H-0403.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1886**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Hudgins, Appleton, Valdez, Pollet, Santos, and Doglio

AN ACT Relating to enhancing protections for persons experiencing voter discrimination; amending RCW 29A.04.205; adding new sections to chapter 29A.04 RCW; and prescribing penalties.

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

**Sec.**  RCW 29A.04.205 and 2003 c 111 s 132 are each amended to read as follows:

(1) It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud.

(2) The election registration laws and the voting laws of the state of Washington must be administered without discrimination based upon ((~~race, creed, color, national origin, sex,~~)) a protected class under chapter 49.60 RCW or political affiliation, except that election officials shall enforce any age requirements in accordance with this title. A person violating this section is subject to civil action for damages and other relief as provided in section 6 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

As used in this section and sections 3 through 6 of this act:

(1) "Claimant" means any eligible voter claiming to be aggrieved by an alleged discriminatory act or practice in violation of RCW 29A.04.205.

(2) "Eligible voter" means a citizen of the United States who is a resident of this state and qualified by law to sign up to register to vote, register to vote, or participate fully in the primary, special election, or general election in this state or any county, city, town, school district, or other political subdivision of this state.

(3) "Respondent" means the person or persons alleged to have committed the practice or act complained of.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

(1) A violation of RCW 29A.04.205 is established if it is shown that members of a class protected under RCW 29A.04.205 did not have the equal opportunity provided to other members of the electorate to participate in a primary, special election, or general election because of:

(a) A discriminatory act by one or more state or county election official, staff, or volunteer; or

(b) An election administration process, rule, or policy that has the purpose of discrimination or has a discriminatory effect.

(2) Proof of intent on the part of the respondent to discriminate based upon a class protected under RCW 29A.04.205 is not required for a cause of action to be sustained.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

(1) A claimant seeking remedies under section 6 of this act must first file with the attorney general a written claim of discrimination in violation of RCW 29A.04.205. The claim must state the name and, to the extent possible, the contact information of the person or persons alleged to have committed the practice or act complained of, the particulars of the alleged discrimination, and other information required by the attorney general. After a claim is filed with the required information, the attorney general shall initiate investigation of the allegations contained in the claim within thirty days.

(2) The attorney general may investigate an alleged discriminatory practice or act in violation of RCW 29A.04.205 on its own initiative.

(3) If, after an investigation, the attorney general determines that there is no reasonable cause to believe that an unlawful discriminatory practice or act has occurred, the attorney general shall notify the claimant and the respondent in writing of this fact within five business days.

(4)(a) If, after an investigation, the attorney general determines that there is reasonable cause to believe that the claim is true, the attorney general shall endeavor to eliminate the unlawful discriminatory act or practice by informal methods of conference, conciliation, and persuasion.

(b) If an agreement is reached for the elimination of the unlawful discriminatory act or practice, the agreement must be reduced to writing and signed by all parties. The agreement is subject to the approval of the superior court in the county in which the respondent resides, where the alleged discriminatory practice or act occurred, or in Thurston county. Communication made during and as part of the informal endeavors is privileged and is not subject to discovery or admissible in evidence in a subsequent proceeding without the written consent of the persons concerned; however, proof of failure to comply with the agreement is prima facie evidence of a violation of RCW 29A.04.205.

(c) If an agreement is not reached, the attorney general may bring a civil action in the name of the state or as *parens patriae* on behalf of persons residing in the state, against any person that the attorney general has reasonable cause to believe is in violation of RCW 29A.04.205. The action must be filed in superior court in the county in which the respondent resides, where the alleged discriminatory practice or act occurred, or in Thurston county. Upon filing an action, the attorney general must concurrently notify the claimant and respondent in writing of the filing.

(5) If the attorney general concludes at any time after the filing of a claim or upon investigation under subsection (2) of this section that prompt judicial action is necessary to carry out the purposes of this act, the attorney general may file a civil action for appropriate temporary or preliminary relief pending final disposition of the claim. The court having jurisdiction over the proceedings shall assign the action for hearing at the earliest practicable date and shall cause the action to be expedited in every way.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

After exhausting the administrative remedy provided under section 4 of this act, a claimant may file a complaint with the superior court in the county in which the respondent resides, where the alleged discriminatory practice or act occurred, or in Thurston county. This section does not prohibit a court from applying the doctrines of collateral estoppel and *res judicata*.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

(1) In an action brought under section 4 or 5 of this act, if the superior court finds discrimination under RCW 29A.04.205, the court may award:

(a) Actual and compensatory damages, including damages for emotional distress;

(b) Costs, including but not limited to court costs, reasonable investigative costs, and expert witness costs;

(c) Temporary or permanent injunctive relief;

(d) If appropriate to vindicate the public interest, a civil penalty against the respondent of not more than:

(i) Five thousand dollars for a first violation; and

(ii) Ten thousand dollars for any subsequent violation;

(e) Any other appropriate remedy authorized by the federal civil rights act of 1964 as amended, the federal voting rights act of 1965 as amended, the federal national voter registration act of 1993 (52 U.S.C. Secs. 20501 et seq.), or the federal help America vote act of 2002 (52 U.S.C. Secs. 20901 et seq.); or

(f) Any other appropriate remedy to enjoin or correct the act or practice found to be unlawful.

(2) In an action brought under section 4 or 5 of this act, if the court finds discrimination under RCW 29A.04.205, the court may, in addition to remedies provided under subsection (1) of this section:

(a) Invalidate the certification of any election administrator certified pursuant to RCW 29A.04.530; and

(b) Prohibit the respondent from holding a position that requires or authorizes oversight of future special elections, primary elections, or general elections.

(3) In an action under section 4 or 5 of this act, the court shall award reasonable attorneys' fees to a prevailing plaintiff. The court shall not award attorneys' fees to a prevailing defendant unless the plaintiff's complaint was frivolous, unreasonable, or without foundation.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

(1) Any action to enforce a claim for damages and other relief as provided in section 6 of this act shall be forever barred unless commenced within four years after the cause of action accrues, except as provided under subsection (2) of this section.

(2) For an action by the claimant pursuant to section 5 of this act to enforce a claim for damages and other relief as provided in section 6 of this act, the running of the statute of limitations under subsection (1) of this section is suspended during the pendency of an investigation by the attorney general or during the pendency of a civil action filed by the attorney general in accordance with section 4 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 29A.04 RCW to read as follows:

Sections 1 through 7 of this act do not apply to alleged violations of chapter 29A.92 RCW.

**--- END ---**