

House Bill 274

By: Representatives Millar of the 79th, Hill of the 21st, Benton of the 31st, and Maxwell of the 17th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 31, 33, and 51 of the Official Code of Georgia Annotated, relating
2 respectively to health, insurance, and torts, so as to provide a comprehensive mechanism to
3 address rising medical malpractice insurance rates and the need for tort reform; to change
4 provisions relating to duties, functions, and powers of the Department of Human Resources;
5 to provide for confidentiality of certain information; to provide for fees on medical
6 malpractice insurance premiums; to limit liability on damages in certain circumstances; to
7 provide for legislative findings; to change certain provisions relating to the amount and
8 method of computing tax on insurance premiums generally; to change provisions relating to
9 abatement or reduction of tax on insurance premiums; to provide for definitions; to provide
10 for financial limitations with respect to certain damages; to provide for related matters; to
11 provide for an effective date and applicability; to repeal conflicting laws; and for other
12 purposes.

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

14 **SECTION 1.**

15 The General Assembly makes the following findings: Georgia hospitals and health care
16 providers are dealing with increases in medical malpractice insurance premiums, and
17 hospitals are experiencing extreme difficulty in attracting a sufficient number of physicians
18 and other health care professionals to maintain an effective team of professionals to provide
19 needed care and assistance to citizens of this state. The shortage of hospitals and health care
20 providers poses a serious threat to the health, welfare, and safety of the citizens of Georgia.
21 It is also recognized that stability in insurance premiums may be achieved by analyzing
22 claims and developing standards for ensuring patient safety. Providing increased sharing of
23 information in the health care system will reduce unintended injury and improve patient care.
24 It is intended that the Department of Human Resources undertake a study of claims and
25 develop patient safety standards which will be funded in part by a fee paid by medical
26 malpractice insurers. The General Assembly further finds that, in the public interest, it

1 continues to be the responsibility of the state to take measures to facilitate an environment
 2 which promotes competition among current health and liability insurers and encourages
 3 additional competitors to enter the market and to contain health insurance and professional
 4 liability insurance costs and thereby provide reasonable assurance of affordable health and
 5 professional liability insurance for the benefit of all Georgians. The Georgia General
 6 Assembly concludes that certain steps can be taken to preserve Georgia citizens' access to
 7 health care on the one hand, while on the other hand providing appropriate remedies for
 8 patients who are negligently injured.

9 **SECTION 2.**

10 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking
 11 "and" at the end of paragraph (12) of Code Section 31-2-1, relating to the duties, functions,
 12 and powers of the Department of Human Resources, inserting "; and" in lieu of the period
 13 at the end of paragraph (13), and adding a new paragraph (14) to read as follows:

14 "(14) Contract for an analysis of health care liability claims as defined in Code Section
 15 51-1-29.5 and develop standards to ensure health care patient safety. Information
 16 collected by the department or its contractor pursuant to this paragraph shall be
 17 confidential, shall not be disclosed, and shall not be subject to Article 4 of Chapter 18 of
 18 Title 50, relating to open records, or subject to subpoena, discovery, or introduction into
 19 evidence in any civil or criminal proceeding."

20 **SECTION 3.**

21 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
 22 adding a new subsection (c) to Code Section 33-8-4, relating to the amount and method of
 23 computing tax on insurance premiums generally, to read as follows:

24 "(c)(1) As used in this subsection, the term 'gross direct premiums' shall not include
 25 annuity considerations.

26 (2) In addition to the tax provided for in subsection (a) of this Code section, all foreign,
 27 alien, and domestic insurance companies doing business in this state shall pay a fee of 1
 28 percent upon the gross direct premiums received by them for medical malpractice
 29 insurance on and after July 1, 2005. The fee shall be levied upon persons, property, or
 30 risks in Georgia, from January 1 to December 31, both inclusive, of each year without
 31 regard to business ceded to or assumed from other companies. The fee shall be imposed
 32 upon gross premiums received from direct writings without any deductions allowed for
 33 premium abatements of any kind or character or for reinsurance or for cash surrender
 34 values paid or for losses or expenses of any kind; provided, however, deductions shall be
 35 allowed for premiums returned on change of rate or canceled policies.

1 (3) It is the intent of the General Assembly that the funds generated by the fee imposed
 2 by this subsection may be made available to and may be appropriated to the Department
 3 of Human Resources for analysis of medical malpractice claims and development of
 4 standards to ensure patient safety."

5 SECTION 4.

6 Said title is further amended by striking Code Section 33-8-5, relating to abatement or
 7 reduction of tax on insurance premiums, and inserting in lieu thereof the following:

8 "33-8-5.

9 Whenever any insurance company doing business in this state shall make it appear to the
 10 Commissioner, by evidence satisfactory to him or her, that one-fourth of its total assets, as
 11 of December 31 of any taxable year, exclusive of direct obligations of the United States,
 12 consists of or is invested in any or all of the following classes of property:

13 (1) General obligation bonds of this state or of any political subdivision of the State of
 14 Georgia;

15 (2) Revenue bonds or revenue anticipation certificates of any county, municipality, or
 16 political subdivision of this state;

17 (3) Revenue bonds or revenue anticipation certificates of any authority or public
 18 corporation created by or pursuant to the laws of this state;

19 (4) Real estate situated in and subject to taxation by this state or its political subdivisions;

20 (5) Tangible personal property located in this state and subject to taxation by this state
 21 or its political subdivisions;

22 (6) Loans secured by liens on real estate situated in this state;

23 (7) Policy loans on insurance policies issued by the company on lives of persons resident
 24 in this state;

25 (8) Intangible property having a taxable situs in this state; or

26 (9) Shares in Georgia corporations in which the insurance companies are authorized to
 27 invest under the laws of this state,

28 then the gross premium tax levied by subsection (a) of Code Section 33-8-4 shall be abated
 29 or reduced to 1 1/4 percent upon the gross premium of any company subject to taxation by
 30 ~~said Code section~~ subsection (a) of Code Section 33-8-4 and, if the amount so invested by
 31 any company shall be as much as three-fourths of its total assets, exclusive of direct
 32 obligations of the United States, then the said premium tax shall be abated or reduced to
 33 one-half of 1 percent upon the gross premiums of the company subject to taxation by ~~said~~
 34 ~~Code section~~ subsection (a) of Code Section 33-8-4."

SECTION 5.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding a new Code section immediately following Code Section 51-1-29.4, relating to liability of voluntary health care providers and sponsoring organizations, to be designated Code Section 51-1-29.5, to read as follows:

"51-1-29.5.

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

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

(2) 'Health care institution' means:

(A) An institution as defined in paragraph (1) of Code Section 31-7-1;

(B) A hospital;

(C) A hospital system;

(D) A hospice as defined in paragraph (3) of Code Section 31-7-172;

(E) A facility providing mental health care under Title 37; or

(F) An end stage renal disease facility licensed under Chapter 44 of Title 31.

(3) 'Health care liability claim' means a cause of action for medical malpractice, as defined in Code Section 9-3-70, against a health care provider for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety or professional or administrative services directly related to health care which proximately results in injury to or death of a claimant.

(4) 'Health care provider' means any person licensed under Chapter 9, 11, 26, 30, 33, 34, 35, or 39 of Title 43 who provides care or assistance to an individual within the scope of such health care provider's licensure, either voluntarily or at the request of a hospital, including but not limited to any health care provider who is 'on call' to a hospital. The term includes an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider and an employee, independent contractor, or agent of a health care provider acting in the course and scope of the employment or contractual relationship.

(5) 'Hospital' means a facility which has a valid permit or provisional permit issued by the Department of Human Resources under Chapter 7 of Title 31. Such term shall also include any employee of such hospital who provides care or assistance to individuals within the scope of his or her employment, whether or not such person is a health care provider.

1 (6) 'Hospital system' means one or more hospitals located in this state that are under the
2 common governance or control of a single corporate parent.

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

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

10 (B) Wages;

11 (C) Income;

12 (D) Funeral and burial expenses;

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

15 (F) Other monetary expenses.

16 (b) Without waiving or affecting and cumulative of any existing immunity from any
17 source, unless it is established that injuries were caused by gross negligence or willful or
18 wanton misconduct, in an action on a health care liability claim, excluding an action for
19 wrongful death, where final judgment is rendered against a health care provider other than
20 a health care institution, the limit of civil liability for noneconomic damages of the health
21 care provider other than a health care institution, inclusive of all persons and entities for
22 which vicarious liability theories may apply, shall be limited to an amount not to exceed
23 \$250,000.00 for each claimant, regardless of the number of defendant health care providers
24 other than a health care institution against whom the claim is asserted or the number of
25 separate causes of action on which the claim is based.

26 (c) Without waiving or affecting and cumulative of any existing immunity from any
27 source, unless it is established that injuries were caused by gross negligence or willful or
28 wanton misconduct, in an action on a health care liability claim, excluding an action for
29 wrongful death, where final judgment is rendered against a single health care institution,
30 the limit of civil liability for noneconomic damages for such health care institution,
31 inclusive of all persons and entities for which vicarious liability theories may apply, shall
32 be limited to an amount not to exceed \$250,000.00 for each claimant.

33 (d) Without waiving or affecting and cumulative of any existing immunity from any
34 source, unless it is established that injuries were caused by gross negligence or willful or
35 wanton misconduct, in an action on a health care liability claim, excluding an action for
36 wrongful death, where final judgment is rendered against more than one health care
37 institution, the limit of civil liability for noneconomic damages for each health care

1 institution, inclusive of all persons and entities for which vicarious liability theories may
2 apply, shall be limited to an amount not to exceed \$250,000.00 for each claimant and the
3 limit of civil liability for noneconomic damages for all health care institutions, inclusive
4 of all persons and entities for which vicarious liability theories may apply, shall be limited
5 to an amount not to exceed \$500,000.00 for each claimant.

6 (e) Without waiving or affecting and cumulative of any existing immunity from any
7 source, unless it is established that the death was caused by gross negligence or willful or
8 wanton misconduct, in a wrongful death action on a health care liability claim where final
9 judgment is rendered against a health care provider the limit of civil liability for all
10 damages shall be limited to an amount not to exceed \$500,000.00 for each claimant,
11 regardless of the number of defendant health care providers against whom the claim is
12 asserted or the number of separate causes of action on which the claim is based.

13 (f) Subsections (b), (c), (d), and (e) of this Code section do not apply to the amount of
14 damages awarded on a health care liability claim for the expenses of necessary medical,
15 hospital, and custodial care received before judgment or required in the future for treatment
16 of the injury.

17 (g) An award for noneconomic damages in excess of the limits provided by this Code
18 section shall be reduced by the court either before the entry of judgment or by amendment
19 of the judgment after entry of judgment, and such reduction shall be made before
20 accounting for any other reduction in damages required by law."

21 **SECTION 6.**

22 This Act shall become effective on July 1, 2005. This Act shall apply only to causes of
23 action arising on or after the July 1, 2005. Any cause of action arising prior to that date shall
24 continue to be governed by the laws in effect at the time such cause of action arose.

25 **SECTION 7.**

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