

The Senate Committee on Judiciary offered the following substitute to HB 1409:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to torts, so as to limit liability for mental health care providers
3 under certain circumstances; to provide for definitions; to limit liability for punitive damages;
4 to provide for applicability; to provide for legislative findings; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 The General Assembly finds that there presently exists a crisis affecting the provision and
9 quality of mental health care services in this state. Hospitals and other health care providers
10 in this state are having increasing difficulty in employing providers, in part due to liability
11 exposure. The result of this crisis is the potential for a diminution of the availability of
12 access to mental health care services and a resulting adverse impact on the health and
13 well-being of the citizens of this state.

SECTION 2.

Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions relative to torts, is amended by adding a new Code section to read as follows:

"51-1-29.7.

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

(1) 'Claimant' means a person, including a decedent's estate, who seeks or has sought recovery of damages under this Code section. 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) 'Inpatient' means:

(A) A person who is not an outpatient that has been admitted to a mental health care facility for a short-term or long-term stay:

(i) Due to being a substantial risk of harm to himself or herself or others, as manifested by either recent or past overt acts, or recent or past expressed threats, of violence which present a probability of physical injury to himself or herself or other persons;

(ii) For the treatment or rehabilitation of substance abuse requiring medically monitored detoxification; or

(iii) Due to being unable to care for his or her own physical health and safety so as to create a life-endangering crisis; or

(B) A person in foster care receiving mental health care rendered by a contracted provider of the Department of Human Services, including a child placement agency, and who is at risk of being admitted to or has previously been admitted to a mental health care facility for a short-term or long-term stay:

(i) Due to being a substantial risk of harm to himself or herself or others, as manifested by either recent or past overt acts, or recent or past expressed threats, of

violence which present a probability of physical injury to himself or herself or other persons;

(ii) For the treatment or rehabilitation of substance abuse requiring medically monitored detoxification; or

(iii) Due to being unable to care for his or her own physical health and safety so as to create a life-endangering crisis.

(3) 'Mental health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for an individual's mental or emotional illness, developmental disability, or addictive disease.

(4) 'Mental health care facility' means any psychiatric or substance abuse program, any contracted beds program that primarily serves at least 50 percent Georgia Medicaid and uninsured inpatient patients, any entity that contracts with the Department of Human Services to provide mental health care for foster children who are in the custody of the Department of Human Services and have been determined by the Department of Human Services to be in need of mental health care, or any entity primarily engaged in providing mental health care to inpatient patients; provided, however, that any such program or entity:

(A) Is open 365 days per year, seven days per week, and 24 hours per day; and

(B) Has or is covered by a hospital affiliation agreement with an acute care hospital within a reasonable distance from the facility or the medical staff at the facility have admitting privileges or other acceptable documented arrangements with such hospital to ensure the necessary backup for the facility for medical complications.

(5) 'Mental health care liability claim' means a cause of action against a mental health care provider for treatment, lack of treatment, or other claimed departure from accepted standards of mental health care to a claimant that is an inpatient and such departure from standards proximately results in injury to or death of a claimant while in a mental health care facility; provided, however, this term shall not be construed to include a cause of

action for injuries arising from criminal acts resulting from negligent hiring or retention by a mental health care facility.

(6) 'Mental health care professional' means any person administering mental health care who is licensed, certified, or otherwise authorized or permitted by law in this state to administer mental health care in the ordinary course of business or the practice of a profession, including, but not limited to:

(A) A clinical nurse specialist in psychiatric/mental health authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health;

(B) A clinical social worker authorized to practice under the laws of this state;

(C) A registered nurse, licensed practical nurse, nurse practitioner, physician assistant, mental health care aid or technician;

(D) A professional counselor authorized to practice under the laws of this state;

(E) A psychologist authorized to practice under the laws of this state;

(F) A psychiatrist authorized to practice under the laws of this state; and

(G) A foster care parent trained by a contracted child placement agency to coordinate mental health care services.

(7) 'Mental health care provider' means:

(A) A mental health care professional, or any person acting for any such professional directly related to providing mental health care;

(B) A mental health care facility; and

(C) Any person providing management or administrative services for:

(i) A mental health care professional; or

(ii) A mental health care facility.

(b) In an action involving a mental health care liability claim, no mental health care provider shall be held liable unless it is proven that the mental health care provider's actions showed gross negligence.

(c) In an action involving a mental health care liability claim, the court shall instruct the jury to consider, together with all other relevant matters:

(1) Whether the person providing mental health care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting mental health conditions or illnesses;

(2) The presence or lack of a preexisting mental health care provider-patient relationship;

(3) The circumstances constituting the provision of mental health care services; and

(4) The circumstances surrounding the delivery of the mental health care services.

(d) In an action involving a mental health care liability claim, no mental health care provider shall be held liable for punitive damages unless the claimant proves that the actions of such provider showed willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

(e) This Code section shall apply to causes of action arising on and after July 1, 2024."

SECTION 3.

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