STATE OF NEW YORK

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8130

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021
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Introduced by M. of A. LAWLER -- read once and referred to the Committee
  on Governmental Operations

AN ACT to amend the public officers law, in relation to prohibiting
  qualified immunity for elected public officials

**The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:**

 1   Section 1. Paragraph (a) of subdivision 1 of section 17 of the public
 2 officers law, as amended by chapter 293 of the laws of 1992, is amended
 3 to read as follows:
 4   (a) As used in this section, unless the context otherwise requires the
 5 term "employee" shall mean any person holding a position by [election,]
 6 appointment or employment in the service of the state, including clin-
 7 ical practice pursuant to subdivision fourteen of section two hundred
 8 six of the public health law, whether or not compensated, or a volunteer
 9 expressly authorized to participate in a state-sponsored volunteer
10 program, but shall not include an independent contractor. The term
11 employee shall include a former employee, his **or her** estate or judicial-
12 ly appointed personal representative and persons who assist the educa-
13 tion department or the department of health as consultants or expert
14 witnesses in the investigation or prosecution of alleged professional
15 misconduct, licensure matters, restoration proceedings, or criminal
16 prosecutions for unauthorized practice pursuant to title eight of the
17 education law or title II-A **of article two** of the public health law.
18   § 2. The public officers law is amended by adding a new section 17-b
19 to read as follows:
20   **§ 17-b. Civil action; elected official; qualified immunity not a**
21 **defense. 1. An elected public official acting under color of law who**
22 **subjects or causes to be subjected any other person to the deprivation**
23 **of any rights, privileges, or immunities secured by the federal or state**
24 **Constitution or laws, is liable to the injured party for legal or equi-**
25 **table relief or any other appropriate relief.**

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[–] is old law to be omitted.
                                                        LBD11109-01-1

1   2. It shall not be a defense or immunity to any action that an elected
2   public officer was acting in good faith, or that such public officer
3   believed, reasonably or otherwise, that their conduct was lawful at the
4   time when it was committed. Nor shall it be a defense or immunity that
5   the rights, privileges, or immunities secured by the federal or state
6   Constitution or laws were not clearly established at the time of their
7   deprivation or interference or attempted interference by the defendant,
8   or that the state of the law was otherwise such that the public officer
9   could not reasonably have been expected to know whether their conduct
10   was lawful.
11   3. (a) If an elected public officer acting under color of law that
12   subjects or causes to be subjected any other person to the deprivation
13   of any rights, privileges, or immunities secured by the federal or state
14   Constitution or laws, the attorney general may bring a civil action for
15   legal or equitable relief or other proper redress. The civil action
16   shall be brought in the name of the state and may be brought on behalf
17   of the injured party. A civil action brought by the attorney general
18   shall not foreclose an injured party from bringing their own civil
19   action for legal or equitable relief or other proper redress. A civil
20   action brought by an injured party shall not foreclose the attorney
21   general from bringing a civil action for legal or equitable relief or
22   other proper redress.
23   (b) If the attorney general prevails in an action brought pursuant to
24   this section, the court shall order the distribution of any award of
25   damages to the injured party.
26   4. Statutory immunities and statutory limitations on liability,
27   damages or attorney fees do not apply to claims brought pursuant to this
28   section.
29   § 3. This act shall take effect immediately.