

The Senate Committee on Health and Human Services offers the following substitute to HB 72:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16, Article 1 of Chapter 8 of Title 17, Chapter 5 of Title 30, and Title 31 of
2 the Official Code of Georgia Annotated, relating to crimes and offenses, general provisions
3 for trial, protection of disabled adults and elder persons, and health, respectively, so as to
4 expand and clarify protection of disabled adults and elder persons; to provide for and revise
5 definitions; to prohibit private causes of actions or civil remedies pursuant to provisions of
6 the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act"; to provide for
7 venue; to provide for abuse, neglect, and exploitation of disabled adults, elder persons, and
8 residents as a racketeering activity; to provide for priority scheduling of cases when the
9 alleged victim is a disabled adult or elder person; to change provisions relating to reporting
10 abuse, neglect, and exploitation of disabled adults and elder persons; to change provisions
11 relating to inspection of premises pursuant to inspection warrants; to repeal provisions
12 relating to exclusion of evidence obtained during the execution of an inspection warrant; to
13 amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
14 provisions relative to torts, so as to revise the Good Samaritan law to provide for damaging
15 property in emergency situations; to amend Code Section 16-3-20 of the Official Code of
16 Georgia Annotated, relating to justification, so as to cross-reference the Good Samaritan law;
17 to provide for related matters; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 PART I
20 SECTION 1-1.

21 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
22 amended in Code Section 16-5-100, relating to definitions for the protection of elder persons,
23 by adding a new paragraph to read as follows:

24 "(7.1) 'Mentally or physically incapacitated' means an impairment which substantially
25 affects an individual's ability to:

- 26 (A) Provide personal protection;
 27 (B) Provide necessities, including but not limited to food, shelter, clothing, medical,
 28 or other health care;
 29 (C) Carry out the activities of daily living; or
 30 (D) Manage his or her resources."

31 **SECTION 1-2.**

32 Said title is further amended by revising Code Section 16-5-103, relating to exceptions to
 33 criminal liability, as follows:

34 "16-5-103.

35 (a) An owner, officer, administrator, board member, employee, or agent of a long-term
 36 care facility shall not be held criminally liable for the actions of another person who is
 37 convicted pursuant to this article unless such owner, officer, administrator, board member,
 38 employee, or agent was a knowing and willful party to or conspirator to the abuse or
 39 neglect, as defined in Code Section 30-5-3, or exploitation of a disabled adult, elder person,
 40 or resident.

41 (b) A violation of this article shall not give rise to a private cause of action or civil
 42 remedies under subsection (b) or (c) of Code Section 16-14-6 against a long-term care
 43 facility or any owner, officer, employee, operator, or manager of such facility. Nothing in
 44 this subsection shall limit the criminal or civil remedies available to the state pursuant to
 45 state law."

46 **SECTION 1-3.**

47 Said title is further amended by revising Code Section 16-5-104, relating to applicability, and
 48 by adding a new Code section to read as follows:

49 "16-5-104.

50 For the purpose of venue under this article, any violation of this article shall be considered
 51 to have been committed:

- 52 (1) In any county in which any act was performed in furtherance of the violation; or
 53 (2) In any county in which any alleged victim resides.

54 16-5-105.

55 This article shall be cumulative and supplemental to any other law of this state."

56 **SECTION 1-4.**

57 Said title is further amended in subparagraph (A) of paragraph (9) of Code Section 16-14-3,
 58 relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt

59 Organizations Act)," by deleting "or" at the end of division (xl), by replacing the period with
60 "; or" at the end of division (xli), and by adding a new division to read as follows:

61 "(xlii) Article 8 of Chapter 5 of Title 16, relating to protection of elder persons."

62 **SECTION 1-5.**

63 Article 1 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to
64 general provisions for trial, is amended by revising Code Section 17-8-1, relating to cases to
65 be called in the order in which they stand on docket, as follows:

66 "17-8-1.

67 (a) The cases on the criminal docket shall be called in the order in which they stand on the
68 docket unless the ~~defendant~~ accused is in jail or, otherwise, in the sound discretion of the
69 court.

70 (b)(1) As used in this Code section, the terms 'disabled adult' and 'elder person' shall
71 have the same meaning as set forth in Code Section 16-5-100.

72 (2) When the alleged victim is a disabled adult or elder person, the prosecuting attorney
73 shall notify the accused if it intends to seek preferred scheduling. The notice shall be in
74 writing and shall:

75 (A) Allege the specific factor or factors that will inhibit a disabled adult from attending
76 or participating in court proceedings if he or she is a disabled adult; or

77 (B) State the age of the alleged victim if he or she is an elder person.

78 (3) When notice has been given pursuant to paragraph (2) of this subsection, the court
79 shall set a date for a hearing on the issue within 14 days after the filing of such notice.

80 The court shall consider the matter and if the court determines that preferred scheduling
81 is necessary, the trial shall not be:

82 (A) Subject to subsection (a) of this Code section; and

83 (B) Earlier than 30 days from the date of the hearing."

84 **SECTION 1-6.**

85 Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to protection of
86 disabled adults and elder persons, is amended by revising Code Section 30-5-3, relating to
87 definitions, as follows:

88 "30-5-3.

89 As used in this chapter, the term:

90 (1) 'Abuse' means the willful infliction of physical pain, physical injury, sexual abuse,
91 mental anguish, unreasonable confinement, or the willful deprivation of essential services
92 to a disabled adult or elder person.

- 93 (2) 'Caretaker' means a person who has the responsibility for the care of a disabled adult
 94 or elder person as a result of family relationship, contract, voluntary assumption of that
 95 responsibility, or by operation of law.
- 96 (3) 'Department' means the Department of Human Services.
- 97 (4) 'Director' means the director of the Division of Aging Services of the Department of
 98 Human Services, or the director's designee.
- 99 (5) 'Disabled adult' means a person 18 years of age or older who is not a resident ~~of a~~
 100 ~~long-term care facility, as defined in Article 4 of Chapter 8 of Title 31, but who is:~~
 101 (A) Is mentally or physically incapacitated or has;
 102 (B) Has Alzheimer's disease, as defined in Code Section 31-8-180, or dementia; or
 103 (C) Has dementia, as defined in Code Section 16-5-100.
- 104 (6) 'Elder person' means a person 65 years of age or older who is not a resident ~~of a~~
 105 ~~long-term care facility as defined in Article 4 of Chapter 8 of Title 31.~~
- 106 (7) 'Essential services' means social, medical, psychiatric, or legal services necessary to
 107 safeguard the disabled adult's or elder person's rights and resources and to maintain the
 108 physical and mental well-being of such person. These services shall include, but not be
 109 limited to, the provision of medical care for physical and mental health needs, assistance
 110 in personal hygiene, food, clothing, adequately heated and ventilated shelter, and
 111 protection from health and safety hazards but shall not include the taking into physical
 112 custody of a disabled adult or elder person without that person's consent.
- 113 (8) 'Exploitation' means the illegal or improper use of a disabled adult or elder person or
 114 that person's resources through undue influence, coercion, harassment, duress, deception,
 115 false representation, false pretense, or other similar means for one's own or another's
 116 profit or advantage.
- 117 (9) 'Fiduciary' shall have the same meaning as set forth in Code Section 7-1-4.
- 118 (10) 'Financial institution' shall have the same meaning as set forth in Code Section
 119 7-1-4.
- 120 (11) 'Investment company' means an individual or a corporation, a partnership, a limited
 121 liability corporation, a joint-stock company, a trust, a fund, or any organized group of
 122 persons whether incorporated that:
 123 (A) Is engaged or proposes to engage in the business of effecting transactions in
 124 securities;
 125 (B) Is engaged or proposes to engage in the business of issuing securities, or has been
 126 engaged in such business and has any certificates outstanding; or
 127 (C) Is engaged or holds itself out to be in the business of advising others, either directly
 128 or through publications or writings, as to the value of securities or the advisability of

129 investing in, purchasing, or selling securities or that, for compensation and as a part of
 130 a regular business, issues or promulgates analysis or reports concerning securities.

131 (12) 'Long-term care facility' shall have the same meaning as set forth in Code Section
 132 31-8-81.

133 (13) 'Mentally or physically incapacitated' means an impairment which substantially
 134 affects an individual's ability to:

135 (A) Provide personal protection;

136 (B) Provide necessities, including but not limited to food, shelter, clothing, medical,
 137 or other health care;

138 (C) Carry out the activities of daily living; or

139 (D) Manage his or her resources.

140 ~~(9)~~(14) 'Neglect' means the absence or omission of essential services to the degree that
 141 it harms or threatens with harm the physical or emotional health of a disabled adult or
 142 elder person.

143 ~~(10)~~(15) 'Protective services' means services necessary to protect a disabled adult or elder
 144 person from abuse, neglect, or exploitation. Such services shall include, but not be
 145 limited to, evaluation of the need for services and mobilization of essential services on
 146 behalf of a disabled adult or elder person.

147 (16) 'Resident' shall have the same meaning as set forth in Code Section 31-8-81.

148 (17) 'Security' shall have the same meaning as set forth in Code Section 10-5-2.

149 ~~(11)~~(18) 'Sexual abuse' means the coercion for the purpose of self-gratification by a
 150 guardian or other person supervising the welfare or having immediate charge, control, or
 151 custody of a disabled adult or elder person to engage in any of the following conduct:

152 (A) Lewd exhibition of the genitals or pubic area of any person;

153 (B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

154 (C) Condition of being fettered, bound, or otherwise physically restrained on the part
 155 of a person who is unclothed or partially clothed unless physical restraint is medically
 156 indicated;

157 (D) Physical contact in an act of sexual stimulation or gratification with any person's
 158 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

159 (E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

160 (F) Penetration of the vagina or rectum by any object except when done as part of a
 161 recognized medical or nursing procedure."

162 **SECTION 1-7.**

163 Said chapter is further amended by revising subparagraph (a)(1)(B) and subsections (b) and
 164 (c) of Code Section 30-5-4, relating to reporting of need for protective services, as follows:

165 "(B) Any employee of a financial institution, ~~as defined in Code Section 7-1-4, or~~
 166 investment company having reasonable cause to believe that a disabled adult or elder
 167 person has been exploited shall report or cause reports to be made in accordance with
 168 the provisions of this Code section; provided, however, that this obligation shall not
 169 apply to any employee of a financial institution or investment company while that
 170 employee is acting as a fiduciary, ~~as defined in Code Section 7-1-4~~, but only for such
 171 assets that the employee is holding or managing in a fiduciary capacity."

172 "(b)(1)(A) A report that a disabled adult or elder person ~~who is not a resident of a~~
 173 ~~long-term care facility as defined in Code Section 31-8-81~~ is in need of protective
 174 services or has been the victim of abuse, neglect, or exploitation shall be made to an
 175 adult protection agency providing protective services as designated by the department
 176 and to an appropriate law enforcement agency or prosecuting attorney. If a report of
 177 a disabled adult or elder person abuse, neglect, or exploitation is made to an adult
 178 protection agency or independently discovered by the agency, then the agency shall
 179 immediately ~~notify the appropriate law enforcement agency or prosecuting attorney~~
 180 make a reasonable determination based on available information as to whether the
 181 incident alleges actions by an individual, other than the disabled adult or elder person,
 182 that constitute a crime and include such information in their report. If a crime is
 183 suspected, the report shall immediately be forwarded to the appropriate law
 184 enforcement agency or prosecuting attorney. During an adult protective agency's
 185 investigation, it shall be under a continuing obligation to immediately report the
 186 discovery of any evidence that may constitute a crime.

187 (B) If the disabled adult or elder person is a resident of a long-term care facility as
 188 defined in Code Section 31-8-81 person is 65 years of age or older and is a resident, a
 189 report shall be made in accordance with Article 4 of Chapter 8 of Title 31. If a report
 190 made in accordance with the provisions of this Code section alleges that the abuse or
 191 exploitation occurred within a long-term care facility, such report shall be investigated
 192 in accordance with Articles 3 and 4 of Chapter 8 of Title 31.

193 (2) Reporting required by subparagraph (A)(1) of this subsection ~~The report~~ may be
 194 made by oral or written communication. Such ~~The~~ report shall include the name and
 195 address of the disabled adult or elder person and should include the name and address of
 196 the disabled adult's or elder person's caretaker, the age of the disabled adult or elder
 197 person, the nature and extent of the disabled adult's or elder person's injury or condition
 198 resulting from abuse, exploitation, or neglect, and other pertinent information.

199 (3) When a report of a disabled adult's or elder person's abuse, neglect, or exploitation
 200 is originally reported to ~~All such reports prepared by a law enforcement agency, it~~ shall

201 be forwarded by such agency to the director or his or her designee within 24 hours of
 202 receipt.

203 (c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial
 204 proceeding arising from the report, who provides protective services, or who participates
 205 in a required investigation under the provisions of this chapter shall be immune from any
 206 civil liability or criminal liability prosecution on account of such report or testimony or
 207 participation, unless such person acted in bad faith, with a malicious purpose, or was a
 208 party to such crime or fraud. Any financial institution, ~~as defined in Code Section 7-1-4~~
 209 or investment company, including without limitation officers and directors thereof, that is
 210 an employer of anyone who makes a report pursuant to this chapter in his or her capacity
 211 as an employee, or who testifies in any judicial proceeding arising from a report made in
 212 his or her capacity as an employee, or who participates in a required investigation under
 213 the provisions of this chapter in his or her capacity as an employee, shall be immune from
 214 any civil liability or criminal liability prosecution on account of such report or testimony
 215 or participation of its employee, unless such financial institution or investment company
 216 knew or should have known that the employee acted in bad faith or with a malicious
 217 purpose and failed to take reasonable and available measures to prevent such employee
 218 from acting in bad faith or with a malicious purpose. The immunity described in this
 219 subsection shall apply not only with respect to the acts of making a report, testifying in a
 220 judicial proceeding arising from a report, providing protective services, or participating in
 221 a required investigation but also shall apply with respect to the content of the information
 222 communicated in such acts."

223 **SECTION 1-8.**

224 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
 225 paragraph (2) of subsection (a) of Code Section 31-2-9, relating to record check requirements
 226 for certain facilities, as follows:

227 "(2) 'Crime' means commission of the following offenses:

- 228 (A) A violation of Code Section 16-5-1;
- 229 (B) A violation of Code Section 16-5-21, ~~relating to aggravated assault;~~
- 230 (C) A violation of Code Section 16-5-24, ~~relating to aggravated battery;~~
- 231 (D) A violation of Code Section 16-5-70, ~~relating to cruelty to children;~~
- 232 (E) A violation of Article 8 of Chapter 5 of Title 16;
- 233 (F) A violation of Code Section 16-6-1, ~~relating to rape;~~
- 234 (G) A violation of Code Section 16-6-2, ~~relating to aggravated sodomy;~~
- 235 (H) A violation of Code Section 16-6-4, ~~relating to child molestation;~~

- 236 (I) A violation of Code Section 16-6-5, ~~relating to enticing a child for indecent~~
 237 ~~purposes;~~
- 238 (J) A violation of Code Section 16-6-5.1, ~~relating to sexual assault against persons in~~
 239 ~~custody, detained persons, or patients in hospitals or other institutions;~~
- 240 (K) A violation of Code Section 16-6-22.2, ~~relating to aggravated sexual battery;~~
- 241 (L) A violation of Code Section 16-8-41;
- 242 (M) A felony violation of Code Section 31-7-12.1;
- 243 ~~(M)~~(N) Any other offense committed in another jurisdiction that, if committed in this
 244 state, would be deemed to be a crime listed in this paragraph without regard to its
 245 designation elsewhere; or
- 246 ~~(N)~~(O) Any other criminal offense as determined by the department and established
 247 by rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative
 248 Procedure Act,' that would indicate the unfitness of an individual to provide care to or
 249 be in contact with persons residing in a facility."

250 **SECTION 1-9.**

251 Said title is further amended by adding a new Code section to read as follows:

252 "31-2-13.

253 (a) As used in this Code section, the term 'commissioner' means the commissioner of
 254 community health or his or her designee.

255 (b) Nothing in this Code section shall be construed to require an inspection warrant when
 256 a warrantless inspection is authorized by law or pursuant to a rule or regulation enacted
 257 pursuant to this title.

258 (c) An inspection warrant is an order, in writing, signed by a judicial officer, directed to
 259 the commissioner or any person authorized to make inspections for such commissioner and
 260 commanding him or her to conduct an inspection required or authorized by:

261 (1) This title;

262 (2) Any other law administered by the commissioner;

263 (3) Rules or regulations promulgated pursuant to this title; or

264 (4) Rules or regulations promulgated pursuant to any other law administered by the
 265 commissioner.

266 (d) The commissioner or any person authorized to make inspections for such
 267 commissioner shall make application for an inspection warrant to a person who is a judicial
 268 officer within the meaning of Code Section 17-5-21.

269 (e)(1) An inspection warrant shall be issued only upon cause and when supported by an
 270 affidavit which:

- 271 (A) Particularly describes the place, dwelling, structure, premises, or vehicle to be
272 inspected;
- 273 (B) Particularly describes the purpose for which the inspection is to be made; and
274 (C) Contains either a statement that consent to inspect has been sought and refused or
275 facts or circumstances reasonably justifying the failure to seek such consent.
- 276 (2) Cause to support the issuance of an inspection warrant shall be deemed to exist if:
- 277 (A) Reasonable legislative or administrative standards for conducting a routine or area
278 inspection are satisfied with respect to the particular place, dwelling, structure,
279 premises, or vehicle; or
- 280 (B) There is reason to believe that a condition of nonconformity exists with respect to
281 the particular place, dwelling, structure, premises, or vehicle.
- 282 (f) An inspection warrant shall be effective for the time specified therein, but not for a
283 period of more than 14 days, unless extended or renewed by the judicial officer who signed
284 and issued the original warrant, upon satisfaction that such extension or renewal is in the
285 public interest. Such inspection warrant shall be executed and returned to the judicial
286 officer by whom it was issued within the time specified in such warrant or within the
287 extended or renewed time. After the expiration of such time, the inspection warrant, unless
288 executed, shall be void.
- 289 (g) An inspection pursuant to an inspection warrant:
- 290 (1) May be executed at any time as deemed appropriate by the individual executing such
291 warrant but whenever possible shall be made at any time during operating or regular
292 business hours;
- 293 (2) Should not be performed in the absence of an owner or occupant of the particular
294 place, dwelling, structure, premises, or vehicle being inspected unless specifically
295 authorized by the judicial officer upon a showing that such authority is reasonably
296 necessary to effectuate the purpose of the law, rule, or regulation being enforced; and
- 297 (3) Shall not be made by means of forcible entry, except that the judicial officer may
298 expressly authorize a forcible entry when facts are shown:
- 299 (A) Which are sufficient to create a reasonable suspicion of a violation of this title or
300 any other law, rule, or regulation administered by the commissioner or the department,
301 which, if such violation existed, would be an immediate threat to health or safety; or
- 302 (B) Establishing that a reasonable attempt to serve a previous inspection warrant has
303 been unsuccessful.
- 304 (h) When prior consent for an inspection has been sought and refused and an investigation
305 warrant has been issued, an inspection warrant may be executed without further notice to
306 the owner or occupant of the particular place, dwelling, structure, premises, or vehicle
307 being inspected.

308 (i) It shall be unlawful for any owner, operator, or employee of the particular place,
 309 dwelling, structure, premises, or vehicle being inspected to refuse to allow an inspection
 310 pursuant to an inspection warrant issued as provided in this Code section. Any person
 311 violating this Code section shall be guilty of a misdemeanor."

312 **SECTION 1-10.**

313 Chapter 5 of Title 31 of the Official Code of Georgia Annotated, relating to administration
 314 and enforcement, is amended by revising subsection (b) of Code Section 31-5-10, relating
 315 to notifying department or board of health of conditions on private property which are
 316 injurious to the public and inspection warrants, as follows:

317 "(b) Any person who knows or suspects that a condition exists on private property, which
 318 condition is injurious to the public health, safety, or comfort, shall immediately notify the
 319 ~~department~~ Department of Public Health or the county board of health. Upon receiving
 320 such notice, the department or the county board of health shall be authorized to obtain an
 321 inspection warrant as provided in Code Section 31-5-21. If the department or the county
 322 board of health determines that there exists a condition which is injurious to the public
 323 health, safety, or comfort, the department or county board of health shall, by registered or
 324 certified mail or statutory overnight delivery with return receipt requested, notify the
 325 occupants of the property and, if different from the occupant, the person, firm, or
 326 corporation which owns the property. Notice to the owner shall be sent to the address
 327 shown on the county or municipal property tax records."

328 **SECTION 1-11.**

329 Said title is further amended by revising Code Section 31-5-20, relating to "inspection
 330 warrant" defined, as follows:

331 "31-5-20.

332 As used in this ~~chapter~~ article, the term 'inspection warrant' means a warrant authorizing
 333 a search or inspection of private property where such a search or inspection is one that is
 334 necessary for the enforcement of any of the provisions of laws authorizing licensure,
 335 inspection, or regulation by the Department of Public Health or a local agency thereof ~~or~~
 336 ~~by the Department of Community Health."~~

337 **SECTION 1-12.**

338 Said title is further amended by revising Code Section 31-5-21, relating to persons who may
 339 obtain inspection warrants, as follows:

340 "31-5-21.

341 The commissioner ~~or the commissioner of community~~ of public health or his or her
 342 delegate or the director of any county board of health, in addition to other procedures now
 343 or hereafter provided, may obtain an inspection warrant under the conditions specified in
 344 this chapter. Such warrant shall authorize the commissioner ~~or the commissioner~~ of
 345 ~~community~~ public health or the director of any county board of health, or the agents of any,
 346 or the Department of Agriculture, as appropriate, to conduct a search or inspection of
 347 property, either with or without the consent of the person whose property is to be searched
 348 or inspected, if such search or inspection is one that is elsewhere authorized under the rules
 349 and regulations duly promulgated under this title or any provision of law which authorizes
 350 licensure, inspection, or regulation by the Department of Public Health or a local agency
 351 thereof ~~or by the Department of Community Health."~~

352 **SECTION 1-13.**

353 Said title is further amended by revising Code Section 31-5-24, relating to excluding
 354 evidence, as follows:

355 "~~31-5-24.~~

356 ~~No facts discovered or evidence obtained in an inspection conducted under authority of an~~
 357 ~~inspection warrant issued pursuant to this chapter shall be competent as evidence in any~~
 358 ~~criminal proceeding against any party."~~

359 **PART II**

360 **SECTION 2-1.**

361 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
 362 provisions relative to torts, is amended by revising Code Section 51-1-29, relating to liability
 363 of persons rendering emergency care, as follows:

364 "51-1-29.

365 (a) Any person, including any person licensed to practice medicine and surgery pursuant
 366 to Article 2 of Chapter 34 of Title 43 and ~~including~~ any person licensed to render services
 367 ancillary thereto, who in good faith renders emergency care at the scene of an accident or
 368 emergency to the ~~victim~~ or victims thereof without making any charge therefor shall not
 369 be liable for any civil damages as a result of any act or omission by such person in
 370 rendering emergency care or as a result of any act or failure to act to provide or arrange for
 371 further medical treatment or care for the injured person.

372 (b) As used in this Code section, the term 'emergency care' shall include, but shall not be
373 limited to, the rescue or attempted rescue of an incapacitated or endangered individual from
374 a locked motor vehicle."

375 **SECTION 2-2.**

376 Code Section 16-3-20 of the Official Code of Georgia Annotated, relating to justification,
377 is amended by revising paragraph (5) as follows:

378 "(5) When the person's conduct is justified for any other reason under the laws of this
379 state, including as provided in Code Section 51-1-29; or"

380 **PART III**

381 **SECTION 3-1.**

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