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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

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

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

NEW SECTION. **Sec.**  (1) 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. It is the intent of the legislature to provide a meaningful legal remedy under state law for persons who are injured when a duly elected or appointed official, through action or neglect, violates the state Constitution or state law.

(2) The legislature finds that the lack of such a remedy jeopardizes justice for the victims and implies impunity for the violators. In order to foster the important public policy of accountability for unlawful legislation and execution of state laws, regulations, and policies, and to promote trust between communities and their government, and in recognition of remedial deficiencies in existing federal law and Washington common law, this chapter establishes a more meaningful remedy through a civil cause of action by which victims of legislative and executive misconduct may obtain compensation for their injuries and an award of costs and attorneys' fees incurred in seeking the remedy. By enacting this chapter, the legislature intends to preclude development and imposition of any qualified or absolute immunity.

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

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

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

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

(2) In an action against an elected or appointed official under subsection (1) of this section, the plaintiff may also name as a defendant the state and any subdivision or agency of the state over which the elected or appointed official exercises authority or which is the elected or appointed official's employer. The state, and any political subdivision or agency named as a defendant in accordance with this subsection, are vicariously liable if the unlawful conduct causing the injury was within the scope of the elected or appointed official's duties.

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

(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.

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

NEW SECTION. **Sec.**  A cause of action under section 3 of this act must be commenced within three years after the cause of action accrues. 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.

NEW SECTION. **Sec.**  (1) This chapter must be liberally construed to effect its beneficial and remedial purposes.

(2) Nothing in this chapter affects any other common law or statutory right of action available to the plaintiff.

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

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

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

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

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

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