracts of medical malpractice insurance shall comply  
16 with the provisions of this Code section. Cancellation of a policy for failure of the named  
17 insured to discharge when due any obligations in connection with the payment of premiums  
18 or cancellation for any reason of a policy that has been in effect for less than 60 days shall  
19 be governed by the provisions of Code Section 33-24-44.

20 (b) For medical malpractice insurance policies, a notice of termination, including a notice  
21 of cancellation or nonrenewal, by the insurer, a notice of an increase in premiums which  
22 exceeds 10 percent of the current policy's premium, or a notice of change in any policy  
23 provision which limits or restricts coverage shall be delivered to the insured in person or  
24 by depositing the notice in the United States mail, to be dispatched by at least first-class  
25 mail to the last address of record of the insured, at least 60 days prior to the termination  
26 date of such policy. In those instances where an increase in premium exceeds 10 percent  
27 of the current policy's premium, the notice to the insured shall indicate the dollar amount  
28 of the increase. The insurer may obtain a receipt provided by the United States Postal  
29 Service as evidence of mailing such notice or such other evidence of mailing as prescribed  
30 or accepted by the United States Postal Service.

31 (c) The failure of an insurer to comply with the requirements of subsection (b) of this Code  
32 section shall entitle the policyholder to purchase, under the same premiums and policy  
33 terms and conditions, an additional 60 day period of insurance coverage beyond the  
34 termination date of such policy; provided, however, that the policyholder shall tender the  
35 premium amount, computed on a pro rata basis, to the insurer on or before the termination  
36 date. No provision of this Code section shall be construed as requiring the insurance

1 coverage under a policy to be extended for more than 60 days from the termination date  
 2 stated in such policy. An insurer shall not be subject to any other penalty for the failure to  
 3 comply with the requirements of subsection (b) of this Code section unless the  
 4 Commissioner finds, after a hearing, that such noncompliance by the insurer has occurred  
 5 with such frequency as to indicate a general business practice by the insurer of  
 6 noncompliance with subsection (b) of this Code section. There shall be no liability on the  
 7 part of and no cause of action of any nature shall arise against the Commissioner or the  
 8 Commissioner's employees or against any insurer, its authorized representatives, its agents,  
 9 its employees, or any firm, person, or corporation furnishing to the insurer information as  
 10 to reasons for cancellation or nonrenewal for any statement made by any of them and in  
 11 written notice of cancellation or nonrenewal or in any other communication, oral or written,  
 12 specifying the reasons for cancellation or nonrenewal or providing information pertaining  
 13 thereto or for statements made or evidence submitted at any formal or informal hearing  
 14 conducted in connection therewith."

### 15 SECTION 13.

16 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding  
 17 a new Code Section 51-2-5.1 to read as follows:

18 "51-2-5.1.

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

20 (1) 'Emergency room physician' means a physician who provides emergency health care  
 21 services in a hospital emergency room and who does not have an ongoing  
 22 physician-patient relationship with the emergency room patient.

23 (2) 'Hospital' means those institutions and facilities included in paragraphs (1) and (2)  
 24 of Code Section 31-7-1.

25 (3) 'Independent contractor' means an emergency room physician who is not an  
 26 employee or agent of the hospital in connection with the emergency health care services  
 27 rendered to the emergency room patient.

28 (b) A hospital shall not be liable for civil damages as a result of an act or omission by an  
 29 emergency room physician who is an independent contractor of the hospital if the hospital  
 30 provides notice that such emergency room physician is an independent contractor and if  
 31 the emergency room physician is insured as described under subsection (f) of this Code  
 32 section. The hospital shall be responsible for exercising reasonable care in granting  
 33 privileges to practice in the hospital, for reviewing those privileges on a regular basis, and  
 34 for taking appropriate steps to revoke or restrict privileges in appropriate circumstances

1 . The hospital shall not be otherwise liable for the acts or omissions of an emergency room  
2 physician who is an independent contractor.

3 (c) The notice required in subsection (b) of this Code section shall be:

4 (1) Posted conspicuously in all admitting areas of the emergency room, consisting of a  
5 sign at least two feet high and two feet wide, with print at least two inches high;

6 (2) Published at least annually in a newspaper of general circulation in the area; and

7 (3) In substantially the following form:

8 (Name of hospital) shall not be responsible for the actions of emergency room  
9 physicians in (name of hospital's) emergency room. The emergency room physicians  
10 are independent contractors and are not employees of the hospital.

11 (d) The notice required in subsection (b) of this Code section shall be sufficient if it meets  
12 the requirements of subsection (c) of this Code section, even if the patient does not receive  
13 the notice.

14 (e) This Code section does not preclude liability for civil damages that are the proximate  
15 result of the hospital's independent negligence or intentional misconduct.

16 (f) A hospital shall not be protected from liability under this Code section unless the  
17 emergency room physician who is an independent contractor has liability insurance  
18 coverage of \$1 million per individual claim, and \$3 million aggregate, available to  
19 claimants, and the coverage is in effect and applicable to those health care services offered  
20 by the emergency room physician that the hospital is required to provide by law or by  
21 accreditation requirements.

22 (g) The degree of care and skill required of an emergency room physician shall be that  
23 degree of care and skill ordinarily employed by the profession generally under similar  
24 conditions and like surrounding circumstances including, but not limited to, any emergent  
25 circumstances.

26 (h) In deciding whether an emergency room physician met the standard of care and skill  
27 of his or her profession when treating a patient in an emergency room setting, a jury shall  
28 consider all relevant evidence describing what the emergency room physician faced when  
29 treating the patient. Such evidence may include, but is not limited to, the following:

30 (1) Whether any emergency circumstances were involved with the patient's condition;

31 (2) Whether the emergency room physician had access to the patient's prior medical  
32 history;

33 (3) Whether there was a physician-patient relationship between the emergency room  
34 physician and the patient predating the emergency care at issue; and

35 (4) All other circumstances affecting the emergency room physician's ability to provide  
36 care in the emergency room at that time and place."

1 **SECTION 14.**

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

4 **SECTION 15.**

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