

SENATE BILL REPORT

SB 6350

As Reported by Senate Committee On:
Governmental Operations, February 6, 2014

Title: An act relating to damages for persons injured by violations of the state Constitution.

Brief Description: Securing damages for persons injured by violations of the state Constitution.

Sponsors: Senators Roach, Padden and Kline.

Brief History:

Committee Activity: Governmental Operations: 2/06/14 [DP].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Dansel and McCoy.

Staff: Karen Epps (786-7424)

Background: The federal Civil Rights Act of 1871, 42 U.S.C. 1983, provides that:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in any action at law, suit in equity, or other proceedings.

Attorneys' fees are available under 42 U.S.C. 1988 to successful plaintiffs and, under limited circumstances, successful defendants. The state itself cannot be sued in the federal court under the 11th Amendment; however, that provision does not protect local governments, nor state officers or agents acting in their individual capacity, but under color of law. Several categories of officials are immune from suit under federal case law.

Summary of Bill: A governmental entity that, under any statute, ordinance, regulation, custom, or usage, deprives any person of any right, privilege, or immunity secured by the state Constitution, is liable to the injured person.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

All damages and remedies available under the federal Civil Rights Act are available. The prevailing party may recover reasonable attorney's fees and costs, including expert witness fees.

In a proceeding to enforce this act, a court may not impose or levy as a remedy a general or special tax, assessment, fee, toll, charge, or other monetary obligation on the citizens of the state. The act applies to causes of action arising after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: It is probably one of the best kept secrets in Washington that there is a state Constitution with very expansive rights for individuals in this state. When we compare the state bill of rights to the federal bill of rights, we find that the protections for free speech and religious exercise are much greater under the state Constitution. The state Constitution protects our rights in privacy when the federal Constitution never mentions privacy. There is a strong provision on eminent domain and on the right to keep and bear arms in the state Constitution. There are provisions in the state Constitution guaranteeing each citizen of this state fair taxation. This bill empowers the individual by creating a cause of action against government for violating the individual's state Constitutional rights. This bill also importantly provides that the prevailing private party is entitled to an award of reasonable attorneys' fees. There are many cases that do not make it to court because the average citizen cannot afford to litigate whereas units of government have a seemingly unlimited treasury for litigation. The attorney fee provision in this bill helps to level the playing field to further empower the private citizen.

Persons Testifying: PRO: Senator Roach, prime sponsor; Richard Sanders, Supreme Court Justice, retired.