

Senate Bill 397

By: Senators McLaurin of the 14th, Jones II of the 22nd, Jackson of the 41st, Orrock of the 36th, Sims of the 12th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to  
2 general provisions regarding torts, so as to provide for remedies for deprivation of  
3 constitutional rights of state citizens by civil immigration enforcement officers; to provide  
4 for definitions; to provide for a short title; to provide for related matters; to repeal conflicting  
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general  
9 provisions regarding torts, is amended by adding a new Code section to read as follows:

10 "51-1-58.

11 (a) As used in this Code section, the term:

12 (1) 'Crowd control equipment' means kinetic impact projectiles, compressed air  
13 launchers, such as PLS and FN303, oleoresin capsicum spray, CS gas, CN gas, or other  
14 chemical irritants, 40 millimeter munitions launchers, less-lethal shotguns, less-lethal  
15 specialty impact-chemical munitions, controlled noise and light distraction devices, and  
16 electronic control weapons.

17 (2) 'Facial covering' means a facial covering designed to protect against exposure to  
18 smoke during a state of emergency related to wildfires, or protective gear used by special  
19 weapons and tactics team officers necessary to protect their faces from harm while they  
20 perform their responsibilities, but does not include medical grade masks designed to  
21 prevent the transmission of diseases.

22 (3) 'Prevailing party' means any individual:

23 (A) Who obtains some of his or her requested relief through a judicial judgment in his  
24 or her favor;

25 (B) Who obtains some of his or her requested relief through any settlement agreement  
26 approved by a court of competent jurisdiction; or

27 (C) Whose pursuit of a nonfrivolous claim was a catalyst for a unilateral change in  
28 position by the opposing party relative to the relief sought.

29 (b) Any resident of this state, other than an officer or employee of a state or local  
30 governmental entity in this state, may bring a civil action against any person who, while  
31 participating in civil immigration enforcement, knowingly engages in conduct that violates  
32 the United States Constitution or the Constitution of this state.

33 (c) All monetary, injunctive, and declaratory relief available at common law is available  
34 under this Code section for a violation of this Code section without regard to whether a  
35 plaintiff may have a claim under any other statute or common law cause of action. If a  
36 plaintiff seeks punitive damages against a defendant who committed a violation of this  
37 Code section while acting under color of law, the following shall be factors in determining  
38 the reprehensibility of the defendant's conduct whether:

39 (1) The defendant wore a facial covering while committing the violation;

40 (2) At the time of the violation, the defendant was a law enforcement officer who failed  
41 to identify or disclose that he or she was a law enforcement officer either verbally or by  
42 wearing identifying insignia, such as a badge, agency logo, or patch, or by providing his  
43 or her name, badge or identification number, and the employing agency or department;

44 (3) At the time of the violation, the defendant was a law enforcement officer who was  
45 required by state or federal law or regulation or agency policy to wear and use an  
46 officer-worn body camera during the type of activity that gave rise to the deprivation of  
47 rights and failed to do so;

48 (4) The defendant was operating or using a motor vehicle without a license plate;

49 (5) The defendant used crowd control equipment at the time of the violation; or

50 (6) The defendant intentionally violated or failed to comply with any material term or  
51 condition of a court order or consent decree that was issued by a court that applied to the  
52 person acting under color of law, and that was issued or entered into in part to address or  
53 prevent future violations of this Code section relating to the conduct complained of.

54 (d) Upon motion, a court shall award reasonable attorney's fees and costs, including expert  
55 witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any  
56 action brought under this Code section. In awarding reasonable attorney's fees, the court  
57 shall consider the degree to which the relief obtained relates to the relief sought."

58

## SECTION 2.

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