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**SUBSTITUTE SENATE BILL 5154**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Roach, Constantine, Kohl-Welles and Winsley)

READ FIRST TIME 02/07/01.

1 AN ACT Relating to the civil rights act of 2001; and adding a new  
2 chapter to Title 7 RCW.

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

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
5 Washington state civil rights act of 2001.

6 NEW SECTION. **Sec. 2.** (1) The legislature recognizes that all  
7 political power is inherent in the people, and governments derive their  
8 just powers from the consent of the governed, and are established to  
9 protect and maintain individual rights; and that a frequent recurrence  
10 to fundamental principles is essential to the security of individual  
11 right and the perpetuity of free government.

12 (2) The legislature declares that it is a fundamental principle  
13 that the state Constitution embodies public policy of the highest order  
14 and priority; that it is a compelling interest of the state of  
15 Washington to ensure that the provisions of the state Constitution are  
16 guaranteed and enforced in order to protect and maintain the liberties  
17 and individual rights of the people of the state of Washington; that  
18 the people of the state of Washington should be able to rely primarily

1 upon the state Constitution for the protection of their liberties and  
2 individual rights; and that it is a legitimate exercise of the police  
3 power of the state of Washington to preserve the public peace, health,  
4 morals, and safety of the people of the state of Washington by  
5 establishing an enforcement mechanism for redress for violations of the  
6 state Constitution.

7 NEW SECTION. **Sec. 3.** (1) Every governmental entity that, under  
8 color of a statute, ordinance, regulation, custom, or usage, subjects  
9 or causes to be subjected, a citizen, inhabitant, or domiciliary of the  
10 state of Washington to the deprivation of any rights, privileges, or  
11 immunities secured by the Constitution of the state of Washington, is  
12 liable to the person injured in an action at law, suit in equity, or  
13 other proper proceeding for the redress.

14 (2) A person deeming himself or herself injured by any act in  
15 violation of this chapter may recover all damages sustained including,  
16 but not limited to, damages or remedies made available under the civil  
17 rights act of 1871 (42 U.S.C. Sec. 1983). Punitive damages, however,  
18 may not be recovered unless there is a separate statutory basis.

19 (3) The common law doctrine of qualified immunity may not be  
20 applied to shield any governmental entity from an action under this  
21 act.

22 (4) If a person has recovered damages, under the civil rights act  
23 of 1871 (42 U.S.C. Sec. 1983), for the conduct or actions of a  
24 governmental entity, he or she may not also recover under this act. In  
25 actions brought under this act, the court shall clearly state in the  
26 conclusions of law whether the damages have been awarded under the  
27 provisions of this act or the civil rights act of 1871.

28 (5) It is the intent of the legislature that persons who are  
29 injured by a violation of the state Constitution are eligible for  
30 redress, that future violations of the state Constitution be deterred  
31 thereby, and that this statute be construed liberally for the  
32 accomplishment of its declared purpose in this chapter. Nothing  
33 contained in this chapter shall be construed to deny the right of a  
34 person to institute an action or pursue any civil or criminal remedy  
35 based upon an alleged violation of his or her civil rights.

36 NEW SECTION. **Sec. 4.** (1) For purposes of this chapter,  
37 "governmental entity" means the state or any local government.

1 (2) For the purposes of this chapter, a governmental entity is  
2 liable for the act of an agency, instrumentality, officer, or employee  
3 done under color of a statute, ordinance, regulation, custom, or usage.

4 (3) For the purposes of this chapter, an officer, employee, or  
5 agent of a governmental entity is liable only to the extent that he or  
6 she acts under color of a statute, ordinance, regulation, custom, or  
7 usage.

8 (4) For the purposes of this chapter, "person" means a natural  
9 person, and does not include a corporation, business trust, estate,  
10 trust, partnership, association, joint venture, or other legal or  
11 commercial entity.

12 NEW SECTION. **Sec. 5.** In an action or proceeding to enforce a  
13 provision of this chapter, a court may impose actual damages but may  
14 not impose or levy as a remedy or otherwise any new or additional  
15 general or special tax, assessment, fee, or toll.

16 NEW SECTION. **Sec. 6.** In an action or proceeding to enforce a  
17 provision of this chapter, the prevailing party may recover any and all  
18 attorneys' fees and costs for any act in violation of this chapter,  
19 including but not limited to expert witness fees, to the same extent  
20 recoverable under RCW 49.60.030(2).

21 NEW SECTION. **Sec. 7.** This act applies prospectively only and not  
22 retroactively. It applies only to causes of action that arise on or  
23 after the effective date of this act.

24 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
25 a new chapter in Title 7 RCW.

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