

2021 Regular Session

HOUSE BILL NO. 609

BY REPRESENTATIVES JORDAN, GREEN, BRASS, BRYANT, CARPENTER, WILFORD CARTER, COX, DUPLESSIS, FREEMAN, GAINES, GLOVER, HUGHES, JEFFERSON, JENKINS, TRAVIS JOHNSON, JONES, LANDRY, LARVADAIN, LYONS, NEWELL, PIERRE, SELDERS, AND WILLARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/IMMUNITY: Provides with respect to liability for peace officers engaged in certain actions

1 AN ACT

2 To amend and reenact R.S. 14:134(A) and to enact R.S. 9:2800.77, relative to liability of
3 peace officers; to provide relative to immunity from civil liability for peace officers;
4 to provide for exceptions to immunity; to provide for costs, expenses, and attorney
5 fees under certain circumstances; to provide for malfeasance; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2800.77 is hereby enacted to read as follows:

9 §2800.77. Limitation of qualified immunity for unreasonable force

10 A. Notwithstanding R.S. 9:2793.1, 2798.1, and 2800.10, no element of
11 qualified immunity shall be available to peace officers as a defense to liability for
12 claims brought under the laws of Louisiana for wrongful death, physical injury, or
13 personal injury inflicted by peace officers through any use of physical force in a
14 manner determined by the court to be unreasonable.

15 B. For the purposes of this Section, "peace officers" shall include
16 commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals,
17 correctional officers, constables, wildlife enforcement agents, state park wardens,
18 probation and parole officers, military police officers, security personnel employed

1 by the Supreme Court of Louisiana or a court of appeal of Louisiana, and an officer,
2 employee, contract worker, or volunteer with any prison, jail, work release facility,
3 or correctional institution. "Peace officers" shall also include any employee of the
4 state, a municipality, or other public agency whose permanent duties include the
5 making of arrests, performing of searches and seizures, executing criminal warrants,
6 preventing or detecting crime, or enforcing the penal, traffic, or highway laws of this
7 state.

8 C. In any action brought against a peace officer to which this Section is
9 applicable and judgment is rendered on the merits in favor of the defendant peace
10 officer, then all costs, expenses, and attorney fees shall be cast upon the party
11 bringing the action against the peace officer.

12 Section 2. R.S. 14:134(A) is hereby amended and reenacted to read as follows:

13 §134. Malfeasance in office

14 A. Malfeasance in office is committed when any public officer or public
15 employee ~~shall~~ does any of the following:

16 (1) Intentionally refuse or fail to perform any duty lawfully required of him,
17 as such officer or employee; ~~or.~~

18 (2) Intentionally perform any such duty in an unlawful manner; ~~or.~~

19 (3) Knowingly permit any other public officer or public employee, under his
20 authority, to intentionally refuse or fail to perform any duty lawfully required of him,
21 or to perform any such duty in an unlawful manner.

22 (4) If the individual is a full-time, part-time, or reserve peace officer, who
23 knowingly or with reckless disregard either refuses or fails to perform any duty
24 lawfully required of him as a peace officer or perform such duty in an unlawful
25 manner.

26 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 609 Reengrossed

2021 Regular Session

Jordan

Abstract: Prohibits qualified immunity for officers as a defense in certain cases.

Present law (R.S. 9:2793.1) provides for civil liability immunity for officers for destruction of property caused while the officer was acting within the course and scope of employment and if necessary to abate a public emergency.

Present law (R.S. 9:2798.1) provides for civil liability immunity for policymaking or discretionary acts or omissions by public entities. Present law exempts acts or omissions not reasonably related to the legitimate governmental objective or to criminal or intentional misconduct.

Present law (R.S. 9:2800.10) provides for civil liability immunity for damages sustained by a perpetrator of a felony offense during the commission of the offense or while fleeing the scene. Present law exempts intentional acts involving the use of excessive force.

Proposed law (R.S. 9:2800.77) supersedes present law and provides that qualified immunity does not apply as a defense for claims of wrongful death, physical injury, or personal injury caused by peace officers through the unreasonable use of physical force.

Proposed law (R.S. 9:2800.77) provides a definition for "peace officers".

Proposed law (R.S. 9:2800.77) provides that if judgment is rendered in favor of the defendant peace officer, then all costs, expenses, and attorney fees shall be cast upon the party bringing the action against the peace officer.

Present law (R.S. 14:134(A)) provides that malfeasance in office is committed when a public officer or employer does any of the following:

- (1) Intentionally refuses or fails to perform a required duty.
- (2) Intentionally performs the required duty in an unlawful manner.
- (3) Knowingly permits another public officer or employee under his authority to intentionally refuse or fail to perform any required duty or perform such duty in an unlawful manner.

Proposed law (R.S. 14:134(A)) retains present law and provides for malfeasance for a peace officer who knowingly or with reckless disregard either refuses or fails to perform any duty required of him or performs such duty in an unlawful manner.

(Amends R.S. 14:134(A); Adds R.S. 9:2800.77)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.

2. Remove references to U.S. and La. constitutions.
3. Remove provisions related to burden of proof and applicable state laws.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Provide for an award of costs, expenses, and attorney fees when judgment is rendered in favor of a defendant peace officer.