

House Bill 1409

By: Representatives Leverett of the 123<sup>rd</sup>, Newton of the 127<sup>th</sup>, and Burns of the 159<sup>th</sup>

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.**

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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) '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, whether provided in a mental health care facility or, for individuals under the age of 21 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, provided in a mental health care entity, residence, or other location.

(3) 'Mental health care facility' means any psychiatric or substance abuse inpatient program or contracted beds that serves Medicaid and uninsured patients that:

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

(B) Has 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.

(4) '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, which departure from standards proximately results in injury to or death of a claimant.

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

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

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

49 (C) A marriage and family therapist authorized to practice under the laws of this state;

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

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

52 (F) A psychiatrist authorized to practice under the laws of this state.

53 (6) 'Mental health care provider' means:

54 (A) A mental health care professional, or any person acting for any such professional;

55 (B) A mental health care facility; and

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

57 (i) A mental health care professional; or

58 (ii) A mental health care facility.

59 (b) In an action involving a mental health care liability claim arising out of the provision  
60 of mental health care, no mental health care provider shall be held liable unless it is proven  
61 by clear and convincing evidence that the mental health care provider's actions showed  
62 gross negligence.

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

- 66 (1) Whether the person providing mental health care did or did not have the patient's  
67 medical history or was able or unable to obtain a full medical history, including the  
68 knowledge of preexisting mental health conditions or illnesses;  
69 (2) The presence or lack of a preexisting mental health care provider-patient relationship;  
70 (3) The circumstances constituting the provision of mental health care services; and  
71 (4) The circumstances surrounding the delivery of the mental health care services.  
72 (d) In an action involving a mental health care liability claim arising out of the provision  
73 of mental health care, no mental health care provider shall be held liable for punitive  
74 damages unless the claimant proves that the actions of such provider showed willful and  
75 wanton misconduct, reckless infliction of harm, or intentional infliction of harm.  
76 (e) This Code section shall apply to causes of action arising on and after July 1, 2024."

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**SECTION 3.**

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