



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB1914

Introduced 2/17/2021, by Rep. Deanne M. Mazzochi

#### SYNOPSIS AS INTRODUCED:

745 ILCS 10/2-201

from Ch. 85, par. 2-201

Amends the Local Government and Governmental Employees Tort Immunity Act. Provides that, in counties with more than 3,000,000 inhabitants, any elected officer for a prosecutorial office or judge (1) who sets a policy of refusing to enforce an existing law, or (2) where the exercise of discretion is not individualized based on the merits of a particular case, but is exercised for the purpose of refusing to enforce an existing law, and (3) who does not have a written, good faith belief that the law in question is unenforceable as a matter of law, shall be personally liable to an injured party for legal or equitable relief or any other appropriate relief resulting from the refusal to enforce the existing law. Provides that no unit of county government is obligated to indemnify a prosecutorial officer absent specified findings. Provides that a court shall award reasonable attorney's fees and costs to the plaintiff who is a prevailing party. Provides that, in actions for injunctive relief, a court shall deem a plaintiff a prevailing party if the plaintiff's action was a substantial factor or significant catalyst in obtaining the results sought by the litigation. Provides that, if a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney's fees to the defendant for defending claims the court finds frivolous. Provides that a civil action shall be commenced: (1) within one year after the cause of action accrues if the damages are less than \$50,000; or (2) within 2 years if the damages involved equal or exceed \$50,000. Provides that implementation of a policy of nonenforcement of an existing law, where the public employee does not have a good faith belief that the law in question is invalid, inapplicable, or unconstitutional, is presumptively willful. Makes other changes.

LRB102 13378 LNS 18722 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Local Governmental and Governmental  
5 Employees Tort Immunity Act is amended by changing Section  
6 2-201 as follows:

7 (745 ILCS 10/2-201) (from Ch. 85, par. 2-201)

8 Sec. 2-201. Public employee liability.

9 (a) Except as otherwise provided by Statute or in this  
10 Section, a public employee serving in a position involving the  
11 determination of policy or the exercise of discretion is not  
12 liable for an injury resulting from his act or omission in  
13 determining policy when acting in the exercise of such  
14 discretion even though abused.

15 (b) In counties with more than 3,000,000 inhabitants, any  
16 elected officer for a prosecutorial office (1) who sets a  
17 policy of refusing to enforce an existing law duly passed by  
18 the General Assembly, or (2) where the exercise of discretion  
19 is not individualized based on the merits of a particular  
20 case, but is exercised for the purpose of refusing to enforce  
21 an existing law set by the General Assembly, and (3) who does  
22 not have a written, good faith belief that the law in question  
23 is unenforceable as a matter of law, shall be personally

1 liable to an injured party for legal or equitable relief or any  
2 other appropriate relief resulting from the refusal to enforce  
3 the existing law.

4 (c) No unit of county government is obligated to indemnify  
5 an officer under subsection (b) absent a finding that the unit  
6 of county government:

7 (1) approved of the existing policy; or

8 (2) refused to provide the prosecutorial office with  
9 budget resources to prosecute claims under the law in  
10 question. Upon giving the county board notice of  
11 nonenforcement, if within 60 days evidence is provided  
12 that the county board approved funding for at least 250  
13 full-time equivalent hours, or a funding level that is  
14 objectively reasonable given the effort and time  
15 associated with prosecuting offenses under the law in  
16 question, shall presumptively preclude any requirement  
17 that the unit of county government immunize the elected  
18 officer in subsection (b).

19 (d) In counties with more than 3,000,000 inhabitants, a  
20 judge (1) who sets a policy of refusing to enforce an existing  
21 law duly passed by the General Assembly, or (2) where the  
22 exercise of judicial discretion is not individualized based on  
23 the merits of a particular case, but is exercised for the  
24 purpose of refusing to enforce an existing law set by the  
25 General Assembly, and (3) who does not have a written, good  
26 faith belief that the law in question is unenforceable as a

1 matter of law, shall be personally liable to an injured party  
2 for legal or equitable relief or any other appropriate relief  
3 resulting from the refusal to enforce the existing law.

4 (e) In any action brought under this Section, a court  
5 shall award reasonable attorney's fees and costs to the  
6 plaintiff, including expert witness fees and other litigation  
7 expenses, if the plaintiff is a prevailing party as defined in  
8 subsection (d) of Section 5 of the Illinois Civil Rights Act of  
9 2003. In an action for injunctive relief, a court shall deem a  
10 plaintiff a prevailing party if the plaintiff's action was a  
11 substantial factor or significant catalyst in obtaining the  
12 results sought by the litigation. If a judgment is entered in  
13 favor of a defendant, the court may award reasonable costs and  
14 attorney's fees to the defendant for defending claims the  
15 court finds frivolous.

16 (f) A civil action under this Section shall be commenced:

17 (1) within one year after the cause of action accrues  
18 if the damages are less than \$50,000; or

19 (2) within 2 years if the damages equal or exceed  
20 \$50,000.

21 Such civil actions shall become moot if the elected  
22 official responsible for the nonenforcement resigns from  
23 office.

24 (g) Implementation of a policy of nonenforcement of an  
25 existing law, if the public employee does not have a good faith  
26 belief that the law in question is invalid, inapplicable, or

1 unconstitutional, is presumptively willful. Belief that the  
2 law in question passed by the General Assembly represents a  
3 bad public policy is not sufficient to create a good faith  
4 belief. Failure to mitigate the impact on the victims of a  
5 policy of nonenforcement, after having had notice of damage  
6 regarding the same, creates a presumption that the  
7 nonenforcement is being done wantonly, and in disregard of the  
8 life, limbs, health, safety, reputation, or property rights of  
9 the class of individuals impacted by the nonenforcement  
10 policy. A policy may be inferred if failure to comply by a  
11 subordinate employee would lead to termination, discipline, or  
12 other adverse employment consequences.

13 (Source: Laws 1965, p. 2983.)