1025-S2 AMH GRAH BUR 057

**2SHB 1025** - H AMD **268**

By Representative Graham

**NOT CONSIDERED 01/02/2024**

 On page 1, line 10, after "law." insert "Additionally, the people of Washington undertake to protect the liberty and security of individuals, and to preserve public peace and advance the public interest, by electing officials entrusted with the power to create, implement, and enforce state law, regulations, and policies, and to appoint officials with similar powers."

 On page 1, line 12, after "peace officer" strike "or the officer's employer" and insert ", or elected or appointed official, or the officer or official's employer,"

 On page 1, line 17, after "policing" insert ", and unlawful legislation and execution of state laws,"

 On page 1, line 18, after "communities" strike "and law enforcement" and insert ", law enforcement, and government officials"

 On page 1, line 21, after "officers" insert ", elected or appointed officials,"

 On page 2, line 9, after (1) insert "Elected or appointed official" means members of the legislature; the governor; holders of elective office in the executive branch of state government; chief executive officers of state agencies; members of boards, commissions, or committees with authority over one or more state agencies or institutions; employees of the state who have high-level discretionary authority to draft, approve, implement, or enforce state laws, regulations, or policies; elected or appointed prosecutors; and any person exercising or undertaking to exercise the powers or functions of an elected or appointed official. "Elected or appointed official" does not include any justice, judge, commissioner, special master, court clerk, law clerk, bailiff, court security officer, or other employee of the judicial branch of state government.

 (2)"

 Renumber the remaining subsections consecutively and correct any internal references accordingly.

 On page 2, line 11, after "officer's" insert "or elected or appointed official's"

 On page 2, beginning on line 19, after "(1)" strike all material through "under:" on line 25 and insert "Any person injured in person or property by a peace officer, or elected or appointed official, acting under color of authority has a cause of action against the peace officer, or elected or appointed official, and against any other peace officer, or elected or appointed official, who had the power through reasonable diligence to prevent or aid in preventing the injury from occurring and failed to do so, if the peace officer, or elected or appointed official, engaged in conduct that is unlawful under:"

 On page 2, beginning on line 29, after "(2)" strike all material through "employment." on line 33 and insert "In an action against a peace officer, or elected or appointed official, under subsection (1) of this section, the plaintiff may also name the officer's or official's employer as a defendant. The employer is vicariously liable if the unlawful conduct causing the injury was within the scope of the peace officer's or elected or appointed official’s employment."

 On page 3, line 33, after "(5)" strike "It" and insert "In any action against a peace officer or their employer, it"

 On page 3, after line 36, insert the following:

 "(6) In any action against an elected or appointed official, or their employer, brought under this chapter, the following immunities and defenses are inapplicable and may not be raised:

(a) Qualified immunity, as it has developed in litigation of suits under 42 U.S.C. Sec. 1983, including without limitation any immunity or defense premised on the argument that the rights, privileges, or immunities sued upon were not clearly established at the time of the act, omission, or decision;

(b) Qualified immunity, as it has developed in litigation of common law torts, including without limitation any immunity or defense premised on the argument that the official carried out a statutory duty according to procedures dictated by statute and superiors, and acted reasonably;

(c) Discretionary immunity, including without limitation any immunity or defense premised on the argument that discretionary governmental acts are immune from tort liability, the act is the outcome of a conscious balancing of risks and advantages, or the act is a basic policy decision made by a high-level executive;

(d) Legislative immunity, including without limitation any immunity or defense premised on the argument that purely legislative acts are immune from tort liability, the government has absolute immunity for purely legislative acts, or that immunity is necessary to avoid rendering the legislative process inoperable; and

(e) Prosecutorial immunity, including without limitation any immunity or defense premised on the argument that a prosecutor has absolute immunity from liability when acting within the scope of their duties in initiating and pursuing a criminal prosecution, or that immunity is warranted to protect the prosecutor's role as an advocate."

On page 4, line 10, after "accrues." insert "For purposes of this chapter, a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action."

On page 4, line 12, after "officer" insert ", or elected or appointed official,"

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|  |  EFFECT:   Makes the following modifications to the bill:* Authorizes a cause of action against elected or appointed officials for violations of the state constitution or specified state laws.
* Permits plaintiffs to name an elected or appointed official’s employer as a defendant and establishes vicarious liability for an elected or appointed official’s employer.
* Provides that, in an action against an elected or appointed official or their employer, the following immunities and defenses are inapplicable: qualified immunity, discretionary immunity, legislative immunity, and prosecutorial immunity.
* Modifies the intent section to reference elected and appointed officials.
* Adds a definition of "elected or appointed official".
* Modifies the definition of employer to include an elected or appointed official's employing agency or entity.
* Provides actions accrue when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action.
* Provides the act is not intended to limit the right of an elected or appointed official to have a legal defense provided by their employer or have a judgment satisfied by their employer.
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