

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 20-0723.01 Michael Dohr x4347

HOUSE BILL 20-1287

HOUSE SPONSORSHIP

Soper, Williams D.

SENATE SPONSORSHIP

Marble and Lee,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENFORCEMENT OF COLORADO CONSTITUTIONAL RIGHTS**
102 **IN COLORADO STATE COURTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows a person who has a right, privilege, or immunity secured by the Colorado constitution that is infringed upon to bring a civil action for the violation. The attorney general can also bring an action under the same circumstances. A plaintiff who prevails in the lawsuit is entitled to reasonable attorney fees, and a defendant in an individual suit is entitled to reasonable attorney fees for defending any frivolous claims.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Qualified immunity and a defendant's good faith but erroneous belief in the lawfulness of his or her conduct are not defenses to the civil action. The civil action has a two-year statute of limitations. The bill requires a public entity to indemnify its public employees in a claim unless the employee is convicted of a crime related to the claim.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-21-131 as
3 follows:

4 **13-21-131. Civil action for deprivation of rights - definition.**

5 (1) (a) A PERSON OR PUBLIC ENTITY THAT, UNDER COLOR OF LAW,
6 SUBJECTS OR CAUSES TO BE SUBJECTED ANY OTHER PERSON TO THE
7 DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY
8 THE COLORADO CONSTITUTION, IS LIABLE TO THE INJURED PARTY FOR
9 LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF.

10 (b) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, A COURT
11 SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A PREVAILING
12 PLAINTIFF. WHEN A JUDGMENT IS ENTERED IN FAVOR OF A DEFENDANT,
13 THE COURT MAY AWARD REASONABLE COSTS AND ATTORNEY FEES TO THE
14 DEFENDANT ONLY FOR DEFENDING ANY CLAIMS THE COURT FINDS
15 FRIVOLOUS.

16 (2) (a) IF A PERSON OR PUBLIC ENTITY, UNDER COLOR OF LAW,
17 SUBJECTS OR CAUSES TO BE SUBJECTED ANY PERSON TO THE DEPRIVATION
18 OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE COLORADO
19 CONSTITUTION, THE ATTORNEY GENERAL OF THE STATE OF COLORADO
20 MAY BRING A CIVIL ACTION FOR LEGAL OR EQUITABLE RELIEF OR OTHER
21 PROPER REDRESS. THE CIVIL ACTION SHALL BE BROUGHT IN THE NAME OF
22 THE STATE AND MAY BE BROUGHT ON BEHALF OF THE INJURED PARTY.

23 (b) IF THE ATTORNEY GENERAL PREVAILS IN AN ACTION BROUGHT

1 PURSUANT TO THIS SECTION, THE COURT SHALL ORDER THE DISTRIBUTION
2 OF ANY AWARD OF DAMAGES TO THE INJURED PARTY.

3 (3) (a) STATUTORY IMMUNITIES AND STATUTORY LIMITATIONS ON
4 LIABILITY, DAMAGES, OR ATTORNEY FEES DO NOT APPLY TO CLAIMS
5 BROUGHT PURSUANT TO THIS SECTION.

6 (b) NEITHER QUALIFIED IMMUNITY, NOR A DEFENDANT'S GOOD
7 FAITH BUT ERRONEOUS BELIEF IN THE LAWFULNESS OF HIS OR HER
8 CONDUCT, IS A DEFENSE TO LIABILITY PURSUANT TO THIS SECTION.

9 (c) NOTHING IN THIS SECTION MAY BE CONSTRUED TO LIMIT THE
10 APPLICABILITY OF THE PROVISIONS OF ARTICLE 17.5 OF THIS TITLE 13.

11 (4) A CIVIL ACTION PURSUANT TO THIS SECTION MUST BE
12 COMMENCED WITHIN TWO YEARS AFTER THE CAUSE OF ACTION ACCRUES.

13 (5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PUBLIC
14 ENTITY SHALL INDEMNIFY ITS PUBLIC EMPLOYEE FOR ANY LIABILITY
15 INCURRED BY THE EMPLOYEE AND FOR ANY JUDGMENT ENTERED AGAINST
16 THE EMPLOYEE FOR CLAIMS ARISING UNDER THIS SECTION; EXCEPT THAT
17 A PUBLIC ENTITY DOES NOT HAVE TO INDEMNIFY A PUBLIC EMPLOYEE IF
18 THE EMPLOYEE WAS CONVICTED OF A CRIMINAL VIOLATION FOR THE
19 CONDUCT FROM WHICH THE CLAIM ARISES.

20 (6) "PUBLIC ENTITY" MEANS THE STATE OF COLORADO; ANY
21 COUNTY, CITY AND COUNTY, MUNICIPALITY, AND EVERY OTHER POLITICAL
22 SUBDIVISION OF THE STATE; AND ANY PRIVATE ENTITY ENGAGED IN STATE
23 ACTION.

24 **SECTION 2. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2020 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.