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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE RESOLUTION

No. 385      Session of  
2001

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INTRODUCED BY VANCE, PERZEL, S. H. SMITH, ARGALL, CORNELL,  
PHILLIPS, E. Z. TAYLOR, ADOLPH, ARMSTRONG, BARD, BARLEY,  
BARRAR, BASTIAN, BENNINGHOFF, BIRMELIN, BOYES, BROWNE, BUNT,  
CAPPELLI, CLARK, CLYMER, L. I. COHEN, COLEMAN, CREIGHTON,  
DAILEY, DALLY, DIGIROLAMO, EGOLF, J. EVANS, FAIRCHILD, FEESE,  
FICHTER, FLEAGLE, FLICK, FORCIER, GABIG, GANNON, GEIST,  
GODSHALL, GORDNER, HABAY, HARHART, HARPER, HASAY, HERMAN,  
HERSHEY, HESS, HUTCHINSON, JADLOWIEC, KENNEY, KREBS, LEH,  
LEWIS, LYNCH, MACKERETH, MAHER, MAITLAND, MAJOR, MARSICO,  
MCGILL, MCILHATTAN, MCILHINNEY, MCNAUGHTON, METCALFE,  
MICOZZIE, R. MILLER, S. MILLER, NAILOR, NICKOL, PICKETT,  
PIPPY, RAYMOND, REINARD, ROHRER, ROSS, RUBLEY, SATHER,  
SAYLOR, SCHRODER, SCHULER, SEMMEL, B. SMITH, STAIRS, STEIL,  
STERN, R. STEVENSON, STRITTMATTER, J. TAYLOR, TULLI, TURZAI,  
WATSON, WILT, WOGAN, ZIMMERMAN AND ZUG, DECEMBER 12, 2001

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REFERRED TO COMMITTEE ON RULES, DECEMBER 12, 2001

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## A 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

1 care procedure; permitting the dismissal of a suit when the  
2 physician files an affidavit demonstrating that the physician  
3 was not involved in the care or treatment of the claimant;  
4 revising pretrial procedures relating to complaints, discovery,  
5 trial expert reports, mediation and pretrial conferences;  
6 establishing sanctions for dilatory or frivolous motions, claims  
7 or defenses; limiting punitive damages; allowing for the  
8 periodic or installment payment of damages; and reporting  
9 malpractice judgments or settlements to medical licensing  
10 boards; and

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

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

24 WHEREAS, Although the Supreme Court of Pennsylvania adopted  
25 the recommended rule changes, the changes fell short of  
26 providing the significant medical tort reform intended by the  
27 General Assembly when it enacted Act 135 of 1996; and

28 WHEREAS, On February 9, 2001, the Senate Judiciary Committee  
29 and the Senate Banking and Insurance Committee held a joint  
30 public hearing to receive testimony on the affordability and

1 availability of medical malpractice insurance; and

2 WHEREAS, Health care providers testifying at the joint public  
3 hearing termed the current situation "a crisis" and reported  
4 that many physicians, most notably in specialties such as  
5 neurosurgery, obstetrics, orthopedics and cardiology, find it  
6 difficult to afford or even obtain medical malpractice  
7 insurance; and

8 WHEREAS, Witnesses reported that some physicians have decided  
9 not to perform surgery in order to reduce their malpractice  
10 insurance premiums and other physicians are retiring early or  
11 moving to other states; and

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

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

18 RESOLVED, That the House of Representatives respectfully urge  
19 the Supreme Court of Pennsylvania to reinstate the provisions of  
20 Act 135 of 1996 that reflect the medical malpractice tort reform  
21 agreement reached by interest groups and enacted by the General  
22 Assembly as soon as the Supreme Court convenes in January 2002;  
23 and be it further

24 RESOLVED, That a copy of this resolution be transmitted to  
25 each member of the Supreme Court of Pennsylvania.