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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R.

To amend the Revised Statute to codify the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BANKS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Revised Statute to codify the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Qualified Immunity
5 Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Qualified immunity is intended for all but
2 the plainly incompetent or those who knowingly vio-
3 late the law and is meant to give government offi-
4 cials breathing room to make reasonable mistakes of
5 fact and law.

6 (2) The Supreme Court has observed that
7 qualified immunity balances two important interests,
8 the need to hold law enforcement officers account-
9 able when they exercise power irresponsibly and the
10 need to shield officers from harassment, distraction,
11 and liability when they perform their duties reason-
12 ably.

13 **SEC. 3. CODIFICATION OF QUALIFIED IMMUNITY.**

14 (a) IN GENERAL.—Section 1979 of the Revised Stat-
15 utes (42 U.S.C. 1983) is amended—

16 (1) by inserting “(a) IN GENERAL—” before
17 “Every person”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(b) APPLICABILITY TO LAW ENFORCEMENT OFFI-
21 CERS.—

22 “(1) A law enforcement officer subject to an ac-
23 tion under this section in their individual capacity
24 shall not be found liable if such law enforcement of-
25 ficer establishes that—

1 “(A) the right, privilege, or immunity se-
2 cured by the Constitution or Federal law was
3 not clearly established at the time of their dep-
4 rivation by the law enforcement officer, or that
5 at this time, the state of the law was not suffi-
6 ciently clear that every reasonable law enforce-
7 ment officer would have understood that the
8 conduct alleged constituted a violation of the
9 Constitution or Federal law; or

10 “(B) a court of competent jurisdiction had
11 issued a final decision on the merits holding,
12 without reversal, vacatur, or preemption, that
13 the specific conduct alleged to be unlawful was
14 consistent with the Constitution and Federal
15 laws.

16 “(2) A law enforcement agency or unit of local
17 government who employed a law enforcement officer
18 subject to an action under subsection (a), shall not
19 be liable for such action if the law enforcement offi-
20 cer is found not liable under paragraph (1) and was
21 acting within the scope of their employment.

22 “(c) DEFINITIONS.—In this section:

23 “(1) LAW ENFORCEMENT OFFICER.—The term
24 ‘law enforcement officer’ means any Federal, State,
25 Tribal, or local official who is authorized by law to

1 engage in or supervise the prevention, detection, in-
2 vestigation, or the incarceration of any person for
3 any violation of law, and has the statutory powers
4 of arrest or apprehension, including police officers
5 and other agents of a law enforcement agency.

6 “(2) LAW ENFORCEMENT AGENCY.—The term
7 ‘law enforcement agency’ means any Federal, State,
8 Tribal, or local public agency engaged in supervision,
9 prevention, detection, investigation, or the incarcer-
10 ation of any person for any violation of law, and has
11 the statutory powers of arrest or apprehension.”

12 (b) EFFECTIVE DATE.—The amendments made
13 under subsection (a) shall take effect on the date that is
14 180 days after the date of the enactment of this Act.