WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 3027

By Delegate Pritt

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

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

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

(b) The Legislature finds that:

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

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

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

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

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

(6) The Supreme Court of the United States has interpreted the United States Constitution to protect police officers and other government employees against claims of excessive force in an arrest, investigatory stop, or other seizure under a standard of objective reasonableness. An objectively reasonable action does not violate the United States Constitution. The Court’s interpretation of the 4th Amendment protects against second-guessing reasonable split-second decisions made by police officers. The Legislature recognizes and agrees with the Supreme Court’s precedent.

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

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

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

(1) “Government” means state, county, municipal, and other governmental entities in this state; and

(2) “Government employee” means an individual employed or contracted by the government.

(d) Respondeat superior.

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

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

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

(4) This section shall constitute a waiver of sovereign immunity and acceptance of responsibility for a government employee’s act under the color of law under the common law theory of respondeat superior by the government as required to enforce the provisions of this code, without regard to whether the government employee acted pursuant to a policy or custom of the government.

(e) Cause of action.

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

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

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

(f) Judicial process.

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

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

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

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

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

(g) Jurisdiction in state court.

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

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

(h) Attorneys fees.

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

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

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

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

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

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

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

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

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

(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.