

House Bill 1230

By: Representatives Kendrick of the 93rd, Boddie of the 62nd, Wilson of the 80th, Bazemore of the 63rd, Kennard of the 102nd, and others

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 relating to state tort claims, so as to remove certain immunities from the actions of certain
3 state officers or employees; to provide that certain state officers or employees shall be liable
4 when causing the deprivation of certain rights; to provide for questions of fact; to waive
5 sovereign immunity; to revise limitations on amounts of damages; to amend Title 36 of the
6 Official Code of Georgia Annotated, relating to local government, so as to provide that
7 certain local law enforcement officers may be subject to lawsuit or liability; to provide for
8 related matters; to provide for applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 PART I

12 SECTION 1-1.

13 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to
14 state tort claims, is amended by revising paragraphs (2), (4), and (7) of Code
15 Section 50-21-24, relating to exceptions to state liability, as follows:

16 ~~"(2) The exercise or performance of or the failure to exercise or perform a discretionary~~
17 ~~function or duty on the part of a state officer or employee, whether or not the discretion~~
18 ~~involved is abused Reserved;"~~

19 ~~"(4) Legislative, judicial, or quasi-judicial, or prosecutorial action or inaction;"~~

20 ~~"(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of~~
21 ~~process, libel Libel, slander, or interference with contractual rights;"~~

22 SECTION 1-2.

23 Said article is further amended by revising subsection (a) of Code Section 50-21-25, relating
24 to immunity of state officers or employees for acts within scope of official duties or

25 employment, officer or employee not named in action against state, and settlement or
 26 judgment, as follows:

27 "(a) This article constitutes the exclusive remedy for any tort committed by a state officer
 28 or employee. A state officer or employee who commits a tort while acting within the scope
 29 of his or her official duties or employment is not subject to lawsuit or liability therefor;
 30 provided, however, that a state officer or employee who is alleged to have acted grossly
 31 negligent or to have committed a violation of law while acting within the actual or
 32 reasonably perceived scope of his or her official duties or employment shall be subject to
 33 lawsuit or liability. However, nothing in this article shall be construed to give a state
 34 officer or employee immunity from suit and liability if it is proved that the officer's or
 35 employee's conduct was not within the scope of his or her official duties or employment."

36 SECTION 1-3.

37 Said article is further amended by adding a new Code section to read as follows:

38 "50-21-25.1.

39 (a) A state officer or employee who, under color of law, subjects or causes to be subjected
 40 any other person to the deprivation of any individual rights, privileges, or immunities
 41 secured by the Constitution or laws of this state or of the United States by, including, but
 42 not limited to, failing to intervene, shall be liable to the injured party for legal or equitable
 43 relief or any other appropriate relief.

44 (b) It shall be a question of fact for the jury whether such state officer or employee acted
 45 grossly negligent or committed a violation of law while acting within the actual or
 46 reasonably perceived scope of his or her official duties or employment.

47 (c)(1) No statutory immunities or immunities at law, including, but not limited to,
 48 qualified immunity, shall be a defense to liability pursuant to this Code section.

49 (2) It shall not be a defense or immunity to any action brought under this Code section
 50 that the defendant was acting in good faith, without malice, or that the defendant
 51 believed, reasonably or otherwise, that his or her conduct was lawful at the time
 52 committed nor shall it be a defense or immunity that the individual rights, privileges, or
 53 immunities secured by the Constitution or laws of this state or of the United States were
 54 not clearly established at the time of the deprivation by the defendant or that the state of
 55 law was otherwise such that the defendant could not reasonably have been expected to
 56 know whether his or her conduct was lawful.

57 (d) To the extent necessary for any actions to proceed under this Code section, the defense
 58 of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party
 59 claim brought in the courts of this state by an aggrieved person seeking legal or equitable

60 relief or any other appropriate relief, including, but not limited to, reasonable attorney fees,
 61 pursuant to this Code section."

62 **SECTION 1-4.**

63 Said article is further amended by revising paragraph (1) of subsection (b) of Code Section
 64 50-21-29, relating to trial of actions, limitations on amounts of damages, and caps to limit
 65 total damages regardless of the type claimed, as follows:

66 "(b)(1) Except as provided for in paragraph (2) of this subsection, in any action or claim
 67 for damages brought under the provisions of this article, no person shall recover a sum
 68 exceeding ~~\$1~~ \$5 million because of loss arising from a single occurrence, regardless of
 69 the number of state government entities involved; and the state's aggregate liability per
 70 occurrence shall not exceed ~~\$3~~ \$10 million. The existence of these caps on liability shall
 71 not be disclosed or suggested to the jury during the trial of any action brought under this
 72 article."

73 **PART II**

74 **SECTION 2-1.**

75 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 76 by adding a new chapter to read as follows:

77 "CHAPTER 92A

78 36-92A-1.

79 (a) As used in this Code section, the term 'law enforcement officer' means any agent or
 80 officer of a political subdivision or municipality of this state vested either expressly by law
 81 or by virtue of public employment or service with authority to enforce the criminal or
 82 traffic laws through the power of arrest and whose duties include the preservation of public
 83 order, the protection of life and property, or the prevention, detection, or investigation of
 84 crime.

85 (b) Notwithstanding any other provision of law, a law enforcement officer who, under
 86 color of law, subjects or causes to be subjected any other person to the deprivation of any
 87 individual rights secured by the Constitution of this state or the Constitution of the United
 88 States by, including, but not limited to, failing to intervene, shall be liable to the injured
 89 party for legal or equitable relief or any other appropriate relief.

90 (c) No statutory immunities or immunities at law, including, but not limited to, qualified
 91 immunity, shall be a defense to liability pursuant to this Code section.

92 (d) To the extent necessary for any actions to proceed under this Code section, the defense
93 of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party
94 claim brought in the courts of this state by an aggrieved person seeking legal or equitable
95 relief or any other appropriate relief, including, but not limited to, reasonable attorney fees,
96 pursuant to this Code section."

97 **PART III**
98 **SECTION 3-1.**

99 This Act shall apply to all causes of action that accrue on and after July 1, 2020.

100 **SECTION 3-2.**

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