H-3327.1

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**HOUSE BILL 2506**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Sawyer, Kilduff, Ormsby, and Appleton

AN ACT Relating to liability for exemplary damages; amending RCW 4.92.090 and 4.96.010; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 4.24 RCW to read as follows:

(1) Except as provided in RCW 4.92.090 and 4.96.010 with respect to the state of Washington and local governmental entities, in a tort action for damages a person may be liable for exemplary damages arising out of his or her willful or wanton misconduct.

(2) "Exemplary damages" includes punitive damages and means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages.

(3) "Wanton misconduct" is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has a duty to do, in reckless disregard of the consequences and under such surrounding circumstances and conditions that a reasonable person would know, or should know, that such conduct would, in a high degree of probability, result in substantial harm to another.

(4) "Willful misconduct" is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has the duty to do when one has actual knowledge of the peril that will be created and intentionally fails to avert injury or actually intends to cause harm.

**Sec.**  RCW 4.92.090 and 1963 c 159 s 2 are each amended to read as follows:

(1) The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation except as provided in subsection (2) of this section.

(2) The state of Washington, whether acting in its governmental or proprietary capacity, is not liable for exemplary damages under section 1 of this act.

**Sec.**  RCW 4.96.010 and 2011 c 258 s 10 are each amended to read as follows:

(1)(a) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation except as provided in (b) of this subsection. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(b) Local governmental entities, whether acting in their governmental or proprietary capacity, are not liable for exemplary damages under section 1 of this act.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

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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