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HOUSE BILL 1886

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State of Washington

66th Legislature

2019 Regular Session

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

Read first time 02/04/19. Referred to Committee on Civil Rights & Judiciary.

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

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

5 **Sec. 1.** RCW 29A.04.205 and 2003 c 111 s 132 are each amended to  
6 read as follows:

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

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

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 29A.04  
2 RCW to read as follows:

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

4        (1) "Claimant" means any eligible voter claiming to be aggrieved  
5 by an alleged discriminatory act or practice in violation of RCW  
6 29A.04.205.

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

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

15        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 29A.04  
16 RCW to read as follows:

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

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

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

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

29        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 29A.04  
30 RCW to read as follows:

31        (1) A claimant seeking remedies under section 6 of this act must  
32 first file with the attorney general a written claim of  
33 discrimination in violation of RCW 29A.04.205. The claim must state  
34 the name and, to the extent possible, the contact information of the  
35 person or persons alleged to have committed the practice or act  
36 complained of, the particulars of the alleged discrimination, and  
37 other information required by the attorney general. After a claim is  
38 filed with the required information, the attorney general shall

1 initiate investigation of the allegations contained in the claim  
2 within thirty days.

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

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

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

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

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

36 (5) If the attorney general concludes at any time after the  
37 filing of a claim or upon investigation under subsection (2) of this  
38 section that prompt judicial action is necessary to carry out the  
39 purposes of this act, the attorney general may file a civil action  
40 for appropriate temporary or preliminary relief pending final

1 disposition of the claim. The court having jurisdiction over the  
2 proceedings shall assign the action for hearing at the earliest  
3 practicable date and shall cause the action to be expedited in every  
4 way.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 29A.04  
6 RCW to read as follows:

7 After exhausting the administrative remedy provided under section  
8 4 of this act, a claimant may file a complaint with the superior  
9 court in the county in which the respondent resides, where the  
10 alleged discriminatory practice or act occurred, or in Thurston  
11 county. This section does not prohibit a court from applying the  
12 doctrines of collateral estoppel and *res judicata*.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 29A.04  
14 RCW to read as follows:

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

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

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

22 (c) Temporary or permanent injunctive relief;

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

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

26 (ii) Ten thousand dollars for any subsequent violation;

27 (e) Any other appropriate remedy authorized by the federal civil  
28 rights act of 1964 as amended, the federal voting rights act of 1965  
29 as amended, the federal national voter registration act of 1993 (52  
30 U.S.C. Secs. 20501 et seq.), or the federal help America vote act of  
31 2002 (52 U.S.C. Secs. 20901 et seq.); or

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

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

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

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

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

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 29A.04  
10 RCW to read as follows:

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

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

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 29A.04  
23 RCW to read as follows:

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

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