

House Bill 973

By: Representatives Stuckey of the 67th, Bordeaux of the 151st, Davis of the 60th and Richardson of the 26th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated,
2 known as "The Georgia Tort Claims Act," so as to change certain provisions relating to
3 exceptions to state liability; to provide that the state may be liable for a tort committed in the
4 form of an assault or battery against a person less than 18 years of age or mentally retarded
5 or legally incompetent who is in the custody of the state and a resident of a state institution
6 or facility operated by the state if such tort is committed as a result of negligent performance
7 of duties by a state employee or officer in providing care or protection to such person; to
8 provide certain exceptions and limitations; to provide for applicability; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, known as "The
13 Georgia Tort Claims Act," is amended by striking in its entirety Code Section 50-21-24,
14 relating to exceptions to state liability, and inserting in lieu thereof a new Code Section
15 50-21-24 to read as follows:

16 "50-21-24.

17 (a) The state shall have no liability for losses resulting from:

18 (1) An act or omission by a state officer or employee exercising due care in the execution
19 of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule,
20 or ordinance is valid;

21 (2) The exercise or performance of or the failure to exercise or perform a discretionary
22 function or duty on the part of a state officer or employee, whether or not the discretion
23 involved is abused;

24 (3) The assessment or collection of any tax or the detention of any goods or merchandise
25 by any law enforcement officer;

26 (4) Legislative, judicial, quasi-judicial, or prosecutorial action or inaction;

1 (5) Administrative action or inaction of a legislative, quasi-legislative, judicial, or
2 quasi-judicial nature;

3 (6) Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the
4 method of providing, law enforcement, police, or fire protection;

5 (7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of
6 process, libel, slander, or interference with contractual rights, except as otherwise
7 provided in subsection (b) of this Code section;

8 (8) Inspection powers or functions, including failure to make an inspection or making
9 an inadequate or negligent inspection of any property other than property owned by the
10 state to determine whether the property complies with or violates any law, regulation,
11 code, or ordinance or contains a hazard to health or safety;

12 (9) Licensing powers or functions, including, but not limited to, the issuance, denial,
13 suspension, or revocation of or the failure or refusal to issue, deny, suspend, or revoke
14 any permit, license, certificate, approval, order, or similar authorization;

15 (10) The plan or design for construction of or improvement to highways, roads, streets,
16 bridges, or other public works where such plan or design is prepared in substantial
17 compliance with generally accepted engineering or design standards in effect at the time
18 of preparation of the plan or design;

19 (11) Financing regulatory activities, including, but not limited to, examinations,
20 inspections, audits, or other financial oversight activities;

21 (12) Activities of the Georgia National Guard when engaged in state or federal training
22 or duty, but this exception does not apply to vehicular accidents; or

23 (13) Any failure or malfunction occurring before December 31, 2005, which is caused
24 directly or indirectly by the failure of computer software or any device containing a
25 computer processor to accurately or properly recognize, calculate, display, sort, or
26 otherwise process dates or times, if the failure or malfunction causing the loss was
27 unforeseeable or if the failure or malfunction causing the loss was foreseeable but the
28 plan or design or both for identifying and preventing the failure or malfunction was
29 prepared in substantial compliance with generally accepted computer and information
30 system design standards in effect at the time of the preparation of the plan or design.

31 (b) The state may be liable for a tort committed in the form of an assault or battery against
32 a person less than 18 years of age or mentally retarded or legally incompetent who is in the
33 custody of the state and a resident of a state institution or facility operated by the state if
34 such tort is committed as a result of negligent performance of duties by a state employee
35 or officer in providing care or protection to such person; provided, however, that the state's
36 sovereign immunity is waived subject to all exceptions and limitations set forth in this
37 article."

SECTION 2.

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2 Said article is further amended by adding at the end of Code Section 50-21-27, relating to
3 retroactive operation, limitations of actions, and applicability of other related statutes, a new
4 subsection (f) to read as follows:

5 "(f) Subsection (b) of Code Section 50-21-24 shall apply to tort claims and causes of action
6 which accrue on or after July 1, 2001, and any tort action brought as authorized under
7 subsection (b) of Code Section 50-21-24 is forever barred unless it is commenced within
8 two years after the date the tort was or should have been discovered."

SECTION 3.

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