

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3027

**FISCAL
NOTE**

BY DELEGATE PRITT

[Introduced March 09, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
2 designated §55-2-23, relating to the Protecting Everyone’s Constitutional Rights Act;
3 ending qualified immunity; providing legislative findings and definitions; clarifying
4 respondeat superior liability and recognizing a civil action for injury by the act or omission
5 of a government employee under the color of law; addressing the judicial process and
6 state court jurisdiction; providing for attorney fees; providing for termination of a contract,
7 agreement or employment; providing a three-year statute of limitations; addressing judicial
8 and legislative immunity, and public information; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

§55-2-23. Protecting Everyone’s Constitutional Rights Act.

1 (a) This section is known and shall be cited as the “Protecting Everyone’s Constitutional
2 Rights Act”.

3 (b) The Legislature finds that:

4 (1) Government’s most important responsibility is to protect rights under the laws and
5 constitutions of this State and the United States.

6 (2) Government’s violation of rights diminishes the lives, liberty, property, and pursuits of
7 individuals.

8 (3) Government’s failure to remedy a violation of rights imposes an unjust cost on an
9 injured individual.

10 (4) Government’s legitimacy is threatened by the absence of a meaningful civil process
11 for an injured individual to seek redress of a violation of rights.

12 (5) Government is responsible for hiring, training, supervising, and retaining employees,
13 and for ensuring they perform their duties consistent with rights under the laws and constitutions
14 of this State and the United States.

15 (6) The Supreme Court of the United States has interpreted the United States Constitution
16 to protect police officers and other government employees against claims of excessive force in

17 an arrest, investigatory stop, or other seizure under a standard of objective reasonableness. An
18 objectively reasonable action does not violate the United States Constitution. The Court's
19 interpretation of the 4th Amendment protects against second-guessing reasonable split-second
20 decisions made by police officers. The Legislature recognizes and agrees with the Supreme
21 Court's precedent.

22 (7) Courts can address frivolous lawsuits. Rules of civil procedure authorize judges to
23 grant a motion to dismiss and to sanction an attorney who files a case to harass a defendant.

24 (8) Courts must be free to engage in fact finding to determine whether a government
25 employee's action violates a constitutional right. By making the government a defendant and the
26 financially responsible party, the legislature wants to free courts to determine if an employee's
27 action violated the Constitution unencumbered by doctrines that impede fact finding, like the
28 federal doctrine of qualified immunity, and without the employee being exposed to personal
29 financial liability.

30 (c) For purposes of this section, these definitions apply:

31 (1) "Government" means state, county, municipal, and other governmental entities in this
32 state; and

33 (2) "Government employee" means an individual employed or contracted by the
34 government.

35 (d) Respondeat superior.

36 (1) The government is a principal responsible for the actions of its government employees.

37 (2) A government employee is an agent of the government that employs the government
38 employee.

39 (3) The government is legally responsible for a wrongful act of its government employee
40 if such act occurs under the color of law.

41 (4) This section shall constitute a waiver of sovereign immunity and acceptance of
42 responsibility for a government employee's act under the color of law under the common law

43 theory of respondeat superior by the government as required to enforce the provisions of this
44 code, without regard to whether the government employee acted pursuant to a policy or custom
45 of the government.

46 (e) Cause of action.

47 (1) An individual plaintiff may seek legal, equitable, or other relief in a court of this state
48 for an injury caused by an act or omission of a government employee under the color of law in
49 violation of a right under the laws or constitution of this State or the United States.

50 (2) The plaintiff seeking relief shall name as the defendant the government, pursuant to
51 the State's rules of civil procedure.

52 (3) The plaintiff seeking relief bears the burden of proving a violation of a right under the
53 laws or constitution of this State or the United States by a preponderance of the evidence.

54 (f) Judicial process.

55 (1) A lawsuit shall not be impeded by invocation of a government employee's defense or
56 immunity including that:

57 (2) The rights, privileges, or immunities secured by the laws or constitution of this State or
58 the United States were not clearly established at the time of their deprivation by the government
59 employee, or that the state of the law was otherwise such that the government employee could
60 not reasonably or otherwise have been expected to know whether the government employee's
61 conduct was lawful; or

62 (3) The government employee acted in good faith or that the government employee
63 believed, reasonably or otherwise, that the government employee's conduct was lawful at the time
64 it was committed.

65 (4) A judgment shall be supported by findings of fact and conclusions of law.

66 (5) A government employee shall not be found financially liable for a violation of a right
67 under the laws or constitution of this state or the United States.

68 (g) Jurisdiction in state court.

69 (1) An action under this section arises out of state law.

70 (2) Jurisdiction is in this state's judicial system pursuant to this state's laws and rules of
71 civil procedure.

72 (h) Attorneys fees.

73 (1) In any proceeding in which a plaintiff's claim prevails, the government shall be liable
74 for reasonable attorney fees and other litigation costs.

75 (2) Reasonable attorney fees include those incurred on an hourly or contingency basis, or
76 by an attorney providing legal services on a pro bono basis.

77 (3) The court shall recognize that a plaintiff's claim prevails if the plaintiff obtains any relief
78 the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement, or the
79 government's voluntary change in behavior.

80 (i) Termination of contract, agreement, or employment.

81 (1) Notwithstanding any other law, contract or agreement, the government may terminate
82 a contract, agreement, or employment with the government employee if the court finds, under this
83 section, that the government employee violated a plaintiff's right under the laws or constitution of
84 this state or the United States.

85 (2) The government's termination of a contract, agreement, or employment with the
86 government employee shall not affect the government's liability under this section.

87 (j) Statute of limitations. A claim made under this section of code shall be commenced no
88 later than three years from the date a claim can be brought for the deprivation of a right under the
89 laws or constitution of this state or the United States unless a longer statute of limitations is
90 otherwise provided by state law.

91 (k) Exclusive immunity. This section shall not abrogate judicial or legislative immunity.

92 (l) Public information. All documents, including complaints, judgments, settlements, and
93 consent decrees, are subject to public disclosure under the laws of this state.

94 (m) Effective date. This section shall take effect upon passage.

NOTE: The purpose of this bill is to create the Protecting Everyone's Constitutional Rights Act and end qualified immunity. The bill provides legislative findings and definitions; clarifies respondeat superior liability; and recognizes a civil action for injury by the act or omission of a government employee under the color of law. The bill addresses the judicial process and state court jurisdiction and provides for attorney fees. It provides for termination of a contract, agreement, or employment and for a three-year statute of limitations. The bill addresses judicial and legislative immunity, and public information, and provides an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.