

The Senate Health and Human Services Committee offered the following substitute to HB 1028:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide for legislative findings with respect to a crisis in the field of hospital and medical
3 liability insurance; to address such crisis through provision of insurance and certain civil
4 justice reforms; to create the Georgia Hospital and Medical Liability Insurance Authority;
5 to provide a short title; to provide for definitions; to provide for the members of the authority
6 and their selection, service, and terms of office; to provide for the filling of vacancies; to
7 provide for the powers, duties, operations, and financial affairs of the authority; to provide
8 for the general purpose of the authority; to prescribe standards relating to vicarious liability
9 of medical facilities for actions of health care providers; to provide for qualifications of
10 experts and allocation of liability in medical malpractice actions; to provide for other related
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
14 at its end a new Chapter 46 to read as follows:
15

"CHAPTER 46

ARTICLE 1

18 31-46-1.

19 (a) The General Assembly finds that there presently exists a crisis in the field of hospital
20 and medical liability insurance. Hospitals and other health care providers in this state are
21 having increasing difficulty in locating liability insurance and, when such hospitals and
22 providers are able to locate such insurance, the insurance is extremely costly. The result
23 of this crisis is the potential for a diminution of the availability of access to health care
24 services and the resultant effect on the health and well-being of the citizens of this state.

1 (b) The General Assembly further finds that the state has a significant interest in ensuring
2 the availability of liability insurance for hospitals and health care providers in this state at
3 reasonable cost to the providers. The General Assembly further finds that the provision of
4 such insurance to providers through the authority created in this chapter will result in the
5 increased availability of health care services for the citizens of this state which is of
6 substantial benefit to the state and its citizens.

7 (c) The General Assembly further finds that certain civil justice reforms as provided in this
8 chapter will promote predictability and improvement in the resolution of health care
9 liability claims and thereby assist in promoting the provision of health care liability
10 insurance by the authority created in this chapter and other insurance providers.

11 ARTICLE 2

12 31-46-20.

13 This chapter shall be known and may be cited as the 'Georgia Hospital and Medical
14 Liability Insurance Authority Act.'

15 31-46-21.

16 This chapter, being for the health and welfare of the state and its inhabitants, shall be
17 liberally construed to effect its purposes.

18 31-46-22.

19 (a) There is created a body corporate and politic to be known as the Georgia Hospital and
20 Medical Liability Insurance Authority which shall be deemed to be a public corporation
21 of the State of Georgia by that name, style, and title. Said body may contract and be
22 contracted with, sue and be sued, implead and be impleaded, and complain and defend in
23 all courts of law and equity.

24 (b) The authority shall consist of 13 members as follows:

25 (1) Three members shall be appointed by the Governor. The terms of the initial
26 members appointed by the Governor shall begin July 1, 2004, and one such member shall
27 serve for a term of two years, one such member shall serve for a term of three years, and
28 one such member shall serve for a term of four years. Thereafter, all members appointed
29 by the Governor shall serve for terms of four years;

30 (2) Three members shall be appointed by the President of the Senate. The terms of the
31 initial members appointed by the President of the Senate shall begin July 1, 2004, and one
32 such member shall serve for a term of two years, one such member shall serve for a term

1 of three years, and one such member shall serve for a term of four years. Thereafter all
 2 members appointed by the President of the Senate shall serve for terms of four years;

3 (3) Three members shall be appointed by the Speaker of the House of Representatives
 4 for terms concurrent with the Speaker's term as Speaker; and

5 (4) The following shall serve ex officio: the state auditor, the commissioner of
 6 community health, the Commissioner of Insurance, and the director of the Risk
 7 Management Division of the Department of Administrative Services.

8 All members shall serve until their successors are appointed and qualified. All members
 9 shall be residents of Georgia.

10 (c) The members of the authority shall elect one of their members as chairperson and
 11 another as vice chairperson. They shall also elect a secretary and a treasurer who need not
 12 be members. The offices of secretary and treasurer may be combined in one person.

13 (d) The authority may make such bylaws for its government as is deemed necessary but
 14 is under no obligation to do so.

15 (e) Any nine members of the authority shall constitute a quorum necessary for the
 16 transaction of business, and a majority vote of those present at any meeting at which there
 17 is a quorum shall be sufficient to do and perform any action permitted to the authority by
 18 this chapter, except that the votes of a majority of the total membership of the authority
 19 shall be required in order for the authority to incur any obligation or indebtedness or enter
 20 into any contract or agreement. No person shall be entitled to exercise or cast a proxy vote
 21 for any member. No vacancy on the authority shall impair the right of a quorum to transact
 22 any and all business.

23 (f) The members shall receive no compensation for their services; but all members shall
 24 be entitled to be reimbursed from funds of the authority for actual expenses, including
 25 travel and any other expenses, incurred while in the performance of their duties.
 26 Employees of the authority shall receive reasonable compensation, to be determined by the
 27 members of the authority, for their services.

28 (g) A vacancy in one of the appointive positions shall be filled in the same manner as the
 29 original appointment for the remainder of the unexpired term.

30 31-46-23.

31 As used in this article, the term:

32 (1) 'Authority' means the Georgia Hospital and Medical Liability Insurance Authority
 33 created in Code Section 31-46-22.

34 (2) 'Bond,' 'bonds,' or 'revenue bonds' means revenue bonds, refunding notes, notes,
 35 interim certificates, bond anticipation notes, and other evidences of indebtedness of the
 36 authority issued under this chapter.

1 (3) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,
2 35, or 39 of Title 43 who provides care or assistance to an individual within the scope of
3 the health care provider's licensure or any association, partnership, professional
4 corporation, or other group of such persons who provide such care or assistance within
5 the scope of their licensure.

6 (4) 'Medical facility' means any licensed general or specialized hospital, institutional
7 infirmary, public health center, or diagnostic and treatment center.

8 31-46-24.

9 (a) The authority shall have power:

10 (1) To have a seal and alter the same at pleasure;

11 (2) To adopt, amend, and repeal bylaws and rules consistent with this chapter to regulate
12 its affairs, to carry into effect the powers and purposes of the authority, and to conduct
13 its business;

14 (3) To acquire by purchase, lease, or otherwise, with the exception of eminent domain,
15 and to hold, lease, and dispose of real and personal property of every kind and character
16 for its corporate purposes;

17 (4) To acquire in its own name by purchase, on such terms and conditions and in such
18 manner as it may deem proper, real property or rights of easements therein or franchises
19 necessary or convenient for its corporate purposes and to use the same so long as its
20 corporate existence shall continue; to lease or make contracts with respect to the use of
21 the same; or to dispose of the same in any manner it deems to the best advantage of the
22 authority;

23 (5) To appoint, select, and employ officers, agents, consultants, and employees,
24 including, but not limited to, fiscal agents, actuaries, accountants, risk managers, health
25 care and financial experts, and attorneys, and fix their respective compensations;

26 (6) To appoint, select, and employ an executive director;

27 (7) To make contracts and leases and to execute all instruments necessary or convenient
28 and to dispose by conveyance of its title in fee simple of real and personal property of
29 every kind and character. Any and all persons, firms, and corporations; the state; and any
30 and all political subdivisions, departments, institutions, or agencies of the state are
31 authorized to enter into contracts, leases, or agreements with the authority upon such
32 terms and for such purposes as they deem advisable. The authority is specifically
33 authorized to convey title, in fee simple, to any and all of its lands and any improvements
34 thereon to any persons, firms, corporations, municipalities, the State of Georgia, or the
35 United States government, or any agency or department thereof;

36 (8) To invest and reinvest funds;

- 1 (9) To provide, obtain, or purchase insurance or reinsurance agreements or both under
2 such terms and conditions as the authority deems appropriate;
- 3 (10) To settle and pay claims under such insurance agreements under such conditions
4 and terms as the authority deems appropriate;
- 5 (11) To accept loans or grants of money or materials or property of any kind from the
6 United States of America or any agency or instrumentality thereof upon such terms and
7 conditions as the United States of America or such agency or instrumentality may
8 impose;
- 9 (12) To accept loans or grants of money or materials or property of any kind from the
10 State of Georgia or any agency or instrumentality or political subdivision thereof upon
11 such terms and conditions as the State of Georgia or such agency or instrumentality or
12 political subdivision may impose;
- 13 (13) To exercise any power usually possessed by private corporations performing similar
14 functions which is not in conflict with the Constitution and laws of this state;
- 15 (14) To sell, convey, mortgage, pledge, assign, lease, exchange, transfer, or otherwise
16 dispose of all or any part of its property or assets;
- 17 (15) To borrow money for any corporate purposes from any bank, banks, or other
18 lending institutions and to execute evidences of such indebtedness and to secure the
19 same;
- 20 (16) To fix, alter, charge, and collect premiums from participating medical facilities and
21 health care providers for insurance provided by or procured by the authority, such rates
22 to be at least sufficient to provide for payment of all expenses of the authority, the
23 conservation, maintenance, and operation of the authority on a sound actuarial basis, the
24 payment of principal and interest on its notes, bonds, and other evidences of indebtedness
25 or obligation, and to fulfill the terms and provisions of any agreement made with the
26 purchasers and holders of any such notes, bonds, or other evidences of indebtedness or
27 obligation; and
- 28 (17) To do all things necessary or convenient to carry out the powers expressly given in
29 this chapter.
- 30 (b) No part of the revenues or assets of the authority may inure to the benefit of or be
31 distributable to its members or officers or other private persons. Any net earnings of the
32 authority beyond that necessary for retirement of authority indebtedness or to implement
33 the public purposes of this chapter shall inure to the benefit of the state. Upon termination
34 or dissolution, all rights and properties of the authority shall pass to and are vested in the
35 state, subject to the rights of lienholders and other creditors.

1 31-46-25.

2 (a) The executive director shall approve all accounts for salaries, allowable expenses, and
3 expenses incidental to the operation of the authority.

4 (b) The executive director shall manage the staff and employees of the authority under the
5 direction and approval of the authority.

6 (c) The executive director shall attend the meetings of the authority and shall maintain a
7 record of the proceedings of the authority along with all books, documents, and papers filed
8 with the authority, the minutes of the authority, and its official seal. The executive director
9 may cause copies to be made of all minutes and other records and documents of the
10 authority and may give certificates under seal of the authority to the effect that such copies
11 are true copies, and all persons dealing with the authority may rely upon such certificates.

12 31-46-26.

13 (a) Without limiting the generality of any provisions of this chapter, the general purpose
14 of the authority is declared to be that of providing or procuring insurance for public and
15 private medical facilities and health care providers in this state. The authority may develop,
16 market, finance, and maintain one or more programs of insurance for such medical
17 facilities and health care providers as desire to participate in such programs, and the
18 authority shall be authorized to do any and all things deemed by the authority to be
19 necessary, convenient, or desirable for and incident to the efficient and proper development
20 and operation of such types of undertakings.

21 (b) The authority and its activities shall not be subject to Title 33. The Commissioner of
22 Insurance may, however, adopt and enforce rules, regulations, and standards to ensure the
23 fiscal and actuarial soundness of the authority and its activities, and all records of the
24 authority shall be open at any time to inspection by the Commissioner of Insurance or his
25 or her authorized agents.

26 31-46-27.

27 In developing programs of insurance for those medical facilities and health care providers
28 that desire to participate in such programs, the authority may establish such eligibility
29 standards and underwriting criteria for participation as the authority deems appropriate,
30 including but not limited to: (1) requirements that participating medical facilities and health
31 care providers assume a part or parts of any insured risks; and (2) contractual requirements
32 for payment of premiums or assessments or both.

1 31-46-28.

2 (a) All meetings of the authority shall be open to the public at all times. Ample notice
3 shall be given to all members of the authority and to the public of any special or called
4 meeting of the authority. The minutes of all meetings and all actions taken by the authority
5 shall likewise be open to public inspection.

6 (b) Each purchase made on behalf of the authority of personal property or services in
7 excess of \$20,000.00 shall be accomplished pursuant to competitive bids, after having
8 published invitations to bid in one or more newspapers in general circulation in the state
9 prior to the award of any contract. All bids shall be opened during meetings of the
10 authority, and the rejection or acceptance thereof shall be entered upon the minutes of the
11 authority.

12 (c) Any surplus or unserviceable property of the authority shall be disposed of pursuant
13 to competitive bids which shall be advertised in one or more newspapers in general
14 circulation in the state. All bids for the disposal of such property shall be opened during
15 public meetings of the authority, and the acceptance or rejection thereof shall be entered
16 upon the minutes of the authority.

17 (d) At the conclusion of each fiscal year of the authority, the affairs of the authority shall
18 be audited by a certified public accounting firm and a report of such audit shall be
19 submitted to the General Assembly for review.

20 31-46-29.

21 (a) Every member of the authority and every employee of the authority who knowingly
22 has any interest, direct or indirect, in any contract to which the authority is or is about to
23 become a party, in any other business of the authority, or in any firm or corporation doing
24 business with the authority shall make full disclosure of such interest to the authority.
25 Failure to disclose such an interest shall constitute cause for which an authority member
26 may be removed or an employee discharged or otherwise disciplined at the discretion of
27 the authority.

28 (b) Any contract or transaction of the authority involving a conflict of interest not
29 disclosed under subsection (a) of this Code section or involving a violation of any other
30 provision of law regulating conflicts of interest which is applicable to the authority or its
31 members, officers, or employees shall be voidable by the authority.

32 31-46-30.

33 The Attorney General shall provide legal services for the authority and Code Sections
34 45-15-13 through 45-15-16 shall apply with respect to such provision of legal services.

1 31-46-31.

2 (a) The authority may issue bonds for the purposes of this chapter, including without
3 limitation the provision of initial capital or reserves or both needed for the provision or
4 procurement of insurance services by the authority.

5 (b) The authority shall have the power to borrow money and to issue bonds, regardless of
6 whether the interest payable by the authority incident to such loans or bonds or income
7 derived by the holders of the evidence of such indebtedness or bonds is, for purposes of
8 federal taxation, includable in the taxable income of the recipients of such payments or is
9 otherwise not exempt from the imposition of such taxation on the recipient.

10 (c) No bonds, notes, or other obligations of, and no indebtedness incurred by, the authority
11 shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State
12 of Georgia or its agencies; nor shall any act of the authority in any manner constitute or
13 result in the creation of an indebtedness of the state or its agencies or a cause of action
14 against the state or its agencies.

15 (d) It is found, determined, and declared that the creation of the authority and the carrying
16 out of its corporate purpose are in all respects for the benefit of the people of this state and
17 are a public purpose and the authority will be performing an essential government function
18 in the exercise of the powers conferred upon it by this chapter. The state covenants with
19 the holders of the bonds that the authority shall not be required to pay any taxes or
20 assessments upon any of the property acquired or leased by the authority or under the
21 jurisdiction, control, possession, or supervision of the authority or upon the activities of the
22 authority in the financing of the activities financed by the authority or upon any principal,
23 interest, premium, fees, charges, or other income received by the authority and that the
24 bonds of the authority, their transfer, and the income therefrom shall at all times be exempt
25 from taxation within the state. The exemption from taxation is declared to specifically
26 extend to any subsidiary corporation created by the board of directors of the authority but
27 shall not extend to tenants or lessees of the authority unless otherwise exempt from
28 taxation. The exemption from taxation shall include exemptions from sales and use taxes
29 on property purchased by the authority or for use by the authority.

30 (e) The state does pledge to and agree with the holders of any bonds issued by the
31 authority pursuant to this chapter that the state will not alter or limit the rights vested in the
32 authority to fulfill the terms of any agreement made with or for the benefit of the holders
33 of bonds or in any way impair the rights and remedies of bondholders until the bonds,
34 together with the interest thereon, with interest on any unpaid installments of interest, and
35 all costs and expenses in connection with any action or proceeding by or on behalf of such
36 holders, are fully met and discharged or funds for the payment of such are fully provided.

1 The authority is authorized to include this pledge and agreement of the state in any
2 agreement with bondholders.

3 31-46-32.

4 (a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall
5 not be subject to regulation under Chapter 5 of Title 10, the 'Georgia Securities Act of
6 1973.' No notice, proceeding, or publication except those required in this chapter is
7 necessary to the performance of any act authorized in this chapter; nor is any such act
8 subject to referendum.

9 (b) The authority shall fix such rates, fees, and charges for use of its services and facilities
10 as is sufficient in the aggregate, when added to any other grants or funds available to the
11 authority, to provide funds for the payment of the interest on and principal of all bonds
12 payable from said revenues and to meet all other encumbrances upon such revenues as
13 provided by any agreement executed by the authority in connection with the exercise of its
14 powers under this chapter and for the payment of all operating costs and expenses which
15 shall be incurred by the authority, including provisions for appropriate reserves.

16 (c) The use and disposition of the authority's revenue is subject to the provisions of the
17 resolutions authorizing the issuance of any bonds payable therefrom or of the trust
18 agreement or indenture, if any, securing the same. The authority may designate any of its
19 bonds as general obligations or may limit the source of repayment pursuant to the
20 resolution authorizing the issuance of the bonds.

21 (d) The making of any loan commitment or loan, and the issuance, in anticipation of the
22 collection of the revenues from such loan or loans, of bonds to provide funds therefor, may
23 be authorized under this chapter by resolution of the authority. Unless otherwise provided
24 therein, such resolution shall take effect immediately and need not be published or posted.
25 The authority, in determining the amount of such bonds, may include all costs and
26 estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all
27 costs of the project. Such bonds may also be issued to pay off, refund, or refinance any
28 outstanding bonds or other obligations of any nature, whether or not such bonds or other
29 obligations are then subject to redemption; and the authority may provide for such
30 arrangements as it may determine for the payment and security of the bonds being issued
31 or for the payment and security of the bonds or other obligations to be paid off, refunded,
32 or refinanced.

33 (e) Bonds may be issued under this chapter in one or more series; may bear such date or
34 dates; may mature at such time or times, not exceeding 40 years from their respective
35 dates; may bear interest at such rate or rates, payable at such time or times; may be payable
36 in such medium of payment at such place or places; may be in such denomination or

1 denominations; may be in such form, either coupon or registered or book entry; may be
2 issued in such specific amounts; may carry such registration, conversion, and
3 exchangeability privileges; may be declared or become due before the maturity date
4 thereof; may provide such call or redemption privileges; may have such rank or priority;
5 may be the subject of a put or agreement to repurchase by the authority or others; may be
6 resold by the authority, once acquired, without the acquisition being considered the
7 extinguishment of the bonds; may be issued for a project or for more than one project,
8 whether or not such project is identified at the time of bond issuance; and may contain such
9 other terms, covenants, assignments, and conditions as the bond resolution authorizing the
10 issuance of such bonds or any indenture or trust agreement may provide. The authority may
11 sell such bonds in such manner, at such price or prices, and on such terms and conditions
12 as the authority determines.

13 (f) The bonds must be signed by the chairperson or vice chairperson of the authority; the
14 corporate seal of the authority must be impressed, imprinted, or otherwise reproduced on
15 the bonds; and the bonds must be attested by the signature of the secretary or assistant
16 secretary of the authority. The signatures of the officers of the authority and the seal of the
17 authority on any bond issued by the authority may be facsimile if the instrument is
18 authenticated or countersigned by a trustee other than the authority itself or an officer or
19 employee of the authority. All bonds issued under authority of this chapter bearing
20 signatures or facsimiles of signatures of officers of the authority in office on the date of the
21 signing thereof are valid and binding, notwithstanding that before the delivery thereof and
22 payment therefor such officers whose signatures appear thereon have ceased to be officers
23 of the authority. Pending the preparation of the definitive bonds, interim certificates, in
24 such form and with such provisions as the authority may determine, may be issued to the
25 purchasers of bonds to be issued under this chapter.

26 (g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement
27 entered into pursuant to this chapter are a contract with every holder of the bonds; and the
28 duties of the authority under this chapter and under any such bond resolution, indenture,
29 or trust agreement are enforceable by any bondholder by mandamus or other appropriate
30 action or proceeding at law or in equity.

31 (h) The authority may provide for the replacement of any bond which becomes mutilated,
32 lost, or destroyed in the manner provided by the resolution, indenture, or trust agreement.

33 (i) Any limitations with respect to interest rates or any maximum interest rate or rates
34 found in Article 3 of Chapter 82 of Title 36, the 'Revenue Bond Law,' the usury laws of this
35 state, or any other laws of this state do not apply to bonds of the authority.

36 (j) All bonds issued by the authority under this chapter shall be issued and shall be
37 validated by the Superior Court of Fulton County, Georgia, under and in accordance with

1 the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a
 2 portion of the 'Revenue Bond Law,' as now or hereafter in effect, except as provided in this
 3 chapter. Notes and other obligations of the authority may be, but are not required to be, so
 4 validated.

5 (k) All bonds must bear a certificate of validation signed by the clerk of the Superior Court
 6 of Fulton County, Georgia. Such signature may be made on the certificate of validation of
 7 such bonds by facsimile or by manual execution, stating the date on which such bonds were
 8 validated; and such entry is original evidence of the fact of judgment and shall be received
 9 as original evidence in any court in this state.

10 (l) The authority shall reimburse the district attorney for his or her actual costs, if any,
 11 associated with the bond validation proceedings. The fees payable to the clerk of the
 12 Superior Court of Fulton County for validation and confirmation shall be as follows for
 13 each bond, regardless of the denomination of such bond: \$1.00 for each bond for the first
 14 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

15 (m) In lieu of specifying the rate or rates of interest which bonds to be issued by the
 16 authority are to bear, the notice to the district attorney or the Attorney General; the notice
 17 to the public of the time, place, and date of the validation hearing; and the petition and
 18 complaint for validation may state that the bonds when issued will bear interest at a rate not
 19 exceeding a maximum per annum rate of interest, which may be fixed or may fluctuate or
 20 otherwise change from time to time, specified in such notices and the petition and
 21 complaint or may state that, if the bonds are to bear different rates of interest for different
 22 maturity dates, none of such rates will exceed the maximum rate, which may be fixed or
 23 may fluctuate or otherwise change from time to time, so specified; provided, however, that
 24 nothing in this Code section shall be construed as prohibiting or restricting the right of the
 25 authority to sell such bonds at a discount, even if in doing so the effective interest cost
 26 resulting therefrom would exceed the maximum per annum interest rate specified in such
 27 notices and in the petition and complaint.

28 (n) Prior to issuance, all bonds shall be subject to the approval of the Georgia State
 29 Financing and Investment Commission.

30 (o) Any other law to the contrary notwithstanding, this chapter shall govern all civil
 31 claims, proceedings, and actions respecting debt of the authority evidenced by bonds.

32 31-46-33.

33 The bonds authorized by this chapter are securities in which:

- 34 (1) All public officers and bodies of this state;
- 35 (2) All local governments of this state;

1 (3) All insurance companies and associations and other persons carrying on an insurance
2 business;

3 (4) All banks, bankers, trust companies, saving banks, and savings associations,
4 including savings and loan associations, building and loan associations, investment
5 companies, and other persons carrying on a banking business;

6 (5) All administrators, guardians, executors, trustees, and other fiduciaries; and

7 (6) All other persons whomsoever who are authorized to invest in bonds or other
8 obligations of this state

9 may properly and legally invest funds, including capital in their control or belonging to
10 them. Such bonds are also securities which may be deposited with and shall be received
11 by all public officers and bodies of this state and local governments for any purpose for
12 which deposit of the bonds or other obligations of this state is authorized.

13 31-46-34.

14 (a) All or any part of the gross or net revenues and earnings derived from any particular
15 loan or loans and any and all revenues and earnings received by the authority, regardless
16 of whether such revenues and earnings were produced by a particular loan or loans for
17 which bonds have been issued, may be pledged by the authority to the payment of the
18 principal of and interest on bonds of the authority as may be provided in any resolution
19 authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to
20 such bonds.

21 (b) Such funds so pledged, from whatever source received, may include funds received
22 from one or more of all sources and may be set aside at regular intervals into sinking funds
23 for which provision may be made in any such resolution or indenture or trust agreement,
24 which sinking funds may be pledged to and charged with the payment of:

25 (1) The interest on such bonds as such interest becomes due;

26 (2) The principal of the bonds as the same mature;

27 (3) The necessary charges of any trustee, paying agent, or registrar for such bonds;

28 (4) Any premium on bonds retired on call or purchase; and

29 (5) Reimbursement of a credit enhancement provider who has paid principal of or
30 premium or interest on any bond.

31 (c) The use and disposition of any sinking fund may be subject to regulations for which
32 provision may be made in the resolution authorizing the issuance of the bonds or in the
33 trust instrument or indenture securing the payment of the same.

1 31-46-35.

2 (a) Any issue of bonds may be secured by a trust agreement or indenture made by the
3 authority with a corporate trustee, which may be any trust company or bank having the
4 power of a trust company inside or outside this state. Such trust agreement or indenture
5 may pledge or assign all revenue, receipts, and earnings to be received by the authority
6 from any source and any proceeds which may derive from the disposition of any real or
7 personal property of the authority or proceeds of insurance carried thereon.

8 (b) The resolution providing for the issuance of bonds and such trust agreement or
9 indenture may contain provisions for protecting and enforcing the rights and remedies of
10 the bondholders, including the right of appointment of a receiver on default in the payment
11 of any principal or interest obligation and the right of any receiver or trustee to enforce
12 collection of any rates, fees, and charges pertaining to any loan, any overdue principal and
13 interest on any loan, any overdue principal of and interest on all bonds in the issue, all costs
14 of collection, and all other costs reasonably necessary to accomplish the collection of such
15 sums in the event of any default of the authority.

16 (c) Such resolution, trust agreement, or indenture may include covenants setting forth the
17 duties of the authority regarding the custody, safeguarding, and application of all funds of
18 the authority, including any proceeds derived from the disposition of any real or personal
19 property of the authority or proceeds of insurance carried thereon. In addition, such
20 resolution, trust agreement, or indenture may include covenants providing for the
21 operation, maintenance, repair, and insurance of any facility or capital improvements
22 constructed or acquired with loan proceeds.

23 (d) All expenses incurred in carrying out any trust agreement or indenture under this Code
24 section may be treated as a part of the cost of financing and administering the loans that
25 will be funded or acquired with the proceeds of the bonds governed by such trust
26 agreement or indenture.

27 31-46-36.

28 (a) All moneys received pursuant to the provisions of this chapter, whether as proceeds
29 from the sale of bonds or other obligations, as grants or other contributions, or as revenues
30 and earnings, shall be deemed to be trust funds to be held and applied solely as provided
31 in this chapter. The authority shall, in the resolution providing for the issuance of bonds or
32 in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and
33 the earnings and revenues to be received to any officer who, or any agency, bank, or trust
34 company which, shall act as trustee of such funds and shall hold and apply the same to the
35 purposes expressed in this chapter, subject to such regulations as this chapter and such
36 resolution or trust indenture may provide.

1 (b) The authority may pledge for the payment of its bonds such assets, funds, and
 2 properties as the resolution providing for the issuance of its bonds may provide. Any such
 3 pledge made by the authority is valid and binding from the time when the pledge is made;
 4 the moneys or properties so pledged and thereafter received by the authority are
 5 immediately subject to the lien of such pledge without any physical delivery thereof or
 6 further act; and the lien of any such pledge is valid and binding as against all parties having
 7 claims of any kind against the authority, irrespective of whether such parties have notice
 8 thereof. No resolution or any other instrument by which a pledge is created need be
 9 recorded.

10 ARTICLE 3

11 31-46-50.

12 As used in this article:

13 (1) The terms 'medical facility' and 'health care provider' have the meanings specified in
 14 Code Section 31-46-23.

15 (2) The term 'medical malpractice action' means an action arising out of any alleged act
 16 or omission in the provision of health care services or assistance by a medical facility or
 17 health care provider.

18 31-46-51.

19 (a) Notwithstanding the provisions of Code Section 51-2-5, no medical facility which
 20 complies with the notice provisions of subsection (b) of this Code section shall be
 21 vicariously liable for the acts or omissions of a health care provider unless there exists an
 22 actual employment relationship between the medical facility and the health care provider.

23 (b) The medical facility shall post a notice in the form and manner described herein. Such
 24 notice shall:

25 (1) Be posted conspicuously in the medical facility lobby or a public area of the medical
 26 facility and in the admitting area of the medical facility's emergency department, if any
 27 such area exists;

28 (2) Contain print at least one inch high; and

29 (3) Provide language substantially similar to the following:

30 'Some or all of the physicians and other health care providers performing services in
 31 this medical facility are independent contractors and are not medical facility
 32 employees. Independent contractors are responsible for their own actions, and the
 33 medical facility shall not be liable for the acts or omissions of any such independent
 34 contractors.'

1 (c) The notice required in this Code section shall be sufficient if it meets the requirements
2 of subsection (b) of this Code section even if the patient or the patient's personal
3 representative did not see the notice.

4 31-46-52.

5 (a) If scientific, technical, or other specialized knowledge will assist the trier of fact in a
6 medical malpractice action to understand the evidence or to determine a fact in issue, a
7 witness qualified as an expert by knowledge, skill, experience, training, or education may
8 testify thereto in the form of an opinion or otherwise, if:

9 (1) The testimony is based upon sufficient facts or data which have been admitted into
10 evidence;

11 (2) The testimony is the product of reliable principles and methods; and

12 (3) The witness has applied the principles and methods reliably to the facts of the case.

13 (b) In medical malpractice actions, the opinions of an expert, who is otherwise qualified
14 as to the standard of conduct of a health care provider whose conduct is at issue, shall be
15 admissible only if, at the time the act or omission is alleged to have occurred, such expert:

16 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
17 in the state in which such expert was practicing or teaching in the profession at such time;

18 (2) Had actual professional knowledge and experience in the area of practice or specialty
19 in which the opinion is to be given, including the diagnosis or treatment of the condition
20 at issue, or the performance of the procedure or procedures at issue; and

21 (3) Had been regularly engaged in:

22 (A) The active practice of such area of practice or specialty of his or her profession for
23 at least half of his or her professional time during three of the last five years
24 immediately preceding such time;

25 (B) The teaching of such area of practice or specialty of his or her profession for at
26 least half of his or her professional time as an employed member of the faculty of an
27 educational institution which has been accredited in the teaching of his or her
28 profession for at least three of the last five years immediately preceding such time; or

29 (C) Any combination of the active practice or the teaching of his or her profession in
30 a manner which meets the requirements of subparagraphs (A) and (B) of this paragraph
31 for at least three of the last five years immediately preceding such time.

32 (c) An expert meeting the requirements set forth in subsection (b) of this Code section
33 shall not be deemed unqualified to testify solely by virtue of the fact the expert is in a
34 different specialty from the health care provider whose conduct is at issue as long as such
35 expert is licensed in the same profession as such health care provider.

1 (d) The admissibility of proposed expert testimony under this Code section may be
2 addressed before trial and the court may hold evidentiary or other hearing in connection
3 with its disposition of such issues.

4 (e) An affiant must meet the requirements of this Code section in order to be deemed
5 qualified to testify as an expert by means of the affidavit required under Code Section
6 9-11-9.1.

7 31-46-53.

8 (a) Where a medical malpractice action is brought against one or more persons and the
9 plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact,
10 in its determination of the total amount of damages to be awarded, if any, shall determine
11 the percentage of negligence of the plaintiff and shall reduce the amount of damages
12 otherwise awarded to the plaintiff in proportion to his or her negligence compared with that
13 of the person or persons liable for the injury or damages claimed.

14 (b) Where a medical malpractice action is brought against more than one person, the trier
15 of fact, in its determination of the total amount of damages to be awarded, if any, shall after
16 a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion
17 its award of damages among the persons who are liable according to the degree of fault of
18 each person. Damages apportioned by the trier of fact as provided in this Code section shall
19 be the liability of each person against whom they are awarded, shall not be a joint liability
20 among the persons liable, and shall not be subject to any right of contribution.

21 (c) Notwithstanding the provisions of this Code section and any other provisions of law
22 which might be construed to the contrary, the plaintiff shall not be entitled to receive any
23 damages if the plaintiff is 50 percent or more responsible for the injury or damages
24 claimed.

25 (d) This Code section shall not affect venue provisions regarding joint actions.

26 (e) With respect to medical malpractice actions, this Code section shall control over any
27 conflicting provisions of Title 51 or any other law."

28 **SECTION 2.**

29 This Act shall become effective July 1, 2004. The provisions of Article 3 of Chapter 46 of
30 Title 31 of the Official Code of Georgia Annotated, as enacted by this Act, shall apply only
31 to causes of action arising on or after July 1, 2004.

32 **SECTION 3.**

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