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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Qualified Immunity Act of 2020”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:
(1) Qualified Immunity is intended for all but the plainly incompetent or those who knowingly violate the law and is meant to give government officials breathing room to make reasonable mistakes of fact and law.

(2) The Supreme Court has observed that qualified immunity balances two important interests, the need to hold law enforcement officers accountable when they exercise power irresponsibly and the need to shield officers from harassment, distraction, and liability when they perform their duties reasonably.

SEC. 3. CODIFICATION OF QUALIFIED IMMUNITY.

(a) IN GENERAL.—Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended—

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

(2) by adding at the end the following new subsection:

“(b) APPLICABILITY TO LAW ENFORCEMENT OFFICERS.—

“(1) A law enforcement officer subject to an action under this section in their individual capacity shall not be found liable if such law enforcement officer establishes that—
“(A) the right, privilege, or immunity secured by the Constitution or Federal law was not clearly established at the time of their deprivation by the law enforcement officer, or that at this time, the state of the law was not sufficiently clear that every reasonable law enforcement officer would have understood that the conduct alleged constituted a violation of the Constitution or Federal law; or

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

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

“(c) DEFINITIONS.—In this section:

“(1) LAW ENFORCEMENT OFFICER.—The term ‘law enforcement officer’ means any Federal, State, Tribal, or local official who is authorized by law to
engage in or supervise the prevention, detection, investigation, or the incarceration of any person for any violation of law, and has statutory powers of arrest or apprehension, including police officers and other agents of a law enforcement agency.

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

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