

December 2014

Employment Security and State Government HB 714

Georgia State University Law Review

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Georgia State University Law Review, *Employment Security and State Government HB 714*, 31 GA. ST. U. L. REV. (2014).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol31/iss1/9>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

LABOR AND INDUSTRIAL RELATIONS

Employment Security and State Government: Amend Chapter 8 of Title 34 and Title 50 of the Official Code of Georgia Annotated, Relating to Employment Security and State Government, Respectively, so as to Change Certain Provisions, Processes, and Procedures Affecting Unemployment Insurance and Benefits; to Change Certain Provisions Relating to the Disposition of Fines, Penalties, and Interest Collected; to Change Certain Provisions Relating to Regular Benefits Paid to be Charged Against Experience Rating Account; to Change Certain Provisions Relating to Benefit Claims; to Provide Changes to the Determination of Eligibility for Unemployment Benefits of Certain Persons Performing Certain Services; to Provide for Definitions; to Change Certain Provisions Relating to Review of a Decision of a Hearing Officer by the Board of Review; to Change Certain Provisions Relating to Procedures for Judicial Review; to Change Certain Provisions Relating to the Process of Issuing, Quashing, Modifying, or Withdrawing Subpoenas; to Change Certain Provisions Relating to Overpayments of Benefits; to Change the Penalty Amount Added to an Overpayment as a Result of a False Statement or Misrepresentation; to Change Certain Provisions Relating to Hearings of the Department of Labor Relative to Unemployment Benefits or Overpayment of Unemployment Benefits; to Provide for Related Matters; to Provide for an Effective Date; to Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 34-8-92, -157, -193, -196, -221, -223, -253, -254, -255, (amended); 50-13-2 (amended)

BILL NUMBER: HB 714

ACT NUMBER: 625

GEORGIA LAWS: 2014 Ga. Laws 730

SUMMARY: The Act denies eligibility for unemployment benefits to certain workers who are employed by private companies to provide services to educational institutions. It further

restricts eligibility for workers who are enrolled in approved job training programs. The Act also aligns the Georgia unemployment laws with federal standards.

EFFECTIVE DATE: January 1, 2015

History

The federal-state unemployment compensation program, which was created as part of the Social Security Act of 1935, is designed to assist temporarily unemployed workers by replacing a portion of their lost wages while they seek new employment.¹ Although federal grants provide base funding, each state provides most of its program's resources, establishes its program's eligibility requirements through legislation, and retains administrative authority over their programs with minimal federal oversight.² Employers provide most of the state's unemployment insurance resources through taxes paid under state unemployment insurance systems.³ In 2008, realizing that unemployment is a "serious menace to the health, morals, and welfare" of its citizens, the legislature created an unemployment trust fund for the benefit of qualifying unemployed workers.⁴

To qualify for benefits, applicants must be involuntarily unemployed and cannot have been dismissed for failing to follow rules, obey instructions, or perform job-related duties.⁵ Additionally, the worker must be available to work and actively seek employment during each week in which he files a claim.⁶ Three categories of workers are statutorily excluded from eligibility: 1) workers employed in educational institutions who are on regularly scheduled breaks between terms or established vacation periods; 2) professional athletes between seasons; and 3) alien workers with undocumented

1. Chad Stone & Willam Chen, *Introduction to Unemployment Insurance*, CTR. ON BUDGET & POLICY PRIORITIES (July 30, 2013), http://www.cbpp.org/cms/index.cfm?fa=view&id=1466#_ftnref2.

2. *Id.*

3. O.C.G.A. § 34-8-150(a) (2008 & Supp. 2014).

4. O.C.G.A. § 34-8-2 (2008).

5. O.C.G.A. § 34-8-194(1), (2)(A) (2008).

6. O.C.G.A. § 34-8-195(a)(3)(A) (2008).

status.⁷ By passing House Bill (HB) 714 in 2014, the legislature amended those categorical exclusions to include workers “who perform[] services to, for, with, or on behalf of any educational institution, regardless of whether such person is engaged to perform such services by the educational institution or through an educational service contractor” and who are contracted for the next term or have a reasonable assurance of continued employment.⁸ Many educational institutions outsource labor to private companies to perform transportation, food, and custodial services. Historically, privately contracted educational employees “whose employers have paid into the UI system [have been] eligible for unemployment benefits” between academic terms.⁹

Georgia’s unemployment insurance reserves grew to \$2 billion by 2000, and “the General Assembly declared a ‘tax holiday,’ which lasted through 2003, absolving most employers from paying taxes.”¹⁰ The fund dwindled to \$703 million by the end of 2003 and had not recovered by the time the Great Recession hit Georgia’s economy.¹¹ By 2009 the fund was depleted and with nearly five hundred thousand unemployed Georgians, the state borrowed \$721 million from the federal government.¹² Legislators paid the first \$21 million interest payment in 2011 from Medicaid funds and the Labor Department’s job services fund.¹³ Labor Department Commissioner Mark Butler looked for repayment solutions and “ways to return the state’s insurance fund to solvency.”¹⁴

In early 2012 Commissioner Butler reinterpreted the excluded worker categories in Section 34-8-196 of the Official Code of

7. O.C.G.A. § 34-8-196 (2008 & Supp. 2014).

8. 2014 Ga. Laws 730 § 4, at 734; *Brown v. Pulaski Cnty. Bd. of Educ.*, No. 5:05-CV-472, 2007 WL 604930, at *10 (M.D. Ga. Feb. 22, 2007).

9. Letter from Gay M. Gilbert, Administrator, U.S. Dep’t of Labor, to Mark Butler, Commissioner, Ga. Dep’t of Labor (Aug. 2, 2012), reproduced in Roger Sikes, *Contingent Jobs and Community Organizing: A Georgia Case Study on the Social Determinants of Health* app. 2, at 74 (2013) (unpublished M.P.H. thesis, Emory University) [hereinafter Gilbert Letter], available at https://etd.library.emory.edu/file/view/pid/emory:f4tnt/sikes_dissertation.pdf.

10. Dan Chapman, *Georgia Could Cut Jobless Benefits to Repay Feds*, ATLANTA J.-CONST. (Sept. 29, 2011), <http://www.ajc.com/news/news/local-govt-politics/georgia-could-cut-jobless-benefits-to-repay-feds/nQMFB/>.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

Georgia Annotated to include privately contracted educational employees and cut off their eligibility for unemployment benefits.¹⁵ Most of the affected workers did not receive notice of their change in eligibility until the summer break began and their employment ended.¹⁶ The affected workers organized demonstrations and reached out to the U.S. Department of Labor, which ordered Georgia to reinstate the benefits because the rule had no statutory basis.¹⁷ Commissioner Butler refused to comply with the order, stating, “the Rule amendment is a reasonable interpretation of Georgia law, and in the absence of any conflict with federal law, we respectfully request reconsideration of the position taken by USDOL.”¹⁸ The U.S. Department of Labor then sent a letter directly to Governor Nathan Deal requesting immediate compliance “to avoid moving to formal proceedings.”¹⁹ Commissioner Butler still failed to comply, and the U.S. Department of Labor sent a final warning: “[t]his is the final opportunity for Georgia to take corrective action before I recommend commencement of conformity proceedings.”²⁰ Commissioner Butler finally complied, and Georgia was forced to pay unemployment compensation to the seasonal workers who were improperly denied benefits.²¹

15. Memorandum from the Georgia Department of Labor Regarding Educational Workers (Feb. 1, 2012), available at http://ftpcontent4.worldnow.com/wtoc/web/busdriver_050712.pdf.

16. Roger Sikes, *Contingent Jobs and Community Organizing: A Georgia Case Study on the Social Determinants of Health* 28 (2013) (unpublished M.P.H. thesis, Emory University), available at https://etd.library.emory.edu/file/view/pid/emory:f4tnt/sikes_dissertation.pdf.

17. Gilbert Letter, *supra* note 9, at 76; see also Dan Chapman, *State Defies U.S. on Seasonal Workers*, ATLANTA J.-CONST. (Sept. 6, 2012), <http://www.ajc.com/news/news/state-defies-us-on-unemployment-policy/nR5Bq/>. For a thorough discussion of the affected workers’ organized movement opposing the rule’s legality, see Sikes, *supra* note 16.

18. Letter from Mark Butler, Commissioner, Ga. Dep’t of Labor, to Gay M. Gilbert, Administrator, U.S. Dep’t of Labor (Sept. 4, 2012), reproduced in Sikes, *supra* note 16, at 82.

19. Letter from Jane Oates, Assistant Sec’y, U.S. Dep’t of Labor, to Nathan Deal, Governor, Ga. (Jan. 3, 2012), reproduced in Sikes, *supra* note 16, app. 7 at 83.

20. Letter from Jane Oates, Assistant Sec’y, U.S. Dep’t of Labor, to Mark Butler, Comm’r, Ga. Dep’t of Labor (Apr. 2, 2013), reproduced in Sikes, *supra* note 16, app. 8 at 85–86 (threatening to withhold “grants to Georgia under the Wagner-Peyser Act” and to possibly terminate “the agreements under which the state administers the Federal UC programs: Unemployment Compensation for Ex-Servicemembers, Unemployment Compensation for Federal Employees, Trade Adjustment Assistance, Disaster Unemployment Assistance, and Emergency Unemployment Compensation.”).

21. See Dan Chapman, *Georgia to Pay Millions in Denied Jobless Benefits*, ATLANTA J.-CONST. (Apr. 4, 2013), <http://www.ajc.com/news/news/state-regional-govt-politics/state-to-pay-millions-in-denied-jobless-benefits/nXCzz/>.

In 2013, the Senate introduced Senate Bill 227 in an attempt to amend Code section 34-8-196 and provide a statutory basis for denying unemployment compensation to privately sector educational workers.²² Time pressures mounted at the end of the legislative session,²³ however, and the bill did not pass.²⁴ In 2014, the General Assembly again addressed the law that categorically allowed privately contracted workers to receive benefits, but excluded workers employed directly by the school systems.²⁵ Representative Mark Hamilton (R-24th) introduced HB 714 during the 2014 legislative session to amend Code section 34-8-196.²⁶

The bill's opponents expressed frustration that the burdens were placed on the ineligible employees, rather than on the employers, who were benefiting from the status quo.²⁷ The bill's proponents focused on the need to place all similarly situated workers in the same position.²⁸ Moreover, proponents indicated that the eligibility rules were costing Georgia approximately \$8 million per year, and that money was needed to help balance the trust fund.²⁹

Bill Tracking of HB 714

Consideration and Passage by the House

Representatives Hamilton, John Meadows (R-5th), Allen Peake (R-141st), Jay Powell (R-171st), Speaker Pro Tempore Jan Jones (R-47th), and Majority Whip Matt Ramsey (R-72nd) sponsored HB

22. SB 227, as introduced, 2013 Ga. Gen. Assem.

23. See Telephone Interview with Sen. Fran Millar (R-40th) (June 27, 2014) [hereinafter Millar Interview].

24. Georgia General Assembly, SB 227, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/display/20132014/SB/227>.

25. Video Recording of Senate Proceedings, Mar. 20, 2014 at 1 hr., 33 min., 15 sec. (remarks by Sen. Fran Millar (R-40th)) [hereinafter Senate Video], <http://www.gpb.org/lawmakers/2014/day-40-sine-die>; Millar Interview, *supra* note 23.

26. HB 714, as introduced, 2014 Ga. Gen. Assem.

27. Video Recording of House Proceedings, Mar. 20, 2014 at 1 hr., 5 min., 24 sec. (remarks by Rep. Dewey McClain (D-100th)) [hereinafter House Video], <http://www.gpb.org/lawmakers/2014/day-40-sine-die>.

28. See Millar Interview, *supra* note 23. The Georgia Department of Labor had to pay \$8 million in arrears to approximately four thousand workers who were denied benefits under Commissioner Butler's rule. See Chapman, *supra* note 21.

29. *Id.*

714.³⁰ The House read the bill for the first time on January 14, 2014.³¹ The House read the bill for the second time on January 15, 2014.³² Speaker of the House David Ralston (R-7th) then assigned it to the House Committee on Industry and Labor, which favorably reported a Committee substitute on February 6, 2014.³³

The House read the Committee substitute for the third time on February 10, 2014.³⁴ The substitute implemented only three changes from the original bill. First, it added a delayed effective date.³⁵ Second, two grammatical changes were made to improve the bill's clarity.³⁶ January 1, 2015 was set as the effective date and would supersede the default date, which would have been during the summer of 2014. Representative Hamilton stated that the date change was intended to give affected parties adequate time to prepare for the new law's effects.³⁷ The affected workers would not feel the law's impact until the summer of 2015 because of the scheduled school breaks.³⁸ The House passed the Committee substitute by a vote of 111 to 60.³⁹

Consideration and Passage by the Senate

Senator Fran Millar (R-40th) sponsored HB 714 in the Senate.⁴⁰ The bill was first read on February 11, 2014,⁴¹ and Lieutenant Governor Casey Cagle (R) subsequently assigned the bill to the

30. Georgia General Assembly, HB 714, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/714>.

31. State of Georgia Final Composite Status Sheet, HB 714, May 1, 2014.

32. *Id.*

33. *Id.*

34. *Id.*

35. Video Recording of House Industry and Labor Committee, Feb. 6, 2014, at 2 min., 2 sec. (remarks by Rep. Mark Hamilton (R-24th)) [hereinafter House Committee Video], <http://www.house.ga.gov/committees/en-US/CommitteeArchives180.aspx>; HB 714 (LC 36 2485ERS), § 2, p. 3, ln. 90, 2014 Ga. Gen. Assem.

36. House Committee Video, *supra* note 35, at 5 min., 10 sec. (remarks by Rep. Mark Hamilton (R-24th)); HB 714 (LC 36 2485ERS), § 1, p. 2, ln. 53–55, 2014 Ga. Gen. Assem.

37. *Id.* at 35, at 3 min., 12 sec. (remarks by Rep. Mark Hamilton (R-24th)).

38. *Id.*

39. Georgia House of Representatives Voting Record, HB 714 (Feb. 10, 2014).

40. Georgia General Assembly, HB 714, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/714>.

41. State of Georgia Final Composite Status Sheet, HB 714, May 1, 2014.

Senate Insurance and Labor Committee.⁴² The Insurance and Labor Committee favorably reported a Committee substitute on March 12, 2014,⁴³ and the bill was read for a second time on March 12, 2014.⁴⁴

The Insurance and Labor Committee added a number of sections to the bill, however those sections were wholly unrelated to the problems HB 714 addressed.⁴⁵ In fact, those unrelated sections were the text of HB 1027, which had already passed the House.⁴⁶ Because both bills addressed the unemployment system, the Senate merged the bills to increase efficiency at the end of the session.⁴⁷ HB 714's original content appeared as Section Four of the substitute bill.⁴⁸ The Senate Committee's only substantive change introduced a definitions section, which defined the terms "educational institution," "educational service contractor," and "educational service worker."⁴⁹ Finally, the bill was read for a third time on March 20, 2014, and the substitute passed by a vote of 36 to 20.⁵⁰

March 20, 2014 was the final day of the legislative session, and the bill was sent back to the House that evening. There, Representative Hamilton presented the bill,⁵¹ and after noting that HB 714 had been merged with HB 1027 (which previously passed the House almost unanimously), the Senate substitute passed by a vote of 107 to 64.⁵² The bill was sent to the Governor on March 27, 2014, who signed it into law on April 24, 2014.⁵³

The Act

This Act amends Title 34 and Title 50 of the Official Code of Georgia Annotated, relating to unemployment security and state government, respectively.⁵⁴ The majority of the Act provides for

42. *Id.*

43. *Id.*

44. *Id.*

45. *See generally* HB 714 (LC 36 2548S), 2014 Ga. Gen. Assem.

46. House Video, *supra* note 27, at 1 hr., 5 min., 0 sec. (remarks by Rep. Mark Hamilton (R-24th)).

47. *See* Millar Interview, *supra* note 23.

48. HB 714 (LC 36 2548S), § 4, p. 4–7, ln. 121–216, 2014 Ga. Gen. Assem.

49. *Id.* § 4, p. 4–5, ln. 132–56, 2014 Ga. Gen. Assem.

50. Georgia Senate Voting Record, HB 714 (Mar. 20, 2014).

51. House Video, *supra* note 27, at 1 hr., 5 min., 0 sec. (remarks by Rep. Mark Hamilton (R-24th)).

52. Georgia House of Representatives Voting Record, HB 714 (Mar. 20, 2014).

53. State of Georgia Final Composite Status Sheet, HB 714, May 1, 2014.

54. 2014 Ga. Laws 730.

bringing Georgia's unemployment insurance system into federal compliance, as was passed by the House in HB 1027.⁵⁵ The content of HB 714 was incorporated into Section Four of the Act.⁵⁶

Section Four provides for the determination of eligibility for unemployment benefits of aliens and other persons performing certain services.⁵⁷ It amends Section 196 of Chapter 8 of Title 34 by renaming each of the subsections, adding a new subsection that defines terms used throughout the section, updating terms to reflect the new terminology, renumbering sections as necessary, and providing stylistic changes for clarity.⁵⁸

The Act amends Code section 34-8-196 by adding a new subsection to provide for benefits based upon service in educational institutions.⁵⁹ The following terms are defined in the new subsection: educational institution, educational service contractor, and educational service worker.⁶⁰ An "educational institution" is

any voluntary pre-kindergarten program, elementary or secondary school, postsecondary institution, or other provider of educational services, irrespective of whether such program, school, institution, or other provider is public or private or nonprofit or operated for profit, provided that it: (i) Is approved, licensed, or issued a permit, grant, or other authority to operate as a program, school, institution, or other provider of educational services by a federal, state, or local government or any of the instrumentalities, divisions, or agencies thereof with the authority to do so; and (ii) Offers, by or under the guidance of teachers or instructors, an organized course of study or training in a facility or through distance learning which is academic, technical, trade related, or preparation for gainful employment in a recognized occupation.⁶¹

55. House Video, *supra* note 27, at 1 hr., 5 min., 0 sec. (remarks by Rep. Mark Hamilton (R-24th)).

56. 2014 Ga. Laws 730 § 4, at 733–36.

57. *Id.* at 733.

58. *See id.* at 734.

59. *Id.*

60. *Id.*

61. *Id.*

Further, the Labor Commissioner can create exceptions from this definition to bring the Act into compliance with federal law.⁶²

An “educational service contractor” is defined as “any public or private employer or other person or entity holding a contractual relationship with any educational institution or other person or entity to provide services to, for, with, or on behalf of any educational institution.”⁶³ Finally, an educational service worker is defined as “any person who performs services to, for, with, or on behalf of any educational institution, regardless of whether such person is engaged to perform such services by the educational institution or through an educational service contractor.”⁶⁴ Section Four of the Act amends section 34-8-196(b)(2) by inserting the terms defined in 34-8-196(b)(1) throughout the subsection.⁶⁵

The remaining subsections of Code section 34-8-196 are unchanged except for the addition of titles and renumbering. Section Eleven of the Act provides an effective date of January 1, 2015.⁶⁶

Analysis

Unemployment insurance benefits are paid to unemployed workers to lighten their burden during periods of unemployment that result through no fault of their own.⁶⁷ Monies are collected from employers in the state and set aside for the use of the paying of benefits under the program.⁶⁸ Persons seeking to collect benefits under the program are subject to various conditions of eligibility.⁶⁹

62. 2014 Ga. Laws 730 § 4, at 734.

63. *Id.*

64. *Id.*

65. *Id.* at 734–36.

66. 2014 Ga. Laws 730 § 11, at 741.

67. O.C.G.A. § 34-8-2 (2008) (stating that “the public policy of this state is declared to be as follows: economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker or the worker’s family.”).

68. O.C.G.A. § 34-8-150(a) (2008).

69. O.C.G.A. § 34-8-195 (2008). Some of the eligibility qualifications include filing a claim, reporting to an employment office as directed, being able and available for work, and being willing to work. *Id.*

One debate surrounding eligibility for benefits through the program has been whether seasonal workers should be eligible for benefits.⁷⁰ Many states in recent years have determined that seasonal workers, such as life-guards, certain artists, and school workers should no longer be eligible for unemployment benefits.⁷¹ In 1991, the General Assembly passed legislation overhauling the unemployment benefits system, and, as part of that law, excluded from eligibility certain workers who worked in educational institutions for educational service agencies.⁷² That law's definition stated that an educational service agency is "a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing [covered] services to one or more educational institutions."⁷³ Effectively, government employees were ineligible for benefits in between academic terms, including the summer.

Since the unemployment compensation laws and policies were created the country has seen a drastic rise in contingent workers—" [those] who do not have standard full-time employment."⁷⁴ Educational workers represent a large portion of contingent workers, and it is estimated that over 64,000 Georgia workers are classified as private educational service workers.⁷⁵ When Commissioner Butler's improper reinterpretation of the unemployment law went into effect, the Georgia Labor Department "claimed that just over 4,000 school workers had applied for the benefits throughout 2012-2013 and were officially denied."⁷⁶ But it is likely that the actual number of educational workers affected is much higher, "because some laid off school workers did not apply for unemployment benefits after hearing that they would be denied anyway."⁷⁷ Now that the Act defines an educational service worker as one who is employed

70. Annalyn Censky, *No More Unemployment Checks for Seasonal Workers*, CNN MONEY, (May 31, 2012, 10:09 a.m.), <http://money.cnn.com/2012/05/31/news/economy/seasonal-unemployment-benefits/>.

71. *Id.*

72. 1991 Ga. Laws 240 (codified at O.C.G.A. § 34-8-196(1992)).

73. *Id.*

74. Report from U.S. Government Accountability Office for Senator Edward M. Kennedy (July 11, 2006), available at <http://www.gao.gov/new.items/d06656.pdf>.

75. Sikes, *supra* note 16, at 21.

76. *Id.* at 21-22 (citation omitted).

77. *Id.* at 22.

directly by the educational institution or through an educational service contractor, Commissioner Butler’s previously rejected rule change has a statutory basis.⁷⁸ Excluding private sector educational employees from unemployment benefits is permitted by federal law, but requires an adequate statutory basis at the state level.⁷⁹ The statutory exclusion is permissible under federal law, and restoring eligibility to impacted private workers will require the statute’s repeal.⁸⁰ The newly excluded workers include “contracted food service workers at both public and private universities and at public K-12 schools, contracted school bus drivers . . . , crossing guards, pre-k teachers funded by the GA lottery and some private school teachers.”⁸¹ Because states are generally able to set eligibility criteria for benefit programs,⁸² the legality of the amendment is unlikely to be challenged in court. However, groups such as labor unions and the affected workers may challenge the law in other ways, including seeking to elect a new Labor Commissioner, raising the taxable wage base to stabilize and maximize the unemployment trust fund, and pushing for full-time, year-round employment.⁸³

The new provisions of the Act treat private sector employees the same as government employees, and the long-standing provision that excludes government workers has rarely been challenged.⁸⁴ Ultimately, if attempts to change the law through the political process fail, private sector educational workers will have to look to their government counterparts for strategies to adjust to the new changes.

Matthew Johnson & Phillip Parham

78. O.C.G.A. § 34-8-196(b)(1)(C) (Supp. 2014).

79. Gilbert Letter, *supra* note 9, at 76.

80. *See id.* (providing a thorough legal analysis of the Federal Unemployment Tax Act’s limitations on the state’s authority and concluding that whether Georgia can exclude private educational workers from eligibility “is a matter of [state] statute”).

81. Sikes, *supra* note 16, at 22.

82. *See* Stone & Chen, *supra* note 1.

83. *See* Sikes, *supra* note 16, at 66–67 (recommending a course of action to develop long term solutions and eliminate the threat of denied unemployment benefits).

84. There are only three cases listed on Westlaw with a citing reference to O.C.G.A. § 34-8-196, or its predecessor, O.C.G.A. § 34-8-152(2).

