

House Bill 1395

By: Representative Bell of the 75th

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 immunities from certain actions of law
3 enforcement officers; to provide that officers alleged to have committed misconduct or a
4 violation of law while acting within the scope of official duties shall be subject to lawsuit or
5 liability; to provide for a definition; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to
10 state tort claims, is amended in Code Section 50-21-24, relating to exceptions to state
11 liability, by revising paragraph (7) as follows:

12 "(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of
13 process, libel, slander, or interference with contractual rights, except where such acts are
14 committed by a state officer or employee who is a law enforcement officer and as
15 otherwise provided for in Code Section 50-21-25.1;"

H. B. 1395

- 1 -

SECTION 2.

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17 Said article is further amended in Code Section 50-21-25, relating to immunity of state
18 officers or employees for acts within scope of official duties or employment, officer or
19 employee not named in action against state, and settlement or judgment, by revising
20 subsection (a) as follows:

21 "(a) This article constitutes the exclusive remedy for any tort committed by a state officer
22 or employee. A state officer or employee who commits a tort while acting within the scope
23 of his or her official duties or employment is not subject to lawsuit or liability therefor;
24 provided, however, that, when such state officer or employee is a law enforcement officer
25 who is alleged to have committed misconduct or a violation of law while acting within the
26 scope of his or her official duties or employment, he or she shall be subject to lawsuit or
27 liability therefor. However, nothing in this article shall be construed to give a state officer
28 or employee immunity from suit and liability if it is proved that the officer's or employee's
29 conduct was not within the scope of his or her official duties or employment. As used in
30 this subsection, the term 'law enforcement officer' shall have the same meaning as set forth
31 in Code Section 50-21-25.1."

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SECTION 3.

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

34 "50-21-25.1.

35 (a) As used in this Code section, the term 'law enforcement officer' means any agent or
36 officer of this state or a political subdivision, municipality, authority, college, or university
37 thereof who, as a full-time or part-time employee, is vested either expressly by law or by
38 virtue of public employment or service with the authority to enforce criminal or traffic laws
39 through the power of arrest and whose duties include the preservation of public order, the
40 protection of life and property, or the prevention, detection, or investigation of crime.

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

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

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

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SECTION 4.

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