
DIGEST

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HB 702 Original

2022 Regular Session

Jordan

Abstract: Provides for liability for the deprivation of constitutional rights by peace officers.

Present law (R.S. 9:2793.1) provides for civil liability immunity for officers for destruction of property caused while the officer was acting within the course and scope of employment and if necessary to abate a public emergency.

Present law (R.S. 9:2798.1) provides for civil liability immunity for policymaking or discretionary acts or omissions by public entities. Present law exempts acts or omissions not reasonably related to the legitimate governmental objective or to criminal or intentional misconduct.

Present law (R.S. 9:2800.10) provides for civil liability immunity for damages sustained by a perpetrator of a felony offense during the commission of the offense or while fleeing the scene. Present law exempts intentional acts involving the use of excessive force.

Proposed law (R.S. 9:2800.28) provides that notwithstanding present law, any peace officer who subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of such constitutional rights that create binding obligations on government actors shall be liable.

Proposed law provides for reasonable attorney fees and costs to the prevailing plaintiff. In actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the injunctive relief.

Present law (C.C.P. Art. 863) provides for attorney or party certification of the following:

- (1) The pleading is not being presented for any improper purpose.
- (2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous for the extension, modification, or reversal of existing law.
- (3) Each allegation or factual assertion has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation or discovery.
- (4) Each denial in the pleading of a factual assertion is warranted by the evidence or reasonably based on a lack of information or belief.

Proposed law provides that under a defendant's motion or upon its own motion, if the court

determines that the action seeking damages is frivolous or fraudulent, the court may award reasonable attorney fees and costs to the defendant, as well as sanctions under present law (C.C.P. Art. 863).

Proposed law provides that the rights and remedies provided by proposed law are in addition to any other rights and remedies provided by law.

Proposed law provides that qualified immunity shall not be a defense to proposed law.

Proposed law provides that the peace officer's employer shall indemnify a peace officer for any liability incurred by that peace officer and for any judgment or settlement entered against the peace officer for claims arising under proposed law.

Proposed law provides that if the peace officer's employer determines that the officer did not act upon good faith and reasonable belief that the act or omission was within the course and scope of their lawful powers and duties, then the peace officer shall be personally liable for the lesser of 5% of the judgment or \$25,000 and shall not be indemnified by the employer.

Proposed law provides that if the peace officer's portion of the judgment is uncollectible from the peace officer, the employer of the peace officer or employer's insurance shall satisfy the full amount of the judgment or settlement. Proposed law exempts a public entity from having to indemnify a peace officer if the officer was criminally convicted for the conduct from which the claim arises.

Proposed law provides for a 3 year prescription for actions brought pursuant to proposed law.

Proposed law defines "peace officer" and "public entity".

Present law (R.S. 14:134(A)) provides that malfeasance in office is committed when a public officer or employer does any of the following:

- (1) Intentionally refuses or fails to perform a required duty.
- (2) Intentionally performs the required duty in an unlawful manner.
- (3) Knowingly permits another public officer or employee under his authority to intentionally refuse or fail to perform any required duty or perform such duty in an unlawful manner.

Proposed law (R.S. 14:134(A)) retains present law and provides for malfeasance for a peace officer who knowingly or with reckless disregard either refuses or fails to perform any duty required of him or performs such duty in an unlawful manner.

Present law (R.S. 40:2405(J)(1)) provides that a P.O.S.T. certification of any qualified peace officer may be revoked upon the occurrence of any of the following conditions: (a) a conviction of malfeasance in office and (b) a conviction of an offense which results in a peace officer's restriction of their right to bear arms.

Proposed law retains present law but adds that P.O.S.T. certification shall be revoked if the officer is found civilly liable for the use of unlawful force or failure to intervene in the use of unlawful force.

(Amends R.S. 14:134(A); Adds R.S. 9:2800.28 and R.S. 40:2405(J)(1)(c))