

House Bill 69

By: Representatives Kendrick of the 93rd, Boddie of the 62nd, McLaurin of the 51st, Hutchinson of the 107th, and Schofield of the 60th

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 a definition; to provide for related matters; to provide for applicability; to repeal conflicting
9 laws; and for other 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:

H. B. 69

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 the
52 negligent action or violation of the law was committed, nor shall it be a defense or
53 immunity that the individual rights, privileges, or immunities secured by the Constitution
54 or laws of this state or of the United States were not clearly established at the time of such
55 defendant's actions or that the state of law was otherwise such that the defendant could
56 not reasonably have been expected to 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, 2021.

100 **SECTION 3-2.**

101 All laws and parts of laws in conflict with this Act are repealed.