

State Court Remedies for Constitutional Violations by Federal Employees Act

December 3, 2022

A state solution to the problem of blanket immunity that stymies individuals' ability to sue federal officials for violations of constitutional rights.

A bill for an act relating to public safety; enabling state-law damages remedy against federal officials; proposing coding for new law in State Law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____

Subdivision 1: Definitions

1. Person means an individual employed or contracted by the federal government, deputized by the federal government, incorporated into a task force with the federal government, or working in active cooperation with the federal government.
2. Federal government means the executive departments, independent establishments of the United States, corporations acting as instrumentalities or agencies of the United States, and any contractor with the United States.¹

Subdivision 2: State Cause of Action

1. Any person who, under color of any statute, ordinance, regulation, custom, or usage, of the federal government, violates a right under the laws or constitution of this State or the United States, shall be liable to the party injured in an action at law for money damages.²
2. The plaintiff bears the burden of proving a violation of a right by a preponderance of the evidence.

¹ See 28 U.S. Code § 2671 et seq., The Federal Tort Claims Act.

² See 42 U.S. Code § 1983 - The Civil Rights Act of 1871

Subdivision 3: Jurisdiction in State Court

1. An action under this chapter arises out of the laws of this State.
2. Jurisdiction is in this State's judicial system pursuant to its laws and rules of civil procedure.

Subdivision 4: Judicial Process

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

Subdivision 5: Attorney Fees

1. In any proceeding in which a plaintiff's claim prevails, the federal government shall be liable for reasonable attorney fees and other litigation costs.
2. Reasonable attorney fees include those incurred on an hourly or contingency basis, or by an attorney providing services on a pro bono basis.
3. The court shall recognize that a plaintiff's claim prevails if the plaintiff obtains any relief the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement or the federal government's voluntary change in behavior.
4. Under this State's rules of civil procedure, the court may dismiss a frivolous claim and may award reasonable attorney fees and costs to the defendant for defending against a frivolous claim.

Subdivision 6: Public Information

All documents, including complaints, judgments, settlements, and consent decrees, are subject to public disclosure.

For more information, please contact the Institute for Justice.

Samuel Hooper
Legislative Counsel
shooper@ij.org

Patrick Jaicomo
Senior Attorney
pjaicomo@ij.org