

Senate Bill 232

By: Senators Carter of the 13th, Seabaugh of the 28th, Harp of the 29th, Rogers of the 21st, Shafer of the 48th 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 change provisions relating to determination of the standard of care and determination of
3 whether that standard has been breached in deciding certain actions relating to the provision
4 of emergency medical services by a hospital or health care provider; to define terms; to state
5 findings; to provide for factors to be considered and practice and procedure; to provide for
6 related matters; to provide for construction with respect to other Acts; to provide for an
7 effective date and applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 "51-1-29.5.

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

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

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

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

25 (2) 'Emergency medical condition' means:

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

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

3 (ii) Serious impairment to bodily functions; or

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

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

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

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

10 (3) 'Health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26,
11 28, 30, 33, 34, 35, 39, or 44 of Title 43 who provides care or assistance to an individual
12 within the scope of such health care provider's licensure, either voluntarily or at the
13 request of a hospital, including but not limited to any health care provider who is 'on call'
14 to a hospital.

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

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

1 to emergency care on the one hand, while on the other hand providing appropriate remedies
2 for patients who are negligently injured.

3 (c) Without waiving or affecting and cumulative of any existing immunity from any
4 source, unless it is established that injuries or death were caused by willful or wanton
5 misconduct, in deciding whether a hospital or health care provider that renders care or
6 assistance in or at the request of a hospital or a health care provider to an individual who
7 comes to a dedicated emergency department for treatment of a medical condition, whether
8 such care or assistance is rendered gratuitously or for a fee, shall be held liable for damages
9 to or for the benefit of any claimant arising out of any act or omission in rendering such
10 care or assistance, the finder of fact must determine whether the hospital or health care
11 provider met the applicable standard of care for treatment of such patients or conditions or
12 both in an emergency department setting under similar conditions and like surrounding
13 circumstances. In making such a determination, a jury shall be charged with the duty to
14 consider all relevant circumstances that the hospital or health care provider faced when
15 treating the patient or condition or both, including, but not limited to:

16 (1) Whether any emergency circumstances were involved with the patient's condition;

17 (2) Whether the hospital or health care provider had access to the patient's relevant
18 medical history;

19 (3) All relevant circumstances surrounding the operation of the facility;

20 (4) The number of patients seeking care;

21 (5) Whether there was a relevant preexisting relationship between the patient and
22 defendant hospital or health care provider; and

23 (6) All other circumstances affecting the hospital or health care provider's ability to
24 provide care under those circumstances at that time and place.

25 (d) Notwithstanding any other law to the contrary, a cause of action alleging a breach of
26 the applicable standard of care by a hospital or health care provider in the care and
27 treatment of an emergency medical condition must be proven by clear and convincing
28 evidence."

29 SECTION 2.

30 It is the intention of the General Assembly that this Act control over any conflicting
31 provisions of any other Act enacted at the 2005 session of the General Assembly. It is
32 specifically the intention of the General Assembly that the provisions of this Act control over
33 any conflicting provisions of SB 3 from the 2005 session of the General Assembly and that
34 new Code Section 51-1-29.5 be as provided in this Act rather than as provided in SB 3.

35 SECTION 3.

1 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
2 law without such approval.

3 (b) Code Section 51-1-29.5, as enacted by this Act, shall apply only with respect to causes
4 of action arising on or after the effective date of this Act, and any prior causes of action shall
5 continue to be governed by prior law.

6 **SECTION 4.**

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