

House Bill 235

By: Representatives Keen of the 179th, Burkhalter of the 50th, Fleming of the 117th, Channell of the 116th, Cooper of the 41st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 provide for certain civil justice reforms with respect to certain health care liability claims;
3 to state legislative findings and intent; to define terms; to provide for certain limits on the
4 amount of noneconomic damages which may be recovered in certain health care liability
5 claims; to provide for other related matters; to provide for an effective date and applicability;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

11 "CHAPTER 13

12 51-13-1.

13 The General Assembly finds that certain aspects of Georgia's current civil justice system
14 are adversely affecting patient access to health care services, quality patient care, and
15 cost-efficient health care. The General Assembly further finds that in the public interest,
16 it continues to be the responsibility of the state to take measures to facilitate an
17 environment which promotes competition among current health and liability insurers,
18 encourages additional competitors to enter the market, to contain health insurance and
19 professional liability insurance costs, and thereby provide reasonable assurance of
20 affordable health and professional liability insurance for the benefit of all Georgians. It is
21 the purpose of this chapter to implement reasonable, comprehensive, and effective health
22 care liability reforms designed to:

23 (1) Improve the availability of health care services in cases in which health care liability
24 actions have been shown to be a factor in the decreased availability of services;

1 (2) Reduce the incidence of defensive use of unnecessary tests and procedures and
2 reduce the rate of increase of the future cost of health care liability insurance, all of which
3 contribute to the escalation of health care costs;

4 (3) Ensure that persons with meritorious health care injury claims receive fair and
5 equitable compensation, including reasonable noneconomic damages; and

6 (4) Improve the fairness and cost-effectiveness of our current judicial liability system to
7 resolve disputes over, and provide compensation for, health care liability by reducing
8 uncertainty in the amount of compensation provided to injured individuals.

9 51-13-2.

10 (a) As used in this chapter, the term:

11 (1) 'Affiliate' means a person who, directly or indirectly through one or more
12 intermediaries, controls, is controlled by, or is under common control with a specified
13 person, including any direct or indirect parent or subsidiary.

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

18 (3) 'Control' means the possession, directly or indirectly, of the power to direct or cause
19 the direction of the management and policies of the person, whether through ownership
20 of equity or securities, by contract, or otherwise.

21 (4) 'Health care' means any act or treatment performed or furnished, or that should have
22 been performed or furnished, by any health care provider for, to, or on behalf of a patient
23 during the patient's medical care, treatment, or confinement.

24 (5) 'Health care institution' means:

25 (A) An ambulatory surgical center;

26 (B) A personal care home licensed under Chapter 7 of Title 31;

27 (C) An institution providing emergency medical services;

28 (D) A hospice;

29 (E) A hospital;

30 (F) A hospital system;

31 (G) An intermediate care facility for the mentally retarded;

32 (H) A nursing home; or

33 (I) An affiliate of any of the foregoing.

34 (6) 'Health care liability claim' means a cause of action against a health care provider or
35 physician for treatment, lack of treatment, or other claimed departure from accepted
36 standards of medical care, health care, or safety or professional or administrative services

1 directly related to health care, which departure from standards proximately results in
2 injury to or death of a claimant.

3 (7) 'Health care provider' means:

4 (A) Any person, partnership, professional association, corporation, facility, or
5 institution duly licensed, certified, registered, or chartered by the State of Georgia to
6 provide health care, including but not limited to:

7 (i) A registered nurse;

8 (ii) A dentist;

9 (iii) A podiatrist;

10 (iv) A pharmacist;

11 (v) A chiropractor;

12 (vi) An optometrist; or

13 (vii) A health care institution; and

14 (B) Any person who is:

15 (i) An officer, director, shareholder, member, partner, manager, owner, or affiliate
16 of a health care provider or physician; or

17 (ii) An employee, independent contractor, or agent of a health care provider or
18 physician acting in the course and scope of the employment or contractual
19 relationship.

20 (8) 'Hospice' means a facility licensed as such under the 'Georgia Hospice Law,' Article
21 9 of Chapter 7 of Title 31.

22 (9) 'Hospital' means a facility licensed as such under Chapter 7 of Title 31.

23 (10) 'Hospital system' means a system of hospitals located in this state that are under the
24 common governance or control of a corporate parent.

25 (11) 'Medical care' means any act defined as the practice of medicine under Code Section
26 43-34-20.

27 (12) 'Noneconomic damages' means damages for physical and emotional pain,
28 discomfort, anxiety, hardship, distress, suffering, inconvenience, physical impairment,
29 mental anguish, disfigurement, loss of enjoyment of life, loss of society and
30 companionship, loss of consortium, and injury to reputation.

31 (13) 'Nursing home' means a facility licensed as such under Chapter 7 of Title 31.

32 (14) 'Pharmacist' means a person licensed as such under Chapter 4 of Title 26.

33 (15) 'Physician' means an individual licensed to practice medicine in this state, a
34 professional association organized by an individual physician or group of physicians, a
35 partnership or limited liability partnership formed by a group of physicians, or a
36 professional corporation or limited liability corporation comprised of physicians.

1 (16) 'Professional or administrative services' means those duties or services that a
2 physician or health care provider is required to provide as a condition of maintaining the
3 physician's or health care provider's license, accreditation status, or certification to
4 participate in state or federal health care programs.

5 (b) Any legal term or word of art used in this chapter, not otherwise defined in this
6 chapter, shall have such meaning as is consistent with the common law.

7 51-13-3.

8 (a) In an action on a health care liability claim where final judgment is rendered against
9 a physician or health care provider other than a health care institution, the limit of civil
10 liability for noneconomic damages of the physician or health care provider other than a
11 health care institution, inclusive of all persons and entities for which vicarious liability
12 theories may apply, shall be limited to an amount not to exceed \$250,000.00 for each
13 claimant, regardless of the number of defendant physicians or health care providers other
14 than a health care institution against whom the claim is asserted or the number of separate
15 causes of action on which the claim is based.

16 (b) In an action on a health care liability claim where final judgment is rendered against
17 a single health care institution, the limit of civil liability for noneconomic damages,
18 inclusive of all persons and entities for which vicarious liability theories may apply, shall
19 be limited to an amount not to exceed \$250,000.00 for each claimant.

20 (c) In an action on a health care liability claim where final judgment is rendered against
21 more than one health care institution, the limit of civil liability for noneconomic damages
22 for each health care institution, inclusive of all persons and entities for which vicarious
23 liability theories may apply, shall be limited to an amount not to exceed \$250,000.00 for
24 each claimant and the limit of civil liability for noneconomic damages for all health care
25 institutions, inclusive of all persons and entities for which vicarious liability theories may
26 apply, shall be limited to an amount not to exceed \$750,000.00 for each claimant,
27 regardless of the number of defendant health care institutions against whom the claim is
28 asserted or the number of separate causes of action on which the claim is based..

29 (d) Subsections (a) through (c) of this Code section do not apply to the amount of damages
30 awarded on a health care liability claim for special damages; loss of income; the expenses
31 of necessary medical, hospital, and custodial care received before judgment or required in
32 the future for treatment of the injury; and punitive damages."

33 SECTION 2.

34 This Act shall become effective July 1, 2005, and shall apply with respect to causes of action
35 arising on or after that date. Prior causes of action shall be governed by prior law.

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SECTION 3.

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