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**HOUSE BILL 1844**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Graham, Walsh, Sandlin, Klicker, and Schmidt

Read first time 02/28/23. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to creating a private right of action for harm  
2 from violations of the state Constitution or state law by elected and  
3 appointed officials; adding a new chapter to Title 7 RCW; and  
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The people of Washington undertake to  
7 protect the liberty and security of individuals, and to preserve  
8 public peace and advance the public interest, by electing officials  
9 entrusted with the power to create, implement, and enforce state law,  
10 regulations, and policies, and to appoint officials with similar  
11 powers. It is the intent of the legislature to provide a meaningful  
12 legal remedy under state law for persons who are injured when a duly  
13 elected or appointed official, through action or neglect, violates  
14 the state Constitution or state law.

15 (2) The legislature finds that the lack of such a remedy  
16 jeopardizes justice for the victims and implies impunity for the  
17 violators. In order to foster the important public policy of  
18 accountability for unlawful legislation and execution of state laws,  
19 regulations, and policies, and to promote trust between communities  
20 and their government, and in recognition of remedial deficiencies in  
21 existing federal law and Washington common law, this chapter

1 establishes a more meaningful remedy through a civil cause of action  
2 by which victims of legislative and executive misconduct may obtain  
3 compensation for their injuries and an award of costs and attorneys'  
4 fees incurred in seeking the remedy. By enacting this chapter, the  
5 legislature intends to preclude development and imposition of any  
6 qualified or absolute immunity.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires  
9 otherwise.

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

23 (2) "Employer" means the state of Washington and all political  
24 subdivisions and agencies thereof that act as an elected or appointed  
25 official's employing agency or entity.

26 (3) "Person" means a natural person and, if the natural person  
27 has died, includes the person's estate and statutory beneficiaries.

28 NEW SECTION. **Sec. 3.** (1) Any person injured in person or  
29 property by an elected or appointed official, acting under color of  
30 authority, has a cause of action against the official if the official  
31 engaged in conduct that is unlawful under the state Constitution or  
32 state law.

33 (2) In an action against an elected or appointed official under  
34 subsection (1) of this section, the plaintiff may also name as a  
35 defendant the state and any subdivision or agency of the state over  
36 which the elected or appointed official exercises authority or which  
37 is the elected or appointed official's employer. The state, and any  
38 political subdivision or agency named as a defendant in accordance

1 with this subsection, are vicariously liable if the unlawful conduct  
2 causing the injury was within the scope of the elected or appointed  
3 official's duties.

4 (3) The following immunities and defenses may not be raised as an  
5 immunity or defense to any action brought under this chapter:

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

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

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

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

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

32 NEW SECTION. **Sec. 4.** In an action brought under this chapter,  
33 the court shall award to a prevailing plaintiff actual damages as  
34 determined by the trier of fact, and shall make an award of at least  
35 nominal damages. The court may also award to a prevailing plaintiff  
36 costs and reasonable attorneys' fees. The court may grant declaratory  
37 and injunctive relief as it deems appropriate.

1        NEW SECTION.    **Sec. 5.**    A cause of action under section 3 of this  
2 act must be commenced within three years after the cause of action  
3 accrues. For purposes of this chapter, a cause of action accrues when  
4 the plaintiff discovers, or in the reasonable exercise of diligence  
5 should discover, the elements of the cause of action.

6        NEW SECTION.    **Sec. 6.**    (1) This chapter must be liberally  
7 construed to effect its beneficial and remedial purposes.  
8        (2) Nothing in this chapter affects any other common law or  
9 statutory right of action available to the plaintiff.

10       NEW SECTION.    **Sec. 7.**    Nothing in this chapter is intended to  
11 limit the right of an elected or appointed official to have a legal  
12 defense provided at the expense of the state or a political  
13 subdivision of the state, or to have any judgment under this chapter  
14 satisfied by the state or a political subdivision of the state under  
15 chapter 4.92 or 4.96 RCW.

16       NEW SECTION.    **Sec. 8.**    This chapter applies only to causes of  
17 action arising on or after the effective date of this section.

18       NEW SECTION.    **Sec. 9.**    This act takes effect January 1, 2025.

19       NEW SECTION.    **Sec. 10.**    Sections 1 through 9 of this act  
20 constitute a new chapter in Title 7 RCW.

21       NEW SECTION.    **Sec. 11.**    If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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