

HB 1727 (Tarver): Bad Apples in Law Enforcement Accountability Act

Language of Bill	Effect of Language
Section 1-5. Right of action.	Section title.
(a) A peace officer, as defined in 720 ILCS 5/2-13, who subjects or causes to be subjected, including by failing to intervene, any other person to the deprivation of any individual rights arising under Illinois Constitution, is liable to the injured party for legal or equitable relief or any other appropriate relief.	<p>This section creates a cause of action, in other words, it gives people the right to bring a lawsuit against a police officer who violates their constitutional rights under the Illinois Constitution. It does not authorize lawsuits against police for violations of the law – only constitutional violations, which by their nature are both difficult to prove and tend to be severe.</p> <p>This section says that a police officer who violates someone’s constitutional rights shall be liable for that violation, and the person whose rights were violated may be entitled to recover money (“legal”) or injunctive (“equitable”) relief, depending on the circumstances.</p>
(b) Sovereign immunity, statutory immunities, and statutory limitations on liability, damages, or attorney fees do not apply to claims brought pursuant to this section. The Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, <i>et seq.</i> , does not apply to claims brought pursuant to this section.	This section recognizes that claims brought under this law, which must allege a violation of the Illinois Constitution by police, are so significant that certain immunities – including sovereign and statutory immunities – that typically extend to police should not apply to these particular constitutional claims. As claims brought under this law shall always be of constitutional magnitude and the harms to plaintiffs and communities so severe, courts under this section will be able to award damages and attorney’s fees, depending on the circumstances.
(c) Qualified immunity is not a defense to liability pursuant to this section.	This section provides that state courts should not apply the federal judicial doctrine of “qualified immunity” to claims brought under this law. “Qualified immunity” is a near-universally condemned judge-made doctrine that improperly forecloses many meritorious Section 1983 claims from proceeding. It has been widely criticized, for good reason, by groups and legal scholars from across the ideological spectrum.
(d) In any action brought pursuant to this Section, a court shall award reasonable attorney fees and costs to the plaintiff, including expert witness fees and other litigation expenses, if they are a prevailing party as defined in 740 ILCS 23/5(d). In actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the	<p>This section says that if the plaintiff fulfills the definition of “prevailing party” as set forth in the Illinois Human Rights Act, the court shall award reasonable attorney fees and costs. The reason for this is because many plaintiffs will not have the means or resources to afford an attorney, even though they have a meritorious claim. Thus, saying that attorney’s fees and litigation costs shall be awarded to the plaintiff if they are the prevailing party would help allow people with meritorious claims retain counsel to vindicate their rights under the Illinois Constitution.</p> <p>The section also makes clear that a plaintiff seeking injunctive relief (i.e., asking the court to make the defendant do a certain thing), the plaintiff has to meet a special threshold to be considered the “prevailing party,” specifically that their lawsuit was the key factor in obtaining the desired litigation outcome.</p>

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defendant for defending claims the court finds frivolous.	Lastly, this section creates a strong disincentive against frivolous claims, by authorizing courts to award attorney's fees and costs to the defendant if the lawsuit and claim turned out to be frivolous.
(e) A civil action pursuant to this section must be commenced within five years after the cause of action accrues	This is the statute of limitations section, and it sets a reasonable period (five years) for people to bring their claims. The 5-year period begins when the cause accrues, which means it could be 5 years after the unconstitutional conduct occurred, or 5 years after the police department investigation into the unconstitutional conduct occurred. For this reason, this statute of limitations will encourage law enforcement departments to more promptly investigate allegations of constitutional violations (the longer they forestall, the longer the claim shall have to accrue, the longer they must wait for the statute of limitations to run, and expire).