

STATE OF NEW YORK

4331

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. HUNTER, GOTTFRIED, REYES, SIMON, EPSTEIN -- read once and referred to the Committee on Governmental Operations

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 acting under color of law that subjects or causes to be
5 subjected any other person to the deprivation of any rights, privileges,
6 or immunities secured by the federal or state Constitution or laws, is
7 liable to the injured party for legal or equitable relief or any other
8 appropriate relief. For the purposes of this section, a public entity
9 subjects, or causes to be subjected, any person to the deprivation of
10 any rights, privileges, or immunities secured by the federal or state
11 Constitution or laws, by employing any person who violates this section.

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

22 2. (a) If a person or public entity acting under color of law that
23 subjects or causes to be subjected any other person to the deprivation
24 of any rights, privileges, or immunities secured by the federal or state
25 Constitution or laws, the attorney general may bring a civil action for

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

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1 legal or equitable relief or other proper redress. The civil action
2 shall be brought in the name of the state and may be brought on behalf
3 of the injured party. A civil action brought by the attorney general
4 shall not foreclose an injured party from bringing their own civil
5 action for legal or equitable relief or other proper redress. A civil
6 action brought by an injured party shall not foreclose the attorney
7 general from bringing a civil action for legal or equitable relief or
8 other proper redress.

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

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

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

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

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

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

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

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

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

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