

2022 Regular Session

HOUSE BILL NO. 702

BY REPRESENTATIVE JORDAN

CIVIL/IMMUNITY: Provides relative to liability for certain actions by peace officers

1 AN ACT

2 To amend and reenact R.S. 14:134(A) and to enact R.S. 9:2800.28 and R.S.  
3 40:2405(J)(1)(c), relative to civil liability; to provide relative to immunity from civil  
4 liability for peace officers; to provide for exceptions to immunity; to provide for  
5 costs, expenses, and attorney fees under certain circumstances; to provide for  
6 indemnification; to provide for prescription; to provide for definitions; to provide for  
7 malfeasance; to provide for P.O.S.T. certification revocation; and to provide for  
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:2800.28 is hereby enacted to read as follows:

11 §2800.28. Civil action for deprivation of rights

12 A. Notwithstanding R.S. 9:2793.1, 2798.1, and 2800.10, any peace officer  
13 who, under the color of law, subjects or causes to be subjected, including failing to  
14 intervene, any other person to the deprivation of individual rights that create binding  
15 obligations on government actors secured by the Constitution of the United States  
16 of America and Constitution of Louisiana shall be liable to the injured party.

17 B.(1)(a) In any action seeking damages under this Section, a court shall  
18 award reasonable attorney fees and costs to a prevailing plaintiff.

1           (b) In actions for injunctive relief, a court shall deem a plaintiff to have  
2           prevailed if the plaintiff's suit was a substantial factor or significant catalyst in  
3           obtaining the results sought by the litigation.

4           (2) Under motion of the defendant or on its own motion, if the court  
5           determines that an action seeking damages under this Section is frivolous or  
6           fraudulent, the court may award reasonable attorney fees and costs to the defendant,  
7           as well as any other sanctions and relief requested pursuant to Code of Civil  
8           Procedure Article 863.

9           C.(1) The rights and remedies provided by this Section are in addition to any  
10          other rights and remedies provided by law.

11          (2) Qualified immunity shall not be a defense to liability pursuant to this  
12          Section.

13          D.(1) An employer of a peace officer shall indemnify a peace officer for any  
14          liability incurred by the peace officer and for any judgment or settlement entered  
15          against the peace officer for claims arising pursuant to this Section.

16          (2)(a) However, if the employer of the peace officer determines that the  
17          officer did not act upon a good faith and reasonable belief that the act or omission  
18          from which the claim brought pursuant to this Section arises was within the course  
19          and scope of the peace officer's lawful powers and duties, then the peace officer shall  
20          be personally liable for the lesser of five percent of the judgment or settlement or  
21          twenty-five thousand dollars and shall not be indemnified by the employer of the  
22          peace officer.

23          (b) If the peace officer's portion of the judgment is uncollectible from the  
24          peace officer, the employer of the peace officer or employer's insurance shall satisfy  
25          the full amount of the judgment or settlement. However, a public entity does not  
26          have to indemnify a peace officer if the peace officer was convicted of a criminal  
27          violation for the conduct from which the claim arises.

28          E. An action brought pursuant to this Section shall be subject to a liberative  
29          prescription of three years.

1           F. For the purposes of this Section:

2           (1) "Peace officer" shall include commissioned police officers, sheriffs,  
3           deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife  
4           enforcement agents, state park wardens, probation and parole officers, military police  
5           officers, security personnel employed by the Supreme Court of Louisiana or a court  
6           of appeal of Louisiana, and an officer, employee, contract worker, or volunteer with  
7           any prison, jail, work release facility, or correctional institution. "Peace officers"  
8           shall also include any employee of the state, a municipality, or other public agency  
9           whose permanent duties include the making of arrests, performing of searches and  
10           seizures, executing criminal warrants, preventing or detecting crime, or enforcing the  
11           penal, traffic, or highway laws of this state.

12           (2) "Public entity" means and includes the state and any of its branches,  
13           departments, offices, agencies, boards, commissions, instrumentalities, officers,  
14           officials, employees, and political subdivisions, and the departments, offices,  
15           agencies, boards, commissions, instrumentalities, officers, officials, and employees  
16           of such political subdivisions.

17 Section 2. R.S. 14:134(A) is hereby amended and reenacted to read as follows:

18 §134. Malfeasance in office

19           A. Malfeasance in office is committed when any public officer or public  
20           employee ~~shall~~ does any of the following:

21           (1) Intentionally refuse or fail to perform any duty lawfully required of him,  
22           as such officer or employee; ~~or.~~

23           (2) Intentionally perform any such duty in an unlawful manner; ~~or.~~

24           (3) Knowingly permit any other public officer or public employee, under his  
25           authority, to intentionally refuse or fail to perform any duty lawfully required of him,  
26           or to perform any such duty in an unlawful manner.

27           (4) If the individual is a full-time, part-time, or reserve peace officer who,  
28           knowingly or with reckless disregard, either refuses or fails to perform any duty

1 lawfully required of him as a peace officer or performs such duty in an unlawful  
2 manner.

3 \* \* \*

4 Section 3. R.S. 40:2405(J)(1)(c) is hereby enacted to read as follows:

5 §2405. Peace officer training requirements; reimbursement by peace officer

6 \* \* \*

7 J.(1) Notwithstanding any provision of law to the contrary, the P.O.S.T.  
8 certification of any qualified peace officer, whether employed full-time, part-time,  
9 or reserve, shall be revoked upon the occurrence of any of the following conditions:

10 \* \* \*

11 (c) A finding of civil liability in an action pursuant to R.S. 9:2800.28 for the  
12 use of unlawful physical force or failure to intervene in the use of unlawful force.

13 \* \* \*

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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))