

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 274 Session of
2001

INTRODUCED BY FLICK, GODSHALL, E. Z. TAYLOR, BROWNE, ADOLPH, BARD, BARRAR, CAPPELLI, CLARK, CLYMER, CREIGHTON, CURRY, DAILEY, EGOLF, FAIRCHILD, FEESE, GEORGE, HERSHEY, LEH, MACKERETH, MANDERINO, MCGILL, S. MILLER, NAILOR, ROHRER, ROSS, RUBLEY, SATHER, SCHRODER, SEMMEL, SHANER, THOMAS, TRICH, WATSON, C. WILLIAMS, WOJNAROSKI, WRIGHT AND YOUNGBLOOD, AUGUST 20, 2001

REFERRED TO COMMITTEE ON JUDICIARY, AUGUST 20, 2001

A CONCURRENT RESOLUTION

1 Urging the Supreme Court of Pennsylvania to reinstate certain
2 provisions of Act 135 of 1996 amending the Health Care
3 Services Malpractice Act to provide for medical malpractice
4 tort reform.

5 WHEREAS, The General Assembly in cooperation with various
6 interest groups, including the Pennsylvania Medical Society and
7 the Pennsylvania Trial Lawyers Association, enacted Act 135 of
8 1996 to provide for tort reform in the area of medical
9 malpractice; and

10 WHEREAS, Act No. 135 of 1996 amended the Health Care Services
11 Malpractice Act by clarifying the physician's liability when the
12 patient has given informed consent to surgery or another health
13 care procedure; permitting the dismissal of a suit when the
14 physician files an affidavit demonstrating that the physician
15 was not involved in the care or treatment of the claimant;
16 revising pretrial procedures relating to complaints, discovery,

1 trial expert reports, mediation and pretrial conferences;
2 establishing sanctions for dilatory or frivolous motions, claims
3 or defenses; limiting punitive damages; allowing for the
4 periodic or installment payment of damages; and reporting
5 malpractice judgments or settlements to medical licensing
6 boards; and

7 WHEREAS, Section 10(c) of Article V of the Constitution of
8 Pennsylvania provides that "The Supreme Court shall have the
9 power to prescribe general rules governing practice, procedure
10 and the conduct of all courts" and that "All laws shall be
11 suspended to the extent that they are inconsistent with rules
12 prescribed under these provisions"; and

13 WHEREAS, On January 17, 1997, the Supreme Court of
14 Pennsylvania suspended all or parts of the provisions of Act 135
15 of 1996 relating to pretrial procedures, dilatory or frivolous
16 claims and punitive damages and directed the Civil Procedural
17 Rules Committee to recommend changes to the Pennsylvania Rules
18 of Civil Procedure that would replace the suspended provisions;
19 and

20 WHEREAS, Although the Supreme Court of Pennsylvania adopted
21 the recommended rule changes, the changes fell short of
22 providing the significant medical tort reform intended by the
23 General Assembly when it enacted Act 135 of 1996; and

24 WHEREAS, On February 9, 2001, the Senate Judiciary Committee
25 and the Senate Banking and Insurance Committee held a joint
26 public hearing to receive testimony on the affordability and
27 availability of medical malpractice insurance; and

28 WHEREAS, Health care providers testifying at the joint public
29 hearing termed the current situation "a crisis" and reported
30 that many physicians, most notably in specialties such as

1 neurosurgery, obstetrics, orthopedics and cardiology, find it
2 difficult to afford or even obtain medical malpractice
3 insurance; and

4 WHEREAS, Witnesses reported that some physicians have decided
5 not to perform surgery in order to reduce their malpractice
6 insurance premiums and other physicians are retiring early or
7 moving to other states; and

8 WHEREAS, This situation threatens to leave hospitals short-
9 staffed and patients without adequate health care; and

10 WHEREAS, Witnesses testified about the need for tort reform,
11 commenting that medical tort reform had been enacted but to a
12 large extent had been short-circuited by the Supreme Court of
13 Pennsylvania; therefore be it

14 RESOLVED (the Senate concurring), That the General Assembly
15 respectfully urge the Supreme Court of Pennsylvania to reinstate
16 the provisions of Act 135 of 1996 that reflect the medical
17 malpractice tort reform agreement reached by interest groups and
18 enacted by the General Assembly; and be it further

19 RESOLVED, That a copy of this resolution be transmitted to
20 the Supreme Court of Pennsylvania.