

The Senate Committee on Health and Human Services offered the following substitute to HB 920:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated,
2 relating to regulation of hospitals and related institutions, so as to restrict civil actions against
3 certain parties involved in nursing homes and intermediate care homes; to provide for
4 definitions; to provide for procedure; to provide for insurance or self-insurance trusts as a
5 condition precedent to obtaining or maintaining a permit to operate a nursing home or
6 intermediate care home; to provide for related matters; to provide for an effective date and
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Article 1 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to
11 regulation of hospitals and related institutions, is amended by adding two new Code sections
12 to read as follows:

13 "31-7-3.3.

14 (a) As used in this Code section, the term 'excluded party' means a person or entity that
15 neither performs, has the duty to perform, nor controls the performance of any of the
16 following functions at or on behalf of a nursing home or intermediate care home where
17 alleged injuries occurred:

18 (1) Providing management, operation, or administrative services for such home;

19 (2) Hiring or firing of the administrator, director of nursing, or other staff working at
20 such home;

21 (3) Setting or controlling the budget of such home;

22 (4) Staffing or determining the level of staff at such home;

23 (5) Providing direct care, treatment, or services to the residents of such home;

24 (6) Making decisions regarding the care, treatment, or services provided to residents at
25 such home; or

26 (7) Adopting, implementing, or enforcing the policies and procedures for such home.

27 (b) Except as otherwise provided by law, the mere ownership of an entity shall not, by
28 itself, create the duty to perform the functions listed in subsection (a) of this Code section.

29 (c) An excluded party shall not be named in a civil action that alleges their direct or
30 vicarious liability for the personal injury or death of one or more residents of a nursing
31 home or intermediate care home or a violation of residents' rights at such home under
32 Article 5 of Chapter 8 of this title.

33 (d) Any person or entity named as a defendant in a civil action or arbitration, who claims
34 to be an excluded party, may serve a notice of such claim upon the plaintiff. Such notice
35 shall be sent to counsel for the plaintiff by certified mail, return receipt requested, or, if the
36 plaintiff does not have an attorney, to the plaintiff personally via certified mail, return
37 receipt requested. Such notice shall be served after the discovery period begins under
38 applicable law for the case but not later than 30 days after such discovery period begins.

39 (e) If, after the expiration of 90 days from the date the notice described in subsection (d)
40 of this Code section is received, the plaintiff does not agree to a dismissal without prejudice
41 of such defendant claiming to be an excluded party, and:

42 (1) The court later determines that there is no genuine issue of material fact as to whether
43 such defendant is an excluded party, grants summary judgment to such defendant as to
44 this issue, and such order becomes final after any appeal; or

45 (2) If an arbitrator enters judgment for such defendant as to this issue and determines that
46 there was not a good faith basis in law and fact for the plaintiff's claim that such
47 defendant was not an excluded party and such order becomes final after any appeal,
48 then such finding by an arbitrator or final judgment by a court shall be deemed a finding
49 that the plaintiff's claim against such defendant was substantially frivolous, substantially
50 groundless, or substantially vexatious. Upon such a final judgment or finding, such
51 excluded party shall be entitled to an award of reasonable and necessary attorneys' fees and
52 expenses of litigation upon the filing of a motion. The court or arbitrator shall award only
53 such reasonable and necessary attorneys' fees and expenses of litigation as the court or
54 arbitrator determines were related to the defense of only such excluded party and not to the
55 defense of other defendants in such action, unless otherwise authorized by law. Such
56 attorneys' fees and expenses so awarded shall be assessed against the party asserting such
57 claim, or against such party's attorney, or against both in such manner as is just.

58 (f) In the event that the plaintiff prevails on any claim against a defendant claiming to be
59 an excluded party and if the court or an arbitrator determines that there was not a good faith
60 basis in law and fact for the defendant's claim that such defendant was an excluded party,
61 and such order becomes final after appeal, then such judgment by a court or arbitrator shall
62 be deemed a finding that the contention by such defendant that it was an excluded party
63 was substantially frivolous, substantially groundless, or substantially vexatious. Upon such

64 a final judgment or finding, the plaintiff shall be entitled to an award of reasonable and
 65 necessary attorneys' fees and expenses of litigation upon the filing of a motion. The court
 66 or arbitrator shall award only such reasonable and necessary attorneys' fees and expenses
 67 of litigation that were incurred in the pursuit of the action against the defendant claiming
 68 to be an excluded party, and the plaintiff shall not be entitled to an award of reasonable and
 69 necessary attorneys' fees and expenses of litigation that were incurred in the pursuit of the
 70 action against other defendants, unless otherwise authorized by law. Such attorneys' fees
 71 and expenses so awarded shall be assessed against the party asserting such claim, or against
 72 such party's attorney, or against both in such manner as is just.

73 (g) Notwithstanding Code Section 51-7-85, subsections (e) and (f) of this Code section
 74 shall be in addition to and shall not limit a party's right to pursue a recovery pursuant to
 75 Code Section 9-15-14 or Article 5 of Chapter 7 of Title 51.

76 (h) The time period set forth in subsection (e) of this Code section may be extended by
 77 agreement of the parties or by order of the court; provided, however, that if during such
 78 time period any party files a motion to stay the case or a motion to compel arbitration, such
 79 time period shall be extended for 30 days following the date the court rules on such motion;
 80 and provided, further, that if any party files a motion to compel discovery, such period shall
 81 be extended until 30 days following the date that the party complies with the court's order
 82 to produce discovery, whichever is later.

83 (i) A defendant which is a licensee shall not identify an excluded party as a potentially
 84 at-fault nonparty for purposes of apportionment under Code Section 51-12-33, unless such
 85 nonparty has entered into a settlement agreement with the plaintiff or claimant.

86 31-7-3.4.

87 (a) As used in this Code section, the term 'nursing home claim' means a claim alleging
 88 direct or vicarious liability for the personal injury or death of one or more residents of a
 89 nursing home or intermediate care home or a violation of residents' rights at such home
 90 under Article 5 of Chapter 8 of this title.

91 (b)(1) As a condition precedent to obtaining or maintaining a permit under this article
 92 to operate a nursing home or intermediate care home, a licensee shall carry or be covered
 93 by liability insurance coverages or establish or have established for its benefit a
 94 self-insurance trust for a nursing home claim.

95 (2) If a licensee fails to carry or be covered by liability insurance coverages or establish
 96 or have established for its benefit a self-insurance trust for a nursing home claim, the
 97 department shall provide notice to such licensee of its noncompliance and allow such
 98 licensee 60 days in which to comply. A licensee's failure to maintain such coverage or
 99 establish such trust shall result in the department:

100 (A) Revoking such licensee's permit issued pursuant to this article to operate the
101 nursing home or intermediate care home;
102 (B) Denying any application to renew such permit; and
103 (C) Denying any application for a change of ownership of the nursing home or
104 intermediate care home."

105 **SECTION 2.**

106 This Act shall become effective on July 1, 2016, and shall apply to any claim filed on or after
107 July 1, 2016.

108 **SECTION 3.**

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