

House Bill 72

By: Representatives Powell of the 29th and Dodson of the 75th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide for legislative findings; to provide a short title; to provide for definitions; to provide
3 for the establishment of hospital insurance authorities and the powers, duties, and
4 management thereof; to provide for contracts establishing such authorities; to provide that
5 an authority shall not be considered an insurance company; to provide for certificates of
6 authority by the Commissioner of Insurance authorizing the establishment of a group
7 self-insurance fund; to provide for applications to the Commissioner of Insurance; to provide
8 for funds to be maintained and requirements relating thereto; to provide for the investment
9 of assets in the fund; to provide for joint and several liability for the legal obligations of the
10 fund; to provide for contracts between an authority and a fund administrator; to provide for
11 a fidelity bond and errors and omissions insurance; to provide for revocation, suspension, and
12 refusal by the Commissioner of Insurance to renew a certificate of authority; to provide for
13 exemptions from taxation; to provide for periodic examinations; to provide for fund
14 deficiencies and assessments upon members; to provide for rules and regulations; to provide
15 for hearings; to provide for an excess loss funding program; to provide for audits of funds;
16 to provide for other related matters; to repeal conflicting laws; and for other purposes.

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

18 **SECTION 1.**

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

21 **"CHAPTER 46**

22 31-46-1.

23 The General Assembly finds that there presently exists a crisis in the field of hospital
24 liability insurance. Hospitals in this state are having increasing difficulty in locating

1 liability insurance and, when such hospitals are able to locate such insurance, the insurance
 2 is extremely costly. The result of this crisis is the potential for a diminution of the
 3 availability of access to health care services and the resultant effect on the health and
 4 well-being of the citizens of this state. The General Assembly finds that the state has a
 5 significant interest in ensuring the availability of liability insurance for hospitals which
 6 provide indigent care in this state at reasonable cost to the facilities. The General
 7 Assembly further finds that the provision of such insurance to the hospitals will result in
 8 the increased availability of health care services for the citizens of this state which is of
 9 substantial benefit to the state and its citizens.

10 31-46-2.

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

13 31-46-3.

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

16 31-46-4.

17 As used in this chapter, the term:

18 (1) 'Administrator' means any person who administers a group self-insurance fund other
 19 than the hospital insurance authority.

20 (2) 'Bond,' 'bonds,' or 'revenue bonds' means revenue bonds, refunding notes, notes,
 21 interim certificates, bond anticipation notes, and other evidences of indebtedness of a
 22 hospital insurance authority issued under this chapter.

23 (3) 'Commissioner' means the Commissioner of Insurance.

24 (4) 'Group self-insurance fund' or 'fund' means a pool of public moneys established by
 25 a hospital insurance authority from contributions of its members in order to pool the risks
 26 of medical malpractice liability.

27 (5) 'Hospital insurance authority' means an association formed by medical facilities by
 28 the execution of a contract for the development and administration of one or more
 29 programs of insurance for public and private medical facilities which provide indigent
 30 health care services in this state.

31 (6) 'Hospital insurance authority program' means a plan and activities carried out under
 32 such plan by a hospital insurance authority to reduce risk of loss on account of medical
 33 malpractice liability, and to administer one or more group self-insurance funds, including
 34 the processing and defense of claims brought against members of the authority.

1 (7) 'Medical facility' means any hospital in this state having less than 200 licensed beds
2 and its credentialed physicians and where such hospital, as of January 1, 2005, did not
3 participate in a captive or self-insurance trust program established for liability insurance
4 purposes.

5 31-46-5.

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

14 (b) A group of medical facilities may execute a contract among themselves to form and
15 become members of a hospital insurance authority. After a hospital insurance authority has
16 been formed, any medical facility may, subject to the bylaws and requirements of such
17 authority, become a member and, through participation in the authority, may:

18 (1) Pool its medical malpractice liability risks in whole or in part with those of other
19 medical facilities; or

20 (2) Jointly purchase medical malpractice liability insurance with other medical facilities
21 participating in and belonging to the hospital insurance authority, the participating
22 medical facilities to be coinsured under a master policy or policies with the total premium
23 apportioned among such participants.

24 (c) An authority shall have power:

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

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

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

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

1 the same; or to dispose of the same in any manner it deems to the best advantage of the
2 authority;

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

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

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

16 (8) To invest and reinvest funds;

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

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

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

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

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

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

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

36 (16) To fix, alter, charge, and collect premiums from participating medical facilities for
37 insurance provided by or procured by the authority, such rates to be at least sufficient to

1 provide for payment of all expenses of the authority, the conservation, maintenance, and
2 operation of the authority on a sound actuarial basis, the payment of principal and interest
3 on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the
4 terms and provisions of any agreement made with the purchasers and holders of any such
5 notes, bonds, or other evidences of indebtedness or obligation; and

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

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

14 (e) All arrangements and agreements made under the authority of this chapter shall be in
15 writing. A medical facility may become a member of a hospital insurance authority by the
16 adoption of a resolution or ordinance by the governing authority of the medical facility.
17 The hospital insurance authority shall operate under such name and style as shall be
18 provided in the contract creating such authority and shall have the power to bring and
19 defend actions in all courts.

20 (f) All books, records, and files maintained by any administrator of any fund established
21 by the authority, including but not limited to audit data and all active and inactive claim
22 files, shall at all times be the sole property of the authority and shall be surrendered
23 immediately to the authority upon demand.

24 31-46-6.

25 Each contract establishing a hospital insurance authority shall provide for a board of
26 trustees which shall govern the authority. Such board shall be authorized to administer the
27 authority in accordance with the provisions of the contract establishing the authority and
28 shall be authorized to adopt such bylaws, rules, and regulations as may be necessary or
29 desirable in administering such authority.

30 31-46-7.

31 A hospital insurance authority created pursuant to this chapter is not an insurance company
32 or an insurer under Title 33, and the development and administration by such authority of
33 one or more group self-insurance funds shall not constitute doing business as an insurer.

1 31-46-8.

2 (a) No hospital insurance authority shall establish a group self-insurance fund or funds
3 until such authority has been issued a certificate of authority by the Commissioner of
4 Insurance as provided in this Code section and under such rules and regulations as the
5 Commissioner may promulgate to assure compliance with this chapter.

6 (b) The Commissioner shall not be authorized to issue any certificate of authority pursuant
7 to this Code section prior to April 30, 2006. Any application for a certificate of authority
8 pursuant to this Code section which is filed prior to March 1, 2006, shall be updated by the
9 applicant in order to comply with any statute, rule, or regulation which may be
10 promulgated or enacted prior to the issuance of the certificate of authority.

11 (c) When applying for a certificate of authority, a hospital insurance authority shall file
12 with the Commissioner an application setting forth:

13 (1) The name of the authority;

14 (2) The location of the authority's principal office;

15 (3) The names and addresses of the members of the authority;

16 (4) The names and addresses of the members of each fund;

17 (5) The name and address of a Georgia resident designated and appointed as each fund's
18 proposed registered agent for service of process in this state;

19 (6) The names and addresses of the members of the board of trustees of the authority;

20 (7) A copy of the bylaws of the authority;

21 (8) A copy of the intergovernmental contract establishing the authority;

22 (9) A copy of the agreement or agreements establishing each fund;

23 (10) A copy of any agreements between the authority, any fund of the authority, and any
24 administrator of a fund;

25 (11) A statement of the financial condition of the authority and each fund of the authority
26 listing all of their assets and liabilities as of the end of the last preceding month prior to
27 the date of the application on such a form as may be prescribed by the Commissioner;

28 (12) A copy of each contract, endorsement, and application form proposed to be issued
29 or used in connection with each fund. Such contracts, endorsements, applications, or
30 revisions thereto shall be filed with and approved by the Commissioner prior to their use;
31 and

32 (13) A copy of the rates, rating systems, and rules proposed to be used in connection
33 with each fund. Such rates, rating systems, rules, and any revisions thereto shall be filed
34 with and approved by the Commissioner prior to their use.

1 31-46-9.

2 (a) The Commissioner shall examine the application made under Code Section 36-85-5
3 to determine whether the authority and any established fund will be able to comply with
4 this chapter and applicable rules and regulations. If the Commissioner finds that the
5 authority and any established fund are capable of complying with such requirements, he
6 shall issue a certificate of authority to the authority.

7 (b) If the Commissioner refuses to issue a certificate of authority, he shall issue an order
8 setting forth the reasons for refusal and forward it to the authority. A copy of the order
9 shall be sent to each member of the fund.

10 (c) Except as otherwise provided in subsection (b) of Code Section 36-85-5, the
11 Commissioner shall approve or disapprove the application for a certificate of authority
12 within 60 days of receipt by him of the application and all of the supporting information
13 requested.

14 (d) The Commissioner may refuse to issue or renew or may suspend or revoke the
15 certificate of authority of any authority, in accordance with Code Section 36-85-12, for
16 failure of the authority to comply with any provision of this chapter or with any of the
17 rules, regulations, or orders of the Commissioner issued pursuant thereto.

18 (e) The certificate shall be renewed annually in accordance with rules and regulations
19 promulgated by the Commissioner.

20 31-46-10.

21 Each fund formed pursuant to this chapter shall possess and thereafter maintain minimum
22 surplus in an amount such as the Commissioner may reasonably establish or subsequently
23 require for the protection of the members. The Commissioner may authorize a fund to
24 maintain a deposit with the Commissioner consisting of securities eligible for deposit by
25 domestic insurance companies in accordance with Chapter 12 of Title 33 or, for a period
26 not to exceed 60 months, to post a surety bond in lieu of maintaining the minimum surplus
27 required by this Code section.

28 31-46-11.

29 The investable assets of a fund may be invested in securities or other investments permitted
30 by the laws of this state for the investment of assets constituting the legal reserves of
31 property and casualty insurance companies or in such other securities or investments as the
32 Commissioner may permit such insurers to invest their funds under Title 33. Such
33 investments shall be subject to the same terms, conditions, and limitations which apply to
34 property and casualty insurance companies under Title 33.

1 31-46-12.

2 Each medical facility shall be jointly and severally liable for all legal obligations of a fund
3 which arise out of an event which occurred while such medical facility was a member of
4 such fund; provided, however, that a fund shall not assume a risk greater than an amount
5 to be determined by the Commissioner; and provided, further, that this legal obligation may
6 be enforced by an assessment against such member as provided in the bylaws of the
7 authority.

8 31-46-13.

9 (a) If an authority contracts with an administrator, the authority and the administrator must
10 enter into a written agreement which shall be subject to review and approval by the
11 Commissioner in accordance with this Code section and which shall contain at least the
12 following:

13 (1) A contractual provision obligating the administrator to obtain and maintain such
14 bonds, deposits, or insurance coverage as may be required to be maintained by this
15 chapter; and

16 (2) A requirement that errors and omissions coverage or other appropriate liability
17 insurance in an amount which is not less than that specified by the rules and regulations
18 of the Commissioner be maintained at all times by the administrator.

19 (b) The terms of any such agreement shall be reasonable and equitable, and the agreement
20 and any amendments thereto shall be filed with the Commissioner at least 30 days prior to
21 their use. Any such agreement and any and all amendments thereto which have not been
22 specifically disapproved by the Commissioner within 30 days after the filing thereof shall
23 be deemed to be approved.

24 (c) A copy of the agreement and any and all amendments thereto shall be furnished to each
25 authority or fund member upon request.

26 31-46-14.

27 (a) The Commissioner shall require each administrator to have and maintain a fidelity
28 bond in an amount which the Commissioner deems appropriate but which is not less than
29 \$100,000.00.

30 (b) Errors and omissions coverage or other appropriate liability insurance in an amount
31 which is not less than that specified by the rules and regulations of the Commissioner shall
32 be maintained at all times by an administrator of a fund; and a certificate by the insurer or
33 other appropriate evidence of such coverage shall be filed with the Commissioner by the
34 fund.

1 (c) Each administrator shall maintain an office in this state for the payment, processing,
2 and adjustment of the claims of the fund or funds which it represents.

3 31-46-15.

4 (a) The Commissioner may revoke, suspend, or refuse to issue or renew the certificate of
5 authority of any authority when and if, after investigation, he finds that:

6 (1) Any certificate of authority issued to the authority was obtained by fraud;

7 (2) There was any material misrepresentation in the application for the certificate of
8 authority;

9 (3) The authority, any fund established by the authority, the administrator of a fund, or
10 any marketing representative has otherwise shown itself to be untrustworthy or
11 incompetent;

12 (4) The authority, any fund established by the authority, the administrator of a fund, or
13 any marketing representative has violated any of the provisions of this chapter or the rules
14 and regulations of the Commissioner promulgated pursuant to this chapter;

15 (5) The authority, any fund established by the authority, or the administrator of a fund
16 has misappropriated, converted, illegally withheld, or refused to pay over upon proper
17 demand any moneys which belong to a member or a person otherwise entitled thereto and
18 which have been entrusted to the authority, fund, or administrator in its fiduciary
19 capacities; or

20 (6) The authority or any fund established by the authority is found to be in an unsound
21 condition or in such condition as to render its future transaction of business in this state
22 hazardous to its members.

23 (b) Before the Commissioner shall revoke, suspend, or refuse to issue or renew the
24 certificate of authority of any authority, he shall give the authority an opportunity to be
25 fully heard and to introduce evidence in its behalf. In lieu of revoking, suspending, or
26 refusing to issue or renew the certificate of authority of any authority for any of the causes
27 enumerated in this Code section, after hearing as provided in this Code section, the
28 Commissioner may place the fund and its administrator on probation for a period of time
29 not to exceed one year when, in his judgment, he finds that the public interest and the
30 interests of the fund's members would not be harmed by the continued operation of the
31 fund. At any hearing provided for by this Code section, the Commissioner or his designee
32 shall have authority to administer oaths to witnesses. Any witness testifying falsely after
33 taking an oath commits the offense of perjury.

34 (c) No fund shall be voluntarily dissolved or otherwise voluntarily cease to function
35 unless:

36 (1) Written approval is first obtained from the Commissioner; and

1 (2) The Commissioner determines that all claims and other legal obligations of the fund
2 have been paid or that adequate provisions for such payment have been made.

3 31-46-16.

4 Hospital insurance authorities and funds established by such authorities shall be exempt
5 from state and local taxes and fees.

6 31-46-17.

7 The Commissioner shall have the authority to require and conduct periodic examinations
8 to verify the solvency of funds in the same manner and under the same conditions as
9 insurers are examined under Chapter 2 of Title 33.

10 31-46-18.

11 (a) If the assets of a fund are at any time insufficient to enable a fund to discharge its legal
12 liabilities and other obligations and to maintain the reserves and surplus required of it under
13 this chapter, the authority shall forthwith make up the deficiency or levy an assessment
14 upon the members of the fund for the amount needed to make up the deficiency.

15 (b) If the authority fails to make up the deficiency or to make the required assessment of
16 the fund members within 30 days after the Commissioner orders it to do so or if the
17 deficiency is not fully made up within 60 days after the date on which any such assessment
18 is made or within such longer period of time as may be specified by the Commissioner, the
19 fund shall be deemed to be insolvent and shall be proceeded against in the same manner
20 as are domestic insurers under Chapter 37 of Title 33; and the Commissioner shall have the
21 same powers and limitations in such proceedings as are provided under that chapter, except
22 as otherwise provided for in this chapter.

23 (c) If the liquidation of a fund is ordered, an assessment shall be levied upon its members
24 for such an amount as the Commissioner determines to be necessary to discharge all
25 liabilities of the fund, including the reasonable costs of liquidation.

26 31-46-19.

27 The Commissioner shall have authority to promulgate rules and regulations to effectuate
28 the provisions of this chapter.

29 31-46-20.

30 Any party which is aggrieved by any act, determination, order, or any other action of the
31 Commissioner taken pursuant to this chapter may request a hearing before the

1 Commissioner or otherwise proceed in accordance with Chapter 13 of Title 50, the
2 'Georgia Administrative Procedure Act.'

3 31-46-21.

4 (a) A hospital insurance authority shall maintain at all times an excess loss funding
5 program acceptable to the Commissioner. An excess loss funding program may consist of
6 excess insurance, self-funding from unobligated surplus of a fund, any combination of the
7 foregoing, or any other funding program acceptable to the Commissioner.

8 (b) The excess loss funding program of an authority shall be approved by the
9 Commissioner as a condition to the issuance and maintenance of a certificate of authority
10 of any authority which establishes a fund or funds authorized pursuant to this article. An
11 authority may be permitted to purchase excess insurance:

12 (1) From insurers authorized to transact business in this state; or

13 (2) From approved surplus lines carriers.

14 31-46-22.

15 Each fund established under this chapter shall have an annual audit of its books and
16 accounts performed by a certified public accountant. Such audit shall be conducted in
17 accordance with generally accepted accounting principles. A copy of such audit shall be
18 made available to fund members."

19 **SECTION 2.**

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