

1 S.254

2 Introduced by Senators Sears, Balint, Baruth and Ram Hinsdale

3 Referred to Committee on

4 Date:

5 Subject: Civil liability of law enforcement officers; qualified immunity;

6 indemnification

7 Statement of purpose of bill as introduced: This bill proposes to create a
8 private right of action against law enforcement officers for violations of
9 Vermont constitutional, statutory, and common law rights. This bill also
10 proposes to waive the use of qualified immunity as a defense in such actions
11 and provides for qualified indemnification of law enforcement officers by law
12 enforcement agencies.

13 An act relating to creating a private right of action against law enforcement
14 officers for violating rights established under Vermont law

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. 12 V.S.A. chapter 190 is added to read:

17 CHAPTER 190. PRIVATE RIGHT OF ACTION AGAINST LAW

18 ENFORCEMENT OFFICERS; DEPRIVATION OF STATE RIGHTS

19 § 5607. LIABILITY OF LAW ENFORCEMENT OFFICERS

20 (a) As used in this section:

1 (1) “Law enforcement agency” has the same meaning as in 20 V.S.A.
2 § 2351a.

3 (2) “Law enforcement officer” has the same meaning as in 20 V.S.A.
4 § 2351a.

5 (b) An individual injured or damaged by the commission or omission of
6 any act of a law enforcement officer acting under authority of the State, or
7 within the scope of authority of a law enforcement agency, that violates the
8 individual’s rights guaranteed under a provision of the Constitution of the State
9 of Vermont that provides a private right of action, prescribed by Vermont
10 statute, or created by Vermont common law, may bring an action for damages
11 or equitable relief against the law enforcement officer.

12 (c) An action brought pursuant to this section is not subject to:

13 (1) common law doctrines of immunity as a defense to liability;

14 (2) statutory immunities and statutory limitations on liability, damages,
15 or attorney’s fees;

16 (3) the provisions of chapter 189 of this title; or

17 (4) the provisions of 24 V.S.A. chapter 33, subchapter 4.

18 (d) A court may award reasonable attorney’s fees and other litigation costs
19 reasonably incurred in any action brought under this section in which the
20 plaintiff substantially prevailed. When a judgment is entered in favor of a
21 defendant, a court may award reasonable attorney’s fees and other litigation

1 costs reasonably incurred to the defendant for defending any claims the court
2 finds frivolous.

3 (e) Notwithstanding the provisions of 3 V.S.A. chapter 29, chapter 189 of
4 this title, or 29 V.S.A. chapter 55, a law enforcement agency shall indemnify
5 its law enforcement officer for any liability incurred, and for any judgment or
6 settlement entered against the law enforcement officer, for claims arising
7 pursuant to this section, except that if the law enforcement agency determines
8 that the law enforcement officer did not act in good faith and under reasonable
9 belief that the action was lawful, then the law enforcement officer is personally
10 liable and shall not be indemnified by the law enforcement agency for five
11 percent of the judgment or settlement or \$25,000.00, whichever is less.

12 (f) Notwithstanding any provision of this section to the contrary, to the
13 extent that a law enforcement officer's portion of a judgment or settlement is
14 uncollectable from the law enforcement officer, the law enforcement agency or
15 the law enforcement agency's insurance shall satisfy any such uncollected
16 amount of the judgment or settlement.

17 (g) An action brought pursuant to this section shall be commenced within
18 three years after the cause of action accrues.

19 Sec. 2. EFFECTIVE DATE

20 This act shall take effect on July 1, 2022.