House Bill 166 (AS PASSED HOUSE AND SENATE)

By: Representatives Channell of the 116th, Keen of the 179th, Fleming of the 117th, Cooper of the 41st, Brown of the 69th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the care and protection of indigent and elderly patients, so as to enact the "'Health Share' Volunteers in Medicine Act"; to provide for a short title; to provide for legislative findings; to provide for definitions; to provide for the establishment of a program for health care services to low-income recipients; to provide for contracts between health care providers and governmental contractors; to provide for uncompensated health care services to low-income persons; to provide for notice requirements to patients; to provide for volunteers providing support services; to provide for applicability of benefits; to provide for a report on claim statistics; to provide for an annual report by the Department of Community Health to certain legislative officers; to provide for liability coverage for claims and defense of litigation; to provide for the establishment of rules and regulations; to provide for applicability; to amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to revise certain provisions relating to the "Georgia Volunteers in Health Care Specialties Act"; to revise certain provisions relating to the "Georgia Volunteers in Dentistry Act"; to revise certain provisions relating to the "Georgia Volunteers in Medicine Health Care Act"; to amend Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to state tort claims, so as to revise the definition of "state officer or employee"; to change certain provisions relating to trial of actions and limitations on amounts of damages; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the care and protection of indigent and elderly patients, is amended by adding at the end thereof a new Article 8 to read as follows:

″ARTICLE 8

31-8-190.

This article shall be known and may be cited as the '"Health Share" Volunteers in Medicine Act.'

31-8-191.

The General Assembly finds that a significant proportion of the residents of this state who are uninsured or Medicaid recipients are unable to access needed health care because health care providers fear the increased risk of medical negligence liability. It is the intent of the General Assembly that access to medical care for indigent residents be improved by providing governmental protection to health care providers who offer free quality medical services to underserved populations of the state. Therefore, it is the intent of the General Assembly to ensure that health care professionals who contract to provide such services as agents of the state are provided sovereign immunity.

31-8-192.

As used in this article, the term:

(1) 'Contract' means an agreement executed in compliance with this article between a health care provider and a governmental contractor. This contract shall allow the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. Payments made to a health care provider from the Indigent Care Trust Fund shall not constitute compensation under this Article.

(2) 'Department' means the Department of Community Health.

(3) 'Governmental contractor' means the department or its designee or designees.

(4) 'Health care provider' or 'provider' means:

(A) An ambulatory surgical center licensed under Article 1 of Chapter 7 of this title;

(B) A hospital or nursing home licensed under Article 1 of Chapter 7 of this title;

(C) A physician or physician assistant licensed under Article 2 of Chapter 34 of Title 43;

(D) An osteopathic physician or osteopathic physician assistant licensed under Article 2 of Chapter 34 of Title 43;

(E) A chiropractic physician licensed under Chapter 9 of Title 43;

(F) A podiatric physician licensed under Chapter 35 of Title 43;

(F.1) A physical therapist licensed under Chapter 33 of Title 43;

(G) A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under Chapter 26 of Title 43 or any facility which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all or part of the care delivered under this article;

(H) A midwife certified under Chapter 26 of this title;

(I) A health maintenance organization certificated under Chapter 21 of Title 33;

(J) A professional association, professional corporation, limited liability company, limited liability partnership, or other entity which provides or has members which provide health care services;

(K) Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment and which includes an office maintained by a provider;

(L) A dentist or dental hygienist licensed under Chapter 11 of Title 43; or

(M) Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs (C) through (H) of this paragraph.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under Section 501(c) of the Internal Revenue Code which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(5) 'Low-income' means:

(A) A person who is Medicaid eligible under the laws of this state;

(B) A person:

(i) Who is without health insurance; or

(ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget;

(C) A person:

(i) Who is without dental insurance; or

(ii) Who has dental insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

(D) Any client or beneficiary of the department or the Department of Human Resources who voluntarily chooses to participate in a program offered or approved by the department or the Department of Human Resources and meets the program eligibility guidelines of the department or the Department of Human Resources.

(6) 'Occasional-service volunteer' means a volunteer who provides one-time or occasional volunteer service.

(7) 'Regular-service volunteer' means a volunteer engaged in specific voluntary service activities on an ongoing or continuous basis.

(8) 'Volunteer' means any person who, of his or her own free will, provides goods or services in support of or in assistance to the program of health care services provided pursuant to this article to any governmental contractor, with no monetary or material compensation. This term shall not include a health care provider.

31-8-193.

(a) The department is authorized and directed to establish a program pursuant to this article to provide for health care services to low-income recipients. The department shall enter into contracts to effectuate the purposes of this article. The department shall make reasonable efforts to promote the program to ensure awareness and participation by low-income recipients. It is the intent of the General Assembly that this program be established as soon as is practicable after the effective date of this article and that the program be implemented state wide at the earliest possible date, subject to available funding.

(b) A health care provider that executes a contract with a governmental contractor to deliver health care services on or after July 1, 2005, as an agent of the governmental contractor shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50, while acting within the scope of duties pursuant to the contract, if the contract complies with the requirements of this article and regardless of whether the individual treated is later found to be ineligible. A health care provider acting under the terms of a contract with a governmental contractor may not be named as a defendant in any action arising out of the medical care or treatment provided on or after July 1, 2005, pursuant to contracts entered into under this article. The contract must provide that:

(1) The right of dismissal or termination of any health care provider delivering services pursuant to the contract is retained by the governmental contractor;

(2) The governmental contractor has access to the patient records of patients provided services pursuant to this article of any health care provider delivering services pursuant to the contract;

(3) Adverse incidents and information on treatment outcomes, as defined by the department and in accordance with the rules and regulations of the Department of Human Resources, must be reported by any health care provider to the governmental contractor if such incidents and information pertain to a patient treated pursuant to the contract. If an incident involves a licensed professional or a licensed facility, the governmental contractor shall submit such incident reports to the appropriate department, agency, or board, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities pursuant to this paragraph are confidential and exempt from the provisions of Article 4 of Chapter 18 of Title 50;

(4) The health care provider shall provide services to patients on a walk-in and referral basis, in accordance with the terms of the contract. The provider must accept all referred patients; provided, however, that the number of patients that must be accepted may be limited under the terms of the contract.

(5) The health care provider shall not provide services to a patient unless such patient has received and signed the notice required in Code Section 31-8-194; provided, however, in cases of emergency care, the patient´s legal representative shall be required to receive and sign the notice, or if such individual is unavailable, such patient shall receive and sign the notice within 48 hours after the patient has the mental capacity to consent to treatment.

(6) Patient care and health care services shall be provided in accordance with the terms of the contract and with rules and regulations as established by the department pursuant to this article. Experimental procedures and clinically unproven procedures shall not be provided or performed pursuant to this article. The governmental contractor may reserve the right to approve through written protocols any specialty care services and hospitalization, except emergency care as provided for in paragraph (5) of this subsection.

(7) The provider is subject to supervision and regular inspection by the governmental contractor.

(c) In order to enter into a contract under this Code section, a health care provider shall:

(1) Have a current valid Georgia health professional license;

(2) Not be under probation or suspension by the applicable licensing board or intermediate sanction by the Centers for Medicare and Medicaid Services for medicare or Medicaid violations; and

(3) Submit to a credentialing process to determine acceptability of participation.

(d) The provider shall not subcontract for the provision of services under this chapter.

(e) A contract entered into pursuant to this Code section shall be effective for all services provided by the health care provider pursuant to this chapter, without regard to when the services are performed.

31-8-194.

The governmental contractor or the health care provider if designated in the contract must provide written notice to each patient or the patient´s legal representative, receipt of which must be acknowledged in writing, that the provider is a state employee or officer for purposes of this article and that the exclusive remedy for injury or damage suffered as the result of any act or omission of a provider acting within the scope of duties pursuant to a contract is by commencement of an action pursuant to the provisions of Article 2 of Chapter 21 of Title 50 and that a remedy or remedies for injury or damage suffered as the result of any act or omission of a provider acting outside the scope of duties shall be as provided for under general tort law or other applicable law.

31-8-195.

(a) Every governmental contractor is authorized to recruit, train, and accept the services of volunteers, including regular-service volunteers and occasional-service volunteers in support of or in assistance to the program of health care services provided pursuant to this article to provide services, including but not limited to clerical, computer, and administrative support.

(b) Prior to providing any services, a volunteer shall enter into a written agreement with the governmental contractor in a form as prescribed by the department.

(c) Each governmental contractor utilizing the services of volunteers pursuant to this Code section shall:

(1) Take such actions as are necessary to ensure that volunteers understand their duties and responsibilities;

(2) Take such actions as are necessary to ensure that volunteers are made aware of and follow all applicable health and safety rules, regulations, and procedures;

(3) Take such actions as are necessary to ensure that volunteers are provided appropriate oversight and guidance in the performance of their volunteer service; and

(4) Ensure that each volunteer enters into a written agreement with the governmental contractor in accordance with subsection (b) of this Code section.

(d) A volunteer shall be considered a state employee or officer for purposes of Article 2 of Chapter 21 of Title 50 while performing services pursuant to and in accordance with this Code section.

31-8-196.

Health care providers and volunteers recruited, trained, or accepted under this article shall not be subject to any provisions of the laws of this state relating to state employment, collective bargaining, hours of work, rates of compensation, leave time, or employee benefits. However, all health care providers and volunteers shall comply with applicable department or agency rules and regulations. Health care providers who are individuals and volunteers shall be considered as unpaid independent volunteers and shall not be entitled to unemployment compensation.

31-8-197.

The Department of Administrative Services shall annually compile a report of all claims statistics which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this article. This report shall be forwarded to the department and included in the annual report submitted to the General Assembly pursuant to Code Section 31-8-198.

31-8-198.

Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of each house, and chairpersons of the House Health and Human Services Committee and the Senate Health and Human Services Committee, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-income persons pursuant to this article.

31-8-199.

The department shall be responsible for and shall pay such amounts as determined by the Department of Administrative Services for insurance premiums for liability coverage for the cost of claims and defense against litigation arising out of health care services delivered pursuant to this article. The department shall be responsible for submitting to the Department of Administrative Services all underwriting information requested by and all insurance premiums assessed by the Department of Administrative Services. The department shall annually report to the Department of Administrative Services the number and type of providers who have entered into a contract pursuant to this article.

31-8-200.

The department shall adopt rules and regulations to administer this article in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. All providers and volunteers shall be subject to such rules and regulations. The rules may include services to be provided and authorized procedures.

31-8-201.

This article applies to incidents occurring on or after July 1, 2005. Nothing in this article in any way reduces or limits the rights of the state or any of its agencies or subdivisions to any benefit currently provided under Article 2 of Chapter 21 of Title 50.″

SECTION 2.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by striking Code Section 43-1-28, relating to volunteers in health care specialties, and inserting in lieu thereof the following:

″43-1-28.

(a) This Code section shall be known and may be cited as the 'Georgia Volunteers in Health Care Specialties Act.'

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

(1) 'Health care board' means that professional licensing board which licenses a health care practitioner under this title.

(2) 'Health care practitioner' means a chiropractor, registered professional nurse, ~~or~~ podiatrist, optometrist, professional counselor, social worker, marriage and family therapist, occupational therapist, physical therapist, physician´s assistant, licensed practical nurse, or certified nurse midwife.

(3) 'Health care specialty' means the practice of chiropractic, nursing, ~~or~~ podiatry, optometry, professional counseling, social work, marriage and family therapy, occupational therapy, physical therapy, physician assistance, or midwifery.

(c) Notwithstanding any other provision of law, each health care board may issue a special license to qualifying health care practitioners whose health care specialty is licensed by that board under the terms and conditions set forth in this Code section. The special license may only be issued to a person who:

(1) Is currently licensed to practice the applicable health care specialty in any health care specialty licensing jurisdiction in the United States and whose license is in good standing; or

(2) Is retired from the practice of the health care specialty or, in the case of a physician´s assistant, has an inactive license and is not currently engaged in such practice either full time or part time and has, prior to retirement or attaining inactive status, maintained full licensure in good standing in the applicable health care specialty licensing jurisdiction in the United States.

(d) The special licensee shall be permitted to practice the health care specialty only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide health care specialty services only to indigent patients in areas which are underserved by that specialty or critical need population areas of the state, as determined by the board which licenses that specialty, or pursuant to Article 8 of Chapter 8 of Title 31.

(e) The person applying for the special license under this Code section shall submit to the appropriate health care board a copy of his or her health care specialty degree, a copy of his or her health care specialty license in his or her current or previous licensing and regulating jurisdiction, and a notarized statement from the employing agency, institution, corporation, ~~or~~ association, or health care program on a form prescribed by that board, whereby he or she agrees unequivocally not to receive compensation for any health care specialty services he or she may render while in possession of the special license.

(f) Examinations by the health care board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(g) If, at the time application is made for the special license, the health care practitioner is not in compliance with the continuing education requirements established by the health care board for the applicable health care specialty, the health care practitioner shall be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(h)(1) Except as provided for in paragraph (2) of this subsection, the ~~The~~ liability of persons practicing a health care specialty under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1, except that a podiatrist engaged in such practice and an employer thereof shall have the same immunity from liability as provided other health care practitioners under Code Section 51-1-29.1.

(2) The liability of persons practicing a health care specialty pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by the provisions of such article.

(i) This Code section, being in derogation of the common law, shall be strictly construed.″

SECTION 3.

Said title is further amended by striking Code Section 43-11-52, relating to volunteers in dentistry, and inserting in lieu thereof the following:

"43-11-52.

(a) This Code section shall be known and may be cited as the 'Georgia Volunteers in Dentistry and Dental Hygiene Act.'

(b) Notwithstanding any other provision of law, the board may issue a special license to qualifying dentists and dental hygienists under the terms and conditions set forth in this Code section and pursuant to requirements which may be set forth in the rules and regulations of the board. The special license may only be issued to a person who is retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full licensure in good standing in dentistry or dental hygiene in any state.

(c) The special licensee shall be permitted to practice dentistry or dental hygiene only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide dentistry or dental hygiene services only to indigent patients in areas which are underserved by dentists or dental hygienists or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31. The practice of dental hygiene by a dental hygienist awarded a special license under this Code section shall be governed by Code Section 43-11-74.

(d) The person applying for the special license under this Code section shall submit to the board a notarized statement from the employing agency, institution, corporation, ~~or~~ association, or health care program on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any dentistry or dental hygiene services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(f) If, at the time application is made for the special license, the dentist or dental hygienist is not in compliance with the continuing education requirements established by the board for dentists or dental hygienists in this state, the dentist or dental hygienist may be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the ~~The~~ liability of persons practicing dentistry or dental hygiene under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section shall be governed by the provisions of such article.

(h) This Code section, being in derogation of the common law, shall be strictly construed.

(i) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check."

SECTION 4.

Said title is further amended by striking Code Section 43-34-45.1, relating to special licenses for volunteers, and inserting in lieu thereof the following:

"43-34-45.1.

(a) This Code section shall be known and may be cited as the 'Georgia Volunteers in Medicine Health Care Act.'

(b) Notwithstanding any other provision of law, the board may issue a special license to qualifying physicians under the terms and conditions set forth in this Code section. The special license may only be issued to a person who:

(1) Is currently licensed to practice medicine in any medical-licensing jurisdiction in the United States and whose license is in good standing; or

(2) Is retired from the practice of medicine and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full licensure in good standing in any medical-licensing jurisdiction in the United States.

(c) The special licensee shall be permitted to practice medicine only in the noncompensated employ of public agencies or institutions or not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide medical services only to indigent patients in medically underserved or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31.

(d) The person applying for the special license under this Code section shall submit to the board a copy of his or her medical degree, a copy of his or her license in his or her current or previous licensing and regulating jurisdiction, and a notarized statement from the employing agency, institution, corporation, ~~or~~ association, or health care program, on a form prescribed by the board, whereby he or she agrees unequivocally not to receive

compensation for any medical services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees must be waived for the holder of the special license under this Code section and do not apply to such person.

(f) If at the time application is made for the special license the physician is not in compliance with the continuing medical education requirements established by the board, the physician shall be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the ~~The~~ liability of persons practicing medicine under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing medicine pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section and the liability of their employers shall be governed by the provisions of such article.

(h) Nothing contained in this Code section shall be construed to authorize the holder of the special license provided for in this Code section to perform surgery or any surgical procedure.

(i) This Code section, being in derogation of the common law, shall be strictly construed."

SECTION 5.

Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to state tort claims, is amended in Code Section 50-21-22, relating to definitions, by striking paragraph (7) in its entirety and inserting in lieu thereof the following:

"(7) 'State officer or employee' means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include

foster parents and foster children. ~~The~~ Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity."

SECTION 6.

Said article is further amended by striking Code Section 50-21-29, relating to trial of actions and limitations on amounts of damages, in its entirety and inserting in lieu thereof the following:

"50-21-29.

(a) Trial of tort actions against the state under this article shall be conducted by a judge with a jury; provided, however, the parties may agree that the same be tried by a judge without a jury.

(b)(1) Except as provided for in paragraph (2) of this subsection, in ~~In~~ any action or claim for damages brought under the provisions of this article, no person shall recover a sum exceeding $1 million because of loss arising from a single occurrence, regardless of the number of state government entities involved; and the state´s aggregate liability per occurrence shall not exceed $3 million. The existence of these caps on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

(2) In any action or claim for damages brought under the provisions of this article pursuant to Article 8 of Chapter 8 of Title 31, any caps specified under Code Section 51-13-1, notwithstanding any applicability limitations specified in such Code section, shall serve as a total cap of all damages, regardless of the type of damages claimed; provided, however, that in no event shall the state´s liability exceed the limits provided for in paragraph (1) of this subsection. The existence of this cap on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article."

SECTION 7.

This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act. This Act shall become effective when funds as appropriated become available for expenditure.

SECTION 8.

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