STATE OF NEW YORK

8668

IN SENATE

July 2, 2020

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to ending qualified immunity for law enforcement; and providing a civil action for deprivation of rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil rights law is amended by adding a new section 79-q to read as follows:

§ 79-q. Qualified immunity for law enforcement defendants. It shall not be a defense or immunity to any action brought for the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution and laws where the defendant is a police officer, peace officer, correction officer or other law enforcement representative or entity, that such defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when it was committed. Nor shall it be a defense or immunity that the rights, privileges, or immunities secured by the federal or state Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.

§ 2. The civil rights law is amended by adding a new section 79-r to read as follows:

§ 79-r. Civil action for deprivation of rights. 1. (a) A person or public entity that subjects or causes to be subjected any other person to the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution or laws, is liable to the injured party for legal or equitable relief or any other appropriate relief. For the purposes of this section, a public entity subjects, or causes to be subjected, any person to the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution or laws, by employing any person who violates this section.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(b) In any action brought pursuant to this section, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. For the purposes of this section, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect change in the defendant's conduct, regardless of whether that change has been implemented as a result of a judgment in such plaintiff's favor. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the defendant only for defending any claims the court finds frivolous.

2. (a) If a person or public entity that subjects or causes to be subjected any other person to the deprivation or any rights, privileges, or immunities secured by the federal or state Constitution or laws, the attorney general may bring a civil action for legal or equitable relief or other proper redress. The civil action shall be brought in the name of the state and may be brought on behalf of the injured party. A civil action brought by the attorney general shall not foreclose an injured party from bringing their own civil action for legal or equitable relief or other proper redress. A civil action brought by an injured party shall not foreclose the attorney general from bringing a civil action for legal or equitable relief or other proper redress.

(b) If the attorney general prevails in an action brought pursuant to this section, the court shall order the distribution of any award of damages to the injured party.

3. (a) Statutory immunities and statutory limitations on liability, damages or attorney fees do not apply to claims brought pursuant to this section.

(b) Neither qualified immunity nor a defendant's good faith but erroneous belief in the lawfulness of his or her conduct, is a defense to liability pursuant to this section.

4. A civil action pursuant to this section shall be commenced within three years after the cause of action accrues.

5. Notwithstanding any other provision of law, a public entity shall indemnify its public employee for any liability incurred by the employee and for any judgment entered against the employee for claims arising under this section; except that a public entity shall not indemnify a public employee if the employee was convicted of a criminal violation for the conduct from which the claim arises.

6. For the purpose of this section, "public entity" shall mean the state, any county, city and county, municipality, and every other political subdivision of the state; and any private entity that engages in state action.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.