

HB 647-FN - AS INTRODUCED

2023 SESSION

23-0264

06/04

HOUSE BILL ***647-FN***

AN ACT relative to causes of action for individual rights.

SPONSORS: Rep. T. Lekas, Hills. 38; Rep. M. Smith, Straf. 10; Rep. T. Mannion, Hills. 1; Rep. Popovici-Muller, Rock. 17; Sen. Murphy, Dist 16

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a cause of action against the state for violations against individual rights.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to causes of action for individual rights.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Cause of Action to Protect Individual Rights. Amend RSA by inserting after chapter 507-G the following new chapter:

CHAPTER 507-H

CAUSE OF ACTION TO PROTECT INDIVIDUAL RIGHTS

507-H:1 Superseding Enactment. To the extent of any conflict, this chapter supersedes a defense or immunity in RSA 99-D, 507-B, 541-B, or other RSA section enacted prior to the effective date of this chapter.

507-H:2 Definitions.

I. "Government" means state, county, municipal, and other political subdivision of the state of New Hampshire.

II. “Government employee” means an individual employed or contracted by a government employer.

III. "Governmental employer" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the government.

507-H:3 Cause of Action.

I. Under this chapter, the government employer shall be liable for an injury caused by an act or omission of a government employee who, under color of law, violates a right under the laws or constitution of the state of New Hampshire or the United States.

II. An individual may seek legal, equitable, or other relief in a court of the state of New Hampshire for a violation of a right under the laws or constitution of the state of New Hampshire or the United States.

III. The proper defendant in an action, under this chapter, is the government employer and not a government employee.

IV. A government employee shall not be found financially liable, under this chapter, for a violation of a right under the laws or constitution of the state of New Hampshire or the United States.

V. The government employer shall notify the government employee, whose actions or omissions are the subject of a claim under this chapter, within 10 days of the government employer being served. The government employee has an unconditional right to intervene in the action, as a third-party defendant, pursuant to New Hampshire rules of civil procedure and court rules.

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1 VI. The individual seeking relief shall bear the burden of proving a violation of a right under
2 the laws or constitution of New Hampshire or the United States by a preponderance of the evidence.

3 VII. A claim under this chapter, shall be commenced no later than three years from the date
4 a claim can be brought for the deprivation of a right under the laws or constitution of New
5 Hampshire or the United States.

6 VIII. Notwithstanding the State of New Hampshire's rules of civil procedure and court rules,
7 a class action is prohibited under his chapter.

8 IX. A claim under this chapter is not subject to:

- 9 A. Statutory immunities;
- 10 B. Common law doctrines of immunity;
- 11 C. Federally-recognized doctrines of qualified immunity;
- 12 D. Sovereign immunity, governmental immunity, custom or policy; or
- 13 E. Limitations on liability or damages.

14 X. Nothing in this chapter abrogates a government's judicial or legislative immunity.

15 507-H:4 Jurisdiction in State Court.

16 I. Any action under this chapter shall arise out of state law.

17 II. Jurisdiction shall be in the state of New Hampshire's judicial system pursuant to its laws
18 and rules of civil procedure.

19 III. The court's order shall be supported by findings of facts and conclusions of law. The
20 court shall make the findings of fact in a bench trial and the jury shall make them in a jury trial.
21 The court shall make conclusions of law.

22 507-H:5 Judicial Evaluation of the Use of Force.

23 I. When evaluating a government employee's use of force under the constitution of New
24 Hampshire or the United States, the court shall make its determination of reasonableness from the
25 perspective of a reasonable government employee on the scene. Its determination shall be an
26 objective one based on the facts and circumstances confronting the government employee. It shall
27 recognize a government employee often must make split-second decisions in tense, uncertain, and
28 rapidly evolving situations. A court shall not determine reasonableness using perfect hindsight or
29 facts and circumstances of a claim that are later discovered.

30 507-H:6 Attorney Fees.

31 I. In any proceeding in which a plaintiff's claims prevail, the state of New Hampshire or a
32 political subdivision shall be liable for reasonable attorney fees and other litigation costs.

33 II. Paragraph I of this section shall include reasonable attorney fees incurred on an hourly
34 or a contingency basis or by an attorney providing legal services on a pro bono basis.

35 III. The court shall recognize that a plaintiff's claim prevails if the plaintiff obtains any
36 relief the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement or
37 the government's voluntary change in behavior.

1 IV. Under the state of New Hampshire's rules of civil procedure, the court may dismiss a
2 frivolous claim and may award reasonable attorney fees and costs to the defendant for defending
3 against a frivolous claim.

4 507-H:7 Termination of Contract, Agreement, or Employment.

5 I. For any contract or agreement enacted after the effective date of this chapter and
6 notwithstanding any other law, a court's finding that a government employee violated a right under
7 the laws or constitution of New Hampshire or the United States under this chapter is per se
8 evidence that the government employer has just cause for terminating the employment of the
9 government employee.

10 II. The government's termination of a contract, agreement, or employment of a government
11 employee shall not affect the government's liability under this chapter.

12 507-H:8 Public Information. All documents, including complaints, judgments, settlements, and
13 consent decrees under this chapter shall be subject to public disclosure.

14 2 Effective Date. This act shall take effect 60 days after its passage

**HB 647-FN- FISCAL NOTE
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AN ACT relative to cause of actions for individual rights.

FISCAL IMPACT: ☒ **State** ☒ **County** ☒ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill establishes a cause of action against the state for violations against individual rights. The Judicial Branch indicates the fiscal impact on the Branch is indeterminable. The Branch anticipates that this bill would result in an increase in the number of cases filed with the greatest impact on the Superior Court. The bill would likely result in a need for additional judicial and staff resources to handle the additional case load. The Branch is unable to estimate the number of additional cases and the fiscal impact is, therefore, indeterminable.

The Department of Justice defends legal claims against the State and its agencies. The Department states this bill significantly reduces the number of defenses available to state agencies and its employees during the course of litigation. The bill also expands the number of potential situations when a state agency may need to pay a plaintiff's attorney's fees. For both of these reasons, this bill would likely increase the Department of Justice litigation costs and, for the State, the cost of paying financial damages. The Department cannot anticipate how many claims may be brought against the State or its agencies as a result of this bill. Likely, this bill

would necessitate an increase in the resources needed to defend the State, including administrative, paralegal and attorney positions and associated operating expenses.

The New Hampshire Municipal Association indicates this bill eliminates any governmental immunities, requires the government to pay for attorney's fees in any circumstances where the government settles or loses in court, and eliminates any collective bargaining protections for employees whose actions are subject to penalty under this legislation. Such employees are entitled to become intervenors under the legislation. The Association states municipalities can anticipate a significant increase in costs related to claims against them. Traditionally, municipalities, would evaluate the likelihood of prevailing in court and weigh the relative costs of litigation against the likelihood of successfully reaching a settlement and those associated costs. Under this bill, the likelihood of settlement would be almost nonexistent because the employee is entitled to become an intervenor and, if a settlement were reached, would be subject to termination regardless of any collective bargaining protections or processes. As such, a court may find that litigation on the merits of the claim is the appropriate resolution. In addition, the Association assumes there would no longer be an incentive for municipalities to attempt to settle cases where the claims are dubious because of the additional costs associated with such settlements, including those relative to employment costs and attorney's fees. Removal of all governmental immunities means that prior claims which would have been precluded by immunity doctrines will not be subject to dismissal by the courts at an early stage in the litigation process, increasing the cost of any filing against the government. Further, the removal of protectionary standards would require additional training of governmental employees to ensure they understand the changed liability landscape. Finally, additional policies and procedures would need to be enacted and existing ones may need to be reviewed and rewritten. The Association assumes this will significantly increase costs for local government.

The New Hampshire Association of Counties states there would be an indeterminable increase in costs to the county governments. The Association anticipates there would be a potential increase in lawsuits from residents at the county jails or nursing homes.

AGENCIES CONTACTED:

Department of Justice, Judicial Branch, New Hampshire Municipal Association and New Hampshire Association of Counties