

Amendment to HB 647-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 New Chapter; Cause of Action to Protect Individual Rights. Amend RSA by inserting after
4 chapter 507-G the following new chapter:

5 CHAPTER 507-H

6 CAUSE OF ACTION TO PROTECT INDIVIDUAL RIGHTS

7 507-H:1 Superseding Enactment. To the extent of any conflict, this chapter supersedes a
8 defense or immunity in RSA 99-D, 507-B, 541-B, or other RSA section enacted prior to the effective
9 date of this chapter.

10 507-H:2 Definitions.

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

13 II. "Government employee" means an individual employed or contracted by a government
14 employer.

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

17 507-H:3 Cause of Action.

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

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

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

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

28 V. The government employer shall notify the government employee, whose actions or
29 omissions are the subject of a claim under this chapter, within 10 days of the government employer
30 being served. The government employee has an unconditional right to intervene in the action, as a
31 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 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 constitution of New Hampshire or the
5 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.

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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 constitution of New Hampshire or the United States under this chapter is per se evidence that
8 the government employer has just cause for terminating the employment of the government
9 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