

House Bill 791

By: Representatives Efration of the 104th, Rogers of the 10th, Rhodes of the 120th, Coomer of the 14th, Willard of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to
2 waiver of sovereign immunity as to actions ex contractu and state tort claims, so as to
3 provide for a limited waiver of the state's sovereign immunity for declaratory or injunctive
4 relief under certain circumstances; to provide for definitions; to provide for exceptions; to
5 provide for immunity of state officers and employees in their individual capacity; to provide
6 for notice of a claim; to provide for related matters; to provide for an effective date and
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 "ARTICLE 3

14 50-21-50.

15 As used in this article, the term:

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

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

20 (i) Elected to a state office;

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

22 (iii) Pursuant to a written or oral contract, employed by the state or a state
23 governmental entity.

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

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

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

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

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

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

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

40 50-21-51.

41 (a) If notice is provided in strict compliance with Code Section 50-21-55, sovereign
 42 immunity is hereby waived as to any claim that:

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

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

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

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

49 (2) For monetary relief, attorney's fees, or expenses of litigation;

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

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

54 (5) Alleging a violation of federal law;

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

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

58 50-21-52.

59 This article shall not:

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

67 50-21-53.

68 (a) An officer or employee shall not be subject to a suit in his or her individual capacity
 69 for performance or nonperformance of his or her official duties.

70 (b) The immunity conferred by subsection (a) of this Code section shall:

- 71 (1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory,
 72 or injunctive relief, unless such suit against such officer or employee in his or her
 73 individual capacity is expressly authorized by state statute or federal law; and
 74 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
 75 was ultra vires, unconstitutional, or illegal.

76 50-21-54.

77 Any suit containing a claim that challenges a state statute on the basis that it violates the
 78 Constitution of Georgia shall name only the state, a state governmental entity that is
 79 charged with enforcing such statute, an officer or employee in his or her official capacity
 80 who is charged with enforcing such statute, or a combination thereof. If an officer or
 81 employee is named in such suit in his or her individual capacity, the court shall substitute
 82 as the party defendant such officer or employee in his or her official capacity.

83 50-21-55.

84 (a) No suit containing a claim that challenges a state statute on the basis that it violates the
 85 Constitution of Georgia shall be commenced, and the courts of this state shall not have
 86 jurisdiction thereof, until 30 days after the date that a written notice is provided in strict
 87 compliance with this Code section.

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

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

- 92 (A) Identification of the specific state statute being challenged;
 93 (B) The name of the state governmental entity that is charged with enforcing the state
 94 statute being challenged or the officer or employee who is charged with enforcing such
 95 statute;
 96 (C) The effective date of such statute being challenged; and
 97 (D) The nature of the relief being sought;
 98 (2) Providing such notice to the Attorney General by:
 99 (A) Mailing it to the Attorney General by certified mail, return receipt requested;
 100 (B) Sending it to the Attorney General by statutory overnight delivery; or
 101 (C) Delivering it personally to the Attorney General's designee in the State Law
 102 Department and obtaining a receipt of such delivery; and
 103 (3) Using one of the methods identified in paragraph (2) of this subsection, providing a
 104 copy of such notice to the:
 105 (A) State governmental entity that is charged with enforcing the state statute being
 106 challenged, if a claim is being made against such entity; and
 107 (B) Officer or employee who is charged with enforcing the challenged state statute, if
 108 a claim is being made against such officer or employee.
 109 (c) A state governmental entity shall designate an individual to whom notice shall be
 110 provided under paragraph (3) of subsection (b) of this Code section for claims made against
 111 such entity or against any officer or employee thereof and shall provide such information,
 112 orally or in writing, upon request.
 113 (d) Providing notice pursuant to this Code section shall neither toll nor extend any
 114 applicable period of limitations.
- 115 50-21-56.
 116 (a) Any suit for which notice has been provided under Code Section 50-21-55 shall be
 117 commenced no later than 90 days after such notice was provided to the Attorney General.
 118 Failure to comply strictly with this subsection shall result in the court dismissing such suit
 119 without prejudice, either sua sponte or upon the state raising such issue by motion.
 120 (b) Any complaint or other legal document initiating a suit for which notice is required by
 121 Code Section 50-21-55 shall have attached thereto as exhibits a copy of such notice and a
 122 copy of the certified mail return receipt, statutory overnight delivery receipt, or receipt for
 123 personal delivery. Failure to attach such exhibits must be cured within 30 days of filing
 124 suit or shall result in the court dismissing such suit without prejudice, either sua sponte or
 125 upon the state raising such issue by motion.
 126 (c) A dismissal under this Code section shall not extend any applicable period of
 127 limitations."

128 **SECTION 2.**

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

131 **SECTION 3.**

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