

Senate Bill 345

By: Senators Albers of the 56th, Grant of the 25th, Ligon, Jr. of the 3rd and Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 34, 38, 45, and 50 of the Official Code of Georgia Annotated, relating to
2 labor and industrial relations, to the military, emergency management, and veterans affairs,
3 to public officers and employees, and to state government, respectively, so as to eliminate
4 the licensing of nongovernmental rescue organizations, groups, teams, search and rescue dog
5 teams, and individuals by the director of the Georgia Emergency Management Agency; to
6 revise certain definitions; to define the term 'emergency management professional'; to revise
7 certain provisions relating to the establishment of, authorization for appropriation of moneys
8 to, and payments from Georgia State Indemnification Fund; to change certain provisions
9 relating to applications for indemnification; to revise certain provisions relating to state flags
10 to honor service of deceased; to provide for related matters; to provide an effective date; to
11 repeal conflicting laws; and for other purposes.

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

13 **SECTION 1.**

14 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
15 is amended by revising paragraph (2) of Code Section 34-9-1, relating to definitions relative
16 to workers' compensation, as follows:

17 "(2) 'Employee' means every person in the service of another under any contract of hire
18 or apprenticeship, written or implied, except a person whose employment is not in the
19 usual course of the trade, business, occupation, or profession of the employer; and, except
20 as otherwise provided in this chapter, minors are included even though working in
21 violation of any child labor law or other similar statute; provided, however, that nothing
22 contained in this chapter shall be construed as repealing or altering any such law or
23 statute. Any reference to any employee who has been injured shall, if the employee dies,
24 include such employee's legal representatives, dependents, and other persons to whom
25 compensation may be payable pursuant to this chapter. All firefighters, law enforcement
26 personnel, and personnel of emergency management or civil defense agencies, emergency

27 medical services, and rescue organizations whose compensation is paid by the state or
28 any county or municipality, regardless of the method of appointment, and all full-time
29 county employees and employees of elected salaried county officials are specifically
30 included in this definition. There shall also be included within such term any volunteer
31 firefighter of any county or municipality of this state, but ~~only for services rendered in~~
32 ~~such capacity which are not prohibited by Code Section 38-3-36~~ and only if the
33 governing authority of the county or municipality for which such services are rendered
34 shall provide by appropriate resolution for inclusion of such volunteer firefighters; any
35 volunteer law enforcement personnel of any county or municipality of this state who are
36 certified by the Georgia Peace Officer Standards and Training Council, for volunteer law
37 enforcement services rendered in such capacity, ~~which are not prohibited by Code~~
38 ~~Section 38-3-36~~ and but only if the governing authority of the county or municipality for
39 which such services are rendered shall provide by appropriate resolution for inclusion of
40 such volunteer law enforcement personnel; any person who is a volunteer member or
41 worker of an emergency management or civil defense organization, emergency medical
42 service, or rescue organization, whether governmental or not, of any county or
43 municipality of this state for volunteer services, ~~which are not prohibited by Code Section~~
44 ~~38-3-36, rendered in such capacity and~~ but only if the governing authority of the county
45 or municipality for which such services are rendered shall provide by appropriate
46 resolution for inclusion of such volunteer members or workers; and any person certified
47 by the Department of Public Health or the Georgia Composite Medical Board and
48 registered with any county or municipality of this state as a medical first responder for
49 any volunteer first responder services rendered in such capacity, ~~which are not prohibited~~
50 ~~by Code Section 38-3-36~~ and but only if the governing authority of the county or
51 municipality for which such services are rendered shall provide by appropriate resolution
52 for inclusion of such responders. The various elected county officers and elected
53 members of the governing authority of an individual county shall also be included in this
54 definition, if the governing authority of said county shall provide therefor by appropriate
55 resolution. For the purposes of workers' compensation coverage, employees of county
56 and district health agencies established under Chapter 3 of Title 31 are deemed and shall
57 be considered employees of the State of Georgia and employees of community service
58 boards established under Chapter 2 of Title 37 shall be considered to be employees of the
59 state. For the purpose of workers' compensation coverage, members of the Georgia
60 National Guard and the State Defense Force serving on state active duty pursuant to an
61 order by the Governor are deemed and shall be considered to be employees of this state.
62 A person shall be an independent contractor and not an employee if such person has a
63 written contract as an independent contractor and if such person buys a product and

64 resells it, receiving no other compensation, or provides an agricultural service or such
 65 person otherwise qualifies as an independent contractor. Notwithstanding the foregoing
 66 provisions of this paragraph, any officer of a corporation may elect to be exempt from
 67 coverage under this chapter by filing written certification of such election with the insurer
 68 or, if there is no insurer, the State Board of Workers' Compensation as provided in Code
 69 Section 34-9-2.1. For purposes of this chapter, an owner-operator as such term is defined
 70 in Code Section 40-2-87 shall be deemed to be an independent contractor. Inmates or
 71 persons participating in a work release program, community service program, or similar
 72 program as part of the punishment for violation of a municipal ordinance pursuant to
 73 Code Section 36-32-5 or a county ordinance or a state law shall not be deemed to be an
 74 employee while participating in work or training or while going to and from the work site
 75 or training site, unless such inmate or person is employed for private gain in violation of
 76 Code Section 42-1-5 or Code Section 42-8-70 or unless the municipality or county had
 77 voluntarily established a policy, on or before January 1, 1993, to provide workers'
 78 compensation benefits to such individuals."

79 **SECTION 2.**

80 Title 38 of the Official Code of Georgia Annotated, relating to the military, emergency
 81 management, and veterans affairs, is amended by revising Code Section 38-3-36, relating to
 82 licensing by the director of the Georgia Emergency Management Agency of
 83 nongovernmental rescue organizations, exceptions, and registration of public and private
 84 search and rescue dog teams, as follows:

85 "38-3-36.

86 ~~(a) Except as otherwise provided by subsection (b) of this Code section, all~~
 87 ~~nongovernmental rescue organizations, associations, groups, teams, search and rescue dog~~
 88 ~~teams, or individuals, whether or not they are holders of a charter issued by this state or~~
 89 ~~officers thereof, shall be prohibited from performing any rescue or emergency management~~
 90 ~~type activity until the organization, association, group, team, search and rescue dog team,~~
 91 ~~or individual has been licensed by the director of emergency management to perform the~~
 92 ~~activities. It is expressly declared that Articles 1 through 3 of this chapter shall not amend,~~
 93 ~~repeal, alter, or affect in any manner Code Section 51-1-29.~~

94 ~~(b) Any marine rescue squadron sponsored by and operating under the direction and~~
 95 ~~control of the sheriff of the county of residence of the squadron and chartered as a Marine~~
 96 ~~Rescue Squadron of America, which was so chartered on January 1, 1960, or prior to that~~
 97 ~~date, and which performs only water or boat safety rescue missions within this state, shall~~
 98 ~~be deemed to be a governmental rescue organization within the meaning of subsection (a)~~

99 of this Code section and need not be licensed by the director of emergency management
100 as provided in the subsection.

101 ~~(c) The director of emergency management shall promulgate rules and regulations for~~
102 ~~training and licensing standards for private search and rescue dog teams. The director shall~~
103 ~~maintain a registry of public and private search and rescue dog teams operating within the~~
104 ~~state. Any public or private organization which provides rescue services in this state~~
105 ~~utilizing search and rescue dog teams shall register with the director the name and address~~
106 ~~of the organization, a 24 hour telephone number to be used for contact during emergencies,~~
107 ~~the counties in which the search and rescue dog teams provide service, the types of~~
108 ~~specialized search and rescue dog teams which are available, and such other information~~
109 ~~as the director may require by rule and regulation Reserved."~~

110

SECTION 3.

111 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
112 is amended by revising Code Section 45-9-81, relating to definitions relative to the Georgia
113 State Indemnification Fund, as follows:

114 "45-9-81.

115 As used in this part, the term:

116 (1) 'Commission' means the Georgia State Indemnification Commission.

117 (2) 'Department' means the Department of Administrative Services.

118 (3) 'Emergency management professional' means any person employed as or serving
119 as an officially recognized or officially designated member of any municipal, county, or
120 state emergency management agency pursuant to Title 38.

121 ~~(3)~~(4) 'Emergency management rescue specialist' means any person licensed as an
122 emergency management rescue specialist pursuant to Code Section 38-3-36 on or before
123 June 30, 2012.

124 ~~(4)~~(5) 'Emergency medical technician' includes only persons who:

125 (A) Are certified as emergency medical technicians, paramedics, or cardiac technicians
126 under Chapter 11 of Title 31; and

127 (B) Are employed in the capacity for which they are so certified by a department,
128 agency, authority, or other instrumentality of state or local government.

129 ~~(5)~~(6)(A) 'Firefighter' means any person who is employed as a professional firefighter
130 on a full-time or part-time basis by any municipal, county, or state government fire
131 department employing three or more firefighters and who has the responsibility of
132 preventing and suppressing fires, protecting life and property, enforcing municipal,
133 county, and state fire prevention codes, enforcing any law pertaining to the prevention
134 and control of fires or who performs any acts or actions while on duty or when

135 responding to a fire or emergency during any fire or other emergency or while
 136 performing duties intended to protect life and property.

137 (B) 'Firefighter' shall also mean any individual serving as an officially recognized or
 138 designated member of a legally organized volunteer fire department, or any employee
 139 of the Georgia Forestry Commission whose job duties include fire mitigation, who
 140 performs any acts or actions while on duty or when responding to a fire or emergency
 141 during any fire or other emergency or while performing duties intended to protect life
 142 and property.

143 (C) 'Firefighter' shall also mean any individual employed by a person or corporation
 144 which has a contract with a municipal corporation or county to provide fire prevention
 145 and fire-fighting services to such municipal corporation or county and any such
 146 individual is employed on a full-time basis of at least 40 hours per week and has the
 147 responsibility of preventing and suppressing fires, protecting life and property,
 148 enforcing municipal or county fire prevention codes, enforcing any municipal or county
 149 ordinances pertaining to the prevention and control of fires or who performs any acts
 150 or actions while on duty or when responding to a fire or emergency during any fire or
 151 other emergency or while performing duties intended to protect life and property.

152 ~~(6)~~(7) 'In the line of duty' means:

153 (A) With respect to an emergency medical technician, ~~or an emergency management~~
 154 rescue specialist, or an emergency management professional, while on duty and when
 155 responding to or returning from an emergency or performing duties at the scene of an
 156 emergency or transporting a person to a medical facility for emergency treatment or
 157 returning therefrom;

158 (B) With respect to a volunteer firefighter, while on duty and when responding to or
 159 returning from a fire or other emergency or performing duties during any fire or other
 160 emergency or performing duties intended to protect life and property including, without
 161 limitation, actual participation in a training exercise;

162 (C) With respect to a law enforcement officer or firefighter, while on duty and
 163 performing services for and receiving compensation from the law enforcement and fire
 164 service agency which employs such officer or firefighter, while off duty when
 165 responding to any situation which would save a life or preserve the peace, or while
 166 preventing or attempting to prevent the commission of a crime or fire. A law
 167 enforcement officer or firefighter who is performing duties for and receiving
 168 compensation from a private employer at the time of such officer's or firefighter's death
 169 or bodily injury causing total permanent disability or partial permanent disability shall
 170 not be considered in the line of duty if the officer or firefighter is entitled to workers'
 171 compensation benefits from the private employer or the private employer's insurer;

172 (D) With respect to a prison guard, while on duty and performing services for and
 173 receiving compensation from the public agency which employs such prison guard; or
 174 (E) With respect to a state highway employee, while on duty and performing any work
 175 necessary for the construction, maintenance, or operation of a roadway on or within the
 176 public roads of the state as defined in paragraph (24) of Code Section 32-1-3 when such
 177 employee is killed or permanently disabled as the result of working under hazardous
 178 conditions in close proximity to moving traffic or equipment.

179 Such term shall not mean commuting to or from work or commuting to or from training.

180 ~~(7)~~(8) 'Law enforcement officer' means any agent or officer of this state, a political
 181 subdivision or municipality of this state, or an authority of this state or a political
 182 subdivision of this state who, as a full-time or part-time employee, is vested either
 183 expressly by law or by virtue of public employment or service with authority to enforce
 184 the criminal or traffic laws with the power of arrest and whose duties include the
 185 preservation of public order, the protection of life and property, or the prevention,
 186 detection, or investigation of crime. Such term also includes the employees designated
 187 by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant
 188 to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the
 189 duty to investigate and apprehend delinquent and unruly children who have escaped from
 190 a facility under the jurisdiction of the Department of Juvenile Justice or who have broken
 191 the conditions of supervision. Such term also includes members of the Georgia National
 192 Guard, the composition of which is set forth in Code Section 38-2-3, who have been
 193 called into active state service by the Governor.

194 ~~(8)~~(9) 'Organic brain damage' means direct physical trauma to the brain which so affects
 195 the mental capacity as to preclude function productively in any employment.

196 ~~(9)~~(10) 'Partial permanent disability' means disability due to:

197 (A) Loss of the use of one eye or blindness in one eye with only light perception;

198 (B) Loss of one hand;

199 (C) Loss of one leg; or

200 (D) Loss of a lower extremity or the residual effect of an organic disease or injury
 201 which so affects the functions of balance or propulsion as to preclude locomotion
 202 without the use of a wheelchair for all but very short distances.

203 ~~(10)~~(11) 'Prison guard' means any person employed by the state or any political
 204 subdivision thereof whose principal duties relate to the supervision and incarceration of
 205 persons accused or convicted of the violation of the criminal laws of this state or any
 206 political subdivision thereof. Such term shall also mean any probation supervisor or
 207 parole officer who is required to be certified under Chapter 8 of Title 35, the 'Georgia
 208 Peace Officer Standards and Training Act,' and whose principal duties directly relate to

209 the supervision of adult probationers or adult parolees. Such term also means any person
 210 employed by the state or any political subdivision thereof whose principal duties include
 211 the supervision of youth who are charged with or adjudicated for an act which if
 212 committed by adults would be considered a crime.

213 ~~(11)~~(12) 'State highway employee' means an employee of the Georgia Department of
 214 Transportation who receives compensation directly therefrom and regularly engages in
 215 duties necessary for the construction, maintenance, or operation of roadways on or within
 216 the public roads of this state as defined in paragraph (24) of Code Section 32-1-3.

217 ~~(12)~~(13) 'Total permanent disability' means disability due to:

- 218 (A) Loss of both eyes or blindness in both eyes with only light perception;
- 219 (B) Loss or loss of use of both hands;
- 220 (C) Loss or loss of use of both legs;
- 221 (D) Loss of a lower extremity or the residual effect of an organic disease or injury
 222 which so affects the functions of balance or propulsion as to preclude locomotion
 223 without resort to a wheelchair at all times; or
- 224 (E) Organic brain damage."

225 SECTION 4.

226 Said title is further amended by revising subsection (a) of Code Section 45-9-82, public
 227 officers and employees, as follows:

228 "(a) There is established a program to provide for indemnification with respect to the:

- 229 (1) Death of any law enforcement officer, firefighter, or prison guard who is or has been
 230 killed in the line of duty subsequent to January 1, 1973;
- 231 (2) Permanent disability of any law enforcement officer, firefighter, or prison guard who
 232 is or has been permanently disabled in the line of duty subsequent to January 1, 1973;
- 233 (3) Death or permanent disability of any emergency medical technician who is killed or
 234 permanently disabled or who has been killed or permanently disabled in the line of duty
 235 subsequent to January 1, 1977;
- 236 (4) Death or permanent disability of any emergency management rescue specialist who
 237 is killed or permanently disabled on or after January 1, 1991 but prior to July 1, 2012;
- 238 (5) Death or permanent disability of any emergency management professional who is
 239 killed or permanently disabled in the line of duty on or after July 1, 2012; and
- 240 ~~(5)~~(6) Death or permanent disability of any state highway employee who is killed or
 241 permanently disabled in the line of duty on or after January 1, 1990."

242 **SECTION 5.**

243 Said title is further amended by revising Code Section 45-9-84.2, relating to the Georgia
 244 State Indemnification Fund, authorization for appropriation of moneys to the fund, and
 245 money from other sources, as follows:

246 "45-9-84.2.

247 The General Assembly is authorized to appropriate funds to be placed in the Georgia State
 248 Indemnification Fund for the purpose of providing for indemnification with respect to the
 249 death or disability of any law enforcement officer, firefighter, or prison guard who is or has
 250 been killed or permanently disabled in the line of duty subsequent to January 1, 1973;~~;~~ the
 251 death or disability of any emergency medical technician who is killed or permanently
 252 disabled or has been killed or permanently disabled in the line of duty subsequent to
 253 January 1, 1977;~~;~~ the death or disability of any emergency management rescue specialist
 254 who is killed or permanently disabled on or after January 1, 1991, but prior to July 1, 2012;
 255 the death or disability of any emergency management professional who is killed or
 256 permanently disabled in the line of duty on or after July 1, 2012; and the death or disability
 257 of any state highway employee who is or has been killed or permanently disabled in the
 258 line of duty subsequent to January 1, 1990, as well as defraying the expenses and costs
 259 incurred by the department and the commission in the administration of this part. In
 260 addition, the department is authorized to accept for deposit in the Georgia State
 261 Indemnification Fund any other funds from any other source. All funds appropriated to the
 262 Georgia State Indemnification Fund shall be presumptively concluded to have been
 263 committed to the purpose for which they have been appropriated and shall not lapse."

264 **SECTION 6.**

265 Said title is further amended by revising Code Section 45-9-85, relating to payment of
 266 indemnification for death or disability, procedure for making of payments, and appeal, as
 267 follows:

268 "45-9-85.

269 (a) Indemnification shall be paid under this article as follows:

270 (1) In the case of a partial permanent disability suffered in the line of duty by a law
 271 enforcement officer, firefighter, emergency medical technician, emergency management
 272 rescue specialist, emergency management professional, state highway employee, or
 273 prison guard, the eligible disabled person may elect payment of \$35,000.00 paid in equal
 274 monthly installments for five years or a lump sum of such amount reduced to its present
 275 value upon the basis of interest calculated at the rate of 6 percent per annum;

276 (2) In the case of a total permanent disability suffered in the line of duty by a law
 277 enforcement officer, firefighter, emergency medical technician, emergency management

278 rescue specialist, emergency management professional, state highway employee, or
 279 prison guard, the injured person may elect to receive a payment of \$75,000.00 paid in
 280 equal monthly installments for five years or a lump sum of such amount reduced to its
 281 present value upon the basis of interest calculated at the rate of 6 percent per annum; or
 282 (3) In the case of death or organic brain damage suffered in the line of duty by a law
 283 enforcement officer, firefighter, emergency medical technician, emergency management
 284 rescue specialist, emergency management professional, state highway employee, or
 285 prison guard, payment shall be made to the surviving unremarried spouse or the
 286 dependents of the spouse or deceased person as shown in his or her most recent tax return
 287 or to the legal guardian of the organically brain damaged person. The surviving
 288 unremarried spouse, dependents, or the legal guardian may elect to receive payment in
 289 a lump sum payment of \$100,000.00 paid in equal monthly installments for five years or
 290 a lump sum of such amount reduced to its present value upon the basis of interest
 291 calculated at the rate of 6 percent per annum.

292 (b) After the department, or the commission upon review of a denial by the department,
 293 determines that a law enforcement officer, firefighter, emergency medical technician,
 294 emergency management rescue specialist, emergency management professional, prison
 295 guard, or state highway employee has suffered a total permanent disability, a partial
 296 permanent disability, organic brain damage, or death in the line of duty, the department
 297 shall be authorized to make the appropriate payments as provided in subsection (a) of this
 298 Code section.

299 (c) If the department denies a claim, any person seeking benefits pursuant to this part may
 300 appeal the department's decision to the commission. Any such appeal shall be filed with
 301 the commission within 60 days of receipt of the department's decision and shall identify
 302 the errors in the department's decision. Appeals shall be considered by the commission at
 303 the commission's semiannual meeting as provided in Code Section 45-9-84."

304 **SECTION 7.**

305 Said title is further amended by revising Code Section 45-9-86, relating to application for
 306 indemnification, as follows:

307 "45-9-86.

308 (a) An application for indemnification with respect to a claim for total permanent disability
 309 or partial permanent disability of a law enforcement officer, firefighter, prison guard,
 310 emergency medical technician, emergency management rescue specialist, emergency
 311 management professional, or state highway employee shall be submitted by that person
 312 unless the person is mentally incompetent, in which case the application may be made on
 313 such person's behalf by his or her legal guardian.

314 (b) An application for indemnification with respect to a claim for the death of a law
 315 enforcement officer, firefighter, prison guard, emergency medical technician, emergency
 316 management rescue specialist, emergency management professional, or state highway
 317 employee shall be submitted by or on behalf of the surviving unremarried spouse or
 318 dependents eligible under this part.

319 (c) An application for indemnification with respect to death, organic brain damage, total
 320 permanent disability, or partial permanent disability must be made within 24 months after
 321 the date of the incident giving rise to the death, organic brain damage, or disability."

322 **SECTION 8.**

323 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 324 by revising subsection (b) of Code Section 50-3-13, relating to state flags to honor service
 325 of deceased qualifying public safety officers, as follows:

326 "(b) For purposes of this Code section, a 'qualifying public safety officer' is a peace officer,
 327 as defined in Code Section 35-8-2, sheriff, or firefighter, emergency medical technician,
 328 ~~or~~ emergency management rescue specialist, or emergency management professional, as
 329 each is defined in Code Section 45-9-81, or member of the Georgia National Guard. In
 330 addition, 'qualifying public safety officer' is an officer killed in the line of duty or an officer
 331 who has served as a qualifying public safety officer for a period of not less than five years.
 332 A person committing or convicted of a felony or crime of moral turpitude or whose
 333 certification or license to practice as a public safety officer is revoked or terminated shall
 334 not be considered a 'qualifying public safety officer.'"

335 **SECTION 9.**

336 This Act shall become effective on July 1, 2012.

337 **SECTION 10.**

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