

HB 111 - AS INTRODUCED

2021 SESSION

21-0089

04/10

HOUSE BILL ***111***

AN ACT establishing a cause of action against the state to protect individual rights.

SPONSORS: Rep. Berch, Ches. 1; Rep. Bixby, Straf. 17; Rep. Schuett, Merr. 20; Rep. Wuelper, Straf. 3; Rep. M. Smith, Straf. 6; Rep. Amanda Bouldin, Hills. 12; Rep. T. Lekas, Hills. 37; Rep. M. King, Hills. 33

COMMITTEE: Judiciary

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ANALYSIS

This bill creates a cause of action in state court for an injury to an individual caused by an agent of the state of New Hampshire, or any of its political subdivisions, which constitutes the violation of a right under state or federal law.

The bill also waives the state's sovereign immunity for deprivations of an individual's rights under state or federal law.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struck through]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT establishing a cause of action against the state to protect individual rights.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

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

## CHAPTER 507-H

## CAUSE OF ACTION TO PROTECT INDIVIDUAL RIGHTS

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

507-H:2 Respondeat Superior.

I. The state of New Hampshire and its political subdivisions shall be responsible for the actions of its employees.

II. An employee is an agent of the state of New Hampshire or a political subdivision that employs the employee.

III. The state of New Hampshire or a political subdivision shall be legally responsible for any wrongful act of its agents if such act occurs under the color of law.

IV. This chapter shall constitute a waiver of sovereign immunity by the state of New Hampshire and its political subdivisions, and acceptance by the state and its political subdivisions of responsibility for an agent's acts under the color of law under the common law theory of respondeat superior, as required to enforce this chapter.

507-H:3 Cause of Action.

I. An individual may seek legal, equitable, or other relief under this chapter in state court for an injury caused by an agent of the state of New Hampshire or a political subdivision in violation of a right under the laws or constitution of New Hampshire or the United States.

II. The individual seeking relief shall name as defendants the state agent and the state employer, or official who acts in an official capacity for the state employer, pursuant to the New Hampshire rules of civil procedure.

III. The individual seeking relief shall bear the burden of proving a violation of a right under the laws or constitution of New Hampshire or the United States by a preponderance of the evidence.

507-H:4 Judicial Process.

I. Any judgment against the state of New Hampshire or a political subdivision, or other defendant, shall be supported by findings of fact and conclusions of law.

1 II. The court shall not be impeded by an invocation of a state agent's defense or immunity  
2 including that:

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

7 (b) The state agent acted in good faith, or that the state agent believed, reasonably or  
8 otherwise, that his or her conduct was lawful at the time it was committed.

9 III. A state agent shall not be found financially liable for a violation of a right under the  
10 laws or constitution of New Hampshire or the United States.

11 507-H:5 Jurisdiction in State Court.

12 I. Any action under this chapter shall arise out of state law.

13 II. Jurisdiction shall be in the New Hampshire judicial system pursuant to New Hampshire  
14 laws and rules of civil procedure.

15 507-H:6 Attorney Fees.

16 I. In any proceeding in which a plaintiff's claims prevail, the state of New Hampshire or a  
17 political subdivision shall be liable for reasonable attorney fees and other litigation costs.

18 II. Paragraph I of this section shall include reasonable attorney fees incurred on a  
19 contingency basis or by an attorney providing legal services on a pro bono basis.

20 507-H:7 Termination of Contract, Agreement, or Employment.

21 I. Notwithstanding any provision of law, contract, or agreement to the contrary, the state of  
22 New Hampshire or a political subdivision may terminate a contract, agreement, or employment with  
23 a state agent if the court finds, under this section, that the state agent violated an individual's right  
24 under the laws or constitution of New Hampshire or the United States.

25 II. The termination of a contract, agreement, or employment by the state of New Hampshire  
26 or a political subdivision with a government agent shall not affect the liability of the state or a  
27 political subdivision under this chapter.

28 2 Effective Date. This act shall take effect 60 days after its passage.