

JAN 21 2022

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 RIGHT OF ACTION FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS

6 § -1 Short title. This Act may be cited as the Police
7 Integrity and Accountability Act of 2022.

8 § -2 Right of action. (a) A law enforcement officer,
9 as defined in section 28-151, who subjects or causes to be
10 subjected, including by failing to intervene, any person to the
11 deprivation of any individual right arising under the
12 Constitution of the State of Hawaii, shall be liable to the
13 injured party for damages and shall be subject to legal,
14 equitable, and any other appropriate remedy. The cause of
15 action provided by this section shall not be exclusive and shall
16 be in addition to any other actions or remedies provided by law.



1 (b) Sovereign immunity, statutory immunities, and
2 statutory limitations on liability, damages, or attorney fees
3 shall not apply to claims brought pursuant to this chapter.
4 Chapter 662 shall not apply to claims brought pursuant to this
5 chapter.

6 (c) Qualified immunity is not a defense to liability
7 pursuant to this section.

8 (d) In any action brought pursuant to this section, a
9 court shall award reasonable attorney fees and costs to the
10 plaintiff, including expert witness fees and other litigation
11 expenses, if they are a prevailing party. In actions for
12 injunctive relief, a court shall deem a plaintiff to have
13 prevailed if the plaintiff's suit was a substantial factor or
14 significant catalyst in obtaining the results sought by the
15 litigation. When a judgment is entered in favor of a defendant,
16 the court may award reasonable costs and attorney fees to the
17 defendant for defending claims the court finds frivolous.

18 (e) A civil action pursuant to this section shall be
19 commenced within six years after the cause of action accrues.

20 (f) Notwithstanding any other provision of law, the law
21 enforcement officer shall be personally liable and shall not be



1 indemnified by a public entity for at least five per cent of the
2 judgment or settlement, or \$100,000, whichever is less, unless
3 the law enforcement officer acted upon a good faith and
4 reasonable belief that the action was lawful. If the judgment
5 or any portion of the judgment is uncollectible from the law
6 enforcement officer, the law enforcement officer's employer
7 shall satisfy the full amount of the judgment or settlement;
8 provided that the employer shall have a right of contribution
9 against the law enforcement officer for any amount not subject
10 to indemnification. A public entity shall not indemnify the
11 officer if the officer was convicted of a crime related to
12 conduct from which the claim arises. Nothing in this section
13 shall be construed to require indemnification for law
14 enforcement officers.

15 **§ -3 Notice of Claims.** Any person who claims damages or
16 other relief arising under this chapter shall provide written
17 notice to the law enforcement agency, as defined by section 28-
18 151, that employs the law enforcement officer. This notice
19 shall be provided within one year after the occurrence giving
20 rise to the claim, and shall provide the date, location, and
21 circumstances of the occurrence. The time for giving notice



1 shall not include the time, not exceeding one year, during which
2 the injured person is unable to provide the notice by reason of
3 injury. The notice required by this section may be presented
4 by, or on behalf of, the personal representative of an
5 incapacitated or deceased person or any person claiming benefits
6 of the proceeds of an action brought under this chapter. No
7 suit shall be commenced under this chapter unless notice has
8 been given pursuant to this section or the law enforcement
9 agency that employs the law enforcement officer had actual
10 notice of the occurrence giving rise to the claim.

11 **§ -4 Reporting of judgments and settlements.** (a) Any
12 political subdivision of the State that employs a law
13 enforcement officer who incurs liability under this chapter,
14 whether in the form of judgment or settlement entered against
15 the law enforcement officer for claims arising pursuant to this
16 chapter, shall publicly disclose:

- 17 (1) The name of any law enforcement officer or officers
18 whose actions or conduct led to the judgment or
19 settlement;



(2) The amount of the judgment or settlement and the portion of the judgment or settlement, if any, indemnified by the political subdivision of the State;

(3) Any internal disciplinary actions taken against the law enforcement officer or officers whose action or conduct led to the judgment or settlement; and

(4) Any criminal charges brought against the law enforcement officer or officers for the actions or conduct that led to the judgment or settlement.

(b) The political subdivision of the State shall not disclose the address, social security number, or other unique, non-public personal identifying information of any individual who brings a claim under this chapter.

§ -5 Disciplinary action. In addition to any criminal and civil penalties provided by law, if a court or internal investigation finds that a law enforcement officer subjected or caused to be subjected, including by failing to intervene, any person to the deprivation of any individual right arising under the Hawaii State Constitution, then the law enforcement agency that employs the law enforcement officer shall subject the law enforcement officer to disciplinary measures, up to and



1 including termination of employment, to the extent permitted by
2 law. The disciplinary measures imposed by the law enforcement
3 agency shall not be overturned or otherwise disturbed unless the
4 law enforcement officer is exonerated by a court."

5 SECTION 2. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be "B. L.", written over a horizontal line.

S.B. NO. 2487

Report Title:

Law Enforcement Officers; Constitutional Rights; Deprivation;
Private Cause of Action; Disclosure

Description:

Establishes a private cause of action for persons injured by the deprivation of rights under the Hawaii Constitution by law enforcement officers. Imposes personal liability on law enforcement officers for judgments or settlements arising from that cause of action up to a certain amount and under certain circumstances. Requires political subdivisions of the State who employ law enforcement officers to publicly disclose a list of officers against whom a judgment or settlement is entered and other proscribed information. Requires employers of law enforcement officers to discipline officers under certain circumstances.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

