

House Bill 1409 (RULES COMMITTEE SUBSTITUTE)

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.



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

43 (ii) For the treatment or rehabilitation of substance abuse due to being incapacitated  
44 by substance abuse; or

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

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

50 (4) 'Mental health care facility' means any psychiatric or substance abuse program or  
51 contracted beds program that primarily serves at least 50 percent Georgia Medicaid and  
52 uninsured inpatient patients, any entity that contracts with the Department of Human  
53 Services to provide mental health care for individuals under the age of 21 who are in the  
54 custody of the Department of Human Services and have been determined by the  
55 Department of Human Services to be in need of mental health care, or any entity  
56 primarily engaged in providing mental health care to inpatient patients; provided,  
57 however, that any such program or entity:

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

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

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

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

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

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

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

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

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

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

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

84 (7) 'Mental health care provider' means:

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

87 (B) A mental health care facility; and

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

89 (i) A mental health care professional; or

90 (ii) A mental health care facility.

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

- 94 (c) In an action involving a mental health care liability claim, the court shall instruct the  
95 jury to consider, together with all other relevant matters:
- 96 (1) Whether the person providing mental health care did or did not have the patient's  
97 medical history or was able or unable to obtain a full medical history, including the  
98 knowledge of preexisting mental health conditions or illnesses;
- 99 (2) The presence or lack of a preexisting mental health care provider-patient relationship;
- 100 (3) The circumstances constituting the provision of mental health care services; and
- 101 (4) The circumstances surrounding the delivery of the mental health care services.
- 102 (d) In an action involving a mental health care liability claim arising out of the provision  
103 of mental health care, no mental health care provider shall be held liable for punitive  
104 damages unless the claimant proves that the actions of such provider showed willful and  
105 wanton misconduct, reckless infliction of harm, or intentional infliction of harm.
- 106 (e) This Code section shall apply to causes of action arising on and after July 1, 2024."

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**SECTION 3.**

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