

LOST

1 Senator Meyer von Bremen of the 12th offered the following amendment:

2 Amend amendment number 6 to the committee substitute to HB 1028 by striking all matter
3 beginning with line 2 of page 1 through the end of the document and inserting in lieu thereof
4 the following:

5 "Amend the committee substitute to HB 1028 by striking all matter beginning with line 1 of
6 page 1 through the end of the document and inserting in lieu thereof the following:

7 'To amend Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
8 relating to pleadings and motions in civil cases, so as to change certain provisions relating
9 to medical malpractice civil actions; to create provisions regarding expert opinions in
10 medical malpractice civil actions; to amend Article 3 of Chapter 9 of Title 24 of the Official
11 Code of Georgia Annotated, relating to examination of witnesses, so as to change provisions
12 relating to opinions of expert witnesses; to create provisions regarding expert witnesses
13 competent to testify in causes of action alleging medical malpractice; to amend Title 31 of
14 the Official Code of Georgia Annotated, relating to health, so as to provide for legislative
15 findings; to create the Georgia Hospital Insurance Authority; to provide a short title; to
16 provide for definitions; to provide for the members of the authority and their selection,
17 service, and terms of office; to provide for the filling of vacancies; to provide for the powers,
18 duties, operations, and financial affairs of the authority; to provide for the general purpose
19 of the authority; to amend Title 51 of the Official Code of Georgia Annotated, relating to
20 torts, so as to provide that hospitals shall be insulated from liability for the acts of emergency
21 room physicians who are independent contractors providing emergency health care services
22 in a hospital emergency room; to provide for definitions; to provide for notice requirements
23 regarding independent contractor physicians to the public; to provide for liability insurance
24 coverage requirements for independent contractor physicians; to provide for matters related
25 to the standard of care; to change provisions relating to right of contribution among joint
26 trespassers and effect of settlement so as to provide for a postverdict apportionment of
27 damages; to change provisions relating to the effect of plaintiff's comparative negligence on
28 right to recover; to provide for related matters; to provide for an effective date and
29 applicability; to repeal conflicting laws; and for other purposes.

30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 2.

Said article is further amended by adding a new Code Section 9-11-9.2 to read as follows:

"9-11-9.2.

(a) In any action for damages alleging medical malpractice against a professional licensed by the State of Georgia and listed in subsection (h) of this Code section, against a professional corporation or other legal entity that provides health care services or is alleged to be liable based on the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection (h) of this Code section, or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection (h) of this Code section, at any time within 90 days following the filing of the complaint the plaintiff shall be required to file an affidavit of an expert competent to testify under Code Section 24-9-67.1, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim.

(b) Within 30 days of service of the complaint the defendant shall be required to produce his or her curriculum vitae, resume, or other complete statement of education, experience, and certifications, as well as all records and other tangible items in the control, custody, or possession of the defendant related to the care and treatment of the patient whose care is at issue. The failure to produce this information shall toll the time to file the affidavit until such time as the information is produced.

(c) If an affidavit is filed after the filing of a complaint, the defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of the affidavit.

(d) The trial court may, on motion, after hearing and for good cause extend such time as it shall determine justice requires. If an affidavit is not filed within the period specified in this Code section or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.

(e) This Code section shall not be construed to extend any applicable period of limitation, except that if the affidavit is filed within the period specified in this Code section, the filing of the affidavit after the expiration of the statute of limitations shall be considered timely and shall provide no basis for a statute of limitations defense.

(f) If a plaintiff files an affidavit which is allegedly defective for any reason other than a claim that after deposing the affiant he or she does not meet the requirements of Code Section 24-9-67.1, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that said affidavit is defective, the plaintiff's complaint is subject to dismissal, except that the

1 plaintiff may cure the alleged defect by amendment pursuant to Code Section 9-11-15
2 within 30 days of service of the motion alleging that the affidavit is defective. A defendant
3 who after deposing the affiant alleges that an affidavit is defective because the affiant does
4 not meet the requirements of Code Section 24-9-67.1 shall file a motion to dismiss within
5 30 days of the date the deposition is filed with the court or delivered to the party taking the
6 deposition by an authorized officer or court reporter pursuant to subparagraph (f)(1)(A) of
7 Code Section 9-11-30 or prior to the date of any pretrial hearing, whichever is earlier. In
8 any order holding that the affiant does not meet the requirements of Code Section
9 24-9-67.1, the court shall state with specificity the reasons the affiant does not meet those
10 requirements and what requirements the court deems necessary for an expert to qualify
11 under that Code section. The plaintiff shall then have 60 days from the date of the order to
12 submit the affidavit of another expert, during which time discovery shall be stayed. If the
13 plaintiff fails to submit such affidavit of another expert within 60 days of the date of the
14 order, the case against that defendant is subject to dismissal. The trial court may, in the
15 exercise of its discretion, extend the time for filing any amendment, affidavit, or response
16 to the motion as it shall determine justice requires.

17 (g) If a plaintiff fails to file an affidavit as required by this Code section and the defendant
18 raises the failure to file such an affidavit by motion to dismiss filed contemporaneously
19 with its initial responsive pleading, such complaint shall not be subject to the renewal
20 provisions of Code Section 9-2-61 after the expiration of the applicable period of
21 limitation, unless a court determines that the plaintiff had the requisite affidavit within the
22 time required by this Code section and the failure to file the affidavit was the result of a
23 mistake.

24 (h) The professions to which this Code section applies are:

- 25 (1) Chiropractors;
- 26 (2) Clinical social workers;
- 27 (3) Dentists;
- 28 (4) Dietitians;
- 29 (5) Marriage and family therapists;
- 30 (6) Medical doctors;
- 31 (7) Nurses;
- 32 (8) Occupational therapists;
- 33 (9) Optometrists;
- 34 (10) Osteopathic physicians;
- 35 (11) Pharmacists;
- 36 (12) Physical therapists;
- 37 (13) Physician's assistants;

- 1 (14) Podiatrists;
 2 (15) Professional counselors;
 3 (16) Psychologists;
 4 (17) Radiological technicians;
 5 (18) Respiratory therapists; or
 6 (19) Veterinarians."

7 **SECTION 3.**

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

11 "24-9-67.

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

15 **SECTION 4.**

16 Said article is further amended by adding a new Code Section 24-9-67.1 to read as follows:

17 "24-9-67.1.

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

22 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
 23 and was practicing or teaching or some combination thereof his or her profession during
 24 at least three of the five years immediately preceding such time; and

25 (2) Except as provided in subparagraph (D) of this paragraph, is a member of the same
 26 profession and meets at least one of the following criteria:

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

28 (B) The expert has experience in the diagnosis or treatment of the condition at issue, the
 29 performance of the procedure or procedures at issue, or the provision of the services at
 30 issue;

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

33 (D) The expert is a physician and, as a result of having supervised, taught, or instructed
 34 nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives,
 35 physician's assistants, physical therapists, occupational therapists, or medical support

1 staff, has knowledge of the standard of care of that health care provider under the
2 circumstances at issue.

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

4 (1) Be made no later than 30 days after the date the deposition is filed with the court or
5 delivered to the party taking the deposition by an authorized officer or court reporter
6 pursuant to subparagraph (f)(1)(A) of Code Section 9-11-30 or prior to the date of any
7 pretrial hearing, whichever is earlier;

8 (2) Be made by written motion; and

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

10 SECTION 5.

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

13 "CHAPTER 46

14 31-46-1.

15 The General Assembly finds that there presently exists a crisis in the field of hospital
16 liability insurance. Hospitals in this state are having increasing difficulty in locating
17 liability insurance and, when such hospitals are able to locate such insurance, the insurance
18 is extremely costly. The result of this crisis is the potential for a diminution of the
19 availability of access to health care services and the resultant effect on the health and
20 well-being of the citizens of this state. The General Assembly finds that the state has a
21 significant interest in ensuring the availability of liability insurance for hospitals which
22 provide indigent care in this state at reasonable cost to the facilities. The General
23 Assembly further finds that the provision of such insurance to the hospitals will result in
24 the increased availability of health care services for the citizens of this state which is of
25 substantial benefit to the state and its citizens.

26 31-46-2.

27 This chapter shall be known and may be cited as the 'Georgia Hospital Insurance Authority
28 Act.'

29 31-46-3.

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

1 31-46-4.

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

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

8 (1) Three members shall be appointed by the Governor. The terms of the initial
9 members appointed by the Governor shall begin July 1, 2004, and one such member shall
10 serve for a term of two years, one such member shall serve for a term of three years, and
11 one such member shall serve for a term of four years. Thereafter, all members appointed
12 by the Governor shall serve for terms of four years;

13 (2) Three members shall be appointed by the President of the Senate. The terms of the
14 initial members appointed by the President of the Senate shall begin July 1, 2004, and one
15 such member shall serve for a term of two years, one such member shall serve for a term
16 of three years, and one such members shall serve for a term of four years. Thereafter all
17 members appointed by the President of the Senate shall serve for terms of four years;

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

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

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

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

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

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

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

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

8 31-46-5.

9 As used in this chapter, the term:

10 (1) 'Authority' means the Georgia Hospital Insurance Authority created in Code Section
11 31-46-4.

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

15 (3) 'Medical facility' means any hospital in this state having less than 200 licensed beds
16 and its credentialed physicians and where such hospital, as of January 1, 2004, did not
17 participate in a captive or self-insurance trust program established for liability insurance
18 purposes.

19 31-46-6.

20 (a) The authority shall have power:

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

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

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

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

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

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

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

14 (8) To invest and reinvest funds;

15 (9) To provide, obtain, or purchase insurance or reinsurance agreements or both under
16 such terms and conditions as the authority deems appropriate;

17 (10) To settle and pay claims under such insurance agreements under such conditions
18 and terms as the authority deems appropriate;

19 (11) To accept loans or grants of money or materials or property of any kind from the
20 United States of America or any agency or instrumentality thereof upon such terms and
21 conditions as the United States of America or such agency or instrumentality may
22 impose;

23 (12) To accept loans or grants of money or materials or property of any kind from the
24 State of Georgia or any agency or instrumentality or political subdivision thereof upon
25 such terms and conditions as the State of Georgia or such agency or instrumentality or
26 political subdivision may impose;

27 (13) To exercise any power usually possessed by private corporations performing similar
28 functions which is not in conflict with the Constitution and laws of this state;

29 (14) To sell, convey, mortgage, pledge, assign, lease, exchange, transfer, or otherwise
30 dispose of all or any part of its property or assets;

31 (15) To borrow money for any corporate purposes from any bank, banks, or other
32 lending institutions and to execute evidences of such indebtedness and to secure the
33 same;

34 (16) To fix, alter, charge, and collect premiums from participating medical facilities for
35 insurance provided by or procured by the authority, such rates to be at least sufficient to
36 provide for payment of all expenses of the authority, the conservation, maintenance, and
37 operation of the authority on a sound actuarial basis, the payment of principal and interest

1 on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the
2 terms and provisions of any agreement made with the purchasers and holders of any such
3 notes, bonds, or other evidences of indebtedness or obligation; and

4 (17) To do all things necessary or convenient to carry out the powers expressly given in
5 this chapter.

6 (b) No part of the revenues or assets of the authority may inure to the benefit of or be
7 distributable to its members or officers or other private persons. Any net earnings of the
8 authority beyond that necessary for retirement of authority indebtedness or to implement
9 the public purposes of this chapter shall inure to the benefit of the state. Upon termination
10 or dissolution, all rights and properties of the authority shall pass to and are vested in the
11 state, subject to the rights of lienholders and other creditors.

12 31-46-7.

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

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

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

23 31-46-8.

24 (a) Without limiting the generality of any provisions of this chapter, the general purpose
25 of the authority is declared to be that of providing or procuring insurance for public and
26 private medical facilities which provide any indigent health care services in this state. The
27 authority may develop, market, finance, and maintain one or more programs of insurance
28 for such public and private medical facilities that desire to participate in such program and
29 the authority shall be authorized to do any and all things deemed by the authority to be
30 necessary, convenient, or desirable for and incident to the efficient and proper development
31 and operation of such types of undertakings.

32 (b) The authority and its activities shall not be subject to Title 33. The Commissioner of
33 Insurance may, however, adopt and enforce rules, regulations, and standards to ensure the
34 fiscal and actuarial soundness of the authority and its activities; and all records of the

1 authority shall be open at any time to inspection by the Commissioner of Insurance or his
2 or her authorized agents.

3 31-46-9.

4 In developing a program of insurance for those medical facilities that desire to participate
5 in such program, the authority may establish such eligibility standards and underwriting
6 criteria for participating medical facilities as the authority deems appropriate, including but
7 not limited to: (1) requirements that participating medical facilities assume a part or parts
8 of any insured risks; and (2) contractual requirements for payment of premiums or
9 assessments or both.

10 31-46-10.

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

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

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

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

29 31-46-11.

30 (a) Every member of the authority and every employee of the authority who knowingly
31 has any interest, direct or indirect, in any contract to which the authority is or is about to
32 become a party, in any other business of the authority, or in any firm or corporation doing
33 business with the authority shall make full disclosure of such interest to the authority.
34 Failure to disclose such an interest shall constitute cause for which an authority member

1 may be removed or an employee discharged or otherwise disciplined at the discretion of
2 the authority.

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

7 31-46-12.

8 The Attorney General shall provide legal services for the authority and Code Sections
9 45-15-13 through 45-15-16 shall apply with respect to such provision of legal services.

10 31-46-13.

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

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

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

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

1 shall not extend to tenants or lessees of the authority unless otherwise exempt from
2 taxation. The exemption from taxation shall include exemptions from sales and use taxes
3 on property purchased by the authority or for use by the authority.

4 (e) The state does pledge to and agree with the holders of any bonds issued by the
5 authority pursuant to this chapter that the state will not alter or limit the rights vested in the
6 authority to fulfill the terms of any agreement made with or for the benefit of the holders
7 of bonds or in any way impair the rights and remedies of bondholders until the bonds,
8 together with the interest thereon, with interest on any unpaid installments of interest, and
9 all costs and expenses in connection with any action or proceeding by or on behalf of such
10 holders, are fully met and discharged or funds for the payment of such are fully provided.
11 The authority is authorized to include this pledge and agreement of the state in any
12 agreement with bondholders.

13 31-46-14.

14 (a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall
15 not be subject to regulation under Chapter 5 of Title 10, the 'Georgia Securities Act of
16 1973.' No notice, proceeding, or publication except those required in this chapter is
17 necessary to the performance of any act authorized in this chapter; nor is any such act
18 subject to referendum.

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

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

31 (d) The making of any loan commitment or loan, and the issuance, in anticipation of the
32 collection of the revenues from such loan or loans, of bonds to provide funds therefor, may
33 be authorized under this chapter by resolution of the authority. Unless otherwise provided
34 therein, such resolution shall take effect immediately and need not be published or posted.
35 The authority, in determining the amount of such bonds, may include all costs and
36 estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all

1 costs of the project. Such bonds may also be issued to pay off, refund, or refinance any
2 outstanding bonds or other obligations of any nature, whether or not such bonds or other
3 obligations are then subject to redemption; and the authority may provide for such
4 arrangements as it may determine for the payment and security of the bonds being issued
5 or for the payment and security of the bonds or other obligations to be paid off, refunded,
6 or refinanced.

7 (e) Bonds may be issued under this chapter in one or more series; may bear such date or
8 dates; may mature at such time or times, not exceeding 40 years from their respective
9 dates; may bear interest at such rate or rates, payable at such time or times; may be payable
10 in such medium of payment at such place or places; may be in such denomination or
11 denominations; may be in such form, either coupon or registered or book entry; may be
12 issued in such specific amounts; may carry such registration, conversion, and
13 exchangeability privileges; may be declared or become due before the maturity date
14 thereof; may provide such call or redemption privileges; may have such rank or priority;
15 may be the subject of a put or agreement to repurchase by the authority or others; may be
16 resold by the authority, once acquired, without the acquisition being considered the
17 extinguishment of the bonds; may be issued for a project or for more than one project,
18 whether or not such project is identified at the time of bond issuance; and may contain such
19 other terms, covenants, assignments, and conditions as the bond resolution authorizing the
20 issuance of such bonds or any indenture or trust agreement may provide. The authority may
21 sell such bonds in such manner, at such price or prices, and on such terms and conditions
22 as the authority determines.

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

36 (g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement
37 entered into pursuant to this chapter are a contract with every holder of the bonds; and the

1 duties of the authority under this chapter and under any such bond resolution, indenture,
2 or trust agreement are enforceable by any bondholder by mandamus or other appropriate
3 action or proceeding at law or in equity.

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

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

9 (j) All bonds issued by the authority under this chapter shall be issued and shall be
10 validated by the Superior Court of Fulton County, Georgia, under and in accordance with
11 the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a
12 portion of the 'Revenue Bond Law,' as now or hereafter in effect, except as provided in this
13 chapter. Notes and other obligations of the authority may be, but are not required to be, so
14 validated.

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

20 (l) The authority shall reimburse the district attorney for his or her actual costs, if any,
21 associated with the bond validation proceedings. The fees payable to the clerk of the
22 Superior Court of Fulton County for validation and confirmation shall be as follows for
23 each bond, regardless of the denomination of such bond: \$1.00 for each bond for the first
24 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

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

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

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

5 31-46-15.

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

7 (1) All public officers and bodies of this state;

8 (2) All local governments of this state;

9 (3) All insurance companies and associations and other persons carrying on an insurance
10 business;

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

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

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

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

21 31-46-16.

22 (a) All or any part of the gross or net revenues and earnings derived from any particular
23 loan or loans and any and all revenues and earnings received by the authority, regardless
24 of whether such revenues and earnings were produced by a particular loan or loans for
25 which bonds have been issued, may be pledged by the authority to the payment of the
26 principal of and interest on bonds of the authority as may be provided in any resolution
27 authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to
28 such bonds.

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

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

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

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

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

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

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

7 31-46-17.

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

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

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

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

33 31-46-18.

34 (a) All moneys received pursuant to the provisions of this chapter, whether as proceeds
35 from the sale of bonds or other obligations, as grants or other contributions, or as revenues

1 and earnings, shall be deemed to be trust funds to be held and applied solely as provided
 2 in this chapter. The authority shall, in the resolution providing for the issuance of bonds or
 3 in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and
 4 the earnings and revenues to be received to any officer who, or any agency, bank, or trust
 5 company which, shall act as trustee of such funds and shall hold and apply the same to the
 6 purposes expressed in this chapter, subject to such regulations as this chapter and such
 7 resolution or trust indenture may provide.

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

17 **SECTION 6.**

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

20 "51-2-5.1.

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

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

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

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

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

SECTION 7.

Said title is further amended by striking Code Section 51-12-32, relating to right of contribution among joint trespassers, and inserting in lieu thereof the following:

"51-12-32.

(a) Except as provided in Code Section 51-12-33, where a tortious act does not involve moral turpitude, contribution among several trespassers may be enforced just as if an action had been brought against them jointly. Without the necessity of being charged by action or judgment, the right of a joint trespasser to contribution from another or others shall continue unabated and shall not be lost or prejudiced by compromise and settlement of a claim or claims for injury to person or property or for wrongful death and release therefrom.

(b) If a judgment is entered jointly against several trespassers and is paid off by one of them, the others shall be liable to him for contribution for their respective pro rata shares of the judgment unless the jury makes a postverdict apportionment of damages under subsection (c) of this Code section, in which case the liability of the trespassers to one another under this Code section shall be determined by the postverdict apportionment of damages.

(c) In all cases where an action is brought jointly against several trespassers and a trier of fact returns an award of damages against more than one person and that award of damages is a joint liability among the persons liable, any person against whom the award was returned shall have the right to request that the trier of fact undertake a postverdict apportionment of damages among all persons found liable. Such a postverdict apportionment of damages shall determine the responsibility of each person held liable for the total award for purposes of contribution under this Code section. When this procedure is invoked, the trial court shall have discretion to permit the presentation of additional argument or evidence to the trier of fact on the question of apportionment of damages.

(d) In all cases in which the plaintiff is himself or herself to some degree responsible for the injury or damages claimed, the trier of fact shall deny a recovery if it finds that the plaintiff's fault is greater than or equal to the aggregate fault of all defendants. Otherwise, the trier of fact shall reduce the award of compensatory damages to which the plaintiff would otherwise be entitled by the degree of the plaintiff's fault.

~~(e)~~(e) Without the necessity of being charged by an action or judgment, the right of indemnity, express or implied, from another or others shall continue unabated and shall not be lost or prejudiced by compromise and settlement of a claim or claims for injury to person or property or for wrongful death and release therefrom."

SECTION 8.

1

2 This Act shall become effective on July 1, 2004. Sections 1, 2, 3, 4, 6, and 7 shall apply only
3 to causes of action arising on or after July 1, 2004.

SECTION 9.

4

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