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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 149, L.D. 214, “An Act To Eliminate Qualified Immunity for Police Officers”

Amend the bill in section 1 in subsection 6 in the first 2 lines (page 1, lines 3 and 4 in L.D.) by striking out the following: "including the immunity provided by Title 14, section 8103."

Amend the bill by inserting after section 1 the following:

'Sec. 2. 14 MRSA §8111, sub-§1, as amended by PL 2001, c. 662, §§7 to 9, is further amended to read:

1. Immunity. Notwithstanding any liability that may have existed at common law, and except as provided in subsection 1-A, employees of governmental entities ~~shall be~~ are absolutely immune from personal civil liability for the following:

- A. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve;
- B. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial;
- C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid;
- D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement;
- E. Any intentional act or omission within the course and scope of employment; ~~provided except~~ that such immunity does not exist in any case in which an employee's actions are found to have been in bad faith; or

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1 F. Any act by a member of the Maine National Guard within the course and scope of
2 employment; except that immunity does not exist when an employee's actions are in
3 bad faith or in violation of military orders while the employee is performing active state
4 service pursuant to Title 37-B.

5 The absolute immunity provided by paragraph C ~~shall be~~ is applicable whenever a
6 discretionary act is reasonably encompassed by the duties of the governmental employee
7 in question, regardless of whether the exercise of discretion is specifically authorized by
8 statute, charter, ordinance, order, resolution, rule or resolve, and ~~shall~~ must be available to
9 all governmental employees, including police officers and governmental employees
10 involved in child welfare cases, who are required to exercise judgment or discretion in
11 performing their official duties.

12 **Sec. 3. 14 MRSA §8111, sub-§1-A** is enacted to read:

13 **1-A. Exceptions.** The absolute immunity provided by subsection 1 is not a defense to
14 a claim brought under this chapter against the following employees of governmental
15 entities:

16 A. A state police officer, as defined in Title 5, section 17708;

17 B. A marine patrol officer, as described in Title 12, section 6025;

18 C. A game warden, as described in Title 12, chapter 905, subchapter 1;

19 D. A Capitol Police officer appointed pursuant to Title 25, section 2908;

20 E. A deputy, as defined in Title 30-A, section 351;

21 F. A sheriff elected or appointed pursuant to Title 30-A, section 371-B;

22 G. A constable, as described in Title 30-A, section 2673; or

23 H. A police officer appointed by municipal officers pursuant to Title 30-A, section
24 2671.'

25 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
26 number to read consecutively.

27 **SUMMARY**

28 This amendment makes clear the intent of the bill, which is to eliminate the qualified
29 immunity available under the Maine Civil Rights Act as well as the statutory absolute
30 immunity under the Maine Tort Claims Act for state police officers, marine patrol officers,
31 game wardens, Capitol Police officers, deputies, sheriffs, constables and police officers
32 appointed by municipal officers.