

# STATE OF NEW YORK

8668--A

## IN SENATE

July 2, 2020

Introduced by Sens. JACKSON, SALAZAR, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to 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:

1 Section 1. The civil rights law is amended by adding a new section  
2 79-q to read as follows:

3 § 79-q. Civil action for deprivation of rights. 1. (a) A person or  
4 public entity that subjects or causes to be subjected any other person  
5 to the deprivation of any rights, privileges, or immunities secured by  
6 the federal or state Constitution or laws, is liable to the injured  
7 party for legal or equitable relief or any other appropriate relief.  
8 For the purposes of this section, a public entity subjects, or causes to  
9 be subjected, any person to the deprivation of any rights, privileges,  
10 or immunities secured by the federal or state Constitution or laws, by  
11 employing any person who violates this section.

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

21 2. (a) If a person or public entity that subjects or causes to be  
22 subjected any other person to the deprivation or any rights, privileges,  
23 or immunities secured by the federal or state Constitution or laws, the  
24 attorney general may bring a civil action for legal or equitable relief  
25 or other proper redress. The civil action shall be brought in the name  
26 of the state and may be brought on behalf of the injured party. A civil

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

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1 action brought by the attorney general shall not foreclose an injured  
2 party from bringing their own civil action for legal or equitable relief  
3 or other proper redress. A civil action brought by an injured party  
4 shall not foreclose the attorney general from bringing a civil action  
5 for legal or equitable relief or other proper redress.

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

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

12 (b) It shall not be a defense or immunity to any action brought for  
13 the deprivation of any rights, privileges, or immunities secured by the  
14 federal or state Constitution and laws where the defendant is a police  
15 officer, peace officer, correction officer or other law enforcement  
16 representative or entity, that such defendant was acting in good faith,  
17 or that the defendant believed, reasonably or otherwise, that his or her  
18 conduct was lawful at the time such conduct was committed. Nor shall it  
19 be a defense or immunity that the rights, privileges, or immunities  
20 secured by the federal or state Constitution or laws were not clearly  
21 established at the time of their deprivation by the defendant, or that  
22 the state of the law was otherwise such that the defendant could not  
23 reasonably have been expected to know whether his or her conduct was  
24 lawful.

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

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

33 6. For the purpose of this section, "public entity" shall mean the  
34 state, any county, city and county, municipality, and every other poli-  
35 tical subdivision of the state; and any private entity that engages in  
36 state action.

37 7. The immunity granted pursuant to subdivision one of section twenty-  
38 four of the correction law shall not extend to actions brought pursu-  
39 ant to this section.

40 8. Notwithstanding any other provision of law, including but not  
41 limited to subdivision two of section twenty-four of the correction law,  
42 actions brought pursuant to this section may be commenced in any court  
43 of competent jurisdiction, including the supreme court.

44 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
45 sion, section or part of this act shall be adjudged by any court of  
46 competent jurisdiction to be invalid, such judgment shall not affect,  
47 impair, or invalidate the remainder thereof, but shall be confined in  
48 its operation to the clause, sentence, paragraph, subdivision, section  
49 or part thereof directly involved in the controversy in which such judg-  
50 ment shall have been rendered. It is hereby declared to be the intent of  
51 the legislature that this act would have been enacted even if such  
52 invalid provisions had not been included herein.

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