

Senate Bill 3

By: Senators Smith of the 52nd, Johnson of the 1st, Seabaugh of the 28th, Stephens of the 27th, Hamrick of the 30th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 24, and 51 of the Official Code of Georgia Annotated, relating
2 respectively to civil practice; evidence; and torts, so as to provide for substantive and
3 comprehensive revision of provisions regarding civil practice, evidentiary matters, and
4 liability in tort actions in general and actions related to health care in particular; to provide
5 for legislative findings; to change provisions relating to venue in actions with joint
6 defendants; to change provisions relating to affidavits accompanying charges of professional
7 malpractice; to provide for defendants' access to plaintiffs' health information in medical
8 malpractice cases; to provide for offers for judgment and the effect thereof; to provide that
9 certain statements of apology or fault by health care providers shall not be admitted as
10 evidence in civil actions; to change provisions relating to opinions of experts; to create
11 provisions regarding expert opinions in certain malpractice civil actions; to limit
12 noneconomic damages in certain actions relating to emergency health care; to change
13 provisions relating to agency liability of hospitals; to change provisions relating to
14 apportionment of award according to degree of fault; to create provisions relating to
15 apportioning damages in certain malpractice actions; to limit noneconomic damages in
16 certain actions relating to health care; to provide for related matters; to provide for an
17 effective date and applicability; to repeal conflicting laws; and for other purposes.

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **SECTION 1.**

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

1 (b) The General Assembly further finds that certain civil justice reforms as provided in this
 2 Act will promote predictability and improvement in the resolution of health care liability
 3 claims and thereby assist in promoting the provision of health care liability insurance by
 4 insurance providers.

5 (c) The General Assembly further finds that there also exists a need in this state's civil
 6 justice system for certain reforms which affect not only health care liability claims but also
 7 other civil actions and accordingly provides such general reforms in this Act.

8 **SECTION 2.**

9 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 10 striking Code Section 9-10-31, relating to actions against certain codefendants residing in
 11 different counties, and inserting in lieu thereof the following:

12 "9-10-31.

13 (a) The General Assembly finds that Paragraph IV of Section II of Article VI of the
 14 Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in
 15 a county other than the county of the defendant's residence only if the Georgia resident
 16 defendant is a joint obligor, joint tort-feasor, joint promisor, copartner, or joint trespasser
 17 and therefore this Code section shall apply to all pending actions filed on or after July 1,
 18 1999.

19 (b) Joint or joint and several tort-feasors, obligors, or promisors, or joint contractors or
 20 copartners, residing in different counties, may be subject to an action as such in the same
 21 action in any county in which one or more of the defendants reside. ~~If, however, the court~~
 22 ~~determines prior to the commencement of trial that:~~ who are joint or joint and several
 23 tort-feasors, obligors, or promisors, or joint contractors or copartners reside.

24 (1) ~~The plaintiff has brought the action in bad faith against all defendants residing in the~~
 25 ~~county in which the action is brought; or~~

26 (2) ~~As a matter of law, no defendant residing in the county in which the action is brought~~
 27 ~~is a proper party, the action shall be transferred to the county and court which the plaintiff~~
 28 ~~elects in which venue is proper. The burden of proof on the issue of venue shall be on the~~
 29 ~~party claiming improper venue by a preponderance of evidence.~~

30 (b)(c) If all defendants who reside in the county in which an action is pending are
 31 discharged from liability before ~~the commencement of trial~~ or upon the return of a verdict
 32 by the jury or the court hearing the case without a jury, a nonresident defendant may
 33 require that the case be transferred to a county and court in which venue would otherwise
 34 be proper. If venue would be proper in more than one county, the plaintiff may elect from
 35 among the counties in which venue is proper the county and the court in which the action
 36 shall proceed.

1 ~~(c) If all defendants who reside in the county in which the action is pending are discharged~~
 2 ~~from liability after the commencement of trial, the case may be transferred to a county and~~
 3 ~~court in which venue would otherwise lie only if all parties consent to such transfer.~~

4 ~~(d) For purposes of this Code section, trial shall be deemed to have commenced upon the~~
 5 ~~jury being sworn or, in the instance of a trial without a jury, upon the first witness being~~
 6 ~~sworn.~~

7 ~~(e)~~(d) Nothing in this Code section shall be deemed to alter or amend the pleading
 8 requirements of Chapter 11 of this title relating to the filing of complaints or answers.

9 ~~(f) This Code section shall apply to actions filed on or after July 1, 1999."~~

10 SECTION 3.

11 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 12 striking Code Section 9-11-9.1, relating to affidavits in professional malpractice cases, and
 13 inserting in its place a new Code section to read as follows:

14 "9-11-9.1.

15 (a) In any action for damages alleging professional malpractice against a professional
 16 licensed by the State of Georgia and listed in subsection ~~(f)~~(d) of this Code section or
 17 against any licensed health care facility alleged to be liable based upon the action or
 18 inaction of a health care professional licensed by the State of Georgia and listed in
 19 subsection ~~(f)~~(d) of this Code section, the plaintiff shall be required to file with the
 20 complaint an affidavit of an expert competent to testify, which affidavit shall set forth
 21 specifically at least one negligent act or omission claimed to exist and the factual basis for
 22 each such claim.

23 ~~(b) The contemporaneous filing requirement of subsection (a) of this Code section shall~~
 24 ~~not apply to any case in which the period of limitation will expire or there is a good faith~~
 25 ~~basis to believe it will expire on any claim stated in the complaint within ten days of the~~
 26 ~~date of filing and, because of such time constraints, the plaintiff has alleged that an~~
 27 ~~affidavit of an expert could not be prepared. In such cases, the plaintiff shall have 45 days~~
 28 ~~after the filing of the complaint to supplement the pleadings with the affidavit. The trial~~
 29 ~~court may, on motion, after hearing and for good cause extend such time as it shall~~
 30 ~~determine justice requires. If an affidavit is not filed within the period specified in this~~
 31 ~~subsection or as extended by the trial court and the defendant against whom an affidavit~~
 32 ~~should have been filed alleges, by motion to dismiss filed contemporaneously with its~~
 33 ~~initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the~~
 34 ~~complaint is subject to dismissal for failure to state a claim.~~

35 ~~(c) This Code section shall not be construed to extend any applicable period of limitation,~~
 36 ~~except that if the affidavit is filed within the period specified in this Code section, the filing~~

1 ~~of the affidavit after the expiration of the statute of limitations shall be considered timely~~
2 ~~and shall provide no basis for a statute of limitations defense.~~

3 ~~(d)~~(b) If a plaintiff files an affidavit which is allegedly defective, and the defendant to
4 whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously
5 with its initial responsive pleading, that said affidavit is defective, the plaintiff's complaint
6 is subject to dismissal for failure to state a claim, except that the plaintiff may cure the
7 alleged defect by amendment pursuant to Code Section 9-11-15 within 30 days of service
8 of the motion alleging that the affidavit is defective. The trial court may, in the exercise of
9 its discretion, extend the time for filing said amendment or response to the motion, or both,
10 as it shall determine justice requires.

11 ~~(e)~~(c) If a plaintiff fails to file an affidavit as required by this Code section and the
12 defendant raises the failure to file such an affidavit by motion to dismiss filed
13 contemporaneously with its initial responsive pleading, such complaint shall not be subject
14 to the renewal provisions of Code Section 9-2-61 after the expiration of the applicable
15 period of limitation, unless a court determines that the plaintiff had the requisite affidavit
16 within the time required by this Code section and the failure to file the affidavit was the
17 result of a mistake.

18 ~~(f)~~(d) The professions to which this Code section applies are:

- 19 (1) Architects;
- 20 (2) Attorneys at law;
- 21 (3) Certified public accountants;
- 22 (4) Chiropractors;
- 23 (5) Clinical social workers;
- 24 (6) Dentists;
- 25 (7) Dietitians;
- 26 (8) Land surveyors;
- 27 (9) Medical doctors;
- 28 (10) Marriage and family therapists;
- 29 (11) Nurses;
- 30 (12) Occupational therapists;
- 31 (13) Optometrists;
- 32 (14) Osteopathic physicians;
- 33 (15) Pharmacists;
- 34 (16) Physical therapists;
- 35 (17) Physicians' assistants;
- 36 (18) Professional counselors;
- 37 (19) Professional engineers;

- 1 (20) Podiatrists;
 2 (21) Psychologists;
 3 (22) Radiological technicians;
 4 (23) Respiratory therapists; or
 5 (24) Veterinarians."

6 **SECTION 4.**

7 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 8 inserting a new Code Section 9-11-9.2 to read as follows:

9 "9-11-9.2.

10 (a) In any action for damages alleging medical malpractice against a professional licensed
 11 by the State of Georgia and listed in subsection (d) of Code Section 9-11-9.1, against a
 12 professional corporation or other legal entity that provides health care services through a
 13 professional licensed by the State of Georgia and listed in subsection (d) of Code Section
 14 9-11-9.1, or against any licensed health care facility alleged to be liable based upon the
 15 action or inaction of a health care professional licensed by the State of Georgia and listed
 16 in subsection (d) of Code Section 9-11-9.1, contemporaneously with the filing of the
 17 complaint, the plaintiff shall be required to file a medical authorization form. Failure to
 18 provide this authorization shall subject the complaint to dismissal.

19 (b) The authorization shall provide that the attorney representing the defendant is
 20 authorized to obtain and disclose protected health information contained in medical records
 21 to facilitate the investigation, evaluation, and defense of the claims and allegations set forth
 22 in the complaint which pertain to the plaintiff or, where applicable, the plaintiff's decedent
 23 whose treatment is at issue in the complaint. This authorization includes the defendant's
 24 attorney's right to discuss the care and treatment of the plaintiff or, where applicable, the
 25 plaintiff's decedent with all of the plaintiff's or decedent's treating physicians.

26 (c) The authorization shall provide for the release of all protected health information
 27 except information that is considered privileged and shall authorize the release of such
 28 information by any physician or health care facility by which health care records of the
 29 plaintiff or the plaintiff's decedent would be maintained."

30 **SECTION 5.**

31 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 32 adding at the end of Chapter 15 a new Code section to read as follows:

33 "9-15-16.

34 (a) In any civil action for damages filed in the courts of this state, if a defendant files an
 35 offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall

1 be entitled to recover reasonable costs and attorney's fees incurred by him or her or on the
2 defendant's behalf pursuant to a policy of liability insurance or other contract from the date
3 of filing of the offer if the judgment is one of no liability or the judgment obtained by the
4 plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and
5 attorney's fees against the award. Where such costs and attorney's fees total more than the
6 judgment, the court shall enter judgment for the defendant against the plaintiff for the
7 amount of the costs and fees, less the amount of the plaintiff's award. If a plaintiff files a
8 demand for judgment which is not accepted by the defendant within 30 days and the
9 plaintiff recovers a judgment in an amount of at least 25 percent greater than the offer, he
10 or she shall be entitled to recover reasonable costs and attorney's fees incurred from the
11 date of the filing of the demand. If rejected, neither an offer nor demand is admissible in
12 subsequent litigation, except for pursuing the penalties of this Code section.

13 (b) The making of an offer of settlement which is not accepted does not preclude the
14 making of a subsequent offer. An offer must:

- 15 (1) Be in writing and state that it is being made pursuant to this Code section;
- 16 (2) Name the party making it and the party to whom it is being made;
- 17 (3) State with particularity the amount offered to settle a claim for punitive damages, if
18 any; and
- 19 (4) State its total amount.

20 The offer shall be construed as including all damages which may be awarded in a final
21 judgment.

22 (c) The offer shall be served upon the party to whom it is made, but it shall not be filed
23 unless it is accepted or unless filing is necessary to enforce the provisions of this Code
24 section.

25 (d) An offer shall be accepted by filing a written acceptance with the court within 30 days
26 after service. Upon filing of both the offer and acceptance, the court has full jurisdiction
27 to enforce the settlement agreement.

28 (e) An offer may be withdrawn in writing which is served before the date a written
29 acceptance is filed. Once withdrawn, an offer is void.

30 (f) Upon motion made by the offer, or within 30 days after the entry of judgment or after
31 voluntary or involuntary dismissal, the court shall determine the following:

- 32 (1) If a defendant serves an offer which is not accepted by the plaintiff, and if the
33 judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer,
34 the defendant shall be awarded reasonable costs, including investigative expenses, and
35 attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme
36 Court, incurred from the date the offer was served, and the court shall set off such costs
37 and attorney's fees against the award. When such costs and attorney's fees total more

1 than the amount of the judgment, the court shall enter judgment for the defendant against
 2 the plaintiff for the amount of the costs and fees, less the amount of the award to the
 3 plaintiff.

4 (2) If a plaintiff serves an offer which is not accepted by the defendant, and if the
 5 judgment obtained by the plaintiff is at least 25 percent more than the amount of the
 6 offer, the plaintiff shall be awarded reasonable costs, including investigative expenses,
 7 and attorney's fees, calculated in accordance with the guidelines promulgated by the
 8 Supreme court, incurred from the date the offer was served.

9 (3) For purposes of the determination required by paragraph (1) of this subsection, the
 10 term 'judgment obtained' means the amount of the net judgment entered, plus any
 11 postoffer collateral source payments received or due as of the date of the judgment, plus
 12 any postoffer settlement amounts by which the verdict was reduced. For purposes of the
 13 determination required by paragraph (2) of this subsection, the term 'judgment obtained'
 14 means the amount of the net judgment entered, plus any postoffer settlement amounts by
 15 which the verdict was reduced.

16 (g)(1) If a party is entitled to costs and fees pursuant to the provisions of this Code
 17 section, the court may, in its discretion, determine that an offer was not made in good
 18 faith. In such case, the court may disallow an award of costs and attorney's fees.

19 (2) When determining the reasonableness of an award of attorney's fees pursuant to this
 20 Code section, the court shall consider, along with all other relevant criteria, the following
 21 additional factors:

22 (A) The then apparent merit or lack of merit in the claim;

23 (B) The number and nature of offers made by the parties;

24 (C) The closeness of questions of fact and law at issue;

25 (D) Whether the person making the offer had unreasonably refused to furnish
 26 information necessary to evaluate the reasonableness of such offer;

27 (E) Whether the suit was in the nature of a test case presenting questions of
 28 far-reaching importance affecting nonparties; and

29 (F) The amount of the additional cost and expense as a result of delay that the person
 30 making the offer reasonably would be expected to incur if the litigation should be
 31 prolonged.

32 (h) Evidence of an offer is admissible only in proceedings to enforce an accepted offer or
 33 to determine the imposition of sanctions under this Code section."

34 SECTION 6.

35 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 36 inserting after 24-3-37 a new Code Section 24-3-37.1 to read as follows:

1 "24-3-37.1.

2 (a) The General Assembly finds that conduct, statements, or activity constituting voluntary
3 offers of assistance or expressions of benevolence, regret, fault, sympathy, or apology
4 between or among parties or potential parties to a civil action should be encouraged and
5 should not be considered an admission of liability. The General Assembly further finds that
6 such conduct, statements, or activity should be particularly encouraged between health care
7 providers and victims of an unanticipated outcome resulting from their medical care.
8 Regulatory and accreditation agencies are in some instances requiring health care providers
9 to discuss the outcomes of their medical care and treatment with their patients, including
10 unanticipated outcomes, and studies have shown such discussions foster improved
11 communications and respect between provider and patient, promote quicker recovery by
12 the patient, and reduce the incidence of claims and lawsuits arising out of such
13 unanticipated outcomes. The General Assembly therefore concludes certain steps should
14 be taken to promote such conduct, statements, or activity by limiting their admissibility in
15 civil actions.

16 (b) As used in this Code section, the term:

17 (1) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,
18 35, or 39 of Title 43 or any hospital, nursing home, home health agency, institution, or
19 medical facility licensed or defined under Chapter 7 of Title 31. The term shall also
20 include any corporation, professional corporation, partnership, limited liability company,
21 limited liability partnership, authority, or other entity comprised of such health care
22 providers.

23 (2) 'Unanticipated outcome' means the outcome of a medical treatment or procedure,
24 whether or not resulting from an intentional act, that differs from an expected or intended
25 result of such medical treatment or procedure.

26 (c) In any claim or civil action brought by or on behalf of an alleged victim of an
27 unanticipated outcome of medical care, any and all statements, affirmations, gestures,
28 activities or conduct expressing benevolence, regret, apology, sympathy, commiseration,
29 condolence, compassion, fault, or a general sense of benevolence which are made by a
30 health care provider or an employee or agent of a health care provider to the patient, a
31 relative of the patient, or a representative of the patient and which relate to the
32 unanticipated outcome shall be inadmissible as evidence and shall not constitute an
33 admission of liability or an admission against interest."

34

SECTION 7.

1 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
 2 striking Code Section 24-9-67, relating to expert opinion evidence, and inserting in its place
 3 a new Code section to read as follows:

4 "24-9-67.

5 (a) Except as otherwise provided in this Code section, the ~~The~~ opinions of experts on any
 6 question of science, skill, trade, or like questions shall always be admissible; and such
 7 opinions may be given on the facts as proved by other witnesses.

8 (b) If scientific, technical, or other specialized knowledge will assist the trier of fact in any
 9 cause of action to understand the evidence or to determine a fact in issue, a witness
 10 qualified as an expert by knowledge, skill, experience, training, or education may testify
 11 thereto in the form of an opinion or otherwise, if:

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

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

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

16 (c) In professional malpractice actions, the opinions of an expert, who is otherwise
 17 qualified as to the standard of conduct of a health care provider whose conduct is at issue,
 18 shall be admissible only if, at the time the act or omission is alleged to have occurred, such
 19 expert:

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

22 (2) In the case of a medical malpractice action, had actual professional knowledge and
 23 experience in the area of practice or specialty in which the opinion is to be given,
 24 including the diagnosis or treatment of the condition at issue or the performance of the
 25 procedure or procedures at issue; and

26 (3) Had been regularly engaged in:

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

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

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

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 hearings 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 SECTION 8.

8 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
 9 a new Code section immediately following Code Section 51-1-29.4, to be designated Code
 10 Section 51-1-29.5 to read as follows:

11 "51-1-29.5.

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

13 (1) 'Dedicated emergency department' means any department or facility of the hospital
 14 located on the main hospital campus that meets one of the following requirements:

15 (A) It is held out to the public, by name, posted signs, advertising, or other means, as
 16 a place that provides care for emergency medical conditions on an urgent basis without
 17 requiring a previously scheduled appointment; or

18 (B) During the calendar year immediately preceding the calendar year in which a
 19 determination under this Code section is being made, based upon a representative
 20 sample of patient visits that occurred during that calendar year, it provided at least
 21 one-third of all of its outpatient visits for the treatment of emergency medical
 22 conditions on an urgent basis without requiring a previously scheduled appointment.

23 (2) 'Emergency medical condition' means:

24 (A) A medical condition manifesting itself by acute symptoms of sufficient severity,
 25 including severe pain, such that the absence of immediate medical attention could
 26 reasonably be expected to result in:

27 (i) Placing the health of the individual, or, with respect to a pregnant woman, the
 28 health of the woman or her unborn child, in serious jeopardy;

29 (ii) Serious impairment to bodily functions; or

30 (iii) Serious dysfunction of any bodily organ or part; or

31 (B) With respect to a pregnant woman who is having contractions:

32 (i) That there is inadequate time to effect a safe transfer to another hospital before
 33 delivery; or

34 (ii) That transfer may pose a threat to the health or safety of the woman or the unborn
 35 child.

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 such health care provider's licensure, either voluntarily or at the request of a hospital,
4 including but not limited to any health care provider who is 'on call' to a hospital.

5 (4) 'Hospital' means a facility which has a valid permit or provisional permit issued by
6 the Department of Human Resources under Chapter 7 of Title 31 and which operates a
7 dedicated emergency department that provides care or assistance, including but not
8 limited to emergency care, to individuals seeking medical treatment. Such term shall also
9 include any employee of such hospital who provides care or assistance to such
10 individuals within the scope of his or her employment, whether or not such person is a
11 health care provider.

12 (5) 'Noneconomic damages' means damages for physical and emotional pain, discomfort,
13 anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental
14 anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss
15 of consortium, injury to reputation, and all other nonpecuniary losses of any kind or
16 nature. This term does not include past or future:

17 (A) Medical expenses, including rehabilitation and therapy;

18 (B) Wages;

19 (C) Income;

20 (D) Funeral and burial expenses;

21 (E) The value of services performed by the injured in the absence of the injury or
22 death; or

23 (F) Other monetary expenses.

24 (b) The General Assembly makes the following findings: Georgia hospitals operating
25 dedicated emergency departments are required by both state and federal law to provide
26 examination and treatment to individuals who come to a dedicated emergency department,
27 without regard to the financial or insurance status of such individuals. Hospitals and other
28 health care providers have complied with these laws to their financial detriment and under
29 the well-founded apprehension of increased liability. Due in large part to fear of such
30 liability, hospitals are experiencing extreme difficulty attracting a sufficient number of
31 physicians and other health care professionals to maintain an effective team of
32 professionals, including on-call physicians, to provide needed care and assistance to
33 citizens of this state. As a result, many hospitals are being forced to close their emergency
34 departments or forgo other needed improvements in order to financially support such
35 emergency services and their attendant liability. The shortage of these emergency providers
36 poses a serious threat to the health, welfare, and safety of the citizens of Georgia.
37 Nevertheless, it is also recognized that patients who have been injured by negligence must

1 be afforded appropriate access to legal remedies for their injuries. The General Assembly
 2 therefore concludes that certain steps must be taken to preserve Georgia citizens' access
 3 to emergency care on the one hand, while on the other hand providing appropriate remedies
 4 for patients who are negligently injured.

5 (c) Without waiving or affecting and cumulative of any existing immunity from any
 6 source, unless it is established that injuries or death were caused by willful or wanton
 7 misconduct, no hospital or health care provider that renders care or assistance in or at the
 8 request of a hospital or a health care provider to an individual who comes to a dedicated
 9 emergency department for treatment of a medical condition, whether such care or
 10 assistance is rendered gratuitously or for a fee, shall be held liable for noneconomic
 11 damages to or for the benefit of any claimant arising out of any act or omission in rendering
 12 such care or assistance.

13 (d) The limitation on liability provided in subsection (c) of this Code section shall not
 14 apply to any act or omission in rendering care or assistance:

15 (1) Unrelated to the original medical condition for which the individual sought care or
 16 assistance;

17 (2) Which occurs more than 24 hours after the hospital or health care provider began
 18 rendering such care or assistance; or

19 (3) To a pregnant woman in active labor who has previously received prenatal care from
 20 such hospital or health care provider for such pregnancy."

21 **SECTION 9.**

22 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
 23 immediately following Code Section 51-2-5, a new Code Section 51-2-5.1 to read as follows:

24 "51-2-5.1.

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

26 (1) 'Health care professional' means a professional licensed as a chiropractor, clinical
 27 social worker, dentist, dietitian, medical doctor, marriage and family therapist, registered
 28 or licensed practical nurse, occupational therapist, optometrist, osteopathic physician,
 29 pharmacist, physical therapist, physician's assistant, professional counselor, podiatrist,
 30 psychologist, radiological technician, or respiratory therapist.

31 (2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the
 32 Department of Human Resources under Chapter 7 of Title 31.

33 (b) Notwithstanding the provisions of Code Section 51-2-5, no hospital which complies
 34 with the notice provisions of either subsection (c) or subsection (d) of this Code section
 35 shall be liable for the acts or omissions of a health care professional unless there exists an

1 actual agency or employment relationship between the hospital and the health care
2 professional.

3 (c) The hospital shall post a notice in the form and manner described herein. Such notice
4 shall:

5 (1) Be posted conspicuously in the hospital lobby or a public area of the hospital;

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

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

8 'Some or all of the health care professionals performing services in this hospital are
9 independent contractors and are not hospital agents or employees. Independent
10 contractors are responsible for their own actions and the hospital shall not be liable for
11 the acts or omissions of any such independent contractors.'

12 (d) The hospital shall have the patient or the patient's personal representative sign a
13 written acknowledgment that contains language substantially similar to that set forth in
14 paragraph (3) of subsection (c) of this Code section.

15 (e) The notice required in this Code section shall be sufficient if it meets the requirements
16 of either subsection (c) or subsection (d) of this Code section even if the patient or the
17 patient's personal representative did not see or read such notice for any reason, including
18 but not limited to medical condition or language proficiency.

19 (f) Whether a health care professional is an actual agent, an employee, or an independent
20 contractor shall be determined by the language of the contract between the health care
21 professional and the hospital. In the absence of such a contract, or if the contract is unclear
22 or ambiguous, a health care professional shall only be considered the hospital's employee
23 or actual agent if it can be shown by a preponderance of the evidence that the hospital
24 reserves the right to control the time, manner, or method in which the health care
25 professional performs the services for which licensed, as distinguished from the right to
26 merely require certain definite results.

27 (g) If the court finds that there is no contract or that the contract is unclear or ambiguous
28 as to the relationship between the hospital and health care professional, the court shall
29 apply the following:

30 (1) Factors that may be considered as evidence the hospital exercises a right of control
31 over the time, manner, or method of the health care professional's services include: the
32 parties believed they were creating an actual agency or employment relationship; the
33 health care professional receives substantially all the employee benefits received by
34 actual employees of the hospital; the hospital directs the details of the health care
35 professional's work step-by-step; the health care professional's services are terminable
36 at the will of the hospital without cause and without notice; the hospital withholds, or is
37 required to withhold, federal and state taxes from the remuneration paid to the health care

1 professional for services to the patients of the hospital; and factors not specifically
2 excluded in paragraph (2) of this subsection; and

3 (2) Factors that shall not be considered as evidence a hospital exercises a right of control
4 over the time, manner, or method of the health care professional's services include: a
5 requirement by the hospital that such health care professional treat all patients or that any
6 health care professional or group is obligated to staff a hospital department continuously
7 or from time to time; the hospital's payment to the health care professional on an hourly
8 basis; the provision of facilities or equipment by the hospital; the fact a health care
9 professional does not maintain a separate practice outside the hospital; the source of the
10 payment for the professional liability insurance premium for that health care professional;
11 the fact that the professional fees for services are billed by the hospital; or any
12 requirement by the hospital that such health care professional engage in conduct required
13 to satisfy any state or federal statute or regulation, any standard of care, any standard or
14 guideline set by an association of hospitals or health care professionals, or any
15 accreditation standard adopted by a national accreditation organization."

16 SECTION 10.

17 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by striking
18 Code Section 51-12-31, relating to recovery against joint trespassers, and Code Section
19 51-12-33, relating to apportionment of damages, and inserting in their respective places new
20 Code sections to read as follows:

21 "51-12-31.

22 Except as provided in Code Section 51-12-33, where an action is brought jointly against
23 several ~~trespassers~~ tort-feasors, the plaintiff may recover damages for ~~the greatest injury~~
24 ~~done~~ an injury caused by any of the defendants against ~~all of them~~ only the defendant or
25 defendants liable for the injury pursuant to subsection (b) of Code Section 51-12-33. In its
26 verdict, the jury may specify the particular damages to be recovered of each defendant.
27 Judgment in such a case must be entered severally."

28 "51-12-33.

29 (a) ~~Where an action is brought against more than one person for injury to person or~~
30 ~~property and the plaintiff is himself to some degree responsible for the injury or damages~~
31 ~~claimed, the trier of fact, in its determination of the total amount of damages to be awarded,~~
32 ~~if any, may apportion its award of damages among the persons who are liable and whose~~
33 ~~degree of fault is greater than that of the injured party according to the degree of fault of~~
34 ~~each person. Damages, if apportioned by the trier of fact as provided in this Code section,~~
35 ~~shall be the liability of each person against whom they are awarded, shall not be a joint~~

1 ~~liability among the persons liable, and shall not be subject to any right of contribution.~~
 2 Where an action is brought against one or more persons for injury to person or property and
 3 the plaintiff is to some degree responsible for the injury or damages claimed, the trier of
 4 fact, in its determination of the total amount of damages to be awarded, if any, shall
 5 determine the percentage of negligence of the plaintiff and shall reduce the amount of
 6 damages otherwise awarded to the plaintiff in proportion to his or her negligence compared
 7 with that of the person or persons liable for the injury or damages claimed.

8 (b) ~~Subsection (a) of this Code section shall not affect venue provisions regarding joint~~
 9 ~~actions.~~ Where an action is brought against more than one person for injury to person or
 10 property, the trier of fact, in its determination of the total amount of damages to be
 11 awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code
 12 section, if any, apportion its award of damages among the persons who are liable according
 13 to the degree of fault of each person. Damages apportioned by the trier of fact as provided
 14 in this Code section shall be the liability of each person against whom they are awarded,
 15 shall not be a joint liability among the persons liable, and shall not be subject to any right
 16 of contribution.

17 (c) ~~This Code section shall apply only to causes of action arising on or after July 1, 1987.~~
 18 Notwithstanding the provisions of this Code section and any other provisions of law which
 19 might be construed to the contrary, the plaintiff shall not be entitled to receive any damages
 20 if the plaintiff is 50 percent or more responsible for the injury or damages claimed.

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

22 SECTION 11.

23 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
 24 a new Chapter 13 to read as follows:

25 "CHAPTER 13

26 51-13-1.

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

28 (1) 'Claimant' means a person, including a decedent's estate, who seeks or has sought
 29 recovery of damages in a health care liability claim. All persons claiming to have
 30 sustained damages as the result of the bodily injury or death of a single person are
 31 considered a single claimant.

32 (2) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34,
 33 35, or 39 of Title 43 or any hospital, nursing home, home health agency, institution, or
 34 medical facility licensed or defined under Chapter 7 of Title 31. The term shall also

1 include any corporation, professional corporation, partnership, limited liability company,
2 limited liability partnership, authority, or other entity comprised of such health care
3 providers.

4 (3) 'Medical facility' means any institution or medical facility licensed as such under
5 Chapter 7 of Title 31.

6 (4) 'Noneconomic damages' means damages for physical and emotional pain, discomfort,
7 anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental
8 anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss
9 of consortium, injury to reputation, and all other nonpecuniary losses of any kind or
10 nature. This term does not include past or future:

11 (A) Medical expenses, including rehabilitation and therapy;

12 (B) Wages;

13 (C) Income;

14 (D) Funeral and burial expenses;

15 (E) The value of services performed by the injured in the absence of the injury or
16 death; or

17 (F) Other monetary expenses.

18 (b) In any verdict returned or judgment entered in a medical malpractice action, including
19 an action for wrongful death, against one or more health care providers, the total amount
20 recoverable by a claimant for noneconomic damages in such action shall be limited to an
21 amount not to exceed \$250,000.00, regardless of the number of defendant health care
22 providers against whom the claim is asserted or the number of separate causes of action on
23 which the claim is based.

24 (c) In any verdict returned or judgment entered in a medical malpractice action, including
25 an action for wrongful death, against a single medical facility, inclusive of all persons and
26 entities for which vicarious liability theories may apply, the total amount recoverable by
27 a claimant for noneconomic damages in such action shall be limited to an amount not to
28 exceed \$250,000.00, regardless of the number of separate causes of action on which the
29 claim is based.

30 (d) In any verdict returned or judgment entered in a medical malpractice action, including
31 an action for wrongful death, against more than one medical facility, inclusive of all
32 persons and entities for which vicarious liability theories may apply, the total amount
33 recoverable by a claimant for noneconomic damages in such action shall be limited to an
34 amount not to exceed \$250,000.00 from any single medical facility and \$500,000.00 from
35 all medical facilities, regardless of the number of defendant medical facilities against whom
36 the claim is asserted or the number of separate causes of action on which the claim is
37 based.

1 (e) In applying subsections (b), (c), and (d) of this Code section, the aggregate amount of
2 noneconomic damages recoverable under such subsections shall in no event exceed
3 \$750,000.00.

4 (f) In any medical malpractice action, if an award of future damages equaling or exceeding
5 \$250,000.00 is made against any party in the action, the trial court shall, upon the request
6 of any party, issue an order providing that such damages be paid by periodic payments.
7 Such periodic payments shall be funded through an annuity policy with the premium for
8 such annuity equal to the amount of the award for future damages."

9 **SECTION 12.**

10 (a) This Act shall become effective on July 1, 2005.

11 (b) Code Sections 51-12-31 and 51-12-33, as amended by this Act, and Code Section
12 51-13-1, as enacted by this Act, shall apply only with respect to causes of action arising on
13 or after July 1, 2005, and any prior causes of action shall continue to be governed by prior
14 law. It is the intention of the General Assembly that all other provisions of this Act shall
15 apply to causes of action pending on July 1, 2005, unless such application would be
16 unconstitutional.

17 **SECTION 13.**

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