

Senate Bill 425

By: Senator Grant of the 25th

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Chapter 9 of Title 45 of the Official Code of Georgia Annotated, relating to  
 2 insuring and indemnification, so as to amend certain provisions pertaining to providing  
 3 insurance coverage by the commissioner of administrative services; to authorize the  
 4 Department of Administrative Services to establish incentive programs including differential  
 5 premium rates and deductibles based on loss histories of state agencies, institutions, and  
 6 authorities, and such entities' participation in loss control programs; to provide for  
 7 definitions; to repeal provisions relating to employee operation of state motor vehicles; to  
 8 amend Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the  
 9 Department of Administrative Services, so as to authorize the commissioner of  
 10 administrative services to establish incentive programs; to establish a return to work  
 11 program; to provide for premiums, deductibles, and penalties for state entities; to amend  
 12 Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to public property,  
 13 so as to authorize the Department of Administrative Services to establish incentive programs  
 14 including differential premium rates and deductibles based on loss histories of state agencies,  
 15 institutions, and authorities, and such entities' participation in loss control programs; to  
 16 amend Code Section 50-21-33, relating to liability insurance or self-insurance programs and  
 17 additional coverages, so as to authorize the Department of Administrative Services to  
 18 establish incentive programs including differential premium rates and deductibles based on  
 19 loss histories of state agencies, institutions, and authorities, and such entities' participation  
 20 in loss control programs; to provide for the deposit of funds collected from state entities; to  
 21 provide for related matters; to repeal conflicting laws; and for other purposes.

22 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

23 **SECTION 1.**

24 Chapter 9 of Title 45 of the Official Code of Georgia Annotated, relating to insuring and  
 25 indemnification, is amended by revising subsection (a) of Code Section 45-9-4, relating to

1 the commissioner of administrative services purchasing insurance or entering into indemnity  
2 contracts, as follows:

3 "(a) When the commissioner of administrative services determines that an adequate  
4 number of agencies, boards, bureaus, commissions, departments, or authorities of this state  
5 have requested the commissioner to do so, the commissioner shall have the authority to  
6 purchase policies of liability insurance, reinsurance, or contracts of indemnity insuring or  
7 indemnifying the officers, officials, or employees of such agencies, boards, bureaus,  
8 commissions, departments, or authorities against personal liability for damages arising out  
9 of the performance of their duties or in any way connected therewith, under a master policy  
10 or on a blanket coverage basis with or without deductibles or excess coverage. The  
11 commissioner may provide for endorsements for contractual liability and, where necessary  
12 or convenient to the public functions of the state, the commissioner may also provide for  
13 additional insureds. In such event, the commissioner may alternatively retain all moneys  
14 paid to the Department of Administrative Services as premiums on such policies of liability  
15 insurance or contracts of indemnity, all moneys received as interest, and all moneys  
16 received from other sources to set up and maintain a reserve fund for the payment of such  
17 liability under, and the expenses necessary to administer properly, a self-insurance  
18 program. If the commissioner decides to institute a self-insurance program, the  
19 commissioner shall establish and maintain a reserve fund for the payment of liabilities  
20 arising out of claims against officers, officials, and employees of the state and for any  
21 additional insureds. The commissioner shall also charge to state entities such premiums,  
22 deductibles, and other payments taking into account any direct appropriations as shall be  
23 necessary to maintain the soundness of the insurance or self-insurance programs  
24 established under this Code section. The commissioner is further authorized to establish  
25 incentive programs, including differential premium rates based on participation in loss  
26 control programs established by the department, increased or decreased deductibles based  
27 on participation in loss control programs established by the department, and the imposition  
28 of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the  
29 department is authorized to deduct any unpaid amounts from the nonpaying agency's or  
30 authority's budget subject to the approval of the Office of Planning and Budget and deposit  
31 those funds into the liability trust fund provided for in this Code section. Any amounts  
32 held by the commissioner which are available for investment shall be paid over to the  
33 Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal  
34 Services shall deposit such funds in a trust account for credit only to the self-insurance  
35 program. The director of the Office of Treasury and Fiscal Services shall invest these  
36 funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All  
37 income derived from such investments shall accrue to the self-insurance program. When

1 moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this  
 2 subsection, the commissioner shall submit an estimate of the date such funds shall no  
 3 longer be available for investment. When the commissioner wishes to withdraw funds  
 4 from the trust account provided for in this Code section, he or she shall submit a request  
 5 for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal  
 6 Services."

7 **SECTION 2.**

8 Said chapter is further amended by revising Code Section 45-9-4, relating to the  
 9 commissioner of administrative services purchasing insurance or entering into indemnity  
 10 contracts, by adding a new subsection as follows:

11 "(g) The policy of insurance provided for in this Code section may also provide liability  
 12 coverage to nonprofit agencies and their employees, which agencies have contracted with  
 13 the Department of Juvenile Justice, the Department of Transportation, or the Department  
 14 of Human Resources to furnish certain services; provided, however, that such liability  
 15 coverage shall be limited to damages arising out of the authorized use of a state-owned  
 16 vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an  
 17 employee of such nonprofit agency during the course of such person's employment with  
 18 such nonprofit agency and the cost of such insurance furnished to any such nonprofit  
 19 agency and its employees shall be allocated to and paid by such agency before any  
 20 coverage shall be effective. For the purpose of this Code section, 'nonprofit agency' means  
 21 any nonprofit or charitable organization, association, corporation, partnership, or other  
 22 entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code."

23 **SECTION 3.**

24 Said chapter is further amended by revising subsection (a) of Code Section 45-9-4.2, relating  
 25 to liability coverage for nonprofit agencies providing services to the mentally retarded, as  
 26 follows:

27 "(a) For the purposes of this Code section, the term 'nonprofit agency' means a nonprofit  
 28 or charitable organization, association, corporation, partnership, or other entity registered  
 29 pursuant to Section 501(c)(3) of the Internal Revenue Code."

30 **SECTION 4.**

31 Said chapter is further amended by repealing Article 3, relating to the operation of state  
 32 motor vehicles by employees, and designating said article as reserved.





1 commissioner. Fidelity bonds covering state officials and employees which are procured  
 2 pursuant to this paragraph shall expressly provide that all state officials and employees who  
 3 are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries  
 4 under the terms of the fidelity bond. Inclusion of any state official, officer, or employee  
 5 required by law or administrative directive to be specifically bonded in a master fidelity  
 6 bond under the terms of this part shall satisfy any statutory requirement that the official,  
 7 officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall  
 8 also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all  
 9 state officials and employees for any liability or expense of any nature resulting from a  
 10 claim on the state official's or employee's bonds which is due to or as a result of an act of  
 11 a subordinate of the state official or employee. In order to finance the continuing liability  
 12 established with other agencies of state government, the commissioner is authorized to  
 13 retain all moneys paid to the department as premiums on policies of insurance, all moneys  
 14 received as interest, and all moneys received from other sources to set up and maintain a  
 15 reserve for the payment of such liability and the expenses necessary to administer properly  
 16 the insurance program. The commissioner is further authorized to establish incentive  
 17 programs including differential premium rates based on participation in loss control  
 18 programs established by the department, increased or decreased deductibles based on  
 19 participation in loss control programs established by the department, and the imposition of  
 20 finances and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the  
 21 department is authorized to deduct any unpaid amounts from the nonpaying agency's or  
 22 authority's budget subject to the approval of the Office of Planning and Budget and deposit  
 23 those funds into the reserve fund provided for in this Code section. The commissioner  
 24 shall invest the moneys in the same manner as other such moneys in his or her possession;"

## 25 SECTION 9.

26 Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to public property,  
 27 is amended by revising Code Section 50-16-9, relating to the formulation of a self-insurance  
 28 plan for the state's properties, as follows:

29 "50-16-9.

30 (a) The Department of Administrative Services may formulate and initiate a plan of  
 31 self-insurance for the state's properties. The department shall cause:

- 32 (1) A complete appraisal to be made of all the state's insurable property as to value;
- 33 (2) A complete classification to be made of all the state's insurable property by type of  
 34 risk; and
- 35 (3) A determination and recommendation to be made of the amount and extent of  
 36 self-insurance which the state can assume, the necessary reserves needed, the minimum

1 claim to be paid on each risk, ~~and~~ the type of additional or excess insurance coverage that  
 2 may be required, the premiums to be charged, and any deductibles to be paid by state  
 3 agencies and authorities.

4 (b) The department is further authorized to establish incentive programs, including  
 5 differential premium rates based on participation in loss control programs established by  
 6 the department, increased or decreased deductibles based on participation in loss control  
 7 programs established by the department, and the imposition of fines and penalties. If any  
 8 premiums, deductibles, fines, or penalties are unpaid, the department is authorized to  
 9 deduct any unpaid amounts from the nonpaying agency's or authority's budget subject to  
 10 the approval of the Office of Planning and Budget and deposit those funds into the state  
 11 insurance and hazard reserve fund provided for in this chapter.

12 (c) Upon the formulation of a plan of self-insurance based on the foregoing determinations  
 13 made and submitted by the Department of Administrative Services, the Governor, by  
 14 executive order, may establish and effectuate a plan of self-insurance; and the General  
 15 Assembly from time to time shall provide and maintain by appropriation an insurance  
 16 reserve fund."

#### 17 SECTION 10.

18 Said chapter is further amended by repealing Code Section 50-16-10, relating to the  
 19 formulation of a self-insurance plan for public school buildings, and designating said Code  
 20 section as reserved.

#### 21 SECTION 11.

22 Said chapter is further amended by revising Code Section 50-16-11, relating to employment  
 23 of personnel to carry out self-insurance plans, as follows:

24 "50-16-11.

25 The Department of Administrative Services is authorized and empowered to employ, as a  
 26 regular member of its staff, ~~a person~~ persons with expert knowledge, training, and  
 27 experience in underwriting and planning and such other personnel, including temporary  
 28 professional insurance engineers and actuaries, as are necessary to carry out the details  
 29 provided in Code ~~Sections~~ Section 50-16-9 ~~and 50-16-10."~~

#### 30 SECTION 12.

31 Code Section 50-21-33, relating to liability insurance or self-insurance programs and  
 32 additional coverages, is amended by revising subsection (d) as follows:

33 "(d) The Department of Administrative Services shall establish and charge to state  
 34 government entities such premiums, deductibles, and other payments, taking into account

1 any direct appropriations as shall be necessary to maintain the soundness of the insurance  
2 or self-insurance programs established under this Code section. The premiums and  
3 deductibles charged to each state government entity may be established on such basis as  
4 the Department of Administrative Services shall deem appropriate and such basis may  
5 include the number of employees, the aggregate annual budget of the state government  
6 entity, and unique exposures, loss history, or claims pending against such state government  
7 entity. The department is further authorized to establish incentive programs including but  
8 not limited to differential premium rates based on participation in loss control programs  
9 established by the department, increased or decreased deductibles based on participation  
10 in loss control programs established by the department, and the imposition of fines and  
11 penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is  
12 authorized to deduct any unpaid amounts from the nonpaying agency's or authority's  
13 budget subject to the approval of the Office of Planning and Budget and deposit those  
14 funds into the State Tort Claims Trust Fund provided for in this Code section."

15 **SECTION 13.**

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