

# STATE OF NEW YORK

5163

2023-2024 Regular Sessions

## IN ASSEMBLY

March 3, 2023

Introduced by M. of A. STECK -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to establishing civil liability for anyone subjecting another person to the deprivation of any rights, privileges or immunities secured by law

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-r to read as follows:

3 § 79-r. Penalties and remedies. 1. Every person who, under color of  
4 any statute, ordinance, regulation, custom, or usage, of this state,  
5 subjects, or causes to be subjected, any citizen of this state or other  
6 person within the jurisdiction thereof to the deprivation of any rights,  
7 privileges, or immunities secured by the constitution and laws of this  
8 state, shall be liable to the party injured in an action at law, suit in  
9 equity, or other proper proceeding for redress, except that in any  
10 action brought against a judicial officer for an act or omission taken  
11 in such officer's judicial capacity, injunctive relief shall not be  
12 granted unless a declaratory decree was violated or declaratory relief  
13 was unavailable.

14 2. The supreme court shall have jurisdiction over all suits brought  
15 for the vindication of civil rights as provided in subdivision one of  
16 this section. To the extent that the laws of the state furnish a remedy  
17 for the vindication of such civil rights, such laws shall be applied;  
18 but in all cases where such laws are deficient in the provisions neces-  
19 sary to furnish suitable remedies, the common law shall be extended to  
20 and govern the said courts in the trial and disposition of the matter.  
21 The parties in an action brought pursuant to this section shall have the  
22 right to a jury trial. A remedy that does not include the right to a  
23 jury trial or recovery of attorneys' fees and expert fees as provided  
24 herein shall not be considered an adequate remedy.

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

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1 3. (a) In any action or proceeding to enforce this section or the  
2 human rights law, the court shall award the prevailing party, other than  
3 the state, a reasonable attorney's fee as part of the costs, except that  
4 in any action brought against a judicial officer for an act or omission  
5 taken in such officer's judicial capacity such officer shall not be held  
6 liable for any costs, including attorneys' fees, unless such action was  
7 clearly in excess of such officer's jurisdiction.

8 (b) In awarding an attorney's fee under paragraph (a) of this subdivi-  
9 sion in any action or proceeding to enforce a provision of this article,  
10 the court shall include reasonable expert fees as part of the attorney's  
11 fee.

12 4. This section shall supplement and not displace any jurisdiction  
13 currently existing in the courts or administrative agencies of this  
14 state to the extent that other laws of this state already provide a  
15 remedy for the type of injury referred to in this section.

16 5. In interpreting this section, the courts may consider the fundamen-  
17 tal principles already enunciated by the federal courts in interpreting  
18 42 U.S.C §§ 1983 and 1988, which are the parallel federal civil rights  
19 laws.

20 6. The state hereby waives its sovereign immunity and consents on  
21 behalf of itself, its subdivisions, agencies, public authorities, and  
22 any other affiliated entity to suit as provided herein. All other immu-  
23 nities from suit hitherto existing under 42 U.S.C §§ 1983 and 1988 are  
24 abolished and shall not be asserted as a defense to any action arising  
25 under this section, unless specifically set forth herein.

26 7. The state, its subdivisions, agencies, public authorities, and any  
27 other affiliated entities, and all municipal entities in this state,  
28 including but not limited to counties, school districts, towns, and  
29 villages, shall be liable in respondeat superior for the actions of any  
30 person committing constitutional violations as referred to in subdivi-  
31 sion one of this section.

32 § 2. This act shall take effect on the ninetieth day after it shall  
33 have become a law.