

The Senate Committee on Judiciary offered the following substitute to HB 791:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 50, Part 1 of Article 3 of Chapter 3 of Title 23, and Code
2 Section 5-6-34 of the Official Code of Georgia Annotated, relating to waiver of sovereign
3 immunity as to actions ex contractu and state tort claims, conventional quia timet, and
4 judgments and rulings deemed directly appealable, respectively, so as to provide for a limited
5 waiver of sovereign immunity for declaratory or injunctive relief under certain
6 circumstances; to provide for definitions; to provide for exceptions; to provide for appeals;
7 to provide for related matters; to provide for an effective date and applicability; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 PART I
11 SECTION 1-1.

12 Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of
13 sovereign immunity as to actions ex contractu and state tort claims, is amended by adding
14 a new article to read as follows:

15 "ARTICLE 3

16 50-21-50.

17 As used in this article, the term:

18 (1) 'Governmental entity' means a department, agency, division, bureau, board,
19 commission, authority, office, association, or committee.

20 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
21 person who is:

22 (i) Elected to a state office;

23 (ii) Appointed to a state governmental entity; or

24 (iii) Employed by the state or a state governmental entity.

25 (B) Such term shall not include an independent contractor doing business with this
 26 state or a state governmental entity.

27 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

28 (4) 'Person' means an individual, corporation, partnership, firm, business trust,
 29 joint-stock company, association, syndicate, group, pool, joint venture, and any
 30 unincorporated association or group, but such term shall not include a county, municipal
 31 corporation, consolidated government, school district, hospital authority, housing or other
 32 local authority, or any other unit of local government.

33 (5) 'State' means the State of Georgia, but such term shall not include a county,
 34 municipal corporation, consolidated government, school district, hospital authority,
 35 housing or other local authority, or any other unit of local government.

36 (6) 'State mental health facility' shall have the same meaning as set forth in Code Section
 37 37-1-1.

38 (7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
 39 that is codified in this Code or has become law and will be codified in this Code.

40 (8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

41 50-21-51.

42 (a) If notice is provided in strict compliance with Code Section 50-21-54, sovereign
 43 immunity is hereby waived as to any claim that:

44 (1) Is brought by a person in the courts of this state against this state, a state
 45 governmental entity, or an officer or employee in his or her official capacity; and

46 (2) Seeks prospective declaratory or injunctive relief from the enforcement of a state
 47 statute on the basis that it violates the Constitution of Georgia.

48 (b) This Code section shall not waive sovereign immunity as to any claim:

49 (1) For which a state statute explicitly prohibits such waiver;

50 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
 51 Code Section 9-15-14;

52 (3) Challenging past conduct of this state, a state governmental entity, or an officer or
 53 employee;

54 (4) Seeking declaratory or injunctive relief related to a contract to which this state, a state
 55 governmental entity, or an officer or employee in his or her official capacity is a party;

56 (5) Alleging a violation of federal law;

57 (6) Brought in a court of the United States; or

58 (7) Brought by, or on behalf of, an individual in a penal institution or a state mental
 59 health facility.

60 50-21-52.

61 This article shall not:

- 62 (1) Create, imply, or otherwise provide a stand-alone private right of action;
 63 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;
 64 (3) Toll or extend any applicable period of limitations; or
 65 (4) Alter or amend any other legal requirement for filing a suit or obtaining relief,
 66 including, but not limited to, jurisdiction, standing, exhaustion of administrative or other
 67 remedies, notice requirements, and defenses to or limitations on the exercise of equitable
 68 jurisdiction.

69 50-21-53.

70 Any suit against the state, a state governmental entity, or an officer or employee that
 71 contains a claim that challenges a state statute on the basis that it violates the Constitution
 72 of Georgia shall name only the state, the state governmental entity that is charged with
 73 enforcing such statute, the officer or employee in his or her official capacity who is charged
 74 with enforcing such statute, or a combination thereof. If an officer or employee is named
 75 in such suit in his or her individual capacity, the court shall substitute as the party
 76 defendant such officer or employee in his or her official capacity.

77 50-21-54.

78 (a) Except as provided in Code Section 50-21-55, no suit against the state, a state
 79 governmental entity, or an officer or employee that contains a claim that challenges a state
 80 statute on the basis that it violates the Constitution of Georgia shall be commenced, and the
 81 courts of this state shall not have jurisdiction thereof, until 30 days after the date that a
 82 written notice is provided in strict compliance with this Code section.

83 (b) No person shall file a suit containing a claim that challenges a state statute on the basis
 84 that it violates the Constitution of Georgia without first giving written notice by:

85 (1) To the extent of the putative plaintiff's knowledge and belief, and as may be
 86 practicable under the circumstances, providing:

87 (A) Identification of the specific state statute being challenged;

88 (B) The name of the state governmental entity that is charged with enforcing the state
 89 statute being challenged or the officer or employee who is charged with enforcing such
 90 statute;

91 (C) The effective date of such statute being challenged; and

92 (D) The nature of the relief being sought;

93 (2) Providing such notice to the Attorney General by:

94 (A) Mailing it to the Attorney General by certified mail, return receipt requested;

95 (B) Sending it to the Attorney General by statutory overnight delivery; or
 96 (C) Delivering it personally to the Attorney General's designee in the State Law
 97 Department and obtaining a receipt of such delivery; and

98 (3) Using one of the methods identified in paragraph (2) of this subsection, providing a
 99 copy of such notice to the:

100 (A) State governmental entity that is charged with enforcing the state statute being
 101 challenged, if a claim is being made against such entity; and

102 (B) Officer or employee who is charged with enforcing the challenged state statute, if
 103 a claim is being made against such officer or employee.

104 (c) A state governmental entity shall designate an individual to whom notice shall be
 105 provided under paragraph (3) of subsection (b) of this Code section for claims made against
 106 such entity or against any officer or employee thereof and shall provide such information,
 107 orally or in writing, upon request.

108 (d) Providing notice pursuant to this Code section shall neither toll nor extend any
 109 applicable period of limitations.

110 (e) This Code section shall not apply to a claim seeking a declaratory judgment that a state
 111 statute violates the Constitution of Georgia when such claim arises in relation to a pending
 112 suit not against the state. In such circumstances, the party challenging the state statute shall
 113 comply with the notice requirement of subsection (c) of Code Section 9-4-7.

114 50-21-55.

115 (a) A court may shorten or waive the 30 day notice requirement set forth in subsection (a)
 116 of Code Section 50-21-54 if:

117 (1) An application for interlocutory injunction or temporary restraining order seeking to
 118 enjoin or restrain enforcement of a state statute on the basis that it violates the
 119 Constitution of Georgia is filed contemporaneously with a suit for which notice is
 120 required by Code Section 50-21-54; and

121 (2) It clearly appears from specific facts shown by affidavit or verified complaint that
 122 compliance with subsection (a) of Code Section 50-21-54 will result in irreparable harm
 123 to the applicant.

124 (b) When a court shortens or waives the notice requirement set forth in subsection (a) of
 125 Code Section 50-21-54, compliance with subsection (b) of Code Section 50-21-54 shall
 126 still be required.

127 50-21-56.

128 (a) Any suit for which notice has been provided under Code Section 50-21-54 shall be
 129 commenced no later than 90 days after such notice was provided to the Attorney General.

130 Failure to comply strictly with this subsection shall result in the court dismissing such suit
 131 without prejudice, either sua sponte or upon the state raising such issue by motion.
 132 (b) Any complaint or other legal document initiating a suit for which notice is required by
 133 Code Section 50-21-54 shall have attached thereto as exhibits a copy of such notice and a
 134 copy of the certified mail return receipt, statutory overnight delivery receipt, or receipt for
 135 personal delivery. Failure to attach such exhibits must be cured within 30 days of filing
 136 suit or shall result in the court dismissing such suit without prejudice, either sua sponte or
 137 upon the state raising such issue by motion.
 138 (c) A dismissal under this Code section shall not extend any applicable period of
 139 limitations."

140 **PART II**
 141 **SECTION 2-1.**

142 Part 1 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
 143 relating to conventional quia timet, is amended by revising Code Section 23-3-41, relating
 144 to when relief is granted and costs, as follows:

145 "23-3-41.

146 (a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate,
 147 if a proper case is made, the relief sought shall be granted to any complainant irrespective
 148 of whether the invalidity of the instrument sought to be canceled appears upon the face of
 149 the instrument or whether the invalidity appears or arises solely from facts outside of the
 150 instrument.

151 (b) ~~In~~ Except as provided in Code Section 23-3-45, in such cases the costs shall be taxed
 152 against the litigants in the discretion of the court."

153 **SECTION 2-2.**

154 Said part is further amended by adding two new Code sections to read as follows:

155 "23-3-45.

156 Sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party
 157 claim brought in the courts of this state by an aggrieved person seeking a declaratory
 158 judgment or injunctive relief under this part; provided, however, that sovereign immunity
 159 is not waived as to any claim for monetary relief, attorney's fees, or expenses of litigation
 160 that are included in or related to such claim, counterclaim, cross-claim, or third-party claim.

161 23-3-46.
 162 Notwithstanding any law to the contrary, a proceeding under this part involving title to
 163 property or an instrument held by the state or any department, agency, commission, board,
 164 authority, or entity thereof shall also be served on the Attorney General. When the
 165 Attorney General does not file a responsive pleading to an action filed pursuant to this part,
 166 the court shall accept this state's acquiescence to the petitioner's claim for declaratory
 167 judgment or injunctive relief."

168 **PART III**
 169 **SECTION 3-1.**

170 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 171 rulings deemed directly appealable, is amended in subsection (a) by deleting "and" at the end
 172 of paragraph (12), by replacing the period with "; and" at the end of paragraph (13), and by
 173 adding a new paragraph to read as follows:

174 "(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or
 175 more parties based upon sovereign, official, qualified, or any other immunity established
 176 by the Constitution of Georgia or laws of this state, when such party is a state
 177 governmental entity or an officer or employee, as such terms are defined in Code Section
 178 50-21-50."

179 **PART IV**
 180 **SECTION 4-1.**

181 This Act shall become effective upon its approval by the Governor or upon its becoming law
 182 without such approval and shall apply to all claims arising on or after such date.

183 **SECTION 4-2.**

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