The House Committee on Judiciary offers the following substitute to SB 34:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to uninsured motorist coverage under motor vehicle liability policies, so as to change provisions relating to the recovery when an insurer refuses to pay for a loss within 60 days after a demand has been made by the insured and a finding has been made that such refusal was made in bad faith; to amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions relative to torts, so as to revise the Good Samaritan law to provide for damaging property in emergency situations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to uninsured motorist coverage under motor vehicle liability policies, is amended by revising subsection (j) as follows:

"(j)(1) If the insurer shall refuse to pay any insured any loss covered by this Code section and the applicable automobile liability or motor vehicle liability policy within 60 days after a written demand has been made by the insured and a finding has been made that such refusal was made in bad faith, the insurer shall be liable to the insured in addition to any recovery under this Code section for not more than 25 percent of the recovery and all reasonable attorney's fees for the prosecution of the case under this Code section; for:

(A) Damages equal to the applicable policy limits or the principal balance of the judgment rendered against the uninsured motorist in the original tort action, whichever amount is less;

(B) If the fact finder determines that the insurer's refusal to pay the insured was made in bad faith, a penalty of $25,000.00 or 25 percent of the damages set forth in subparagraph (A) of this paragraph, whichever amount is greater; and
(C) Postjudgment interest on the damages provided in subparagraph (A) of this paragraph pursuant to Code Section 7-4-12 calculated from the date of entry of the judgment against the uninsured motorist in the original tort action.

(2) When an insured has prevailed on a claim pursuant to subparagraph (B) of paragraph (1) of this subsection, the court in its discretion may hold the insurer liable to the insured for reasonable attorney's fees and expenses of litigation for the prosecution of the case under this Code section that were incurred after the sixtieth day of the demand made by the insured.

(2) The amounts set forth in paragraph (1) of this subsection and the question of bad faith, the amount of the penalty, if any, and the reasonable attorney's fees, if any, shall be determined in a separate action filed by the insured against the insurer after a judgment has been rendered against the uninsured motorist in the original tort action. The attorney's fees shall be fixed on the basis of competent expert evidence as to the reasonable value of the services, based on the time spent and legal and factual issues involved, in accordance with prevailing fees in the locality where the action is pending. The trial court shall have the discretion, if it finds such jury verdict fixing attorney's fees to be greatly excessive or inadequate, to review and amend such portion of the verdict fixing attorney's fees without the necessity of disapproving the entire verdict. The limitations contained in this subsection in reference to the amount of attorney's fees are not controlling as to the fees which may be agreed upon by the plaintiff and his attorney for the services of the attorney in the action against the insurer.

(4) Payment of the amounts provided in paragraph (1) of this subsection shall fully discharge the insurer's obligations under the judgment entered against the uninsured motorist in the original tort action. Payment of the damages provided in subparagraph (A) of paragraph (1) of this subsection shall reduce the principal amount of such judgment. Payment of the postjudgment interest provided in subparagraph (C) of paragraph (1) of this subsection shall reduce the postjudgment interest owed on such judgment.

SECTION 2.

Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions relative to torts, is amended by revising Code Section 51-1-29, relating to liability of persons rendering emergency care, as follows:

(a) Any person, including any person licensed to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43 and including any person licensed to render services ancillary thereto, who in good faith renders emergency care at the scene of an accident or
emergency to the victim or victims thereof without making any charge therefor shall not be liable for any civil damages as a result of any act or omission by such person in rendering emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

(b) As used in this Code section, the term 'emergency care' shall include, but shall not be limited to, the rescue or attempted rescue of an incapacitated or endangered individual from a locked motor vehicle."

SECTION 3.

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