

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3246**

BY DELEGATE HAMRICK

[Introduced March 16, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55-19-7, §55-  
3 19-8, §55-19-9, §55-19-10, §55-19-11, and §55-19-12, all relating to protecting everyone's  
4 constitutional rights; establishing findings, defining terms, establishing government is  
5 responsible for actions of its employees; providing a cause of action for individual against  
6 a government employee; describing judicial process; establishing jurisdiction in state  
7 court; providing that government may terminate contract, agreement or employment of  
8 employee found to have violated plaintiff's rights; providing a statute of limitations;  
9 providing immunity; designating information available to public; and providing effective  
10 date.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 19. PROTECTING EVERYONE'S CONSTITUTIONAL RIGHTS ACT**

### **§55-19-1. Legislative Findings.**

- 1 (a) Government's most important responsibility is to protect rights under the laws and  
2 constitutions of this state and the United States.
- 3 (b) Government's violation of rights diminishes the lives, liberty, property and pursuits of  
4 individuals.
- 5 (c) Government's failure to remedy a violation of rights imposes an unjust cost on an  
6 injured individual.
- 7 (d) Government's legitimacy is threatened by the absence of a meaningful civil process  
8 for an injured individual to seek redress of a violation of rights.
- 9 (e) Government is responsible for hiring, training, supervising and retaining employees,  
10 and for ensuring they perform their duties consistent with rights under the laws and constitutions  
11 of this state and the United States.
- 12 (f) The U.S. Supreme Court has interpreted the U.S. Constitution to protect police officers  
13 and other government employees against claims of excessive force in an arrest, investigatory

14 stop or other seizure under a standard of objective reasonableness. An objectively reasonable  
15 action does not violate the U.S. Constitution. The Court's interpretation of the Fourth Amendment  
16 protects against second-guessing reasonable split-second decisions made by police officers. The  
17 Legislature recognizes and agrees with the Supreme Court's precedent.

18 (g) Courts can address frivolous lawsuits. Rules of civil procedure authorize judges (a)  
19 To grant a motion to dismiss and (b) to sanction an attorney who files a case to harass a  
20 defendant.

21 (h) Courts must be free to engage in fact finding to determine whether a government  
22 employee's action violates a constitutional right. By making the government a defendant and the  
23 financially responsible party, the Legislature wants to free courts to determine if an employee's  
24 action violated the constitution (a) unencumbered by doctrines that impede fact finding, like the  
25 federal doctrine of qualified immunity, and (b) without the employee being exposed to personal  
26 financial liability.

**§55-19-2. Definitions.**

1 (a) "Government" means state, county, municipal, and other governmental entities in this  
2 state.

3 (b) "Government employee" means an individual employed or contracted by the  
4 government.

**§55-19-3. Respondeat Superior.**

1 (a) The government is a principal responsible for the actions of its government employees.

2 (b) A government employee is an agent of the government that employs the government  
3 employee.

4 (c) The government is legally responsible for a wrongful act of its government employee if  
5 such act occurs under the color of law.

6 (d) This chapter constitutes (1) A waiver of sovereign immunity and (2) acceptance of  
7 responsibility for a government employee's act under the color of law under the common law

8 theory of respondeat superior by the government as required to enforce the chapter, without  
9 regard to whether the government employee acted pursuant to a policy or custom of the  
10 government.

**§55-19-4. Cause of Action.**

1 (a) An individual ("plaintiff") may seek legal, equitable, or other relief in a court of this state  
2 for an injury caused by an act or omission of a government employee under the color of law in  
3 violation of a right under the laws or constitution of this state or the United States.

4 (b) The plaintiff seeking relief shall name as the defendant the government, pursuant to  
5 the state's rules of civil procedure.

6 (c) The plaintiff seeking relief bears the burden of proving a violation of a right under the  
7 laws or constitution of this state or the United States by a preponderance of the evidence.

**§55-19-5. Judicial Process.**

1 (a) A lawsuit shall not be impeded by invocation of a government employee's defense or  
2 immunity including that:

3 (1) The rights, privileges, or immunities secured by the laws or constitution of this state or  
4 the United States were not clearly established at the time of their deprivation by the government  
5 employee, or that the state of the law was otherwise such that the government employee could  
6 not reasonably or otherwise have been expected to know whether the government employee's  
7 conduct was lawful; or

8 (2) The government employee acted in good faith or that the government employee  
9 believed, reasonably or otherwise, that the government employee's conduct was lawful at the time  
10 it was committed.

11 (b) A judgment shall be supported by findings of fact and conclusions of law.

12 (c) A government employee shall not be found financially liable for a violation of a right  
13 under the laws or constitution of this state or the United States.

**§55-19-6. Jurisdiction in State Court.**

- 1           (a) An action under this chapter arises out of state law.
- 2           (b) Jurisdiction is in this state’s judicial system pursuant to this state’s laws and rules of
- 3 civil procedure.

**§55-19-7. Attorney Fees.**

- 1           (a) In any proceeding in which a plaintiff’s claim prevails, the government shall be liable
- 2 for reasonable attorney fees and other litigation costs.
- 3           (b) Reasonable attorney fees include those incurred on an hourly or contingency basis, or
- 4 by an attorney providing legal services on a pro bono basis.
- 5           (c) The court shall recognize that a plaintiff’s claim prevails if the plaintiff obtains any relief
- 6 the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement or the
- 7 government’s voluntary change in behavior.

**§55-19-8. Termination of Contract, Agreement or Employment.**

- 1           (a) Notwithstanding any other law, contract or agreement, the government may terminate
- 2 a contract, agreement or employment with the government employee if the court finds, under this
- 3 chapter, that the government employee violated a plaintiff’s right under the laws or constitution of
- 4 this state or the United States.
- 5           (b) The government’s termination of a contract, agreement or employment with the
- 6 government employee shall not affect the government’s liability under this chapter.

**§55-19-9. Statute of Limitations.**

- 1           A claim made under this chapter shall be commenced no later than three years from the
- 2 date a claim can be brought for the deprivation of a right under the laws or constitution of this
- 3 state or the United States unless a longer statute of limitations is otherwise provided by state law.

**§55-19-10. Exclusive immunity.**

- 1           This chapter shall not abrogate judicial or legislative immunity.

**§55-19-11. Public information.**

- 2           All documents, including complaints, judgments, settlements, and consent decrees, are

3 subject to public disclosure.

**§55-19-12. Effective Date.**

1 This act shall take effect on July 1, 2021.

NOTE: The purpose of this bill is to allow individuals to bring action against government employees for violation of their constitutional rights.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.