

House Bill 378

By: Representatives Hitchens of the 161<sup>st</sup>, Cheokas of the 138<sup>th</sup>, Tanner of the 9<sup>th</sup>, Wilkinson of the 52<sup>nd</sup>, Pruett of the 149<sup>th</sup>, and others

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 the 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 style="text-align:center">**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. Individuals who are parties to a franchise  
 79 agreement as set out by the Federal Trade Commission franchise disclosure rule, 16  
 80 C.F.R. 436.1 through 436.11, shall not be deemed employees for purposes of this  
 81 chapter."

82

## SECTION 2.

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

88 "38-3-36.

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

97 ~~(b) Any marine rescue squadron sponsored by and operating under the direction and~~  
 98 ~~control of the sheriff of the county of residence of the squadron and chartered as a Marine~~  
 99 ~~Rescue Squadron of America, which was so chartered on January 1, 1960, or prior to that~~

100 ~~date, and which performs only water or boat safety rescue missions within this state, shall~~  
 101 ~~be deemed to be a governmental rescue organization within the meaning of subsection (a)~~  
 102 ~~of this Code section and need not be licensed by the director of emergency management~~  
 103 ~~as provided in the subsection.~~

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

### 113 SECTION 3.

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

117 "45-9-81.

118 As used in this part, the term:

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

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

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

124 ~~(3)~~(4) 'Emergency management rescue specialist' means any person licensed as an  
 125 emergency management rescue specialist pursuant to former Code Section 38-3-36 on  
 126 or before June 30, 2013.

127 ~~(4)~~(5) 'Emergency medical technician' includes only persons who:

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

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

132 ~~(5)~~(6)(A) 'Firefighter' means any person who is employed as a professional firefighter  
 133 on a full-time or part-time basis by any municipal, county, or state government fire  
 134 department employing three or more firefighters and who has the responsibility of  
 135 preventing and suppressing fires, protecting life and property, enforcing municipal,

136 county, and state fire prevention codes, enforcing any law pertaining to the prevention  
 137 and control of fires or who performs any acts or actions while on duty or when  
 138 responding to a fire or emergency during any fire or other emergency or while  
 139 performing duties intended to protect life and property.

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

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

155 ~~(6)~~(7) 'In the line of duty' means:

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

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

165 (C) With respect to a law enforcement officer or firefighter, while on duty and  
 166 performing services for and receiving compensation from the law enforcement and fire  
 167 service agency which employs such officer or firefighter, while off duty when  
 168 responding to any situation which would save a life or preserve the peace, or while  
 169 preventing or attempting to prevent the commission of a crime or fire. A law  
 170 enforcement officer or firefighter who is performing duties for and receiving  
 171 compensation from a private employer at the time of such officer's or firefighter's death  
 172 or bodily injury causing total permanent disability or partial permanent disability shall

173 not be considered in the line of duty if the officer or firefighter is entitled to workers'  
 174 compensation benefits from the private employer or the private employer's insurer;  
 175 (D) With respect to a prison guard, while on duty and performing services for and  
 176 receiving compensation from the public agency which employs such prison guard; or  
 177 (E) With respect to a state highway employee, while on duty and performing any work  
 178 necessary for the construction, maintenance, or operation of a roadway on or within the  
 179 public roads of the state as defined in paragraph (24) of Code Section 32-1-3 when such  
 180 employee is killed or permanently disabled as the result of working under hazardous  
 181 conditions in close proximity to moving traffic or equipment.

182 Such term shall not mean commuting to or from work or commuting to or from training.  
 183 ~~(7)~~(8) 'Law enforcement officer' means any agent or officer of this state, a political  
 184 subdivision or municipality of this state, or an authority of this state or a political  
 185 subdivision of this state who, as a full-time or part-time employee, is vested either  
 186 expressly by law or by virtue of public employment or service with authority to enforce  
 187 the criminal or traffic laws with the power of arrest and whose duties include the  
 188 preservation of public order, the protection of life and property, or the prevention,  
 189 detection, or investigation of crime. Such term also includes the employees designated  
 190 by the commissioner of juvenile justice ~~of the Department of Juvenile Justice~~ pursuant  
 191 to paragraph (2) of subsection (i) of Code Section 49-4A-8, ~~which employees~~ who have  
 192 the duty to investigate and apprehend delinquent and unruly children who have escaped  
 193 from a facility under the jurisdiction of the Department of Juvenile Justice or who have  
 194 broken the conditions of supervision. Such term also includes members of the Georgia  
 195 National Guard, the composition of which is set forth in Code Section 38-2-3, who have  
 196 been called into active state service by the Governor.

197 ~~(8)~~(9) 'Organic brain damage' means direct physical trauma to the brain which so affects  
 198 the mental capacity as to preclude function productively in any employment.

199 ~~(9)~~(10) 'Partial permanent disability' means disability due to:

- 200 (A) Loss of the use of one eye or blindness in one eye with only light perception;
- 201 (B) Loss of one hand;
- 202 (C) Loss of one leg; or
- 203 (D) Loss of a lower extremity or the residual effect of an organic disease or injury  
 204 which so affects the functions of balance or propulsion as to preclude locomotion  
 205 without the use of a wheelchair for all but very short distances.

206 ~~(10)~~(11) 'Prison guard' means any person employed by the state or any political  
 207 subdivision thereof whose principal duties relate to the supervision and incarceration of  
 208 persons accused or convicted of the violation of the criminal laws of this state or any  
 209 political subdivision thereof. Such term shall also mean any probation supervisor or

210 parole officer who is required to be certified under Chapter 8 of Title 35, the 'Georgia  
 211 Peace Officer Standards and Training Act,' and whose principal duties directly relate to  
 212 the supervision of adult probationers or adult parolees. Such term also means any person  
 213 employed by the state or any political subdivision thereof whose principal duties include  
 214 the supervision of youth who are charged with or adjudicated for an act which if  
 215 committed by adults would be considered a crime.

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

220 ~~(12)~~(13) 'Total permanent disability' means disability due to:

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

#### 228 SECTION 4.

229 Said title is further amended by revising subsection (a) of Code Section 45-9-82, relating to  
 230 the establishment of an indemnification program, as follows:

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

- 232 (1) Death of any law enforcement officer, firefighter, or prison guard who is or has been  
 233 killed in the line of duty subsequent to January 1, 1973;
- 234 (2) Permanent disability of any law enforcement officer, firefighter, or prison guard who  
 235 is or has been permanently disabled in the line of duty subsequent to January 1, 1973;
- 236 (3) Death or permanent disability of any emergency medical technician who is killed or  
 237 permanently disabled or who has been killed or permanently disabled in the line of duty  
 238 subsequent to January 1, 1977;
- 239 (4) Death or permanent disability of any emergency management rescue specialist who  
 240 is killed or permanently disabled on or after January 1, 1991, but prior to July 1, 2013;
- 241 (5) Death or permanent disability of any emergency management professional who is  
 242 killed or permanently disabled in the line of duty on or after July 1, 2013; and
- 243 ~~(5)~~(6) Death or permanent disability of any state highway employee who is killed or  
 244 permanently disabled in the line of duty on or after January 1, 1990."

245 **SECTION 5.**

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

249 "45-9-84.2.

250 The General Assembly is authorized to appropriate funds to be placed in the Georgia State  
251 Indemnification Fund for the purpose of providing for indemnification with respect to the  
252 death or disability of any law enforcement officer, firefighter, or prison guard who is or has  
253 been killed or permanently disabled in the line of duty subsequent to January 1, 1973;~~;~~ the  
254 death or disability of any emergency medical technician who is killed or permanently  
255 disabled or has been killed or permanently disabled in the line of duty subsequent to  
256 January 1, 1977;~~;~~ the death or disability of any emergency management rescue specialist  
257 who is killed or permanently disabled on or after January 1, 1991, but prior to July 1, 2013;  
258 the death or disability of any emergency management professional who is killed or  
259 permanently disabled in the line of duty on or after July 1, 2013; and the death or disability  
260 of any state highway employee who is or has been killed or permanently disabled in the  
261 line of duty subsequent to January 1, 1990, as well as defraying the expenses and costs  
262 incurred by the department and the commission in the administration of this part. In  
263 addition, the department is authorized to accept for deposit in the Georgia State  
264 Indemnification Fund any other funds from any other source. All funds appropriated to the  
265 Georgia State Indemnification Fund shall be presumptively concluded to have been  
266 committed to the purpose for which they have been appropriated and shall not lapse."

267 **SECTION 6.**

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

271 "45-9-85.

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

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

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



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

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

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

### 307 **SECTION 7.**

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

310 "45-9-86.

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

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

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

325 **SECTION 8.**

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

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

338 **SECTION 9.**

339 This Act shall become effective on July 1, 2013.

340 **SECTION 10.**

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