STATE OF NEW YORK

6714

2023-2024 Regular Sessions

IN ASSEMBLY

May 5, 2023

Introduced by M. of A. MCGOWAN -- 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 Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 1 of section 17 of the public officers law, as amended by chapter 293 of the laws of 1992, is amended to read as follows:

(a) As used in this section, unless the context otherwise requires the term "employee" shall mean any person holding a position by [~~election,~~] appointment or employment in the service of the state, including clinical practice pursuant to subdivision fourteen of section two hundred six of the public health law, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his **or her** estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to title eight of the education law or title II-A **of article two** of the public health law.

§ 2. The public officers law is amended by adding a new section 17-b to read as follows:

§ 17-b. Civil action; elected official; qualified immunity not a defense. 1. An elected public official acting under color of law who 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.

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

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2. It shall not be a defense or immunity to any action that an elected public officer was acting in good faith, or that such public officer believed, reasonably or otherwise, that their 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 or interference or attempted interference by the defendant, or that the state of the law was otherwise such that the public officer could not reasonably have been expected to know whether their conduct was lawful.

3. (a) If an elected public officer acting under color of law 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, 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.

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

§ 3. This act shall take effect immediately.